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A/CN.4/SR.19

Summary record of the 19th meeting

Topic:
Fundamental rights and duties of States

Extract from the Yearbook of the International Law Commission:-
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METHOD OF WORK AND ESTABLISHMENT OF A COMMITTEE

49. The CHAIRMAN requested the Commission to decide on the method of work it desired to adopt. The question to be decided was whether or not it would be necessary to re-word articles 6, 7 and 8 of the Charter of the Nürnberg Tribunal in order to emphasize the principles of international law which they enunciated. For his part he refused to admit that the task of the Commission was merely to extract from the Charter the provisions containing principles of international law and simply and solely recopy them.

50. Mr. AMADO said that it would first be necessary to determine the meaning of the word " formulation ". Some of the principles enunciated in the Charter and the judgment of the Nürnberg Tribunal had considerably modified existing international law. In formulating them, the Commission would sanction those modifications. Its task was therefore extremely important and could not be a mere reproduction of certain provisions of the Charter and judgment of the Nürnberg Tribunal.

51. Mr. SANDSTROM was of the opinion that the Commission should not confine itself to repeating principles enunciated in the Charter and judgment of the Nürnberg Tribunal: it should proceed to make a systematic analysis of those two documents.

52. Mr. CORDOVA shared the views of the Chairman. The Commission should not only register the principles proclaimed in the Charter and judgment of the Nürnberg Tribunal. It should also, to mention only one example, study the question of aggressive operations, which in the Tribunal's opinion did not constitute wars of aggression (A/CN.4/5, p. 59).

53. Mr. FRANÇOIS wondered whether in formulating the principles of Nürnberg the Commission might not be guided by the French proposal (A/AC.10/34) a summary of which appeared on page 20 of the Secretary-General's memorandum (A/CN.4/5). In that case the Commission might take the proposal as a basis for discussion.

54. The CHAIRMAN remarked that the French proposal was drawn up in terms which were too general to serve as a point of departure for the discussion.

55. Mr. AMADO had no objection to taking the French proposal as a basis, but he thought the Commission should first discuss and agree as to what principles emerged from the Charter and the judgment of the Nürnberg Tribunal.

56. Mr. ALFARO recalled that the Commission had agreed to recognize that the principles to be formulated were enunciated in Articles 6, 7 and 8 of the Charter. He thought the Commission might arrange for the formulation of those principles to be preceded by a general statement in the sense of paragraphs (*a*) and (*b*) of the French proposal. Emphasizing the need for a working document to serve as a basis for discussion, he proposed the establishment of a committee composed of two or three members whose task would be to draw up such a document.

57. The CHAIRMAN pointed out that before preparing the document the Committee should study the Charter and judgment of the Nürnberg Tribunal, taking into account the preparatory work on the Charter and the other judgments given by the Tribunal, as well as the Charter and judgment of the Tokyo Tribunal. The question therefore arose as to whether the Committee should draw up the working document during the present session or in the interval between the Commission's first and second sessions.

58. After a brief discussion in which Mr. SPIROPOULOS, Mr. ALFARO and Mr. CORDOVA took part, the Commission decided to set up a committee composed of Mr. François, Mr. Spiropoulos and Mr. Sandström, whose task it would be to draw up during the present session a working document containing a formulation of the Nürnberg principles.[2]

The meeting rose at 5.40 p.m.

[2] The discussion was resumed at the 25th meeting. See A/CN.4/SR.25.

18th MEETING

Wednesday, 11 May 1949, at 3 p.m.

This meeting was held in private and no Summary Record was issued.

19th MEETING

Thursday, 12 May 1949, at 3 p.m.

CONTENTS

Chairman: Mr. Manley O. HUDSON.

Rapporteur: Mr. Gilberto AMADO.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. James L. BRIERLY, Mr. Roberto CÓRDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Vladimir M. KORETSKY, Sir Benegal N. RAU, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

Secretariat: Mr. KERNO, Assistant Secretary-General in charge of the Legal Department; Mr. LIANG, Director, Division for the Development and Codification of International Law, Secretary of the Commission.

Draft Declaration on the Rights and Duties of States (*resumed*)

SECOND READING

1. The CHAIRMAN drew attention to the draft Declaration on the Rights and Duties of States as proposed by the Sub-Committee [1] on the Draft Declaration.[2]

2. Mr. KERNO (Assistant Secretary-General) wished to make some general comments on the draft Declaration. Recalling that the Commission

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[1] Set up at the sixteenth meeting. See A/CN.4/SR.16, paras. 112-116.

[2] The Draft Declaration read as follows:

" *Whereas* the States of the world form a community and the protection and advancement of the common interests of their peoples require effective organization of the community of States;

" *Whereas* the great majority of the States are organized as a legally constituted community and have established a new international order under the Charter of the United Nations;

" *Whereas* the community of States is universal and participation in its constitutional organization should also be universal and obligatory;

" *Whereas* the maintenance of international peace and security is the supreme aim of the community of States and the United Nations has set forth purposes and principles and has established organs and procedures appropriate for the realization of that aim and conforming to the rules, customs and principles generally recognized by the civilized nations as constituting international law;

" *Whereas* the reign of law is the necessary foundation of international peace and security, and therefore it is important to define the basic rights and duties that States may exercise or must fulfil in their mutual relations; and

" *Having in mind* the principle that rights and duties are correlative and the right of one State implies the duty of other States to respect it;

" *The General Assembly* of the United Nations adopts and proclaims the following:

" DECLARATION ON THE RIGHTS AND DUTIES OF STATES

" *Article 1*

" Every State has the right to maintain its existence and to provide for the well-being of its people.

" *Article 2*

" Every State has the right to have its existence recognized by other States.

" *Article 3*

" Every State has the right to independence and thus to exercise freely, without being subject to the dictates of any other State, all its legal powers including the choice of its own form of government. It is in this sense that States are sovereign.

" *Article 4*

" Every State has the duty to refrain from intervention in the internal or external affairs of any other State.

" *Article 5*

" Every State has the right to equality in law with any other State.

" *Article 6*

" Every State has the right to exercise jurisdiction over its territory and over all persons and things therein.

" *Article 7*

" Every State has the duty settle its international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

" *Article 8*

" Every State has the duty to refrain from waging war as an instrument of national policy and from resorting to any threat or use of force either against the territorial integrity or political independence of another State or in any other manner inconsistent with international law and order.

" *Article 9*

" Every State has the duty to refrain from recognizing any territorial acquisition made by another State through force or the threat of force.

" *Article 10*

" Every State has the duty to refrain from giving assistance to any State which has failed to perform the duty set forth in Article 8 or against which the United Nations is taking preventive or enforcement action.

" *Article 11*

" Every State has the right, individually or collectively, to take legitimate measures for its own defence or for the defence of any other State.

" *Article 12*

" Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law and it may not invoke limitations contained in its own Constitution or its laws as an excuse for failure to perform this duty.

" *Article 13*

" Every State has the duty to see that conditions prevailing within its own territory do not menace international peace and order, and to this end it must treat its own population with respect for human rights and fundamental freedoms for all.

" *Article 14*

" Every State has the duty to refrain from fomenting civil strife in the territory of another State, and the duty to prevent the organization within its territory of activities calculated to foment such civil strife.

" *Article 15*

" Every State has the right to accord asylum to persons of any nationality who request it in consequence of persecution for offences of a political character.

" *Article 16*

" Every State has the duty to conduct its relations with other States in accordance with international law, and with the principle that the sovereignty of the State is subject to be supremacy of international law. "

had previously decided to base that document on general international law rather than on the United Nations Charter only, he observed that general international law included primarily customary international law, but it also included conventional law, of which the United Nations Charter formed an important part. The Charter set forth a body of international law which had been accepted by 59 States and all other States in the world had indicated their willingness to abide by it, with the exception of traditionally neutral Switzerland and of Franco Spain which was precluded from admission to membership in the United Nations in consequence of resolutions of the General Assembly. The Principles of the Charter were certainly as broadly accepted as those of customary international law. Moreover, by the time the draft Declaration under discussion was adopted, it was to be hoped that there would be even fewer States in the world that had not formally become Members of the United Nations and hence bound by the international law contained in the Charter.

3. In view of the importance of the Charter as a basic source of international law, Mr. Kerno expressed considerable concern that that importance was not manifest in the draft Declaration. There was even reason to fear that some misunderstandings might arise. For example, article 10 of the draft Declaration specifically affirmed as a principle of general international law a principle already contained in the Charter. On the basis of that fact, it might be argued that Principles of the Charter that were not mentioned in the draft Declaration were not obligations under general international law.

4. Mr. Kerno reminded the Commission that the principles recognized in the Charter of the Nürnberg Tribunal, which were first valid for the twenty-three countries that signed the London Agreement, had later been recognized by General Assembly resolution 177 (II). That action of the General Assembly had had important repercussions on the validity of the principles involved. The draft Declaration was designed to be read not only by legal experts but by men everywhere; it should therefore be entirely clear that the Declaration was not framed irrespective of the Charter. Mr. Kerno suggested that there might be need for a general statement in the Declaration to the effect that everything contained therein was subject to the declarations set forth in the Charter.

5. Mr. AMADO, in supporting the views of the Assistant Secretary-General, recalled that he had already outlined his position on that subject at an earlier meeting. The international community, such as it was now organized in the United Nations, had been " institutionalized ". The Charter of the United Nations could almost be considered in itself to constitute general international law. The Charter laid down the most complete form of international co-operation. It was applicable to Member States and, under Article 2, paragraph 6, the United Nations had the duty of ensuring that non-Member States should act in accordance with its principles so far as might be necessary for the maintenance of international peace and security. Therefore it was not *res inter alias acta* for non-member States. The draft Declaration should recognize the general obligations of States toward the international community; it should affirm the existence of the United Nations and the Principles of the United Nations Charter.

6. Mr. ALFARO wondered whether the point raised by the Assistant Secretary-General was not met by the fourth paragraph of the preamble of the draft Declaration, as that paragraph set forth the significance of the United Nations in international law.

7. The CHAIRMAN suggested that the Commission should first consider the various articles of the draft Declaration and later discuss the preamble.

It was so agreed.

Article 1

8. At the request of the CHAIRMAN, Sir Benegal RAU explained why the Sub-Committee had proposed a text for article 1 different from that adopted at the tenth meeting. [3] The new text omitted mention of the right of a State to exist, because the Sub-Committee had considered such a statement superfluous. The draft Declaration was based on the assumption that sovereign States did in fact exist. So it was a tautology to say they had a right to exist.

9. The second part of the earlier text had been amended. The words " the right to preserve its existence " seemed to imply two ideas: first, the right of a State to defend itself against aggression; and secondly, the right to provide for the well-being of its people in peacetime. As the first right was provided for in article 11, it seemed appropriate to define only the second right in article 1. The new wording " to maintain its existence and to provide for the well-being of its people " had therefore been suggested.

10. The CHAIRMAN thought the proposed addition could serve no useful purpose. A State's right to provide for the well-being of its people could scarcely be said to constitute a legal right. He preferred the text adopted at the tenth meeting, possibly limited to the State's right to preserve its existence.

11. Mr. ALFARO considered that text inadequate. Article 1 should not be divested of all its natural and human implications. It should proclaim the right of a State, i.e., a community

[3] See A/CN.4/SR.10, paras. 57-64.

of men—to life, liberty and happiness, the right to develop within the community of States. He could not agree to anything less than the Sub-Committee's text.

12. Mr. BRIERLY preferred the Sub-Committee's text to that adopted at the tenth meeting, but he considered the whole article unnecessary. The right of a State to exist was fully implied in article 3, which dealt with the independence of a State; and the right of a State to maintain its existence was covered by article 11, concerning self-defence. He therefore proposed the deletion of article 1.

13. The CHAIRMAN would support that proposal, particularly if the Sub-Committee's text was to be maintained. He pointed out, furthermore, that article 3 would be appropriate as the first article of the draft Declaration.

14. Mr. SANDSTROM agreed that article 1 might be deleted. It was in fact a postulate that there was no need to state. The substance of the article was implied in article 2.

15. Mr. FRANÇOIS strongly opposed the inclusion of article 1 in the draft Declaration as it was contrary to the principle of self-determination of peoples. If the people of a State should decide upon the constitution of a new State or States, the old State would have no longer the right to exist. Moreover, an illegally constituted State, or one that was the result of the use of force, had no right to exist; that principle was to be found in article 9 of the draft Declaration itself. Mr. François therefore urged that the article should be deleted.

16. Mr. HSU supported the proposal to delete the article. He was also prepared to delete article 2 if the Commission should think that advisable. He recalled that he had previously proposed that articles 1 and 2 should be strengthened. That proposal had been referred to the Sub-Committee, but had not been carried out. The articles as they stood seemed to serve no useful purpose.

17. Mr. AMADO knew of no provision in positive law that corresponded to the " well-being " of peoples. That idea was rather political than legal and went beyond the recognized principles of international law on which the draft Declaration was based.

18. Mr. SCELLE agreed with Mr. François that article 1 might prejudice the right of self-determination of peoples. If in fact the article wished to ensure the democratic right of peoples to form a State of their own choosing, it should be more explicit; if it was not referring to that right, it was meaningless. In order to avoid any misunderstanding, the article should be deleted.

19. Mr. SPIROPOULOS thought the second part of the article, which concerned the well-being of peoples, had no place in the draft Declaration. That was an internal matter and was not of international concern. The statement that a State had a right to exist could have no legal meaning; it could have only a political significance. However, some previous declarations contained such a provision. He would abstain in the vote on the article.

20. Mr. ALFARO thought there was no more need to confuse the right of a State to exist and to develop with its right to independence than there was to confuse the right of an individual to life with his right to liberty. The right to exist was a positive assertion, whereas the right to independence was a negative assertion. Moreover, the existence of a State was not dependent upon its recognition by other States. In that connexion, Mr. Alfaro quoted article 3 of the draft Declaration submitted by Panama (A/CN. 4/2, p. 35). If the right of a State to have its existence recognized was to be mentioned in the Declaration, its right to exist should first be set forth.

21. Mr. AMADO, replying to the point raised by Mr. Alfaro, observed that while an individual could in fact exist and yet not be free, doubted whether a State without independence in fact existed.

22. The CHAIRMAN put to the vote the proposal to delete article 1.

As the result of the vote was 7 in favour and 5 against, the Chairman suggested, and it was agreed, that no definite decision should be taken on the basis of so close a vote.

23. The Chairman wondered whether more general agreement might be reached if the text were amended.

24. Mr. CORDOVA thought the omission of the last part of the Sub-Committee's draft might make the article more acceptable.

25. Mr. ALFARO urged again that the article should be retained. To assert the right of a State to exist was a matter of vital importance. It appeared as drafted by the Institute of International Law and was supported by many jurists. The draft Declaration was intended for the man in the street as well as for jurists and should be perfectly clear. If the Commission decided to reject articles 1 and 2, Mr. Alfaro was certain that the Panamanian delegation would raise the question in the General Assembly.

26. Mr. FRANÇOIS observed that the Declaration was intended for the man in the street, but would be used by politicians. For that reason he was opposed to article 1.

Article 2

27. The CHAIRMAN noted that the Sub-Committee had not changed the draft of article 2 which had been provisionally adopted by the Commission. [4]

[4] See A/CN.4/SR.II, para. 32.

28. Mr. SCELLE wondered whether Mr. Alfaro might not agree that the principle contained in article 1 was, in fact, embodied in article 2, without the implied prejudgement on the way in which a State had come into existence, which he himself saw in article 1.

29. Mr. AMADO considered that article 2 should be maintained because it expressed a principle of law which was universally recognized.

30. The CHAIRMAN recalled that the text of article 2 had been derived from article 3 of the Panamanian draft Declaration, which had declared that " the political existence of the State is independent of its recognition by other States ". That idea had, however, been omitted from the article under consideration, which now appeared to lack foundation. It had not been the practice of States for a century at least to consider that a State was entitled to recognition by other States, and certainly not in the early nineteenth century, when the Latin American States had become independent. The inclusion of the word " existence " appeared immaterial to the substance of that objection.

31. Mr. BRIERLY was in favour of deleting article 2. He was not opposed to the principle it contained but considered that the article would be out of place in the Declaration, as the whole topic of recognition had been retained for separate codification and it was wrong to select one aspect of it in the draft Declaration. Finally, he pointed out that the Commission had decided not to define a State, yet article 2 proposed to indicate one of the qualities of a State, though it was a negative quality, since a State could exist without being recognized by other States.

32. The CHAIRMAN endorsed that opinion, and expressed the view that such a declaration on the broad subject of recognition would be worthless. He referred to the example of Israel. At what time had Israel a right to have its existence recognized by other States? And if some States did not recognize it, did they then violate a duty?

33. Mr. FRANÇOIS suggested that the words " recognition of an entity as a State in no way requires the entry into diplomatic, or any other particular relations with, the entity so recognized ", which had been suggested in the United Kingdom comment, should be added to article 2.

34. The CHAIRMAN objected that such an addition would entail the complete redrafting of the article, which had been accepted in principle.

35. Sir Benegal RAU did not consider the meaning of article 2 to be clear. Since the Commission had decided not to define the meaning of the word " State ", but to take for granted the existence of those entities, why was it necessary to refer to the recognition of their existence? If reference was intended to the duty of a State, acting in good faith, to recognize as a State an entity which satisfied certain conditions, then the article would, at least, mean something.

36. Mr. ALFARO urged again that the declaration was not intended only for legal specialists and should therefore be clear to the lay mind. The essential ideas to be conveyed were the right of a State to exist, its right to have that existence recognized by other States, and its right to maintain its existence independently of such recognition. In the case of the Latin-American republics, it was accepted that they had been in fact and in law independent since 1824, though many European States had not recognized their existence for as long as 18 years after that date. The right which was to be affirmed was the right of a State to develop its own existence in the period between its birth and its recognition by other States. He proposed, therefore, that a combination of the texts suggested by the Greek and United Kingdom Governments in their comments on articles 1 and 2 (A/CN.4/2, pp. 49-50 and 52-53) should be inserted, and that article 2 should read: " Every State has the right to exist, to have its existence recognized by other States and to maintain its existence independently (or regardless) of such recognition."

37. The CHAIRMAN contended that such a text would be self-contradictory, since it declared that other States should recognize the State in question, which was entitled to maintain its existence independently of such recognition.

38. Mr. ALFARO explained that the last clause was to provide for the inevitable delay between the birth of a State and the formal recognition of its existence.

39. The CHAIRMAN pointed out that article 1, the principle of which was included in the proposed phrase, had not been finally rejected.

40. Mr. SCELLE maintained that the principle and practice of recognizing a new State had changed very much since the early nineteenth century, since the time of the independence of the Spanish colonies. Law corresponds to political evolution, With collective recognition possible through the General Assembly of the United Nations, it was absurd to suggest that a State would refuse to recognize another State which had already been recognized by that Organization.

41. He appealed to the Commission not to allow academic considerations to blind them to their objective. He himself had perhaps allowed considerations of logic to weigh too heavily when he had voted against the inclusion of article 1. In his opinion article 2 was important and derived part of its value from the inclusion of the principle originally contained in article 1.

42. Mr. YEPES asked the Chairman whether, in view of the statements by Mr. Scelle and Mr. Amado, the Commission might vote again on article 1 in the form in which it had earlier been provisionally approved by the Commission.

43. The CHAIRMAN said that article 1 would be reconsidered after the discussion on the next few articles had been concluded. He then put to the vote the question whether or not article 2 should be deleted.

It was decided, by 7 votes to 4, that article 2 should not be deleted.

44. The CHAIRMAN said that the Commission would reconsider the wording of article 2 at a later stage.

Article 3

45. The CHAIRMAN said the first sentence of this article would be excellent to start the Declaration. Only a comma had been added to the text [5] of article 3 by the Sub-Committee. He himself proposed that the word " thus " should be changed to " hence " and that " the dictates of " should be amended to " dictates by ".

It was so decided.

46. The CHAIRMAN proposed further that the last sentence should be deleted. The matter of sovereignty was dealt with in article 16, and need not be included in article 3 as well. As it stood, the sentence was in the nature of an interpretation of the preceding sentence, and he considered it superfluous.

47. Mr. FRANÇOIS suggested that article 3 as it stood might provide justification for a protectorate to claim independence as a sovereign State.

48. Mr. SANDSTROM said that he intended to propose the insertion of the word " sovereign " in the title of the Declaration, in order to show clearly that it referred to the rights and duties of sovereign States only. If that amendment were adopted, the objection raised by Mr. François would be met.

49. The CHAIRMAN thought that the draft Declaration did not deal with protectorates which did not have control of their international relations, but only with States which had such control.

50. Mr. SANDSTROM suggested that that point should be explained in the report of the Committee.

51. Sir Benegal RAU added that the drafting Sub-Committee had expressed the hope that an explanation would be given showing that, for the purposes of article 3, protectorates were not regarded as States.

52. The CHAIRMAN put to the vote the first sentence of article 3 as amended.

The first sentence of article 3 as amended was tentatively adopted.

53. Mr. SCELLE attached great importance to the maintenance of the second sentence of article 3. In his view it would help to purge the concept of sovereignty of the sense given to it by some individuals and Governments; that sense was that sovereignty was the justification for indulging a State's own wishes even in defiance of international law. Such was the former sense of the word " sovereignty ". An opportunity was now offered to the Commission of declaring that a State enjoyed no discretionary powers, amounting to a negation of international law, and such a declaration, based on the advisory opinion of the Permanent Court of International Justice on the *Anschluss*, [6] would strongly impress public opinion and influence the conduct of Governments. A State could not be a source of law and a subject of law. Sovereignty should be reduced to legal powers. It was necessary to educate mankind on that new conception of sovereignty.

54. In reply to the CHAIRMAN's objection that his purpose appeared to be beyond the Commission's terms of reference, Mr. Scelle contended that the proper concept of sovereignty entailed the duty of States not to exceed their rights.

55. Mr. BRIERLY thought that the principle that sovereignty was limited by international law was adequately covered by article 16, and might be omitted from article 3, though he supported Mr. Scelle's opinion regarding the great importance of the principle.

56. Mr. SCELLE thought that the Declaration would lose much of its power and value if the last sentence were omitted from article 3. In his view, independence and sovereignty were identical, but while the former had a precise juridical meaning, the latter either had no meaning at all or one which was the negation of international law. He wanted sovereignty defined in connexion with independence and would urge the inclusion of the sentence in article 3, as it emphasized in a more striking manner than article 16 the idea that national sovereignty was necessarily limited.

57. Mr. KORETSKY suggested that Mr. Scelle was introducing the idea of sovereignty only in order to kill it.

58. Mr. SCELLE declared that his intention was only to banish what was evil in the connotation.

59. Mr. HSU agreed that a definition of sovereignty would be welcome, and that such a definition could properly be included in article 3, as the word was not defined in article 16.

60. Mr. YEPES endorsed Mr. Scelle's opinion that the inclusion of the last sentence in article 3 would represent an advance in international law. The notion of sovereignty had been interpreted in many ways, often with unfortunate results,

[5] A/CN.4/SR.12, paras. 81-82. The present Article 3 was originally Article 4.

[6] Permanent Court of International Justice. Series A/B. Fascicle No. 41, *Customs Régime between Germany and Austria.* (Protocol of 19 March 1931).

and a definition by the Commission would have great effect throughout the world.

61. Mr. CORDOVA noted that the concept of sovereignty which Mr. Scelle wished to introduce into article 3 was included in article 16. The second sentence of article 3, however, might introduce a controversial idea on sovereignty; he was therefore in favour of deleting it.

62. Mr. AMADO noted that most members had supported in substance the definition of sovereignty given in the second sentence of article 3. A definition of that concept, however, would be inappropriate in view of the fact that no definition was given for the concepts dealt with in the subsequent articles.

63. The Commission's task was to determine what principles should be included in the Declaration, and not to discuss new concepts of future international law. In view of those considerations, Mr. Amado would vote for the deletion of the second sentence of article 3.

64. Mr. SANDSTROM stated that he had voted against the inclusion of the definition in article 3 at a previous meeting for reasons given by the Chairman and Mr. Amado. He still maintained that position and would therefore vote for the deletion of the second sentence.

65. The CHAIRMAN stated that the Commission must decide whether it would retain the substance of the second sentence in article 3; if so, the text could subsequently be re-drafted. He then put to the vote the question of retaining the substance of the second sentence of article 3, which read: " It is in this sense that States are sovereign ".

Six votes having been cast in favour and 6 against, the Chairman reserved the question until a later date.

66. Sir Benegal RAU thought that if the words " legal powers " in the first sentence were replaced by the words " sovereign powers ", the second sentence might be deleted.

67. Mr. SCELLE did not agree.

68. The CHAIRMAN drew attention to a defect in the drafting of the article. It was not clear which of the two thoughts contained in the first sentence was implied by the opening words of the second sentence: " It is in this sense ". He therefore suggested that the second sentence might be redrafted as follows: " A State is sovereign only in the sense that it is independent ", or " The sovereignty of a State has the meaning of independence ". Thus it would be clear that the right of independence was larger than the choice of a government mentioned in the second part of the first sentence.

69. Mr. SCELLE thought that the French version of the article which read *dans la mesure où* (to the extent that), was quite clear. The words " including the choice of its own form of government " were intended as an illustration of the legal powers which could be exercised by a State.

70. The CHAIRMAN thought that if the Commission decided to retain the concept contained in the second sentence of the article, the Charter phrase " sovereign equality ", although not quite clear, in itself, might be adopted.

71. Mr. KORETSKY pointed out that the problem of sovereignty had not been sufficiently clarified or studied by the Commission, and thought that a group might be appointed to deal with that question. Mr. Scelle's incidental definition of the concept was not sufficient and lost its original meaning in the context of an article dealing with independence. Sovereignty was the important and fundamental principle of statehood and its meaning should be kept clear. The Commission had yet another article dealing with sovereignty, in connexion with which it could later work out a definition of that concept. In the present context, however, a definition of sovereignty would be impossible.

72. Mr. ALFARO, with reference to an earlier discussion of the article, [7] recalled his description of sovereignty as a sheaf of many rights, including three essential rights—(1) right of independence, (2) right to non-intervention, and (3) right of equality. The United Kingdom comment on equality also identified that right with sovereignty. Noting the value of the concept of sovereignty as laid down in article 3, he wondered whether it might not be presented elsewhere as a direct expression of a right or a duty, instead of constituting an isolated postulate in an article dealing with independence.

73. The CHAIRMAN stated that the Commission would revert to that article after completion of the discussion of the remaining articles.

Article 4

74. Mr. KERNO (Assistant Secretary-General), pointing out that the concepts of the Declaration were necessarily the same as those contained in the Charter, wished to know whether the word " intervention " in article 4 was used in the same sense as in Article 2, paragraph 7 of the Charter.

75. The CHAIRMAN replied that intervention, as used in the Declaration, meant intervention by a single State acting on its own authority, whereas in the Charter it meant collective action by the United Nations.

76. Mr. KERNO (Assistant Secretary-General) said that when the expression had been discussed in the General Assembly, a number of delegations had maintained that its meaning in the Charter was the same as under international law.

77. In order to meet the point raised by the

[7] *Ibid.*, para. 70.

Assistant Secretary-General, Mr. YEPES suggested that the article might be re-phrased as follows: Every State has the duty to refrain from unilateral intervention. " Thus collective action by the United Nations would be excluded from the purview of the article.

78. The CHAIRMAN noted that Mr. Yepes' text did not take into account the possibility of intervention by a group of States.

79. Mr. YEPES said that it was with that possibility in mind that he had previously proposed the phrase " Every State or group of States ", which proposal had been rejected.[8]

80. Mr. SCELLE thought that it would be better to say explicitly: " This article does not prevent an international organization from exercising its competence. "

81. The CHAIRMAN recalled, in that connexion, the need for a general clause in the Declaration reserving all rights and duties laid down in the Charter of the United Nations.

82. Mr. SPIROPOULOS thought that the meaning of the word " intervention " in Article 2, paragraph 7 of the Charter, where it laid down the rule of non-intervention by the United Nations in the domestic affairs of a State, was entirely different from its present connotation of political intervention by force or threat of force, which need not be limited to the internal affairs of another State.

83. Mr. CORDOVA thought that the word " intervention " had a very precise meaning in international law. It was mentioned in the Charter only in Article 2, paragraph 7, where it was said that intervention in the domestic affairs of another State was illegal. In other instances the Charter used such words as " coercive action " and " measures of enforcement ". Consequently the word "intervention ", as used in the Declaration, could not include United Nations action. Mr. Córdova suggested, however, that the Rapporteur might state in his report that the Commission understood by that word unilateral intervention or collective intervention without legal authority.

84. The CHAIRMAN put to the vote Mr. Yepes' proposal that article 4 should be amended to read " Every State has the duty to refrain from unilateral intervention . . .".

Mr. Yepes' proposal was rejected by 8 votes to 1.

85. The CHAIRMAN then put article 4 to the vote.

Article 4 was tentatively adopted by 12 votes in favour and none against.

Article 5

86. The CHAIRMAN noted that the Sub-Committee had made no changes in that article.[9] He suggested, however, that the word " any " might be changed to " every ". There seemed to be no need to reopen the discussion of the article's relation to the similar provision in Article 2, paragraph 1 of the Charter.

In the absence of further comment he put the article to the vote.

Article 5 was tentatively adopted by 11 votes in favour and none against.

Article 6

87. Sir Benegal RAU noted that the Sub-Committee had made some changes in the article to take into account the right of the State to cede its territory or territorial rights to another State, and in general to exercise jurisdiction over its territory as well as over all persons and things therein.[10]

88. The CHAIRMAN, on a remark by Mr. FRANÇOIS concerning the right of extra-territoriality, stated that the Commission had reserved the question of the State's jurisdiction over embassies and legations, warships and persons enjoying diplomatic immunities.

89. Mr. KERNO (Assistant Secretary-General) noted that while Article 105 of the Charter dealt with the privileges and immunities of the United Nations and the persons connected therewith, two specific instruments had been adopted on the matter: (1) The Convention on the Privileges and Immunities of the United Nations, providing diplomatic immunity for the Secretary-General and the Assistant Secretaries-General, and (2) The Headquarters Agreement with the United States ensuring diplomatic immunity to members of the delegations and their staffs.

90. Mr. SPIROPOULOS thought that the present text of article 6, dealing with States' right to exercise domestic jurisdiction was self-evident and meaningless in a declaration dealing with principles of international law. The point which should be brought out was that every State had the right to exercise *exclusive*, jurisdiction over its territories. The matter had been discussed previously, and while there had been some disagreement on the appropriate word to denote that exclusiveness, the Commission had felt that a word was necessary. What was meant was that no State could exercise jurisdiction in the territory of another State.

91. Mr. SANDSTROM proposed the deletion of the word " all ".

92. Mr. FRANÇOIS, supported by Mr. ALFARO and Mr. SCELLE, suggested the addition of the clause " subject to the privileges and immunities recognized by international law. "

[8] *Ibid.*, para. 36.

[9] *Ibid.*, para. 99.

[10] See A/CN.4/SR.13, para. 54. Article 6 was formerly Article 7.

93. The CHAIRMAN recalled that that was one of the subjects retained by the Commission as suitable for codification. He did not think, moreover, that such a clause could be included without mentioning the specific exceptions to which it referred.

94. Mr. AMADO suggested that article 16 might provide the necessary limitation of article 6.

95. The CHAIRMAN agreed inasmuch as the privileges and diplomatic immunities were part of international law and must thus be respected by States in accordance with article 16 in the exercise of their rights.

96. Mr. KORETSKY observed that article 12 might serve the same purpose.

97. Mr. ALFARO stated that while generally opposed to listed exceptions to the provisions laid down in the Declaration, in the present case he would favour a limitation clause covering the requirements of international law and of the Charter.

98. Mr. SCELLE agreed with Mr. Alfaro. Moreover, article 16 referred to a specific question and should not be transformed into a blanket clause applying to all articles of the Declaration.

99. The CHAIRMAN put to the vote the amendment to article 6 which read " subject to the immunities recognized by international law. . . "

100. Mr. ALFARO suggested the insertion of the word " privileges " before the word " immunities " in order to bring the words into conformity with the Charter text.

The amendment to article 6 as amended by Mr. Alfaro was adopted by 9 votes to none.

101. The CHAIRMAN then put to the vote article 6, as amended.

Article 6 as amended was tentatively adopted by 10 votes in favour and none against.

Article 7

102. The CHAIRMAN noted that the sub-committee had made no changes in that text [11] which was based on the provision in the United Nations Charter.

103. Mr. CORDOVA questioned the need for the word " international " in speaking of disputes between States.

104. Mr. BRIERLY suggested that the word " international " might be replaced by the words: " with other States ".

105. The CHAIRMAN pointed out that there might also be disputes between one State and a citizen of another State.

106. Mr. YEPES considered that the word " international " was necessary. There might be disputes with other States which were not international. Referring in that connexion to the possibility of a dispute between two States on a matter falling within the domestic jurisdiction of one of those States, he pointed out that the State whose domestic jurisdiction was in question could not be compelled to submit the matter to an international authority. He therefore felt that the word " international " should be retained.

107. Mr. FELLER (Secretariat), referring to Articles 2 (3) and 33 of the Charter, pointed out that the Charter used various expressions to describe disputes. He therefore thought Mr. Brierly's proposal appropriate.

108. The CHAIRMAN then put to the vote Mr. Brierly's proposal that the word " international " should be deleted and the words " with other States " inserted after the word " disputes ".

The proposal was adopted by 9 votes to 2.

109. The CHAIRMAN put to the vote article 7 as amended.

Article 7 as amended was tentatively adopted by 10 votes to 1.

110. Mr. YEPES stated that he had voted against the amendment and the amended article 7 for the reasons already indicated.

The meeting rose at 6.00 p.m.

[11] Formerly article 15. See A/CN.4/SR. para 29.

20th MEETING

Friday, 13 May 1949, at 10.15 a.m.

CONTENTS

Chairman: Mr. Manley O. HUDSON.

Rapporteur: Mr. Gilberto AMADO.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. James L. BRIERLY, Mr. Roberto CÓRDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Vladimir M. KORETSKY, Sir Benegal N. RAU, Mr. A. E.