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Summary record of the 7th meeting

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code of international law. With regard to Mr. Koretsky's objections, Mr. Spiropoulos pointed out that the general outline of the plan could not prejudice its contents, and that topics could very well be given a new aspect within the framework of the traditional divisions of recognized international law.

The meeting rose at 6 p.m.

7th MEETING

Thursday, 21 April 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. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Vladimir M. KORETSKY, Sir Benegal N. RAU, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

Secretariat: Mr. KERNO, Assistant Secretary-General in charge of the Legal Department; Mr. FELLER, Principal Director of the Legal Department; Mr. LIANG, Director of the Division for the development and codification of international law, Secretary to the Commission.

Planning for the codification of international law: survey of international law with a view to selecting topics for codification. (Article 18 of the Statute of the International Law Commission) (A/CN.4/1/Rev.1) (*concluded*)

REVISION OF THE PROVISIONAL LIST AND PRIORITY OF TOPICS

1. The CHAIRMAN asked whether the members of the Commission wished to revise the list of fourteen topics which had been retained for

codification. He thought for his part that such a revision was hardly necessary at that stage since the Commission was free to re-examine the subject later.

2. Mr. KORETSKY stated that he found it difficult to say immediately which subjects could be codified with any chance of success. He reminded the Commission that he had proposed that it should postpone the detailed and final examination of that question and request the Rapporteur to make a preliminary study of it with the assistance of the Secretariat. Since the Rapporteur had not felt that he should accept that task, Mr. Koretsky thought that it might be useful to set up a sub-committee for that purpose.

3. He recalled that under article 18 of the Statute the Commission was called upon to survey the *whole* field of international law. The preparatory work resulting in that text made it impossible to doubt that its authors had intended the survey to cover both customary international law and the law concerning treaties, of which there were a considerable number. The treaties published and registered by the United Nations during the last two years alone filled thirteen volumes.

4. He considered that the Commission had not so far reviewed the whole field of international law in conformity with the General Assembly's instructions. Its selection had been guided by intuition, scientific considerations and the personal experience of its members rather than by objective realities. It was quite possible that the passivity of the old theories still dominated the conceptions of certain members who had participated in previous attempts at codification. The Statute laid down that the Commission should consider existing codification drafts whether emanating from Governments or private institutions. The Commission had already had occasion to note that if it left aside all political considerations in the selection of topics, it would not achieve the results which were expected of it.

5. Mr. KORETSKY recalled that so far international law had been tinged with the Europeanism of the Nineteenth Century, a period when French capital had supported Czarism, when French had been the diplomatic language *par excellence*, and when French doctrines had predominated. The United Kingdom had also played an equally dominant role at that time, particularly in matters of maritime law. With the Twentieth Century, what might be called Americanism had made its appearance in international law; that was an obvious fact which could not be left out of account. Thus international law had hitherto been dominated by two tendencies the European and the American, which ignored any conceptions that had arisen in other parts of the world. Apparently, therefore, America and Europe wished to retain a monopoly of civilization. It was well

known that the countries of Asia and Africa had not until quite recently enjoyed equal rights; the European and American legal systems had been imposed on those countries together with the régimes of capitulations, extra-territoriality, etc. Europe and America had thereby been able to ensure their supremacy over those countries.

6. Mr. Koretsky stated that it was of primary importance when embarking on the codification of international law that the Commission should wrestle with its own inclinations and tussle against the old conceptions. Under article 8 of the Statute, the Commission and, therefore, its work should be representative of the main forms of civilization and of the principal legal systems of the world. That was essential if co-operation between the States was to be achieved and if the principle of equality for all was to be applied. It was consequently impossible to admit that one group of States should try to dictate its conceptions to other States and to impose standards of life on them. If there was a desire to create laws based on an international organization of peoples rather than laws based on the world domination of one group of States, the progress achieved by countries to which scientists had hitherto paid scant attention must be examined. The countries which had just re-found their independence were entitled to see their political, legal and governmental institutions studied in detail. He recalled the words of Marshal Stalin who had stated that every nation large or small had its own qualities and that each one made its contribution to the cultural heritage of the world. All nations had equal rights, therefore, and the new tendencies appearing among those peoples who had re-found their sovereign liberty were worthy of the Commission's attention.

7. Mr. Koretsky noted with regret that certain members of the Commission had adopted foreign ideas. He deplored the fact that all the members of the Commission were not present. The absence of Mr. Faris el Khouri, to whom he paid glowing tribute, deprived the Commission of his views on one of the principal civilizations of the world, the Arab civilization. As the representative of a people's democracy which rejected the old conceptions Mr. Zourek might also have contributed to the work of the Commission by his ideas as the Abbé Grégoire and Thomas Jefferson had contributed to the evolution of ideas in their time. He therefore considered that in the absence of those two members it would hardly be possible to obtain a general picture of the legal systems of the world.

8. He stated in conclusion that before fixing on a final list it would be necessary to know the reasons, political considerations included, which had led to the selection of any particular topic, to hear an account of the different attitudes and to examine further any topics which formed the background for existing controversies. For all

those reasons, he felt that the time was not ripe for adopting a final list. He therefore proposed that the list should be referred to the Rapporteur who should prepare a report, with the assistance of a sub-committee if he wished, to be submitted to the next session of the Commission.

9. The CHAIRMAN also regretted the absence of Mr. El Khouri and Mr. Zourek but stated that unfortunately the Commission could not adjourn for that reason. The Commission had adopted a programme which could be modified. The list in question was not final and was not binding on any member of the Commission or on the Commission as a whole. That said, however, it was essential to proceed with the work as soon as possible. To that end he proposed to ask first whether certain members wished to re-examine the topics on the list and secondly whether there were any other topics which the Commission wished to add to the list. Lastly he would put to the vote Mr. Koretsky's proposal that a sub-committee should be established with a view to making a more detailed study.

10. Mr. KORETSKY considered that it was impossible to reach even a provisional decision on the number of topics which should be codified in view of the fact that several of those topics were still matters of bitter controversy, or belonged to the field of the development of international law rather than to that of its codification. The number of topics should therefore be reduced by bringing it down to certain urgent matters which could easily be codified. The first questions to be examined should of course be those which the General Assembly had referred to the Commission for immediate study. The study of the draft declaration on the rights and duties of States might easily take a considerable time; the formulation of the principles of Nürnberg was also important.

11. Moreover it was possible that at its next session the General Assembly would request the Commission to study other questions. Apart, therefore, from those referred to it by the General Assembly the Commission should only retain the following questions:

(1) The régime of the high seas: that was not a controversial question and there were a certain number of precise treaties on it; it was therefore one of the first subjects to be codified and systematized so that the Commission could try out its powers and harmonize the different legal systems.

(2) The question of stateless persons to which Mr. Yepes had referred, which had considerable political significance.

(3) The question of consular intercourse and immunities which often led to great friction between States.

12. In reply to the CHAIRMAN who considered that that proposal was equivalent to eliminating

from the list eleven of the fourteen topics previously retained by the Commission, Mr. KORETSKY explained that he did not propose any elimination; he asked that provisionally three subjects only should be examined and that the others, plus any additional topics, should be examined later. His proposal was therefore a question of priority. If a list of fourteen specific topics were referred to the General Assembly the right to add others would thereby be forfeit immediately. There was therefore no question of excluding the other subjects on the list.

13. The CHAIRMAN stated that after examining the study prepared by the Secretariat the Commission had provisionally retained fourteen topics; that did not mean that it was impossible to add other topics if necessary. Before discussing the question of priority however he wished to know if certain members desired to add any other topics to the list.

14. Mr. SCELLE recalled that the previous day he had emphasized the necessity for studying the question of a draft international penal code. Since provision had been made for that draft under item 3 (b) of the agenda he would not insist on his proposal although he would have preferred that the question should be considered as one of codification rather than as one of perfecting international law. Mr. Scelle therefore withdrew his proposal on condition that the question should be examined as soon as possible.

15. The CHAIRMAN proposed that after it had finished with the questions referred to it by the General Assembly the Commission should examine two topics which could almost certainly be successfully codified. In making its final selection the Commission should bear in mind the failure of the Codification Conference of 1930. The Chairman therefore proposed the following two questions:

(1) The law relating to treaties, on which there was ample documentation including the work of the Sixth International Conference of American States, held at Havana in 1928, and

(2) Arbitral procedure which was directly linked to the application of Article 33 of the United Nations Charter.

16. In reply to Mr. KORETSKY who asked whether the Commission would at that juncture make recommendations to the General Assembly as contemplated in Article 18, paragraph 2, of its Statute, the Chairman stated that no recommendations would be made to the General Assembly before detailed studies had been made.

17. Mr. SCELLE recognized the importance of the question of treaties and said that as it would be most useful to reach concrete results on that subject as soon as possible the question deserved priority. It was, however, a classic question which would produce much less impression on public opinion than the questions of nationality and statelessness. From the very beginning

public opinion and Governments would judge the activity and the vitality of the Commission by the way in which it dealt with that latter problem. The question of arbitral procedure could be left in the background without much inconvenience for the arbitration system, which had worked smoothly for a hundred years or so, would not suffer thereby.

18. The CHAIRMAN indicated the three reasons for which he had not put the question of nationality forward. First of all, it had already been examined without appreciable result by the Codification Conference held at The Hague in 1930. The subject was now in full evolution, as many countries had recently adopted new regulations in that field. Some time, therefore, should be allowed to elapse before broaching that question. Lastly, the problem of statelessness, which formed part of the question, was now on the agenda of the Economic and Social Council, which would work on the basis of a very thorough study prepared by the Secretariat (E/1112). The Council's decision on that subject might provide a satisfactory and topical solution.

19. Mr. YEPES reminded the Commission that the question of the right of political asylum had been selected and given priority. He proposed, therefore, that it should be among the first topics to be examined. Indeed, the problem had already been thoroughly studied: it had been the subject matter of two Conventions—the Havana¹ and Montevideo² Conventions—and it seemed that its codification could easily be achieved in the form of three or four articles to be inserted in the special chapter which would be reserved for that question in the future code of international law. A committee, working simultaneously with the sub-committee preparing the draft declaration on the rights and duties of States, would be able to deal with the topic in a matter of a few days.

20. The CHAIRMAN believed that the Conventions mentioned by Mr. Yepes did not really solve the problem which, in his opinion, could give rise to serious difficulties and which did not arouse the same interest in all countries.

21. Mr. BRIERLY agreed with the Chairman's choice and the reasons underlying it. He felt that the two questions of treaties and of arbitral procedure were of paramount importance; should their examination be successfully concluded within a relatively short time, that success could have a favourable influence on the fate of the Commission when the three years of its current terms of reference expired.

¹ See James Brown Scott, *The International Conference of American States, 1889-1928*. New York, Oxford University Press, pp. 434-435.

² See *The International Conferences of American States* First supplement 1933-1940. Washington, Carnegie Endowment of International Peace, 1940, pp. 116-117.

22. Mr. HSU said that he also had placed the question of treaties at the beginning of his selection. He was prepared to add arbitral procedure to his list since the scope of that question was to be extended to the whole of the pacific settlement of disputes and thus go beyond the limits laid down by the Secretariat's memorandum.

23. Mr. FELLER (Secretariat) thought that the Commission might wish to have some information from the Secretariat on the frequency with which some of the topics envisaged were arising in the practice of the United Nations. He pointed out that the problem of the recognition of States was the one to arise most often in the daily life of the United Nations. It was followed by the question of treaties and that of nationality, the latter being raised in connexion with both the problem of statelessness and that of discrimination in the acquisition and loss of nationality. The difficulties raised by the question of the recognition of States could not be overlooked. Furthermore, a considerable part of the problem of nationality was being studied by the Economic and Social Council. There remained, however, the question of treaties which was of considerable topical interest for the United Nations.

24. Mr. KORETSKY thought that the part played by arbitral procedure in the United Nations did not justify the need for its immediate codification. The question of treaties was undoubtedly of great importance: it covered a very extensive field and raised numerous political and ideological problems. That question would no doubt require the Commission's attention for several years.

25. In his view, the topic to be codified in the first place was the régime of the high seas. It was in that field that the Commission would provide a true measure of its capacity to carry out its tasks. There was yet another question which could not be neglected, for it arose very often in the current life of States, to wit the question of consular intercourse and immunities. It was no doubt strewn with obstacles, as practice differed in various countries, thus leading to frequent misunderstandings between the States. The selection of topics, however, should be carried out in accordance with what might be called the line of greatest urgency and not that of least resistance. As to the question of nationality, Mr. Koretsky felt that it fell essentially within the domestic competence of States and that, judging by past results, it might best be solved by means of diplomatic agreements rather than through international conventions. The only part of it which should be selected was the question of statelessness.

26. The CHAIRMAN agreed with the wish expressed by Mr. Brierly that the Commission should reach positive results before the expiration of its terms of reference. He pointed out that a

study of the régime of the high seas could lead to the examination of numerous problems such as the natural resources of the seas, fishing on the high seas, the sea-bed and the subsoil resources of sea-beds, and that the Commission therefore might spend much time on that subject before reaching a final conclusion. He did not deny the current interest of the question of consular intercourse and immunities which might replace the question of arbitral procedure even though preference for the latter was justified by its direct link with Article 33 of the Charter of the United Nations.

27. Mr. SPIROPOULOS noted that some of the fourteen topics of the provisional list related to the progressive development of international law, while others related to its codification pure and simple. The first stage of the Commission's work should be devoted to the latter topics; among them the topics relating to treaties and to arbitral procedure and perhaps also to the régime of the high seas were of obvious importance. It would be necessary, however, to define exactly the scope of each question and especially that of the régime of the high seas, which in his opinion was confined to a certain number of well-defined standard problems—freedom of the seas, the legal status of war-ships, the status of merchant ships—and should not extend to questions mentioned by the Chairman, such as fisheries, natural resources, and the sea-bed.

28. The CHAIRMAN drew up a list of topics which, according to the views expressed during the debate, should be given priority. The list included: the régime of the high seas, nationality, the right of political asylum, treaties, consular immunities, arbitral procedure. He asked the Commission to express its opinion on the order in which those priority topics should be examined.

The result of several successive votes by show of hands was as follows:

Law of Treaties	12 votes
Arbitral procedure	9 votes
The régime of the high seas	5 votes
Nationality	5 votes
The right of political asylum	3 votes
Consular immunities	3 votes

As the majority of the Commission had expressed itself in their favour, the questions of the law of treaties and of arbitral procedure would head the list of the topics selected for codification.

29. Mr. ALFARO suggested that a third topic should be added to the two selected.

30. The CHAIRMAN proposed, therefore, that the Commission should choose between the questions of the régime of the high seas and of nationality, both of which came third.

A vote was taken by show of hands and the

Commission decided to add the question of the régime of the high seas to the questions of treaties and of arbitral procedure.

31. The CHAIRMAN, summing up the decisions taken by the Commission, pointed out that it had drawn up a provisional list of fourteen topics selected for codification but had as yet taken no decision regarding the need or the opportunity of codifying any one of them; three topics of that list had been given special priority which meant that as soon as the Commission was able to do so—namely when it had dealt with items 2, 3 and 4 of its agenda—it would examine those questions successively in their given order. That decision could be mentioned in the report.

32. Mr. KORETSKY wished that part of the report to make it clear that the choice of those three topics in no way precluded other matters suitable for codification but not mentioned in the list.

33. The CHAIRMAN asked the Rapporteur to bear Mr. Koretsky's observation in mind and to modify the suggested wording accordingly. He also noted that the Commission was agreed that the report should mention the fact that the Commission had discussed the idea of a general plan of codification without definitely establishing a plan.

Order of examination of the questions on the agenda]

34. Mr. ALFARO thought the Commission should continue its work in accordance with its Statute and agenda. The Statute provided that the Commission should first survey the whole field of international law and select topics for codification and then submit its recommendations thereon to the General Assembly. In the last stage of its work it should proceed with the drafting of final plans and recommendations relating to the selected topics, particularly those questions to which priority had been given and which the General Assembly had specially referred to the Commission.

35. The Commission had just surveyed the whole field of international law with a view to selecting topics appropriate for codification, in other words, it had completed the task laid down in article 18, paragraph 1, of its Statute. As it did not seem that the Commission was willing to proceed immediately to the following stage of its work, which was to draft recommendations relating to the selection of topics, and as the priority given to the three topics selected from the provisional list would come into play only when final plans and recommendations were drafted, there remained nothing but to pass on to the next item on the agenda.

36. The CHAIRMAN noted that the Commission did not wish for the time being to go any further

into the first item on its agenda; it would resume its discussion thereon at the appropriate time, after examining what was to be done with the questions referred back by the General Assembly. The Commission should, therefore, pass on to another item on the agenda.

37. Item 2 concerned the draft declaration on the rights and duties of States: it had been referred to the Commission by the General Assembly resolution 178 (II). Item 3 related to the formulation of the principles of Nürnberg. It had been referred to the Commission by General Assembly resolution 177 (II) which had, therefore, priority over the previous question although it bore the same date. Item 4 dealt with the creation of an international judicial organ: it had been dealt with in General Assembly resolution 260B (III).

38. It was for the Commission to decide the order in which it wished to examine those three items of its agenda. The Chairman thought that it would be preferable to deal first with items 3 and 4 and to leave item 2 for the end, as its examination would probably take longer.

39. Mr. LIANG (Secretary to the Commission), explained the precedence given in the agenda to the question of the rights and duties of States by the fact that it had been pending before the United Nations for a very long time and that a large amount of documentation on the subject was available. On the other hand, the only documentation existing for item 3 was the Charter and judgments of the Nürnberg and Tokyo Tribunals. There was no governmental commentary in the relevant file. Moreover, the order of the items was purely provisional and the Commission was perfectly at liberty to alter it.

40. Mr. FRANÇOIS recognized the importance of the question of the rights and duties of States; it was so vast and so complex that it embraced a number of problems of international law which might be discussed in all its entirety in connexion with those rights and duties. If, therefore, the Commission took up that question immediately, it might well have it on its agenda for several months and would not have time to consider the other topics. It therefore seemed preferable to begin with items 3 and 4 of the agenda and then take up item 2, a study of which might at least be begun and taken as far as possible, provided that its scope was limited.

41. Mr. SCELLE supported Mr. François' proposal. In view of the wide scope of the subject, it was unlikely that any definite result on item 2 of the agenda could be easily reached. That, however, was not so in the case of items 3 and 4, between which there was a close relationship, and which should, it seemed, be dealt with successively before broaching item 2.

42. Mr. SANDSTRÖM shared the opinion of Mr. François and Mr. Scelle. They should begin by examining items 3 and 4 of the agenda. But,

it would hardly be possible to discuss the substance of the questions before a preparatory study had been made of them.

43. In Mr. KORETSKY's opinion, the order of the items was unimportant; in the end, they would all three have to be examined by the Commission. Annex B of the Secretariat submitted by the Secretary-General on the draft declaration on the rights and duties of States (A/CN.4/2) proved, by the abundance of their comments and observations, that Governments were very closely interested in the question and wished to see the Commission's work follow a predetermined course. In making those comments they were, moreover, simply answering the wish of the General Assembly which in resolution 178(III) had invited the Secretary-General to draw the attention of States to the desirability of submitting their comments and observations without delay and had stipulated that in preparing its draft declaration the Commission should take into consideration all documents and drafts on the subject.

44. He would like the Secretariat to say whether it had done what was necessary to accelerate the transmission of observations and whether it expected to receive further drafts or comments. Most of the comments received dated back to 1947, and only that of the United States was of recent date. Were further comments expected, it would be preferable to postpone the consideration of the draft declaration of Panama until all comments and drafts had been received when a sub-committee could be appointed to examine them. If, on the other hand, the Commission thought it was already in possession of all the facts and evidence concerning the matter, it should obviously take up item 2 of the agenda immediately, whatever the difficulty of the undertaking.

45. Mr. LIANG (Secretary to the Commission) drew the Commission's attention to the last paragraph of page 33 (English text) of the preparatory study submitted by the Secretary-General in which it was indicated that only 17 States and 5 national and international bodies had sent their comments and observations on the draft declaration, although they had been twice requested to do so. The Secretariat had not been able to subordinate the drafting of its preparatory study to the reception of all the comments; it had succeeded in incorporating therein those it had so far received; it thought the Commission should continue its work without waiting for other comments which might not arrive for several years.

46. Mr. ALFARO asked the Commission to begin by the draft declaration on the rights and duties of States not because he was its author, but because it was the oldest and best prepared of the three subjects transmitted by the General Assembly. It was indeed at the San Francisco

Conference that that draft declaration had been submitted for the first time by the delegation of Panama.³ Because of lack of time the question was referred to the first session of the General Assembly which decided to ask the International Law Commission to report to it on the comments and observations on that draft received from member States and national and international bodies concerned (resolution 38 (I)). At its second session, in resolution 178 (II), the General Assembly instructed the International Law Commission to prepare a draft declaration on the rights and duties of States, taking as a basis of discussion the draft of Panama, and taking into consideration the other documents and drafts on this subject.

47. The Commission had at its disposal the preparatory work carried out by the Secretariat in accordance with the instructions of the General Assembly. Mr. Alfaro wished to congratulate the Secretariat on the excellent document it had submitted to the Commission. The study which had been made was absolutely complete: it contained all that had been said or written on the subject of the rights and duties of States. The question being thus ready for discussion, nothing could justify postponing its examination.

48. Mr. CORDOVA thought the question of the rights and duties of States should be examined first. The Commission had indeed decided that it would begin by proceeding to its work of codification, leaving until later the progressive development of international law. The question of the rights and duties of States was unquestionably within the field of codification, whereas it might well be asked whether the other two questions transmitted by the General Assembly were not rather within the domain of the progressive development of international law. That was an additional reason for taking up item 2 first, quite apart from the fact that the Commission had been seized of it since 1946.

49. Mr. SPIROPOULOS shared Mr. Córdova's opinion. The fact that all Governments had not sent their comments to the Secretary-General could not justify postponement of examination of the question by the Commission, for experience showed that Governments did not all reply to requests for observations addressed to them and that sometimes they limited themselves to having their views expressed orally by their delegations.

50. Mr. SPIROPOULOS declared it was necessary to submit concrete and positive results to the General Assembly. He asked the Commission to proceed to the examination of the draft declaration presented by the delegation of Panama in order to be in a position to draw up during its current session the draft declaration on the

³ Documents of the UNCIO, San Francisco, 1945, Vol. III, pp. 272-273.

rights and duties of States requested by the General Assembly in its resolution 178 (II).

51. The CHAIRMAN asked the members of the Commission to decide what item of the agenda they wished to take up immediately.

As the result of a vote by show of hands, the Commission decided by 9 votes to begin with item 2 of its agenda.

Draft Declaration on the Rights and Duties of States (A/CN.4/2)

GENERAL DEBATE

52. The CHAIRMAN said the Secretary-General had placed at the disposal of the Commission an excellent preparatory study (A/CN.4/2) and he particularly drew the members' attention to the explanatory note by Mr. Alfaro on the draft declaration which appeared on page 38 (English text).

53. At the Chairman's request, Mr. ALFARO explained that he had annotated the various articles of the draft declaration, placing at the end of each article the sources from which the principles enunciated had been drawn. Those annotations were to be found on pages 49, *et seq.* of the preparatory study.

54. The CHAIRMAN proposed that they should at once proceed to the examination, article by article, of the draft declaration of Panama.

55. Mr. KORETSKY thought a general discussion of the whole of the question preceded by an explanation by Mr. Alfaro would be very useful. He recalled that the draft of Panama had been drawn up in 1945 and observed that no important change had since been made in it. It would be very interesting to know the views of members of the Commission on the various aspects of the question before going into a detailed examination, article by article, of the draft. He said that he did not in any way mean to hinder the examination of the draft declaration: the document must be very carefully studied in order that the draft to be drawn up by the Commission might have a good chance of being accepted by States and might thus succeed in ensuring international peace and security.

56. Mr. SANDSTROM and Mr. SPIROPOULOS supported Mr. Koretsky's observations.

57. The CHAIRMAN invited Mr. Alfaro to give a preliminary explanation of the draft declaration of Panama.

58. Mr. ALFARO recalled that the need for a charter on the rights and duties of States had long preoccupied international jurists. Professor Alvarez and Professor La Pradelle had drawn up

two drafts, one containing 60 articles,⁴ which constituted a summary of international law rather than a declaration of the rights and duties of States, the other, a shorter draft of 45 articles,⁵ but conceived on the same general basis as the first. The American States signed at Lima in 1938, and at Mexico in 1945, two well-known Declarations. A Convention was concluded in 1933 at Montevideo: it contained 15 articles, some of which, such as the first article, had no place in a declaration on the rights and duties of States, as they did not enshrine either a right or a duty. Finally, a Commission of Canadian and American jurists, presided over by Mr. Manley O. Hudson, published in Washington in 1944 a document entitled *The International Law of the Future: Postulates, Principles and Suggestions*, which contained a draft of ten articles enunciating the duties of States corresponding to their rights.

59. Drawing on those sources, as well as on the Covenant of the League of Nations and the United Nations Charter, Mr. Alfaro had drawn up the draft declaration in 24 articles submitted by Panama. He then reviewed the various articles of that draft, and pointed out that the principles it proclaimed were all contained in the documents he had just listed and that no new provision had been added. He thought the draft was complete. It was, however, obvious that the Commission was completely at liberty to add any fundamental principles it thought might have been omitted or to suppress any provisions it did not consider essential.

60. Mr. KORETSKY asked Mr. Alfaro if he thought the draft of Panama corresponded to current realities. He himself was not very sure that if the draft had been adopted in 1945 at San Francisco it would have resisted the test of time.

61. Mr. ALFARO replied that in his opinion the draft in question corresponded perfectly to the actual state of international relations.

62. Mr. SCALLE observed that it was important in the first place to establish what was meant by the terms "State" and "Nation". It was also important, before enunciating the rights and duties of States, to consider whether there might not be a conflict between the rights of the State and those of the nation. It should not be forgotten, for example, that the exercise by a nation of the right of peoples to self-determination might very well entail the destruction of a State.

63. In his opinion, the State was nothing but the instrument which organized the relations of the nation with other nations. If that were so, it would be difficult to attribute rights and duties

⁴ See *Revue de Droit International*, 1931, Vol. VIII, pp. 44-55.

⁵ *Ibid.*, pp. 56-63.

to such an instrument. He thought that the expression "rights and duties of States" should not be retained. It was in reality a question of determining the international legal competence of governments towards the nations they governed, or in other words, of indicating what powers were granted them and what were refused.

64. In placing before the Commission the question of the possible alteration of the title of the draft declaration, he pointed out that that was one of the reasons for which he had opposed that item of the agenda being taken up first. The discussion of that item would inevitably lead to the study of questions which the Commission had set aside.

65. The CHAIRMAN pointed out that the expression "rights and duties of States" appeared in resolution 178 (II) and that the Commission was bound by its terms of reference.

66. For Mr. SPIROPOULOS, the question raised by Mr. Scelle was very interesting but of purely academic interest. "Rights and duties of States" was an expression which had long been accepted. It appeared in all the declarations and conventions thus far adopted on that subject as well as in the various resolutions of the General Assembly. It had a very exact meaning which in no way lent itself to misunderstanding. It was therefore preferable to retain it.

67. Mr. SCELLE insisted on the necessity of defining the idea of the State before enunciating the rights and duties of States. It was indispensable to distinguish between the State and the nation, the rights of which were often opposed.

68. Mr. ALFARO recalled that according to the Convention of Montevideo, the State, to be considered as such, should possess the four following qualifications: (1) a permanent population; (2) a defined territory; (3) a government; and (4) capacity to enter into relations with the other States.

69. He pointed out that he had avoided devoting an article of his draft to a definition of that type because he had thought the definition of the State had no place in a declaration on the rights and duties of States. He recalled that in his explanatory note he had indicated that if a country did not satisfy the conditions required for the existence of a State, it was not a State and, consequently, it could not have the rights of a State; on the other hand, if a State existed, that meant that it fulfilled the conditions necessary for its existence and that it could not be called upon to fulfil those conditions (A/CN.4/2, page 41, English text).

70. Mr. SCELLE was glad that Mr. Alfaro had not included in his draft the definition of the State found in the Convention of Montevideo for

while it might apply to collectivities which were not States, it did not apply to collectivities which nevertheless were States.

The meeting rose at 6.00 p.m.

8th MEETING

Friday, 22 April 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. 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*)

GENERAL DEBATE (*continued*)

1. The CHAIRMAN asked Mr. Alfaro to introduce the draft Declaration on the Rights and Duties of States which he had prepared.
 2. Mr. ALFARO said he had nothing to add to the remarks he had made at the previous meeting.
 3. Mr. FRANÇOIS, after paying tribute to the work done by Mr. Alfaro in drafting the Declaration on the Rights and Duties of States, observed that most of the articles contained guiding principles, but that in concrete cases the special circumstances of each justified exceptions. If the Declaration were to contain only general rules, there would be the danger that special circumstances would be denied any influence whatsoever. If, on the other hand, certain exceptions were mentioned in a general way, the Declaration would lose much of its practical value.
1. Mr. AMADO also paid tribute to the work done by Mr. Alfaro in drafting the Declaration