

Document:-
A/CN.4/SR.35

Summary record of the 35th meeting

Topic:
Other topics

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since the latter would not acquire any other right from the fact than that of receiving, officially and free of charge, certain documents of the Commission. Anyone could, however, obtain those documents by buying them at booksellers who were agents for United Nations publications. Inclusion in the list could, therefore, in no case confer consultative status of any kind on the organizations listed therein.

88. For that reason the Secretariat had not thought it vitally necessary to add to the list of organizations detailed information regarding each one of them. But it had studied very carefully the list in question. In particular it had taken into account the list of organizations granted consultative status by the Economic and Social Council (E/C.2/87) and the most recent decisions of the Council. With regard to relations with Franco Spain, it had, for example, excluded from the list the International Bar Association which had only been granted consultative status by the Economic and Social Council subject to the exclusion of its Spanish affiliates and to which the Council had refused that status as such exclusion had not been effected by a certain date. The Secretariat had also used the list submitted by the Secretary-General in 1947 to the Commission on the Progressive Development of International Law and its Codification, which had not formulated any objections with regard to the organizations included in that list. With regard to the International Institute for the Unification of Private Law, the headquarters of which was in Rome, the Secretariat had thought that the close co-operation of that Institute with the Economic Commission for Europe was sufficient proof that it could not be presumed to have collaborated with the Fascists.

89. The Secretariat had thus taken all the necessary precautions and, so far as was possible, had verified all data. If, however, the accuracy of its information were found to be defective on some points, it would take advantage of any comments of members of the Commission to alter the list which had been submitted to them.

90. Part B of the list had been compiled solely from the replies of Governments which, it must be admitted, were not very uniform, certain Governments having supplied a list of most of their universities, others having confined themselves to indicating one or two official institutions. It should be borne in mind, however, that, in principle, the national organizations enumerated in that part of the list were not to receive the Commission's documents unless the Commission itself decided to extend distribution to them. The Secretariat would be glad to receive any additions to the list which members of the Commission might wish to make.

91. The CHAIRMAN suggested that members of the Commission should notify the Assistant

Secretary-General directly of any omissions which they would like to see rectified, and of all additions or deletions which they thought should be made, it being understood that the Secretariat as a result, would alter the list without prejudice to any changes which might subsequently be proposed.

The meeting rose at 6 p.m.

35th MEETING

Tuesday, 7 June 1949, at 3 p.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. CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Vladimir M. KORETSKY, Sir Benegal RAU, 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 Report to the General Assembly on the Work of the First Session (A/CN.4/W.10, A/CN.4/W.10/Add.1 and Add.2) (*resumed*)

1. The CHAIRMAN opened the discussion on chapters IV, V and VI of the draft report to the General Assembly.

CHAPTER IV. FORMULATION OF THE NÜRNBERG PRINCIPLES AND PREPARATION OF A DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND

*Paragraph 29*¹

Paragraph 29 was approved without comment.

*Paragraph 30*²

2. Mr. KORETSKY objected to the tendency to emphasize the Secretariat's contribution to the Commission's work. That was bound to create the impression that the Commission had been able to make progress only because of the Secretariat's help. In his opinion, it would be sufficient to mention in a note at the bottom of the page that the Secretariat had collected the relevant documentation in a memorandum.

3. The CHAIRMAN recalled that the rapporteur of a commission had always a certain freedom of action in the drafting of his report. He asked for Mr. Kern's opinion in that connexion.

4. Mr. KERNO (Assistant Secretary-General) replied that in practice the General Assembly had shown some uncertainty in that matter. At first the Main Committees had approved the rapporteur's report. Later they had contented themselves with approving the resolutions without commenting on the report itself. The Commission could, of course, follow or alter that practice.

5. Mr. AMADO (Rapporteur) stated that he had only followed the practice pursued up to the present by other bodies, and instanced the report of Mr. Brierly, Rapporteur of the Committee on the methods for encouraging the progressive development of international law and its eventual codification (A/AC.10/51) and that of Mr. Spiropoulos, Rapporteur of the Sixth Committee, at the third session of the General Assembly (A/760).

6. Mr. SPIROPOULOS was surprised at Mr. Koretsky's objections to mention being made of the only working document submitted to the Commission at that session.

7. Mr. KORETSKY said that if the procedure outlined by Mr. Kern were observed, that would mean giving full discretionary powers to the Rapporteur. While not contesting the usefulness of the work carried out by the Secretariat, Mr. Koretsky pointed out that the Commission had taken the Charter and Judgment of the Nürnberg Tribunal as a basis for its work and not the memorandum submitted by the Secretary-General (A/CN.4/5). It was for that reason that the memorandum should be mentioned only in a note at the bottom of the page. In doing that the Commission would prove to everyone that it had done serious and objective work.

8. Mr. KERNO, Assistant Secretary-General, explained that he had simply pointed out the practice followed by the Main Committees without in any way suggesting the procedure to be followed by the International Law Commission.

9. The CHAIRMAN considered that the paragraph in question was a simple statement of fact. It was obvious that the Commission had taken the Charter and Judgment of the Nürnberg Tribunal as the basis for its work.

10. Mr. AMADO (Rapporteur) also pointed out that the paragraph simply recorded a fact, namely that the Secretary-General had submitted a memorandum in accordance with instructions received. In order to meet Mr. Koretsky's view he suggested that the following phrase should be added at the beginning of the paragraph—"The Commission had before it the Charter and Judgment of the Nürnberg Tribunal."

11. Mr. SCALLE supported that proposal.

12. Mr. SPIROPOULOS could not support the addition which was useless, as that fact was obvious.

13. Mr. AMADO (Rapporteur) did not press his proposal.

14. The CHAIRMAN put to the vote the original text of paragraph 30.

Paragraph 30 was approved by 10 votes.

*Paragraph 31*³

Paragraph 31 was approved without comment.

*Paragraph 32*⁴

15. Mr. YEPES suggested that, in order to submit a complete picture of the Commission's debates to the General Assembly, the alternative proposal submitted by Mr. Scelle in connexion with the formulation of the principles of Nürnberg should appear at the bottom of the page.

16. Mr. AMADO (Rapporteur) pointed out that that would be contrary to practice.

17. Mr. SCALLE left the matter to the Rapporteur. He did not wish to receive special treatment if such an addition was not in accordance with the usual practice.

18. Mr. YEPES said he was requesting that such an addition should be made in the interests of the General Assembly.

19. Mr. CORDOVA pointed out that if Mr. Scelle's text was reproduced it would be necessary to state the reasons why it had been rejected by the Commission.

20. The CHAIRMAN put Mr. Yepes' proposal to the vote.

The proposal was rejected by 4 votes to 1.

Paragraph 32 was approved.

¹ See Report, para. 24.

² Ibid., para. 25.

³ Ibid., para. 26.

⁴ Ibid., para. 27.

*Paragraph 33*⁵

21. Mr. SCELLE felt it would be advisable to mention whether the "revised" proposal referred to had been accepted or not by the Commission. He particularly wished that his vote against that proposal should be mentioned.

22. Mr. AMADO (Rapporteur) said that Mr. Scelle's negative vote would be mentioned.

23. The CHAIRMAN suggested that the word "revised" should be replaced by "further".

It was so decided.

24. Mr. KORETSKY thought the paragraph should be simplified. All that was necessary was to mention the working paper and to state that after thorough discussion the Commission had decided to defer its decision until its next session.

25. The CHAIRMAN pointed out that paragraph 34 contained the decision taken by the Commission in that matter. In his opinion, paragraph 33 was necessary because it showed that the Commission had already embarked on a thorough study of the question at its current session.

Paragraph 33 was approved with the reservation that Mr. Scelle's vote should be mentioned.

*Paragraph 34*⁶

26. Mr. KORETSKY considered that the facts as set out were incorrect. It had been decided to postpone that item of the agenda to the second session so that the question might be studied more thoroughly. That postponement did not mean that the Nürnberg principles would be formulated only after a draft code of offences against the peace and security of mankind had been drawn up. If it had been otherwise, the Commission would have acted in opposition to General Assembly resolution 177 (II), which separated the two questions.

27. The CHAIRMAN said that the paragraph correctly set out the reason why he had supported the deferment of the study of the formulation of the Nürnberg principles. Otherwise, he would have recommended making a more thorough study of the latter question.

He put paragraph 34 to the vote.

Paragraph 34 was approved by 11 votes to one.

*Paragraph 35*⁷

Paragraph 35 was approved without comment.

*Paragraph 36*⁸

Paragraph 36 was approved without comment.

CHAPTER V. STUDY OF AN INTERNATIONAL CRIMINAL JURISDICTION

*Paragraph 37*⁹

Paragraph 37 was approved without comment.

*Paragraph 38*¹⁰

28. Mr. KORETSKY wondered why the memorandum submitted by the Secretary-General (A/CN.4/7) was mentioned, although that document had not even been studied.

29. The CHAIRMAN said that it was a simple statement of fact.

30. Mr. YEPES was in favour of the retention of the paragraph.

31. Mr. SPIROPOULOS suggested that the paragraph should be drafted in the same way as paragraph 30.

It was so decided.

Paragraph 38 as amended was approved.

*Paragraph 39*¹¹

Paragraph 39 was approved without comment.

CHAPTER VI. WAYS AND MEANS FOR MAKING THE EVIDENCE OF CUSTOMARY INTERNATIONAL LAW MORE READILY AVAILABLE

*Paragraph 40*¹²

32. The CHAIRMAN suggested that the drafting of the second sentence should be amended in order to make it agree with the first sentence of paragraph 30.

It was so decided.

33. Mr. KORETSKY stated that the second sentence of that paragraph was wrongly worded as he thought it gave the false impression that resolution 175 (II) instructed the Secretariat to carry out a particular task. As the Commission had decided to mention all documents prepared by the Secretariat, he reserved the right to submit to the Rapporteur, for inclusion in his report, a draft text of the objections which he had already raised against the memorandum (A/CN.4/6) because, of all the memoranda submitted by the Secretariat, that one contained the crudest and most flagrant mistakes.

34. Mr. SCELLE, pointed out that he had not pressed for the inclusion of his counter proposal to the formulation of the Nürnberg principles in the report, and thought no special treatment should be accorded to Mr. Koretsky's observations

⁵ *Ibid.*, para. 28.

⁶ *Ibid.*, para. 29.

⁷ *Ibid.*, para. 30.

⁸ *Ibid.*, para. 31.

⁹ *Ibid.*, para. 32.

¹⁰ *Ibid.*, para. 33.

¹¹ *Ibid.*, para. 34.

¹² *Ibid.*, para. 35.

relating to the memorandum by inserting them in the report.

35. Mr. YEPES felt, on the contrary, that Mr. Koretsky's observations regarding the Secretariat memorandum should appear in the report, so that it should be complete. As it stood, the text did not state that the Commission had studied the documents which had been submitted to it.

36. The CHAIRMAN, in order to meet Mr. Koretsky's wishes, proposed that the words "in accordance with resolution 175 (II), dated 21 November 1947, of the General Assembly" should be suppressed. Having said that, he hoped that the Rapporteur would hesitate to insert in his report criticisms of the kind made by Mr. Koretsky. He had himself made a declaration which he had not asked to be inserted in the report.

Paragraph 40 was approved with the preceding amendment and the deletion of the words "in accordance with resolution 175 (II) dated 21 November 1947 of the General Assembly".

*Paragraph 41*¹³

37. Mr. YEPES felt that the paragraph should be recast. As drafted, it gave the impression that the Commission had attached but little importance to the problem of documentation relating to customary international law as compared with that relating to conventional international law. It had, however, devoted two meetings to that question and had listened to an admirable address by its Chairman. In any case, it would be advisable to emphasize the importance attached by the Commission to customary law.

38. Mr. SPIROPOULOS suggested the deletion of the words "brief" and "some" in the first and second lines respectively.

39. The CHAIRMAN proposed that it should be added that the Commission had had a general discussion on the importance of customary international law as compared with conventional international law.

40. Mr. SPIROPOULOS objected that there had not been a general discussion of the matter.

The Commission left the Rapporteur free to make the desired insertion if he wished.

Paragraph 41 was approved, with the deletion of the words "brief" and "some" and the addition proposed by the Chairman.

*Paragraph 42*¹⁴

41. The CHAIRMAN suggested the deletion of the word "suitable" before "paper" and of the sentence "in view of his well-known concern

over a period of years with the problem of documentation of international law" after the words "the Chairman of the Commission was invited."

42. Mr. KORETSKY supported that deletion. The Chairman was an eminent judge and jurist who hardly needed that type of praise, particularly when stress was laid on his competence in questions of documentation.

43. Mr. YEPES urged that the sentence should be retained.

44. Mr. AMADO (Rapporteur) agreed with the deletion of the words "of documentation". The rest was a mere statement of fact which should be retained.

45. The CHAIRMAN put to the vote the deletion of the sentence "in view of his well-known concern over a period of many years with the problem of documentation on international law."

It was decided to delete the sentence by 8 votes to 3.

Paragraph 42, thus amended and with the deletion of the word "suitable", was approved.

CHAPTER II. SURVEY OF INTERNATIONAL LAW
AND SELECTION OF TOPICS FOR CODIFICATION:
ADDITIONAL PARAGRAPHS

46. The CHAIRMAN opened the discussion on the additional paragraphs proposed by the Rapporteur.

First additional paragraph

47. The text of the paragraph was as follows:

"Election of Rapporteurs"

"The foregoing three topics were entrusted to three rapporteurs elected by the Commission, each of whom was to prepare a draft on one of these topics, for submission to the Commission at its second session. The rapporteurs were:

"(1) Law of Treaties: Mr. James L. Brierly, Rapporteur;

"(2) Régime of the high seas: Mr. J. P. A. François, Rapporteur;

"(3) Arbitral procedure: Mr. Georges Scelle, Rapporteur."

48. At the suggestion of Mr. SPIROPOULOS, the word "draft" was replaced by "working paper", in order to bring the paragraph into line with paragraph 36.

49. At the suggestion of Mr. BRIERLY, the word "Rapporteur" each time it appeared after a Rapporteur's name, was deleted.

50. It was also decided to insert the words "elected by the Commission" after the word "Rapporteurs" in the fourth line. Finally, the word "were" was replaced by "are".

The first additional paragraph, as amended, was approved.

¹³ *Ibid.*, para. 36.

¹⁴ *Ibid.*, para. 37.

Second additional paragraph

51. The text of the second paragraph was as follows :

“ Request to Governments for data

“ Pursuant to the provisions of article 19, paragraph 2, of its Statute, the Commission decided that a request should be addressed to Governments to furnish the texts of laws, decrees, judicial decisions, treaties, diplomatic correspondence and other documents relevant to the foregoing three topics. The rapporteurs were requested to prepare, in consultation with the Chairman of the Commission and the Secretary-General, the terms of the request which would be sent to the Governments in the name of the Commission through the Secretary-General. ”

52. Mr. KORETSKY recalled that he has voted against the proposal to consult Governments ; he wished his objections to be recorded in a footnote. He reserved the right to submit to the Rapporteur the text to be used.

The second additional paragraph was approved, with the reservation made by Mr. Koretsky.

Third additional paragraph

53. The text of the paragraph was as follows :

“ The Topic of the Right of Asylum

“ During the discussion on the draft Declaration on Rights and Duties of States, a proposal was submitted by Mr. Ricardo J. Alfaro, Mr. Georges Scelle and Mr. Jesús M. Yepes to include in the Declaration an article relating to asylum.¹ It was finally decided not to include such an article in the draft Declaration, on the ground that the right of asylum had already been selected by the Commission as one of the topics for codification and would, therefore, be dealt with in due course.² Mr. Jesús M. Yepes was subsequently invited to prepare a working paper on this topic, for submission to the Commission at its second second session.”

¹ A/CN.4/SR.16.

² A/CN.4/SR.20.”

54. Mr. KORETSKY felt that the end of that paragraph somewhat distorted the facts. It was true that the Commission had decided to ask Mr. Yepes to prepare a document on the right of political asylum, but there had been no question of placing that item on the next session's agenda, which would be a full one.

55. The CHAIRMAN stated that the paragraph in question only mentioned the fact that Mr. Yepes had been requested to prepare a working document for the following session. That did not mean the question would be placed on that session's agenda.

56. Mr. ALFARO found the second sentence inaccurate. It should be either deleted or altered, so as to show the Commission's real reason

for postponing the study of that question, namely that the dispute between Colombia and Peru was pending before the International Court of Justice.

57. The CHAIRMAN, supported by Mr. YEPES, thought it unnecessary to specify the reasons for which the Commission had taken that decision. He therefore proposed the deletion of the entire sentence.

It was so decided.

The third additional paragraph, as amended, was approved.

CHAPTER III. DRAFT DECLARATION ON THE RIGHTS AND DUTIES OF STATES (resumed)

58. The CHAIRMAN stated that the Rapporteur had prepared a new text to replace paragraph 23 (chapter III) of his draft report. He invited the Commission to deal with that new text as well as with the brief comments which had been made by the Rapporteur after each article of the draft Declaration on the Rights and Duties of States, indicating its origin.

Paragraph 23

59. The text of paragraph 23 was as follows:

“ The Draft prepared by the Commission was submitted to three readings, and each of the articles finally adopted was discussed and voted upon at each reading. Though the votes varied upon the different articles, those which were retained met in each case with the preponderant support of the members of the Commission. The Draft Declaration as a whole was finally adopted by eleven votes against two.¹ The draft declaration of the Commission is as follows: . . . ”

¹ Document A/CN.4/SR.25. After the vote on the draft Declaration as a whole, Mr. Vladimir M. Koretsky and Mr. Manley O. Hudson, who voted against it, made statements in explanation of their votes. Mr. Koretsky declared that he voted against the draft Declaration because its present text was even less satisfactory than the original text proposed by Panama. Certain shortcomings in the Panamanian Draft had not been met in the present Draft (A/CN.4/SR. 22). Mr. Hudson stated that he voted against the draft Declaration because the provisions of its article 6 went beyond the Charter of the United Nations and beyond international law at its present stage of development (A/CN.4/SR. 25).”

60. Mr. KORETSKY did not think that the new text was altogether satisfactory. The Commission had not, in fact, taken a vote on each of the articles, each time the draft declaration had been read; a formal vote had been taken only on the final text. When, at each reading of the draft Declaration, the Chairman had called for the Commission's view on the article before it, he had merely taken the sense of the Commission.

61. Furthermore, Mr. Koretsky was opposed to the expression "preponderant support" in view of the fact that some of the articles had been adopted by a small majority.

62. Mr. AMADO (Rapporteur) read the result of the final vote on each of the articles of the draft Declaration and pointed out that they had all been adopted by a large majority.

63. The CHAIRMAN proposed that the first two sentences of paragraph 23 should be replaced by the following text: "The draft prepared by the Commission was submitted to three readings; each of the articles finally adopted was discussed at each reading and the sense of the Commission was taken on its retention. Though the views varied upon the different articles, those which were retained met in each case with the preponderant support of the members of the Commission."

That proposal was adopted.

64. The CHAIRMAN then put to the vote Mr. Koretsky's proposal to delete the word "preponderant."

That proposal was rejected by 10 votes.

SOURCES OF THE ARTICLES OF THE DECLARATION ¹⁵

65. Mr. KORETSKY pointed out that the members of the Commission had not had time to examine closely the statement ¹⁶ about the sources which the Rapporteur wished to add after each article of the draft Declaration. At first glance, it seemed to him that, with the exception of the Treaty of Paris of 1948 those statements cited only American sources of the provisions of the draft Declaration.

66. In his opinion, it was quite proper to specify articles of the Panamanian draft which had been taken over in the draft adopted by the Commission, in view of the fact that, in accordance with resolution 178 (II) of the General Assembly the Panamanian draft was to serve as a basis for discussion. Other documents, however, such as the "Principles of the International Law of the Future" should not be mentioned. It was the opinions of governments which mattered, and these were not mentioned at all.

67. Mr. Koretsky regretted that there was no indication in the statement on the sources of the debate on articles 1 and 2 of the Panamanian draft or of the reasons for which the Commission had adopted each article of the draft declaration. He thought the statements proposed by the Rapporteur should be examined more thoroughly

and consequently suggested that their consideration should be postponed until the following day's meeting.

68. Mr. YEPES and Mr. CORDOVA supported that last suggestion.

69. The CHAIRMAN observed that paragraphs 26 to 28 of the draft report were devoted to the Commission's discussion and that the proposed statements were intended not to indicate the reasons for the Commission's decisions but merely the sources of the articles themselves.

Mr. Koretsky's suggestion was rejected by 6 votes to 3.

(a) Source of article 1

70. The text was as follows:

"Every State has the right to independence and hence to exercise freely, without dictation by any other State, all its legal powers, including the choice of its own form of government."

"This text was derived from articles 3 and 4 of the Panamanian Draft."

71. Mr. YEPES congratulated the Rapporteur on his excellent work. He proposed the addition of the following text to the comment on article 1: "Some members of the Commission were of the opinion that a last sentence should be added to the article, thus: 'It is in this sense that the sovereignty of States should be understood.' This sentence was not retained by the Commission."

72. The CHAIRMAN stated that Mr. Yepes' proposal would be considered in connexion with paragraphs 26 to 28 of the draft report.

(b) Source of article 2

73. The text was as follows:

"Article 2

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

"This text was derived from article 7 of the Panamanian Draft. The concluding phrase is a safeguard for protecting such immunities as those of diplomatic officers and officials of international organizations. Reference was made in the discussions to Article 105 of the Charter of the United Nations, and to the more recent implementation of that article."

74. Mr. KORETSKY saw no need for the last two sentences of that comment. The immunities recognized under international law were quite obviously those accorded to diplomats and officials of international organizations. It was equally unnecessary to mention that, during the debate on article 2, reference had been made to Article 105 of the Charter and to the more recent implementation of that Article. Mr. Koretsky

¹⁵ See A/CN.4/SR.34, para. 30.

¹⁶ Hectographed document issued on 7 June 1949 (without symbol), the substance of which has been included in the present summary record, paras. 69-103.

therefore proposed the deletion of those two sentences.

That proposal was rejected by 8 votes to 4.

(c) *Source of article 3*

75. The text was as follows:

“ Article 3

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

“ The substance of this text which was derived from article 5 of the Panamanian Draft, has already found place in various conventions between the American Republics.”

76. Mr. KORETSKY was opposed to mentioning exclusively the conventions concluded between American Republics. He consequently proposed that the phrase “ in various conventions between the American Republics ” should be replaced by “ in various international conventions.”

That proposal was adopted.

(d) *Source of article 4*

77. The text was as follows:

“ Article 4

“ 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.”

“ This text was derived from article 22 of the Panamanian Draft, which in turn was based upon Principle 4 of the ‘ International Law of the Future ’.”

78. The CHAIRMAN stated that he had no objection to Mr. Koretsky’s proposal of deleting the second part of that comment, in order to suppress the reference to the “ Principles of the International Law of the Future.”

79. Mr. KORETSKY recalled that he had never questioned the political and theoretical scope of the “ Principles of the International Law of the Future.” Those principles had been formulated at a time when all States had shown their wish to co-operate in the struggle against fascism; they had not, however, received official consecration in practice and it was consequently better to mention only that article of the Panamanian Draft which was the source of the provisions of article 4, or if it was so desired, the various bilateral and multilateral agreements related to the principle expressed in article 4 could also be mentioned.

80. Mr. ALFARO remarked that, from the outset the Panamanian delegation had carefully stated the various sources which it had used to prepare the draft declaration it had submitted to the General Assembly. He had himself on several occasions stressed the fact that article 22 of

the Panamanian Draft had been directly inspired by Principle 4 of the “ International Law of the Future ”. That document had been drafted by 200 United States and Canadian jurists and its authority could not be questioned. Mr. Alfaro opposed the deletion of the latter part of the comment.

81. The CHAIRMAN put to the vote Mr. Koretsky’s proposal to add to the comment the following sentence: “ This principle has been enunciated in various international agreements.”

That proposal was adopted by 10 votes.

82. The CHAIRMAN put to the vote Mr. Koretsky’s proposal to delete the second part of the comment, which read: ‘ which in turn was based upon Principle 4 of “ The International Law of the Future ” ’.

That proposal was adopted by 5 votes to 4.

83. The CHAIRMAN explained that he had voted for the deletion of the reference to the “ Principles of the International Law of the Future ” because he had himself taken part in the drafting of that document.

84. Mr. SCALLE stated that he had voted to maintain that reference because he thought that the members of the Commission, in their capacity as jurists and not as representatives of their Governments, ought to pay a tribute to an important document prepared by other jurists. Moreover, inasmuch as the Commission’s work would become a matter of public knowledge, it would have been proper to allude to a document the title of which might be of some consolation to peoples obliged to live under international law in its present stage of evolution.

(e) *Source of article 5*

85. The text was as follows:

“ Article 5

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

“ This text was derived from article 6 of the Panamanian Draft. It expresses the meaning of the phrase ‘ sovereign equality ’ employed in article 2¹ of the Charter of the United Nations, as interpreted at the Conference held in San Francisco in 1945.”

¹ Report of Committee 1 to Commission I. Document of the San Francisco Conference, VI, p. 457.”

86. Mr. KORETSKY did not think that article 5 of the draft Declaration could be said to express the meaning of the term “ sovereign equality ” contained in Article 2, paragraph 1 of the Charter. That was by no means the opinion of all the members of the Commission; if it was desired to retain the mention of that term at all costs, it would in any case be necessary to add after the

words "It expresses", the words "in the view of the majority of the Commission".

87. Mr. BRIERLY remarked that the principle of equality of States was universally recognized and that it was therefore unnecessary to invoke the provisions of Article 2 of the Charter to reaffirm it.

88. The CHAIRMAN put to the vote the deletion of the second sentence of the comment.

It was decided by 6 votes to 5 to retain that sentence.

89. The CHAIRMAN next put to the vote Mr. Koretsky's proposal to insert in that sentence the phrase "in the view of the majority of the Commission".

That proposal was adopted by 5 votes to 3.

(f) *Source of article 6*

90. The text was as follows:

"Article 6

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

"This text was derived from the latter part of article 21 of the Panamanian Draft. The reference to human rights and fundamental freedoms is based upon Article 1. 3, Article 13. 1 b, Article 55 c, and Article 76 c of the Charter of the United Nations. Frequent reference was made in the discussions in the Commission to the Universal Declaration of Human Rights."

91. Mr. CORDOVA pointed out that it was not correct to say that the reference to human rights and fundamental freedoms was based on the provisions of certain Articles of the Charter. In point of fact, the Commission had taken account of those provisions in deciding to insert such a reference in article 6 of the draft declaration.

92. After a brief discussion in which Mr. BRIERLY and Sir Benegal RAU took part, the CHAIRMAN put to the vote the text of the comment on article 6 as proposed by the Rapporteur.

That text was approved by 8 votes.

(g) *Source of article 7*

93. The text was as follows:

"Article 7

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

"This text was derived from the introductory part of article 21 of the Panamanian Draft, which in turn was based upon Principle 2 of 'The International Law of the Future'."

94. After a short discussion in which Mr.

ALFARO, Mr. KORETSKY and Mr. SCELLE took part, the CHAIRMAN put to the vote the deletion of the second part of the comment, which read: "which in turn was based upon Principle 2 of 'The International Law of the Future'."

It was decided, by 6 votes to 4, to delete that clause.

(h) *Source of article 8*

95. The text was as follows:

"Article 8

"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."

"This text was derived from article 15 of the Panamanian Draft. Its language follows closely Article 2. 3 of the Charter of the United Nations."

The comment was approved without discussion.

(i) *Source of article 9*

96. The text was as follows:

"Article 9

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

"This text was derived from article 16 of the Panamanian Draft. The first phrase is fashioned upon a provision in the Treaty of Paris for the Renunciation of War of 1928. The second phrase follows closely the provision in Article 2.4 of the Charter of the United Nations."

The comment was approved without discussion.

(j) *Source of article 10*

97. The text was as follows:

"Article 10

"Every State has the duty to refrain from giving assistance to any State which is acting in violation of article 9, or against which the United Nations is taking preventative or enforcement action."

"This text was derived from article 19 of the Panamanian Draft. The second phrase follows closely the language employed in the latter part of Article 2.5 of the Charter of the United Nations."

The comment was approved without discussion.

(k) *Source of article 11*

98. The text was as follows:

"Article 11

"Every State has the duty to refrain from recognizing any territorial acquisition by another State acting in violation of article 9."

"This text was derived from article 18 of the Panamanian Draft. Reference was made in the discussions of the Commission to the importance assigned to this principle in connexion with the Japanese invasion of Manchuria in 1931."

99. Mr. KORETSKY was opposed to the reference in the second sentence to the Japanese invasion of Manchuria in 1931. That invasion had not been the only example discussed by the Commission. As had been done in the case of the other articles of the draft declaration, reference should be made only to the Panamanian draft, to international conventions, or the Charter of the United Nations.

It was decided, by 6 votes to 3, to delete the second sentence of that comment.

(l) Source of article 12

100. The text was as follows:

"Article 12

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

"This text was derived from article 17 of the Panamanian Draft. The language is based upon that employed in Article 51 of the Charter of the United Nations."

That comment was approved without discussion.

(m) Source of article 13

101. The text was as follows:

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

"This text was derived from articles 11 and 12 of the Panamanian Draft. The phrase 'treaties and other sources of international law' was borrowed from the Preamble of the Charter of the United Nations. The first phrase is a re-statement of the fundamental principle *pacta sunt servanda*. The concluding phrase of this Article reproduces the substance of a well-known pronouncement by the Permanent Court of International Justice.¹

¹ Series A/B, No. 44, p. 24."

102. Mr. KORETSKY was opposed to the reference, in the last sentence, to a decision by the Permanent Court of International Justice.

It was decided by 6 votes to 5, to retain the last sentence.

(n) Source of article 14

103. The text was as follows:

"Article 14

"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."

"This text was derived from article 13 of the Panamanian Draft, which in turn was based upon Postulate 3 of 'The International Law of the Future'."

104. The CHAIRMAN suggested that the reference to "The International Law of the Future" might be deleted, as had been done in the case of the comments on articles 4 and 7.

It was so decided.

The meeting rose at 6 p.m.

36th MEETING

Wednesday, 8 June 1949, at 11 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 RAU, 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 Report to the General Assembly on the Work of the First Session (*resumed*)

CHAPTER III: DRAFT DECLARATION ON THE RIGHTS AND DUTIES OF STATES (*concluded*)

Paragraph 22

1. The CHAIRMAN placed before the Com-