

Document:-  
**A/CN.4/SR.23**

**Summary record of the 23rd meeting**

Topic:  
**Fundamental rights and duties of States**

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do so for the exclusive purpose of polishing the text, the substance of which must remain unchanged.

91. Contrary to Mr. Koretsky, Mr. Scelle considered that the draft should be presented to the fourth session of the General Assembly. He was therefore in favour of finishing the work on the draft Declaration and then proceeding to another subject.

92. The CHAIRMAN thought that the Sub-Committee might also be instructed to check the versions of the Declaration in the other working languages.

93. Mr. ALFARO agreed with Mr. Scelle that it was the Commission's duty to finish the Declaration at its current session. The Commission would appear ridiculous in the eyes of the world if, after all its lengthy deliberations, it decided to reconsider the text at its following session. He therefore supported the Chairman's proposal.

94. In reply to a question by Mr. CORDOVA, the CHAIRMAN stated that the Sub-Committee's terms of reference would be to polish the text of the draft Declaration and to check the versions of it in the other working languages, for the Commission's consideration at the third reading. The Sub-Committee would be free to seek the assistance of other members of the Commission.

95. Mr. SPIROPOULOS reserved the right to speak on the Declaration as a whole at the third reading.

96. The CHAIRMAN put to the vote the question of referring the draft to the Sub-Committee.

*The Commission decided by 11 votes to 1 to refer the draft to the Sub-Committee.*

97. After a brief discussion of procedure, Mr. CORDOVA proposed that the Commission should finish its work on the Declaration before proceeding to other items on its agenda.

*Mr. Cordova's proposal was adopted by 8 votes to 2.*

98. Mr. HSU, referring to Mr. Koretsky's criticism of the draft Declaration, suggested that the latter submit a number of concrete proposals on the text for the Commission's consideration.

99. Mr. ALFARO asked for clarification of the meaning of the words "modern developments of international law". The word "modern" was a concept of time, and it was not clear when that modern development had begun, nor which instruments of international law belonged to the period of modern development.

The meeting rose at 6 p.m.

## 23rd MEETING

Thursday, 19 May 1949, at 3 p.m.

### CONTENTS

	<i>Page</i>
Draft Declaration on the Rights and Duties of States ( <i>continued</i> )	
Third reading . . . . .	163
Preamble . . . . .	164
Article 1 . . . . .	166
Article 2 . . . . .	166
Article 3 . . . . .	166
Article 4 . . . . .	166
Article 5 . . . . .	167
Article 6 . . . . .	167
Article 7 . . . . .	167
Article 8 . . . . .	170
Article 9 . . . . .	170
Article 10 . . . . .	170
Article 11 . . . . .	170

*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, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

*Secretariat:* 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*)

#### THIRD READING

1. The CHAIRMAN opened the third reading of the draft Declaration on Rights and Duties of States, based on the revised text submitted by the Sub-Committee.<sup>1</sup> That document contained

<sup>1</sup> "Whereas the States of the world form a community governed by international law;

"Whereas the progressive development of international law requires effective organization of the community of States;

"Whereas a great majority of the States of the world have accordingly established a new international order under the Charter of the United Nations, and most of the other States of the world have declared their [willingness to accept] *desire to live within this order;*

"Whereas a primary purpose of the United Nations is to maintain international peace and security, and the reign of law and justice is essential to the realization of this purpose; *and*

"Whereas it is *therefore* desirable to formulate

various minor changes suggested by the Sub-Committee, upon which the Commission would be required to decide.

certain basic rights and duties of States in the light of [modern] *new* developments of international law and in harmony with the Charter of the United Nations:

THE GENERAL ASSEMBLY of the United Nations adopts and proclaims this DECLARATION OF RIGHTS AND DUTIES OF STATES

“ Article 1

“ Every State has the right to preserve its existence.

“ 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 hence to exercise freely, without [being subject to] dictation by any other State, all its legal powers, including the choice of its own form of government.

“ Article 4 [6]

“ Every State has the right to exercise jurisdiction over its territory and over all persons and things therein, subject to the [privileges and] immunities recognized by international law.

“ Article 5 [4]

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

“ Article 6 [5]

“ Every State has the right to equality in law with every other State.

“ Article 7 [14]

“ Every State has the duty to treat [all] *the* persons under its jurisdiction with respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

“ Article 8 [13]

“ Every State has the duty to ensure that conditions prevailing [within] *in* its territory do not menace international peace and order.

“ Article 9 [15]

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

“ Article 10 [7]

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

“ Article 11 [8]

“ Every State has the duty to refrain from [waging] *resorting to* war as an instrument of national policy, and to refrain from [resorting to any] *the* threat or

2. Mr. SPIROPOULOS stated that the revised text still contained a number of points with which he could not agree and to which he had objected during previous discussions. He would not repeat his objections, but would indicate that he could not support the revised draft by abstaining from voting on the parts of the preamble and the articles in question.

#### *Preamble*

3. The CHAIRMAN read the preamble, and opened discussion on the first paragraph.

*There being no objection, the first paragraph was adopted by 10 votes to none, with 1 abstention.*

4. The CHAIRMAN asked for comments on the second paragraph.

5. Mr. HSU suggested that the word “requires” was too strong, and might be replaced by the expression “calls for.”

6. Mr. YEPES asked whether the word “an” should not be inserted before “effective organization”.

7. The CHAIRMAN explained that the change suggested by Mr. HSU would affect the meaning only very slightly, and expressed the personal view that the stronger word was preferable. In reply to Mr. Yepes, he said that the English text would not be improved by the addition of the indefinite article.

*The second paragraph was adopted, without amendment, by 9 votes to 1, with 1 abstention.*

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 12 [9]

“ Every State has the duty to refrain from giving assistance to any State which is acting in violation of article 8, or against which the United Nations is taking preventive or enforcement action.

“ Article 13 [10]

“ Every State has the duty to refrain from recognizing any territorial acquisition [made] by another State acting in violation of Article 8.

“ Article 14 [11]

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

“ Article 15 [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 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 each State is subject to the supremacy of international law.

8. The CHAIRMAN read the third paragraph and said that the Sub-Committee, bearing in mind the fact that nearly all non-member States of the United Nations had applied for membership, had concluded that the words "their willingness to accept" should be replaced by the more emphatic expression: "their desire to live within".

9. In reply to a question from Mr. CORDOVA, the CHAIRMAN pointed out that the word "accept" in Article 4 of the Charter referred to the obligations contained in the Charter, whereas the phrase under discussion referred more largely to the willingness or desire of States to live within the new international order, a desire of which they had given proof by applying for membership.

10. In reply a question by Mr. FRANÇOIS, Mr. BRIERLY expressed the view that a State could be said to "desire to live . . .", since if it existed it must live.

11. After some discussion, the CHAIRMAN put to the vote the substitution of the words "desire to live within" for "willingness to accept".

*The substitution was approved by 6 votes to 3, with 2 abstentions.*

12. Mr. SPIROPOULOS suggested that the word "accordingly" in the same paragraph carried the implication that the new international order under the Charter of the United Nations had been established with the sole purpose of achieving the progressive development of international law.

13. The CHAIRMAN explained that the word "accordingly" meant that the new international order had been established in accordance with the idea expressed in the preceding paragraph, but not that that idea was the only reason for establishing that order.

14. Mr. CORDOVA said that he had accepted the word "accordingly" because it carried the meaning that the States of the world were establishing an effective organization under the Charter of the United Nations.

15. Mr. LIANG (Secretary to the Commission) supported the view of Mr. Spiropoulos. The French text, even more than the English, might give rise to the restrictive interpretation.

16. Mr. YEPES proposed that the word "accordingly" should be omitted.

*The proposal was rejected by 7 votes to 3, with none abstention.*

17. The CHAIRMAN put the third paragraph as amended to the vote.

*The third paragraph was adopted by 9 votes to none, with one abstention.*

18. The CHAIRMAN read the fourth paragraph, and asked if there was any objection to adding the word "and" to the end of that paragraph, as recommended by the Sub-Committee. There being no objection and no comments, he put the paragraph to the vote.

*The fourth paragraph, as amended, was adopted by 9 votes to none, with one abstention.*

19. The CHAIRMAN read the fifth paragraph, and indicated three amendments suggested by the Sub-Committee. He asked whether there was any objection to the insertion of the word "therefore" before "desirable", or to the substitution of "new" for "modern".

*There being no objection, those amendments were adopted.*

20. The CHAIRMAN said that the Sub-Committee had proposed that the words "and in harmony with the Charter of the United Nations" should be added to the end of the paragraph. A phrase had been included in earlier drafts of the next paragraph to the effect that the Declaration had been drawn up subject to the provisions of the Charter. That phrase had been deleted at the previous meeting. The Sub-Committee had adopted the phrase "and in harmony with the Charter of the United Nations" at the suggestion of Mr. Alfaro.

21. Mr. LIANG (Secretary to the Committee), speaking on behalf of Dr. Kerno, (Assistant Secretary-General), proposed that the words "in particular" or "particularly" should be inserted at the beginning of the Sub-Committee's proposed amendment, to emphasize that the Charter itself was a new development of international law, not something apart from it.

*The proposal was rejected by 6 votes to 2, with 3 abstentions.*

22. Mr. SPIROPOULOS considered that the expression proposed by the Sub-Committee would mean that certain basic rights were to be formulated in harmony with the Charter, which he held to be meaningless. Certain principles contained in the Charter could be codified, but the word "harmonize" implied that a compromise had been reached, and that either one or both of the things being harmonized had had something taken away from it to achieve the harmony.

23. In reply, Mr. ALFARO explained that the phrase meant that in the formulation of certain basic rights and duties, the Charter had been taken into consideration and that nothing had been declared which was at variance with its provisions.

24. The CHAIRMAN added that "in harmony with" meant "in the spirit of". He put to the vote the inclusion of the phrase proposed by the Sub-Committee.

*The phrase was adopted by 9 votes to 1, with 1 abstention.*

25. Mr. SPIROPOULOS wondered whether the word "certain" should not be omitted. Other authorities had formulated draft declarations on rights and duties of States in a number of articles ranging from 6 to 100 without using that word. The limitation in the word "basic" was enough.

If the Commission considered that it had codified all the basic rights and duties, it could and should omit the word "certain".

26. Mr. BRIERLY agreed that he, at least, had not consciously agreed to the omission of any basic right or duty, and that the word "certain" might be omitted.

27. Mr. ALFARO supported that view; if any of the basic rights or duties had, in fact, been omitted, then they should be inserted.

28. Mr. CORDOVA also agreed with Mr. Spiropoulos. If the Commission submitted such an admittedly limitative text to the General Assembly, it might well be instructed by it to finish what it had undertaken and codify the remaining rights and duties.

29. Mr. YEPES held the contrary view: e.g. the vital *jus communicationis* had not been embodied in the Declaration and it could not be regarded as exhaustive.

30. Mr. SCALLE endorsed Mr. Yepes' argument, and added that many other rights, such as the right of diplomatic representation, had not been included.

31. Mr. FRANÇOIS expressed the same view, observing that several subjects had been dealt with as they had been retained for codification.

32. Mr. SPIROPOULOS pointed out that the question turned upon the meaning and application of the word "basic". No list of the rights and duties of States had ever claimed to be exhaustive or final, but for each draft the essential and fundamental rights had been selected for codification. It was therefore for the Commission to decide whether it had omitted any right or duty which it considered to be fundamental, and if so, to insert it. In any case the word "certain" was not appropriate.

33. Mr. SANDSTROM proposed the insertion of the phrase "as a standard of conduct" between the words "formulate" and "certain", which phrase had been proposed at a previous meeting on the example of the Universal Declaration of Human Rights.

*The proposal was adopted by 9 votes to 1, with 1 abstention.*

34. The CHAIRMAN put to the vote the fifth paragraph as amended.

*The fifth paragraph, as amended, was adopted by 9 votes to 1, with 1 abstention.*

*The last phrase of the preamble with the title was adopted, without change, by 9 votes to none, with 2 abstentions.*

#### Article 1

35. The CHAIRMAN considered that article 1 should be deleted. He did not feel that it served any useful purpose.

36. Mr. SPIROPOULOS proposed to replace the words "preserve its existence" by "exist".

He considered that the right to preserve its existence was merely a derivative right.

*Mr. Spiropoulos' proposal was rejected by 4 votes to 3.*

37. Mr. YEPES proposed to insert the words "to exist and" between "the right" and "to preserve its existence."

*The proposal was adopted by 5 votes to 1.*

The CHAIRMAN put article 1 as amended to the vote.

*The result of the vote was a tie, 5 members voting in favour and 5 against. The article was therefore reserved for reconsideration after the return of absent members.<sup>2</sup>*

#### Article 2

38. The CHAIRMAN considered article 2 less necessary since article 1 had been retained. Moreover he considered the use of the term "right to have its existence recognized" to be dangerous, as recognition was too complicated a subject matter.

*Article 2 was also reserved.<sup>3</sup>*

#### Article 3

39. The CHAIRMAN stated that the Sub-Committee proposed to delete the words "being subject to" between "without" and "dictation", on the ground that they were superfluous.

*There being no objection, the proposal was adopted.*

40. Mr. SPIROPOULOS disliked the whole article. Not only was it clumsily worded, but its substance was covered by article 5, which dealt with intervention. He proposed deleting everything after the word "independence".

*The proposal was rejected by 9 votes to 1.*

*Article 3 as amended was adopted by 9 votes to none.*

41. The CHAIRMAN pointed out that the Sub-Committee had changed the order of the remaining articles into what it considered to be a more logical sequence. He suggested discussing them in the order in which they appeared in document A/CN.4/W.8 and deferring a final decision on the order.

#### Article 4 [6]

42. The CHAIRMAN stated that the Sub-Committee had proposed the deletion of the words "privileges and" as unnecessary and out of place.

43. Mr. YEPES opposed the deletion on the ground that "privileges and immunities" was the accepted phrase.

*The proposal to delete the words "privileges and" was adopted by 7 votes to 2.*

*Article 4 as amended was adopted by 9 votes to 1.*

<sup>2</sup> See A/CN.4/SR.24, paras. 10-23.

<sup>3</sup> *Ibid.*, paras. 24-50.

44. Mr. SPIROPOULOS stated that he had voted against the article because he felt it did not express what should have been expressed—that a State had exclusive jurisdiction over its territory, as no other State had the right to exercise jurisdiction therein.

*Article 5 [4]*

*Article 5 was adopted by 10 votes to none.*

*Article 6 [5]*

*Article 6 was adopted by 10 votes to none.*

*Article 7 [14]*

45. The CHAIRMAN stated that the Sub-Committee proposed to replace the word "all" by "the" between "treat" and "persons", in order not to have the word "all" twice in one sentence. The change was merely one of drafting.

46. Mr. BRIERLY suggested retaining the word "all" in the first line and deleting "for all" after "fundamental freedoms" in the second line.

*Mr. Brierly's suggestion was adopted by 7 votes to none.*

47. Mr. YEPES proposed the addition of the word "the" before "human rights and fundamental freedoms", to express that all human rights must be respected.

48. The CHAIRMAN pointed out that that would be inconsistent with the Charter, which always spoke of respect for human rights and fundamental freedoms. Moreover, those rights and freedoms had never been defined.

49. Mr. ALFARO said that there had been much confusion with regard to the article in question. It had originally been inspired by Principle 2 of "International Law of the Future", which stated that every nation had a duty to treat its own population in a way which "will not shock the conscience of mankind".<sup>4</sup> That had been changed, at the suggestion of Sir Benegal Rau, to a direct reference to human rights. Article 55 c of the Charter spoke of human rights and fundamental freedoms for all, but the Commission had replaced "population" by "persons under its jurisdiction" and thereby changed the structure of the phrase. Article 7 of the Declaration now dealt with the rights and freedoms of those persons and the suppression of the words "for all" was therefore logical. He suggested saying: "Every State has the duty to treat all persons under its jurisdiction with respect for their human rights and fundamental freedoms".

50. Mr. YEPES withdrew his proposal in favour of Mr. Alfaro's.

51. Mr. CORDOVA asked whether Mr. Alfaro's proposal would not restrict the duty of the State

to respecting the human rights and fundamental freedoms only of the persons under its jurisdiction.

52. Mr. ALFARO agreed that that was so; the Declaration could not say that State A was bound to treat persons under its jurisdiction with respect for the human rights and fundamental freedoms prevailing for persons under the jurisdiction of State B.

53. The CHAIRMAN asked the members to reconsider the last phrase of article 7—"without distinction as to race, sex, language or religion". The text of that article had previously been combined with article 8 to form what was then article 13, and the phrase in question had not been included. The article had subsequently been divided into two and thereupon the Commission had tentatively decided to add the words in question.

54. These words appeared four times in the Charter. The first time was in Article 1, paragraph 3, which gave as one of the purposes of the United Nations "to achieve international co-operation in . . . promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". No duty was imposed upon any Member of the United Nations by that text.

55. Article 13.1 b merely empowered the General Assembly to "initiate studies and make recommendations for the purpose of . . . assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". It did not impose a duty upon any Member of the United Nations.

56. Article 55 c laid down that the United Nations should "promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". No duty was thereby imposed upon any Member of the United Nations.

57. Article 76 c provided that "the basic objectives of the Trusteeship system . . . shall be . . . to encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion . . ." It could hardly be claimed that the article either imposed a specific duty upon any Member of the United Nations.

58. Article 62.2 (which did not contain the words "without distinction as to race, sex, language or religion") merely empowered the Economic and Social Council to "make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all". Once more, no duty was imposed on any Member of the United Nations.

59. The conclusion he drew was that Member States had not, by signing the Charter, assumed a legal obligation to treat persons under their jurisdiction with respect for human rights and

<sup>4</sup> See A/CN.4/2, p. 161.

fundamental freedoms without distinction as to race, sex, language or religion. They had merely agreed to promote international co-operation to that end.

60. Article 7 of the Declaration went beyond the Charter in attempting to lay down a legal duty for Member States, and much beyond anything so far known in existing international law in attempting to lay down a legal duty for both Member and non-member States. Moreover, the term "human rights and fundamental freedoms" was not defined, either in the Charter or in the Universal Declaration of Human Rights.

61. He considered that it would be a mistake for the Commission to use the phrase "without distinction as to race, sex, language, or religion" in connexion with a legal duty. Such a distinction was made in many countries, both Members and non-members of the United Nations. In Switzerland, for instance, the vote had not been extended to women. The Declaration could not impose on Switzerland the duty of granting them the franchise, and if it were to contain such a provision that country, as well as many others, would simply refuse to comply.

62. He therefore proposed that the phrase should be omitted. He had made the proposal at that time since he considered that it bore upon the proposal made by Mr. Alfaro and Mr. Yepes that the word "their" should be inserted. If they agreed, he asked that his proposal should be examined first.

63. Mr. ALFARO and Mr. YEPES agreed to the Chairman's proposal being considered before theirs.

64. Mr. SANDSTROM felt that the Chairman's arguments did not apply only to the phrase to which he had referred; they meant that the whole article as drafted went too far.

65. The CHAIRMAN could not accept that extension of his argument.

66. Mr. BRIERLY agreed with the Chairman. Furthermore, even without the phrase in question the article as drafted would mark a revolutionary change in international law, since it brought into the domain of international law a matter which had hitherto been one of purely domestic jurisdiction—the treatment by a State of its own nationals. He felt, however, that there was some reason for saying that that change had in fact taken place. There were the Nürnberg principles, and there was the implication in the Charter that respect for human rights within a State was an important element in securing peaceful and friendly relations with other States. It could well be argued that international law today did impose a duty on States to respect the human rights of their own nationals. He accepted the article as far as the word "freedoms" and if the General Assembly should consider that went too far, it could strike out the article.

67. To say, however, that no distinction could be made on any of the four grounds as they stood was another matter altogether. That went far beyond anything in the Charter or in the rules of general international law outside the Charter. He felt that it went beyond anything that present-day world opinion would be prepared to accept. Probably more than half the Members of the United Nations made a distinction between the sexes, and if the Declaration were to state that they were violating the Charter by so doing, it would not be taken seriously and the members of the Commission would be considered with some reason as academically-minded doctrinaires.

68. Mr. CORDOVA on the other hand thought that the article should be drafted in such a way as to state that human rights and fundamental freedoms should be granted to all persons within a State, without distinction as to race, sex, language or religion. He disagreed with the argument that the last phrase should be omitted because some States did make such a distinction. The instances that had been quoted concerned political rights, but those were not fundamental human rights.

69. The Declaration recognized the necessity of respecting the principle that in order that there should be friendly relations between nations States should never make distinctions between individuals on the ground of race, sex, language or religion. It was for the Commission to determine whether that was a principle of international law and whether it could be imposed on States as a duty. In his view the whole of the Charter gave reason to think that it was more than a mere principle.

70. Mr. KORETSKY stated that the Chairman's proposal substantially altered the provision on fundamental human rights as adopted by the Commission after lengthy deliberation. One of the defects of the earlier texts had been the lack of reference to human rights; to delete the phrase "without distinction as to race, sex, language, or religion" would be to nullify what little improvement had been made in the present draft. Moreover, such action would be interpreted as a limitation of human rights and as an attempt to legalize or ignore the existing injustice in the world. Having stressed new developments in international law in the preamble of the Declaration, how could the Commission now delete a clause dealing with fundamental human rights the protection of which constituted one of the newest principles in international law?

71. Replying to some arguments advanced by the Chairman, he pointed out that a Universal Declaration on Human Rights was already in existence, and that the present Declaration was not intended to limit the human rights to the ones mentioned therein, but its purpose was to lead to the recognition and protection of funda-

mental human rights by all States which in turn would strengthen peaceful and friendly international relations. Moreover, the Commission was drafting a declaration whose importance would lie primarily in its great moral significance.

72. As regards Mr. Briery's view that the Commission might be accused of being doctrinarian, he thought that such an accusation might be justified in respect of article 16, but not in the present case.

73. The Chairman had mentioned Switzerland as an example of a country where women enjoyed no political rights; however, other examples of fundamental human rights which needed to be protected might be found in the South of the Chairman's own country. By avoiding reference to those rights, the Commission would give rise to the impression that it was loath to speak out against racial and other forms of discrimination.

74. It had also been stated that a reference to human rights in the present declaration would be in violation of the Charter which purportedly never spoke of the protection of human rights as a duty of States. Such a view seemed strange coming from those who had not been concerned over such glaring violations of the Charter as the Western Union and the Atlantic Treaty.

75. Mr. Koretsky stated that in any case the words "all" in the first line of article 7, and the phrase "without distinction as to race, sex, language, or religion" should be maintained. Inclusion of such a concept had been termed "revolutionary"; in Mr. Koretsky's view, deletion would be "counter-revolutionary".

76. Mr. SCELLE pointed out that the question whether or not fundamental human rights were positive rights had been previously debated on a constitutional level. He disagreed with the Chairman's view that the Charter did not impose any positive obligations in the matter. While it did not establish specific obligations or specific rights, in Article 55, for instance, certain real obligations were implied, though vaguely expressed. The Charter provision that Members of the United Nations should *promote* respect for human rights constituted an obligation, although not a very strict one.

77. The obligation was also incumbent upon States which were not Members of the United Nations. Article 38, paragraph 1, c of the Statute of the International Court of Justice stated that the Court, in deciding international disputes, should apply the general principles of law recognized by civilized nations. Those principles, he felt, must be sought in the Constitutions of the different civilized States, namely States which respected fundamental human rights.

78. As regards the Chairman's reference to Switzerland as a country in which women did not have the right to vote, Mr. Scelle thought that a clear distinction should be drawn between political

rights and the fundamental human rights. Until recent years women had not had the right to vote in such civilized countries as France and England in which the fundamental human rights had yet been fully respected and recognized constitutionally. Mr. Scelle therefore felt that recognition of fundamental human rights constituted a true legal obligation under positive law. In France a number of authorities on international law even felt that respect for human rights not only belonged to positive and constitutional law but even to supra-constitutional law, since without such respect there could be no constitution and no civilization.

79. He therefore agreed with Mr. Córdova and Mr. Koretsky that the article should be retained in its present form, inasmuch as it dealt not with political, but with fundamental human rights. Public opinion would receive a bad impression of the Commission's work if the latter were to delete or weaken the provisions on human rights.

80. Mr. HSU stated that he would vote against the Chairman's proposal. The Commission was justified in including such an article in its declaration in the light of the provisions of the Charter and the Universal Declaration on Human Rights.

81. Pointing out that it was perhaps a borderline case, Mr. Hsu appealed to the Commission to take a courageous and progressive stand, especially as it had already been very conservative on the other questions in the Declaration. The article must not be weakened; moreover, the Declaration would be submitted to the General Assembly which would surely amend the article if it considered it too far-reaching.

82. Mr. SANDSTROM, quoting from the General Assembly resolution on the Universal Declaration of Human Rights 217 (III), pointed out that it did not impose the obligation to respect human rights, but used the expressions: "common standard of achievement" and "to promote respect for these rights". He therefore doubted whether respect for human rights could be considered a duty in international law. In any case, however, if article 7 were retained, nothing would be gained by deleting the phrase "distinction as to race, sex, language, or religion".

83. Mr. ALFARO said that the Commission was bound to take into account one of the new developments in international law which was the fact that the individual had become the subject of international law. The question was no longer a matter of interest to jurists only, but had become a principle established in the Charter of the United Nations in which promotion of human rights was mentioned several times. Moreover, the United Nations had adopted a Universal Declaration of Human Rights. In view of those facts it was no longer a debatable question and the Commission was obliged to state, as a principle of international law, that every State had the duty to treat all

persons under its jurisdiction with respect for human rights. The ultimate source of all international law was the will and conscience of civilized nations. Quoting from the first, third and last paragraphs of the preamble to the Universal Declaration of Human Rights, Mr. Alfaro pointed out that when fifty-eight nations stated that human rights must be protected, their view could not be ignored.

84. Recalling his earlier remarks, he stated that he agreed to the omission of the last phrase because, as in two instances in the Charter, its meaning was implied in the words "respect for human rights and fundamental freedoms". Those were the only inherent human rights with which the Commission had to deal; other rights not mentioned in the Charter were of no concern to it.

85. Before adopting the Universal Declaration of Human Rights the General Assembly on two occasions had dealt with the question of fundamental human rights—in the case of Franco Spain and that of the treatment of Indians in the Union of South Africa. When objection had been raised that those were matters falling within the domestic jurisdiction of the countries concerned, the majority of the General Assembly expressed the view that the question of human rights belonged to the domain of international law. In view of those considerations, he felt that article 7 must be maintained, although he would not object to the deletion of the last phrase.

86. Mr. KORETSKY thought that members of the Commission should refrain from using the expression "civilized countries", even if article 38 of the Statute of the International Court of Justice used it. That expression dated back to the colonial era with its concept of the "white man's burden".

87. The CHAIRMAN agreed with Mr. Koretsky that the words "civilized countries" should not be used.

88. Mr. CORDOVA pointed out that in most of the documents of the United Nations the words "fundamental human rights" were accompanied by the qualifying Charter phrase "without distinction as to race, sex, language, or religion". It was a matter of great historical importance, and consequently the last phrase of article 7 should be maintained.

89. Mr. HSU suggested that, in view of the importance of the question, the Commission should postpone action on the Chairman's proposal until a later meeting when the two now absent members would be present.

*After some discussion, the Commission decided that the matter should be put to the vote with the understanding that if no clear majority decision was reached, another vote on it would be taken at a later time.*

*The Chairman's proposal to delete the last line of article 7 was rejected by 4 votes to 6.*

90. Mr. YEPES proposed that another vote should be taken on the proposal at a subsequent meeting.<sup>5</sup>

*Mr. Yepes' proposal was adopted by 7 votes to 1.*

#### Article 8 [13]

91. The CHAIRMAN pointed out that the Sub-Committee had proposed that the word "within" in the first line of that article should be changed to "in".

*In the absence of objection, the proposed change was adopted.*

92. The CHAIRMAN then put the article as amended to the vote.

*Article 8 as amended was adopted by 9 votes to none.*

#### Article 9 [15]

93. No change having been proposed in that article, the CHAIRMAN put it to the vote.

*Article 9 was adopted by 9 votes to none.*

#### Article 10 [7]

94. No change having been proposed in that article, the CHAIRMAN put it immediately to the vote.

*Article 10 was adopted by 10 votes to none.*

#### Article 11 [8]

95. The CHAIRMAN drew attention to the Sub-Committee's suggestion that the word "waging" in the first line should be changed to "resorting", in view of the fact that a war was waged only after it had begun. In reply to a remark by Mr. Koretsky, he pointed out that the word "waging" had caused considerable difficulty at the Nürnberg trial.

96. The Sub-Committee proposed the deletion of the words "resorting to any" in the second line. A third change proposed by the Sub-Committee was the deletion of the word "the" before the word "threat" in the third line of the article. And finally, the Sub-Committee had proposed the deletion of the word "either" in the third line. He was personally in favour of retaining that word which served to clarify the meaning of the text.

*In the absence of objection, the four drafting changes proposed by the Sub-Committee were adopted.*

97. Mr. YEPES proposed the addition of the words "and justice" at the end of the article with a view to bringing it into conformity with Article 2, paragraph 3 of the Charter.

98. The CHAIRMAN, pointing out that the

<sup>5</sup> A/CN.4/SR.24, para. 51.

addition of that word would weaken the text as the use of force was always inconsistent with justice, put Mr. Yepes' proposal to the vote.

*Mr. Yepes' proposal was rejected by no votes to 4.* The CHAIRMAN then put article 11, as amended, to the vote.

*Article 11, as amended, was adopted by 9 votes to none.*

The meeting rose at 6 p.m.

## 24th MEETING

Friday, 20 May 1949, at 10.15 a.m.

### CONTENTS

	Page
Draft Declaration on the Rights and Duties of States ( <i>continued</i> )	
Third reading ( <i>continued</i> )	
Article 12 . . . . .	171
Article 13 . . . . .	171
Article 14 . . . . .	171
Article 15 . . . . .	171
Article 16 . . . . .	171
Article 1 . . . . .	171
Article 2 . . . . .	172
Article 7 . . . . .	174
Preamble . . . . .	174
Order of articles . . . . .	175
Procedure to be followed after the adoption of the draft Declaration . . . . .	175

*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 (A/CN.4/2) (*continued*)

THIRD READING (*continued*)

*Article 12* [9]

1. The CHAIRMAN said that no changes had been suggested by the Drafting Committee (See

A/CN.4/SR.23, footnote 1) to the English text previously approved by the Commission. As former article 8 had become article 11 of the draft Declaration, the reference to that article in article 12 should therefore be corrected.

*Article 12 as amended was adopted by 9 votes.*

*Article 13* [10]

2. The CHAIRMAN said that the Drafting Committee suggested the deletion of the word "made" from the English text. As in the case of article 12, article 13 should be amended by changing "article 8" into "article 11".

*Article 13 as amended was adopted by 13 votes.*

*Article 14* [11]

3. The CHAIRMAN said that no changes to article 14 were suggested by the Committee.

*Article 14 was adopted by 9 votes.*

*Article 15* [12]

4. The CHAIRMAN said that no changes to the English text of article 15 were suggested by the Committee. He suggested that the word "own" which preceded the word "constitution" in the English text, should be deleted.

*That proposal was adopted.*

5. Mr. ALFARO thought that the word "limitations" in the English text should be replaced by "provisions". The Spanish word *disposiciones* meant not only limitations, but also any provisions contrary to the obligations dealt with in that article.

6. Mr. BRIERLY supported that proposal.

*Mr. Alfaro's proposal was adopted by 6 votes.*

7. Mr. SANDSTROM then suggested that the word "contained" in the English text be deleted, as it became redundant.

*That proposal was adopted.*

8. The CHAIRMAN put to the vote article 15 in the following wording:

"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 provisions contained in its own constitution or its laws as an excuse for failure to perform this duty."

*Article 15 was adopted by 11 votes.*

*Article 16*

9. The CHAIRMAN said that no changes to the English text of article 16 were suggested by the Drafting Committee.

*Article 16 was adopted by 10 votes to 1.*

*Article 1*

10. The CHAIRMAN reminded the Commission that it had deferred its decision on article 1 of