

Document:-
A/CN.4/SR.20

Summary record of the 20th meeting

Topic:
Fundamental rights and duties of States

Extract from the Yearbook of the International Law Commission:-
1949 , vol. I

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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 text¹¹ 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 inter-

national. 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. Briery's proposal appropriate.

108. The CHAIRMAN then put to the vote Mr. Briery'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.

20th MEETING

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

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Chairman: Mr. Manley O. HUDSON.

Rapporteur: Mr. Gilberto AMADO.

Present:

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

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

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 of the Division for the Development and Codification of International Law, Secretary to the Commission.

Draft Declaration on the Rights and Duties of States: text proposed by the Sub-Committee on the Draft Declaration
(continued)

SECOND READING (continued)

1. The CHAIRMAN invited the Commission to continue its consideration of the draft Declaration on the Rights and Duties of States as proposed by the Sub-Committee on the draft declaration (See A/CN.4/SR.19, footnote 2).

Article 8

2. The CHAIRMAN pointed out that article 8 was article 16 of the original draft as amended during the first reading.¹ He proposed a drafting change affecting the English text only: to add the words: "to refrain" before the words: "from resorting", and to insert three commas.

These changes were agreed to.

3. The CHAIRMAN put the English text of article 8, as amended, to the vote.

Article 8 was adopted by 10 votes to nil.

Article 9

4. The CHAIRMAN pointed out that article 9 was article 18 of the original draft as amended during the first reading.²

5. Mr. SCELLE proposed a drafting change affecting the French text only: to replace the words: *d'un autre Etat* by the words: *faite par un autre Etat*.

This change was agreed to.

6. Mr. FRANÇOIS recalled that, like some other members of the Commission, he had voiced objections to that article. Peace treaties, and in particular the peace treaty which would shortly be concluded with Germany, had always sanctioned and would still have to sanction territorial acquisitions made through force. It had been observed that the Declaration on the Rights and Duties of States would be a political document, and that public opinion would therefore have to be taken into account: but what would be the reaction of the man in the street to the simultaneous emergence of, on the one hand, peace treaties sanction-

ing territorial acquisitions made through force and, on the other hand, a declaration condemning such acquisitions?

7. The CHAIRMAN thought Mr. François' remark very relevant. This was not the right moment for including such an article in a declaration on the rights and duties of States.

8. Sir Benegal RAU recalled that he had inquired whether the declaration on the rights and duties of the States would be retroactive. In any case, he was opposed to article 9 as it stood.

9. The CHAIRMAN pointed out that the declaration would not be retroactive, but that Mr. François' remarks related to the situation that would be created by future peace treaties.

10. Mr. ALFARO expressed the opinion that article 9 should be considered merely as a condemnation of the right of conquest, a condemnation which had been proclaimed for the first time by the International Conference of Washington in 1890. Article 9 could, therefore, apply only to territorial acquisitions made in a way condemned by the provisions of article 8. He would answer Mr. François by saying that territorial acquisitions resulting from the peace treaties were really reparations or, in some cases, represented the restitution of territories acquired and held by force or at any rate in violation of international law.

11. He felt that article 9 should stand, firstly because it was not retroactive and, secondly, because it related exclusively to territorial acquisitions made in a way condemned by article 8.

12. Mr. CORDOVA remarked that the Commission's task was to codify the principles of international law. Its work should, therefore, not be interrupted by outside considerations. If it was of the opinion that territorial acquisitions made by force were against the law it should say so explicitly without regard to the repercussions which that might have when future peace treaties were signed.

13. Mr. BRIERLY thought the difficulty pointed out by Mr. François might be solved by omitting the words: "through force or the threat of force" and replacing them by the words: "in violation of article 8".

14. Mr. HSU, Mr. SCELLE, Mr. SPIROPOULOS and Mr. AMADO seconded the amendment proposed by Mr. Brierly.

15. The CHAIRMAN put Mr. Brierly's suggested amendment to the vote.

The amendment was adopted by 9 votes to 2.

16. Mr. SANDSTROM explained that he had voted against the amendment because he was of the opinion that it was irregular to sanction territorial acquisitions made through force, whether justified or not. He had always been opposed to the provisions of article 9, for the same reasons as those given during the discussion. Article 9,

¹ See A/CN.4/SR.14, para. 58.

² *Ibid.*, para. 131.

as amended, was less acceptable than it had been in its original form. He therefore proposed that the article should be struck out.

17. Sir Benegal RAU said that article 9, as amended, became a natural and logical consequence of article 8 and hence it did not seem necessary to retain it.

18. The CHAIRMAN put Mr. Sandström's proposal to delete article 9 to the vote.

The proposal was rejected by 8 votes to 3.

19. The CHAIRMAN put the following text of article 9 to the vote: "Every State has the duty to refrain from recognizing any territorial acquisitions made by another State in violation of article 8".

Article 9 was adopted by 8 votes to 3.

Article 10

20. The CHAIRMAN pointed out that article 10 was article 19 of the original draft as amended during the first reading,³ with the Sub-Committee's addition of the words: "or against which the United Nations is taking preventive or enforcement action".

21. Sir Benegal RAU explained that the purpose of the proposed addition was to provide for a case in which State "A" came to the support of State "B" because it considered that State "B" was not acting in violation of article 8. If, on the contrary, the Security Council was of the opinion that State "B" was acting in violation of article 8 and took measures accordingly, State "A" was bound to discontinue its support to State "B".

22. Mr. CORDOVA was inclined to doubt the need for that addition, since the provisions of Article 51 of the Charter implied that the measures taken by States should be discontinued when the Security Council took the necessary action to maintain or restore peace.

23. The CHAIRMAN pointed out that the addition proposed by the Sub-Committee was in conformity with the provisions of Article 25 and Article 2, paragraph 5 of the Charter.

24. Mr. HSU was opposed to the addition proposed by the Sub-Committee. The obligations of the Charter could not be imposed upon States which were not Members of the United Nations. One might quite properly hope that States which were not Members of the Organization would voluntarily co-operate, but one could not impose upon them a duty for which there was no justification in international law.

25. The CHAIRMAN drew attention to the remarks made by Mr. Kerno and Mr. Amado at the 19th meeting.⁴ Mr. KERNO had said, *inter*

alia, that all the non-Member States except Switzerland, a neutral by tradition, and Franco Spain, had declared their readiness to respect the principles of the Charter. Hence the Sub-Committee's proposed addition would not seem to give rise to any practical difficulty. Moreover, it was difficult to concede that the General Assembly could accept the text of article 10 if the proposed addition were not allowed to stand.

26. Mr. HSU felt that a question of principle was involved, and that it could not be disposed of by the fact that almost all States were ready to respect the Charter. The Declaration on the Rights and Duties of States should not impose on all the States in the world obligations incumbent on some States by virtue of the rights they enjoyed as Members of the United Nations. If the non-Member States were willing to assume the same obligations as the Member States, that was a source of gratification, but it did not convey the right to impose those obligations upon them.

27. Mr. BRIERLY pointed out that Mr. Hsu's argument would be valid only if the Security Council decided to take steps in violation of international law. The Commission could not entertain such an assumption.

28. Mr. ALFARO recalled that under Article 2, paragraph 6 of the Charter, the United Nations could impose certain obligations upon non-Member States so far as might be necessary for the maintenance of international peace and security. He supported the addition proposed by the Sub-Committee without reserve.

29. Mr. CORDOVA did not agree with Mr. Alfaro's interpretation of Article 2, paragraph 6. He pointed out moreover, that the Security Council was not bound by the Charter to act in conformity with international law: the Charter empowered it to resort to force without specifying that the Council, in so doing, should respect all the rights of States. The Security Council was a political organ: although it might in fact be hoped that it would respect international law in all circumstances, it was by no means bound by the principles of international law. In its efforts to maintain peace, the Security Council might be obliged to act inconsistently with international law.

30. Mr. HSU said Mr. Córdova had raised an important point. The Security Council was a political organ responsible for taking measures in the interests of the community of States, and not necessarily for enforcing respect for international law. Non-Member States could not be forced to accept the Security Council's judgment. That, however, was what the addition proposed by the Sub-Committee would amount to.

31. Mr. SPIROPOULOS remarked that, contrary to the opinion of Mr. Córdova and Mr. Hsu, the Security Council was bound to act in conformity with international law. That was clearly

³ See A/CN.4/SR.15, para. 39.

⁴ A/CN.4/SR.19, paras 2 and 5.

apparent from Article 24, paragraph 2, of the Charter in which it was stated that "the Security Council shall act in accordance with the Purposes and Principles of the United Nations". Article 1, paragraph 1, however, provided for collective action by the United Nations for the prevention and removal of all threats to the peace "in conformity with the principles of justice and international law".

32. The CHAIRMAN put the addition proposed by the Sub-Committee to the vote.

The addition was adopted by 8 votes to 3, with 2 abstentions.

33. The CHAIRMAN proposed that the wording of article 10 should be modified so as to bring it into line with that of article 9. He therefore suggested that the words: "which has failed to perform the duties set forth in article 8" should be replaced by the words: "which is acting in violation of article 8".

The amendment was adopted.

34. The CHAIRMAN put article 10 to the vote as amended.

Article 10 was adopted by 10 votes to none, with 3 abstentions.

35. The CHAIRMAN proposed that the order of articles 9 and 10 should be reversed. The subject matter of article 10 was very closely related to that of article 8. Moreover, the questions dealt with in article 9 arose chronologically after the questions dealt with in article 10. Logically therefore article 10 should come before article 9.

This was agreed to.

Article 11

36. The CHAIRMAN pointed out that article 11 was article 17 of the original draft.⁵ The Sub-Committee had modified the wording of the article as adopted at the first reading, and article 11 now read as follows:

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

37. He said the words "individually or collectively" had been adopted for the sake of conformity with the terms of Article 51 of the Charter (the expression occurred in the text of Article 51), but it was difficult to accept them in connexion with the right of a State. He proposed therefore that the words "individually or collectively" should be replaced by the expression: "acting by itself or in co-operation with other States."

The amendment was adopted by 9 votes to none.

38. Sir Benegal RAU explained that the Sub-Committee proposed the expression: "legitimate

measures" for the sake of conformity with the provisions of Article 51 of the Charter. Article 51 restricted the exercise of the right of self-defence in two ways: firstly, there must have been armed aggression and, secondly, the Security Council must not yet have taken the necessary action. For States Members, therefore, "the legitimate measures" were those which they could take when those two conditions were fulfilled. For non-Member States, "legitimate measures" were those which were necessary in order effectively to repel aggression.

39. The CHAIRMAN pointed out that the provisions of Article 51 were based on the idea of time (they stipulated *when* a State could exercise the right of self-defence), while the word "legitimate" generally carried a generic connotation (it indicated *what* measures were permissible to a State exercising that right). Hence the word "legitimate" did not apparently reflect the limitations imposed by Article 51 on the exercise of the right of self-defence, but had rather the meaning attributed to it by Mr. Córdova: the only measures permissible were those necessary to repel an attack.

40. Mr. CORDOVA was of the opinion that "legitimate measures" had to be taken to mean measures taken in conformity with international law, that is to say, measures which did not go beyond the necessities of "self-defence."

41. Mr. BRIERLY supported that interpretation.

42. Mr. SCALLE was of the opinion that the word "legitimate" was not necessary and even had no precise meaning. It might moreover, raise doubts as to a State's ability to defend itself. He proposed that the expression "legitimate measures" should be replaced by the expression "measures necessary", to bring it into line with the expression used in Article 51 of the Charter. Article 51 admittedly employed the expression "measures necessary" in connexion with measures taken by the Security Council, but it might well be thought that any State which had become the victim of aggression had the right and the duty to employ all means "necessary" for its defence.

43. Mr. SANDSTROM thought it was dangerous to depart from the idea of "self-defence" as generally accepted. He thought it would be preferable to retain the text adopted by the Commission at the first reading.

44. Mr. CORDOVA expressed the fear that the use of the word "necessary" would make it possible for a State to take excessive measures, a possibility which would be ruled out by the use of the word "legitimate."

45. The CHAIRMAN put Mr. Scelle's motion to replace the word "legitimate" by the word "necessary" to the vote.

The motion was rejected by 1 vote to 4.

⁵ See A/CN.4/SR. 14, para. 112.

46. The CHAIRMAN put his proposal to omit the word "legitimate" to the vote.

The proposal was rejected by 5 votes to 4.

47. Mr. ALFARO explaining his vote, pointed out that in the expression *légitime défense* (self-defence) the word *légitime* had a meaning in Spanish because it conveyed the implication that the defence should be proportionate to the attack. When used in juxtaposition with the word "measures" however, it had no precise meaning. After the discussion that had taken place, he would, while recognizing that the use of the word was unfortunate, vote in favour of its retention.

48. Mr. SPIROPOULOS explained that he had abstained because he preferred the text as originally adopted by the Commission. Moreover, to his mind, the word "legitimate" meant merely "that which was not forbidden by international law".

49. The CHAIRMAN stated that in the present state of international organization it would be disastrous to give States a blanket right of self-defence. History taught that States were unfortunately too prone to disguise aggression under the name of "self-defence". He pointed to the unfortunate consequences of the reservation formulated by various Powers signatory to the Briand-Kellogg Pact. The reservation was due to the initiative of Kellogg himself, who had said that each State had the inherent right of self-defence and was the judge of when that right would be exercised. That reservation had undermined the very foundations of the Briand-Kellogg Pact and had impaired the authority of the League of Nations.

50. The Nürnberg Tribunal had fortunately not endorsed that provision and had stated that "whether action taken under the claim of self-defence was in fact aggressive or defensive must ultimately be subject to investigation and adjudication if international law is ever to be enforced" (A/CN.4/5, p. 49). That limitation on the right of self-defence, like the limitation provided for in Article 51 of the Charter, represented considerable progress in international law and that progress should be recorded.

51. He therefore proposed that the following words should be inserted at the end of the preamble: "subject to the provisions of the Charter of the United Nations", and that Article 11 should be worded as follows:

"Every State has the right, acting by itself or in co-operation with other States, to take legitimate measures of defence against armed attack."

52. He remarked that he preferred the words "self-defence", but accepted the decision to allow the words "legitimate measures" to stand.

53. Mr. ALFARO agreed to the Chairman's proposal and recalled that the original text of the

article on self-defence (which had been proposed by Panama) had also been based on the provisions of the Charter. In order to meet the arguments advanced by Mr. Córdova and Mr. Scelle, he proposed the following wording: "Every State has the right, acting by itself or in co-operation with other States, to take such measures as may be necessary or legitimate for its own defence against armed attack."

54. Mr. SCELLE pointed out that in French the word *légitime* in the expression *légitime défense* did not mean "subject to the limitations of international law": it meant "inherent".

55. Sir Benegal RAU asked if under the Chairman's new text a State could come to the assistance of an attacked State before the matter had been brought before the Security Council and the Council had taken a decision.

56. The CHAIRMAN said that provided the preamble stipulated that the declaration was subject to the provisions of the Charter, article 11 might be worded as follows: "Every State has the right of self-defence, acting by itself or in co-operation with other States, if an armed attack occurs".

57. Mr. BRIERLY remarked that the new text did not clearly mention the right to come to the assistance of another State.

58. Mr. SANDSTROM thought it would be preferable in the circumstances, to retain the text originally adopted by the Commission.⁶

59. Mr. BRIERLY pointed out that in that text the expression "collective self-defence" was a contradiction in terms.

60. The CHAIRMAN proposed the following revised wording of his text:

"Every State has the right of defence against armed attack, either by itself or in co-operation with other States."

61. Mr. SCELLE explained that the word "collective" in the expression "collective self-defence" had a technical meaning; it covered the case of a State going to the assistance of another State not in a position to defend itself. That was why he was in favour of adhering to the language of Article 51 of the Charter.

62. The CHAIRMAN pointed out that the wording of Article 51 of the Charter, which did not deal with the right of a specified State, permitted the use of the expression "right of individual or collective self-defence", whereas article 17, which dealt with the right of a State, did not. Hence the expression "either alone, or in co-operation with other States" was preferable.

63. In answer to Sir Benegal RAU's inquiry whether the Commission was agreed as to the

⁶ See A/CN.4/SR.14, para. 112.

right of every State, whether a Member of the United Nations or not, within certain limits, to defend itself or to defend another State against armed attack, the CHAIRMAN replied that Article 51 of the Charter limited the right of self-defence to the case of an armed attack.

64. Mr. CORDOVA said he would agree to the addition of the words "against an armed attack" provided the words "individual or collective", which appeared in the original text, were allowed to stand.

65. Mr. SANDSTROM said that the words "individual or collective" might conceivably be paraphrased by saying: "Every State has the right of self-defence or of coming to the assistance of another State", but he considered that unnecessary, the first expression being sufficiently precise.

66. Mr. YEPES was in favour of the text as originally adopted by the Commission, which followed the provisions of Article 51 of the Charter. As Mr. Scelle had pointed out, the expression "individual or collective defence" had a precise technical meaning.

67. The CHAIRMAN pointed out that the original article did not limit the right of defence to the case of armed attack. Nevertheless, in view of Mr. Yepes' observation and since the discussion showed that the Commission had changed its mind as to the usefulness of the words "acting alone or in co-operation with other States", he proposed the following wording: "Every State has the right of individual or collective defence against armed attack", provided the preamble contained the words "in accordance with the provisions of the United Nations Charter".

68. Mr. ALFARO proposed the addition of the words "upon itself or another State".

69. Mr. SCELLE seconded the Chairman's proposal and said that the expression "against armed attack" had a wider meaning than "if armed attack occurs". It was advisable to allow States some latitude when it came to deciding at which moment self-defence should come into operation.

70. Mr. SANDSTROM, Mr. BRIERLY and Mr. YEPES also accepted the Chairman's new wording.

71. Mr. CORDOVA opposed it on the grounds that it did not mention the idea that the defence should be proportionate to the attack.

The text proposed by the Chairman was adopted by 8 votes to 1.

72. Mr. YEPES proposed the use of the expression "individual or collective self-defence".

73. Mr. BRIERLY again pointed out that the expression "collective self-defence" had no meaning in English.

74. Mr. SCELLE, while appreciating the difficulties for the English text, said he would prefer the expression *légitime défense collective* to stand

in the French text, as it had a precise meaning for French-speaking jurists.

75. Mr. CORDOVA said that Mr. Scelle's remarks applied equally to the Spanish text.

76. The CHAIRMAN put to the vote the proposal to use the expression "individual or collective self-defence".

The proposal was adopted by 8 votes to 3.

77. The CHAIRMAN put to the vote the final text of article 11, worded as follows:

"Every State has the right of individual or collective self-defence against armed attack."

Article 11, amended as above, was adopted by 8 votes to 1.

Article 12

78. The CHAIRMAN pointed out that article 12 was article 11 of the original draft and mentioned the Drafting Committee had not proposed any change in the text provisionally adopted by the Commission.⁷ He proposed the substitution of the conjunction "and" by "or", in the expression "treaties and other sources of international law", and the addition of a comma after that expression.

79. Mr. YEPES pointed out that the preamble to the Charter contained the expression "treaties and other sources of international law".

80. The CHAIRMAN withdrew his proposal.
Article 12 was adopted by 11 votes.

Article 13

81. The CHAIRMAN pointed out that article 13 was article 21 of the original draft and that the Drafting Committee had not proposed any change in the text provisionally adopted by the Commission.⁸ He proposed that the word "own" before the words "territory" and "population" be struck out of the English text. He also proposed the substitution in the French text of the words *il a le devoir de traiter* for the words *il doit traiter*.

82. Mr. CORDOVA and Mr. BRIERLY proposed the substitution of the word "ensure" for the word "see" in the English text.

This was agreed to.

83. Mr. FRANÇOIS proposed that a semi-colon should be inserted after the expression "international peace and order"; he also proposed that the words "and to this end" should be omitted, as the duty referred to in the second part of the article did not apply only to the case in which a State's treatment of its population menaced international peace and order.

⁷ A/CN.4/SR.14, para. 16.

⁸ A/CN.4/SR.15, para. 75.

84. The CHAIRMAN pointed out that the Charter did not expressly make it a duty of States to respect "human rights and fundamental freedoms for all". It required them to maintain international peace and security. That being so, the duty of a State to "treat its own population with respect for human rights and fundamental freedoms for all" could only be imposed upon it if the purpose was to cause to prevail upon its territory conditions which did not menace international peace and order.

85. Mr. BRIERLY pointed out that one of the purposes of the United Nations was "to achieve international co-operation. . . in promoting and encouraging respect for human rights and for fundamental freedoms for all". Such co-operation was only conceivable if each State, on its own territory, respected human rights and fundamental freedoms.

86. Mr. CORDOVA said it was not a question of incorporating the Principles of the United Nations Charter in the Declaration, but the general principles of international law. The obligation to respect human rights and fundamental freedoms was an obligation in international law: it had been laid down in several international conventions, for instance certain conventions between the Latin-American States.

87. The CHAIRMAN was of the opinion that, if the second part of article 13 was not linked to the first by the expression "and to this end", the Declaration would go far beyond existing international law.

88. Sir Benegal RAU drew attention to the introductory passage of Article 55 of the Charter which proved that the United Nations considered respect for human rights essential to good relations between States.

89. Mr. BRIERLY suggested that article 13 be divided into two separate articles: the first dealing with the duty of every State to ensure that conditions prevailing within its own territory did not menace international peace and order, and the second making it the duty of every State to treat its own population with respect for human rights and fundamental freedoms for all. The General Assembly would not agree to the Declaration omitting any mention of the duty to respect human rights. He did not consider that in proclaiming this duty, the Declaration went beyond the principles of the Charter, although it did to some extent go beyond the obligations set forth therein.

90. The CHAIRMAN said it was dangerous to proclaim the duty to respect human rights and fundamental freedoms without defining those rights and freedoms.

91. Mr. YEPES said that in his opinion the Universal Declaration of Human Rights, adopted at the First Part of the Third Session of the

General Assembly, defined the fundamental rights and freedoms referred to in the Charter.

The Commission decided, by 10 votes to 2, to delete the words "and to this end" and to divide article 13 into two separate articles.

92. The CHAIRMAN put to the vote article 13 (a), worded as follows:

"Every State has the duty to ensure that conditions prevailing within its territory do not menace international peace and order."

Article 13 (a) was adopted by 12 votes.

93. The CHAIRMAN put to the vote article 13 (b), worded as follows:

"Every State has the duty to treat its population with respect for human rights and fundamental freedoms for all."

Article 13 (b) was adopted by 11 votes to 1.

Article 14

94. The CHAIRMAN pointed out that article 14 was article 22 of the original draft and that the Drafting Committee had not proposed any change in the text provisionally adopted by the Commission.⁹ He proposed the deletion of the words "the duty" before the words "to prevent".

Article 14, amended in accordance with the Chairman's suggestion, was adopted by 12 votes.

Article 15

95. Sir Benegal RAU explained that the Drafting Committee had deleted the words "which the State according asylum deems to have" in the text provisionally adopted by the Commission,¹⁰ considering that it could be left to the State according asylum to decide in the first instance as to the nature of the offence. Final decision was a matter for the competent international jurisdiction.

96. The CHAIRMAN said his attention had been drawn to the fact that following the granting of asylum to a Peruvian by the Colombian Embassy in Peru, a dispute had arisen between Peru and Colombia as to the power of the State according asylum to define the nature of the offence. Apparently Peru and Colombia had agreed to submit the question to the International Court of Justice.¹¹ He asked Mr. Yepes if he was in a position to give the Commission some information on the dispute.

97. Mr. YEPES said that the Chairman's information was correct. It was true that Peru and Colombia had agreed to submit the dispute to the International Court of Justice. He did not

⁹ See A/CN.4/SR.15, para. 89.

¹⁰ Additional article proposed by Mr. Alfaro, Mr. Scelle and Mr. Yepes. See A/CN.4/SR.16, para. 107.

¹¹ "Asylum Case"

think that the fact that the question was pending before the International Court of Justice stood in the way of the adoption of article 15.

98. Under the text provisionally adopted by the Commission the State according asylum had been given the right to define the offence. A provision of this kind was necessary for if it did not exist, the State of which the person seeking asylum was a national would have the right to define the nature of the offence, and naturally that State would always claim that the offence with which the fugitive was charged was an infringement of the ordinary law and not of a political character. Although he considered that the Drafting Committee's amendment to the text provisionally adopted by the Commission was an absolute mutilation of the text and that the Committee had not the power to make changes of this kind, yet, in deference to the members of the Committee he would be prepared to accept the alteration.

99. He thought the question of the right of asylum deserved more careful study. He therefore reserved the right, after the adoption of this article, to propose that a Rapporteur be instructed to examine the various aspects of the question in the interval between the first and second session of the Commission, and to draft a basic proposal.

100. The CHAIRMAN was opposed to the adoption of article 15, considering that the question of the right of asylum was too complex to be dealt with in a single article on the Declaration on the Rights and Duties of States. The matter should be studied at greater length; it would be of interest to the Commission to have full information on the dispute between Peru and Colombia which he had mentioned.

101. Mr. CORDOVA recalled that when the draft declaration was being considered at the first reading, he had proposed that the discussion on the article concerning the right of asylum should be postponed, but his proposal had been found unacceptable.

102. He considered the Commission unable at that stage to reach a decision upon article 15; the decision of the International Court of Justice on the dispute submitted to it by Peru and Colombia should be awaited.

103. Mr. ALFARO pointed out that both Peru and Colombia had signed and ratified the Havana Convention of 1928 on the right of asylum. The two countries had likewise signed the Convention adopted by the Montevideo Conference in 1933, recognizing the right of the State according asylum to define the offence. Peru, however, had not ratified the Montevideo Convention and that was why Peru had contested Colombia's right to determine whether, in the specific instance quoted by the Chairman, the offence was of a political character or not. That being so, it did not seem to be a question of principle but simply a parti-

cular case which had been submitted to the International Court of Justice.

104. Mr. SPIROPOULOS pointed out that in deciding upon what articles to insert in the Declaration on the Rights and Duties of States, the Commission ought not to be influenced by disputes which might exist between States; it should be guided by one consideration only, namely the need of proclaiming this or that right or duty. The task of the Commission was not to judge but to codify.

105. Mr. SANDSTROM stated that, even if he had been unaware of the dispute between Peru and Colombia, he would have proposed the deletion of article 15, in view of the Commission's amendment to article 6 of the Declaration concerning the competence of a State. In fact, as that amendment stood, it was extremely difficult to construe the provisions of article 15 as excluding asylum accorded in Embassies, warships or military aircraft. Moreover, contrary to Mr. Spiropoulos, Mr. Sandström thought the Commission should only insert in the Declaration rights and duties concerning which there was no controversy.

106. Mr. YEPES read article 1 of the Havana Convention, 1928. According to the terms of that article, the contracting States agreed to prohibit the right to grant asylum in their Legations, warships and military aircraft to persons charged with an offence against ordinary law or to deserters. The corollary of that provision, he said, was that it was permitted to grant asylum to persons charged with offences of a political character.

107. According to the terms of article 1 of the 1933 Convention adopted at Montevideo by the Seventh International Conference of American States, it was the State according asylum which had the right to define the nature of the acts with which the fugitive was charged. That Convention had been signed by all the States of Latin America, including Colombia and Peru, but Peru had not ratified it and that was why she had contested Colombia's right to define the offence committed by a Peruvian to whom the Colombian Embassy in Peru had granted asylum. The question submitted to the International Court of Justice by Peru and Colombia was whether the State according asylum had the right to define the offence with which the fugitive was charged.

108. He proposed that article 15 of the Declaration on the Rights and Duties of States be deleted, on the understanding that, as the Commission had decided at a previous meeting, the question of the right of asylum remained a suitable subject appropriate for codification.

109. Mr. ALFARO seconded the proposal.

110. Mr. CORDOVA said he would vote against deletion of article 15, his opinion being that the proper procedure would be to postpone discussion of the article in the Declaration which dealt with

the right of asylum until the whole question of that right had been studied for codification.

111. The CHAIRMAN said that such a procedure was unacceptable at the present stage of their Commission's work. He then put Mr. Yepes' proposal to delete article 15 to the vote.

It was decided to delete article 15 by 10 votes to 1.

Article 16

112. Sir Benegal RAU explained that the Drafting Committee had felt that the words "and the sovereignty of the State is subject to the limitations of international law",¹² should be replaced by the words: "and with the principle that the sovereignty of the State is subject to the supremacy of international law", as the word "limitations" is ambiguous and might be interpreted as meaning the imperfections of international law.

113. He pointed out that in addition to the text adopted, two other formulas had been submitted to the committee: (1) "that the sovereignty of the State is limited by international law" and (2) "that the sovereignty of the State is subject to the limitations imposed by international law". It was for the Commission to select the terms it considered most suitable.

114. The CHAIRMAN said he preferred the phrase "that the sovereignty of the State is subject to the limitations imposed by international law", which indicated more clearly the limitations on the sovereignty of the State.

115. Mr. SCELLE said he preferred the version "that the sovereignty of the State is subject to the supremacy of international law" as that indicated that international law governed what was known as the sovereignty of the State, which was in reality only the competence of the Governments of States.

116. The wording preferred by the Chairman weakened the text of article 16, whilst he (Mr. Scelle) wished to strengthen the meaning of the article. He therefore proposed that the last words of article 16 should read: "and according to the principle that the so-called sovereignty of the State is subject to the supremacy of international law".

117. Mr. SPIROPOULOS pointed out that the first part of article 16 would suffice; the second part, which added nothing to the first, might well be dropped.

118. The CHAIRMAN proposed that the expression "the sovereignty of the State" should be replaced by "the sovereignty of each State".

This was agreed to.

119. The CHAIRMAN then put to the vote the proposal to substitute for the last phrase of

article 16 the words "and according to the principle that the sovereignty of the State is subject to the limitations imposed by international law".

The proposal was rejected by 5 votes to 1.

120. The CHAIRMAN then put Mr. Scelle's proposed wording to the vote, viz., "and according to the principle that the so-called sovereignty of the State is subject to the supremacy of international law".

The proposal was rejected by 5 votes to 1.

121. Lastly the CHAIRMAN put to the vote article 16, worded as follows:

"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 each State is subject to the supremacy of international law".

Article 16 was adopted by 11 votes to 1.

The meeting rose at 1.00 p.m.

21st MEETING

Monday, 16 May 1949, at 3 p. m.

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Chairman: Mr. Manley O. HUDSON.

Rapporteur: Mr. Gilberto AMADO.

Present:

Members: Mr. Ricardo ALFARO, Mr. James L. BRIERLY, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Vladimir 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 to the Commission.

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

SECOND READING (*continued*)

1. The CHAIRMAN observed that, as thirteen articles of the draft Declaration had been tenta-

¹² Article 16 was article 13 of the original draft adopted by the Commission. See A/CN.4/SR.14, para. 22.