

Document:-
A/CN.4/SR.8

Summary record of the 8th meeting

Topic:
Fundamental rights and duties of States

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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

on the Rights and Duties of States, which he entirely supported. Pointing out that he had been present at the signing of the Convention on the Rights and Duties of States at Montevideo in 1933, he stated that the Commission was faced with the problem of whether it should re-assert the principles enunciated at previous conferences or whether it should lay down new principles. In any case, the Declaration must not be allowed to constitute a retrograde.

5. He emphasized the difficulty of defining the words "State" and "nation", and felt that the Commission should thoroughly study the draft Declaration and examine it paragraph by paragraph. Some favoured the inductive method of codifying specific subjects first and deducting general principles from them. However, the practice of States, judicial decisions, doctrine, legislation and the practice of the United Nations indicated sufficiently how to re-appreciate certain traditional conceptions in that field. The Commission should also decide on the degree of generality to be given to the text of the Declaration, and in that connexion Mr. Amado referred briefly to the remarks made by Mr. François.

6. According to the comment of the Greek Government, in order that non-Member States of the United Nations might sign the Declaration, it should not include any reference to the provisions of the Charter or to any specific treaties. Mr. Amado considered that the Declaration should not ignore the juridical relations which existed between States and between Member States and the Organization, and pointed out that Article 2, paragraph 6, of the Charter laid down that "the Organization shall ensure that States which are not Members of the United Nations act in accordance with these principles so far as may be necessary for the maintenance of International peace and security". The draft Declaration could not, therefore, ignore the existence of the United Nations: it should not, however, repeat the principles of the Charter. Moreover, its provisions should be of a general character, but precise.

7. Comments submitted by Governments on the various articles of the draft Declaration showed that a majority was in favour of the drafting of a convention and not of a declaration, and he agreed with that opinion. Although the Commission could not arrive at a final decision on the matter until the reactions of the various Governments to the draft to be prepared were known, he felt that it might wish to draw up a draft Convention and at the same time recommend that the General Assembly should adopt a resolution on the rights and duties of States. The draft resolution in question could include general provisions which would be out of place in a convention. The convention might contain more detailed provisions for which a declaration was not a suitable form.

8. Referring to the substance of the Declaration, he stated that according to certain writers sovereign States possessed fundamental rights which were absolute and inalienable. Other writers were of a different opinion, and considered that the enjoyment of such fundamental rights by a sovereign State derived from the international legal order. Still others ignored the theory of the fundamental rights of States. The Commission should avoid any inconclusive theoretical discussions. It could be seen from the practice of States that they had on various occasions based their diplomatic action on the alleged exercise of their fundamental rights. It had always been difficult to define such rights: the most recent attempt to do so had been made in chapters II and III of the Charter of the Organization of American States.

9. Although the so-called fundamental rights of States had sometimes been violated in international life, they had generally been respected. In order to reach agreement on the usefulness of defining the rights and duties of States, which might be called "general", in case the word "fundamental" appeared unsuitable from the doctrinal point of view, the Commission should consider the international legal order and define the subjects of law subordinate to it, and also their rights and duties. Among those rights and duties there would be some of a more general character, but none would be absolute and inalienable as they might be changed by evolution or even revolution. They were, however, sufficiently stable to warrant their definition.

10. It should be remembered that the rights of States as laid down by international law gave States no sovereign powers beyond those rights. Sovereign rights would become more restricted with the development of an international organization which would guarantee the legitimate interests of States. As long as such an organization was unable to guarantee peace and security, States would have to be allowed a certain liberty of action. The difficulty was to harmonize the fact that the ideal of an effective international organization had not yet been attained with the necessity of maintaining certain traditional conceptions of the rights of States.

11. Sir Benegal RAU felt that some of the articles of the draft Declaration before the Commission would probably give rise to controversy, but that fact should prove an incentive and not a deterrent to the work of the Commission. Some of the articles of the Declaration would lose a great deal of their value unless the Commission defined the word "State". It was not enough to say that a State was a community fulfilling certain conditions as to its existence, for it depended on who was to decide whether those conditions were fulfilled. In that connexion article 2 of the draft Declaration would have to be clarified. Unless there was an impartial authority to pronounce

on the Statehood of any community, article 2 had no meaning. Sir Benegal Rau welcomed the principles set forth in article 21 of the draft Declaration, as they brought to an end controversies which had arisen regarding paragraph 7 of Article 2 of the Charter and provided that treatment of its own population was no longer a matter reserved for the domestic jurisdiction of the State.

12. Mr. YEPES paid tribute to the initiative taken by Mr. Alfaro in preparing the draft Declaration on the Rights and Duties of States. As Mr. Alfaro had pointed out, that document was based on information obtained from international conferences, from treaties and conventions adopted by Pan-American States and others, and from documents prepared by scientific institutions.

13. While agreeing in general with the draft Declaration, he intended to suggest amendments when the document was discussed article by article. For instance, he considered that the title itself would give rise to misunderstanding, as the definite article (Declaration on *the* Rights and Duties of States) invited the interpretation that the Declaration was exhaustive. In that connexion, he referred to the title "Convention on Rights and Duties of States" which had been adopted by the Montevideo Conference.

14. Referring to article 1, he said the second part of it was limitative and should therefore be deleted. In connexion with article 5 he preferred the wording of the Bogotá Charter which also prohibited intervention by a group of States. It was of course understood that the collective intervention by the international community of States to enforce respect of the law was not included in this prohibition. Article 8 was entitled "Diplomatic Intervention" but he thought it referred more particularly to diplomatic "*démarches*" in favour of nationals of one State who were on the territory of another State. The article should therefore be clarified and it might be advisable to divide it into several parts.

15. Referring to the form in which the Commission should submit the result of its work to the General Assembly, he felt that it might do so in the form of a draft multilateral convention or a draft collective declaration. The drawback of the former was that it was subject to parliamentary ratification, whereas a collective declaration, of which the *ipso jure* obligatory nature might be disputed in certain cases, would have the advantage of simplicity and might create a juridical conscience regarding matters dealt with in collective declarations. No State would place itself beyond the pale of civilization by violating a collective declaration which it had accepted at an international conference and which most of the other States had accepted. He therefore formally proposed that the International Law Commission should submit a draft Declaration on

Rights and Duties of States to the General Assembly.

16. Mr. SANDSTROM noted that the topic of the rights and duties of States had been discussed for some three years, but that the General Assembly had now requested that the Commission should urgently consider a draft declaration on the subject. The relevant international law could not be put into the proverbial nutshell, nor could many of the principles involved be established without an accompanying list of exceptions. The Commission should rather endeavour to list certain rules which had crystallized in the course of practice, without weakening them with too much detail. On the question of form, he supported the suggestion of a declaration submitted with an accompanying resolution.

17. On points of detail, it would be advisable to avoid doctrinal controversy; to a considerable extent traditional notions should be accepted. The proclamation of abstract rights as such should be kept to the minimum, since a right only existed by virtue of the corresponding duty imposed upon another State. Definitions should also be restricted, since the Commission was not setting out to write a treatise; the word "State", however, did appear to require definition. Again, when a rule was taken over from the United Nations Charter, the Commission should take care that the wording in the draft Declaration did not give the impression that something different was intended. The draft should also be drawn up with future modifications and additions in mind.

18. In conclusion, Mr. Sandström said that the draft before the Commission contained instances of the same principle embodied under different aspects in various articles. In the detailed discussion of the draft, he suggested that a group of articles might sometimes be taken for discussion simultaneously.

19. Mr. HSU had no general statement to make, but wished to support the suggestion that the concept of the State should be defined; it would assist all who read the Declaration, especially the public who were not students of international law. The definition should not be included in the Declaration itself, but might be part of the accompanying report.

20. Mr. BRIERLY divided the definition of a State into two points; firstly, what was a State, or what were the conditions which a member of the international community must satisfy in order to be a State; and secondly, how was it to be decided whether or not such a member of the international community satisfied those conditions; in other words, and using the French word, how was the matter to be *constaté*?

21. It was to be noted that the British Government had stated its opinion that the Declaration on the rights and duties of States should begin with a definition of the word "State", and that

such a definition seemed essential to the meaning of the whole Declaration. He himself did not agree that there was any such necessity. The definition would be difficult to establish and highly controversial. Logically, no doubt, the Declaration should begin with a definition of the State, but something less than perfection would probably be sufficient. The word was commonly used in documents and speech, and its meaning had been understood without definition.

22. The second point, concerning the authority who was to pronounce whether or not a member of the international community was a State, had also to be left in abeyance until such time as humanity had evolved some organ, perhaps of the United Nations, to perform the act of collective recognition on behalf of all other States. Meanwhile, each nation was left to decide for itself whether a given entity did or did not conform to certain criteria, to be laid down in the Declaration, and therefore was or was not a State. Mr. Brierly hoped that, in drafting the Declaration, the Commission would regard recognition not as creating a State but as an acknowledgement by one State that another State did, in fact, exist as such.

23. In reply to the Chairman, Mr. Brierly said that he would be glad to see attention drawn in the report to the unsatisfactory situation with regard to the impossibility of ensuring collective recognition of a State.

24. Mr. CORDOVA agreed that the Declaration should not start with a definition of the State. The theory according to which a State was regarded as a legal entity and a nation as a territorial unit could not be included in the Declaration. For the sake of convenience, it would be sufficient to consider only the juridical concept of a State as the subject of certain norms of conduct which the Commission was about to codify. It should, of course, be remembered that both States Members of the United Nations and non-member States had duties and corresponding rights. With regard to the method of drafting, Mr. Córdova said that the draft before the Commission appeared to him to contain too much explanation; he would prefer a more concise text.

25. With regard to the value of the Declaration, he agreed that that was not very great if it were regarded as an instrument for securing rights which were continually being violated; but as establishing a norm for the international intercourse of States, and recognized by States as a standard of conduct, it would be a considerable achievement in human progress. The Commission was about to draw up what amounted to the international penal code of the future, though penalties for violations would not yet be provided.

26. Mr. SCALLE felt appalled by the magnitude of the task before the Commission, which seemed to have undertaken to perform a legal feat of the

utmost difficulty. The first consideration, however, appeared to be that of defining a State. The view expressed by Mr. Brierly on that point was most valuable, and would help to clarify future discussion: Mr. Scelle could endorse the distinction he had drawn between the State as understood theoretically and as understood practically. Mr. Brierly had shown that, though the situation might be delicate and difficult, yet the fact that some States recognized another offered a certain practical solution to the problem. Various peoples were recognized as having certain international competences, and therefore corresponding obligations, and only they could claim the status of a State.

27. The difficulty, however, was to determine precisely what qualities did constitute the sovereign State. It was perhaps unnecessary to ask the question in such terms, since a State could hardly be said to exist as a body, any more than the town of Paris existed as a body. However, the President of the Municipal Council of Paris existed quite clearly, and he represented the collective entity of Paris; moreover, he had certain powers to act according to his own will, and no one could justly prevent him from carrying out those acts. Surely, then, it was the Government, and not the State, which should be recognized, since the State was not an entity which exercised power. He wished to recommend, not that the title of the draft Declaration should be rejected, but that article 1 should be replaced by a statement to the effect that "rights and duties of States" referred to the powers of Governments of communities which international society recognized as being States. Such a statement would be understood by the man in the street, who was often a better judge of good sense than people of more refined perception.

28. The CHAIRMAN observed that the first question to be decided appeared to be that of the form and status of the instrument which the Commission was preparing. On page 35 of the draft (A/CN.4/2) Mr. Alfaro had worded the concluding sentence of the preamble as follows: "The representatives of the signatory states have agreed to make the following DECLARATION . . ." If the Declaration were to be signed, subject to ratification, it might be urged that if it failed to obtain many ratifications, its value would be diminished. An alternative would be for the Declaration to be submitted for adoption by the General Assembly. Even though not adopted as an instrument for creating specific legal obligations upon Members, it would still be of considerable value and comparable to the Universal Declaration of Human Rights. The latter had been adopted as "a common standard of achievement for all peoples and all nations". The Chairman emphasized the fact that much of the contents of the instrument depended upon the form in which it would be presented.

29. The notion that the Commission was drafting a treatise on international law must be firmly rejected; the Declaration could not be a complete list of the rights and duties of States. The general theory of approach, however, should be consistent, and every paragraph must have a practical value. The general discussion might also deal with the fact that rights and duties were correlative. Mr. Alfaro had stated that rights implied duties. The list of rights and duties might, therefore, be drawn up, each right showing its corresponding duty and *vice versa*. In that case, the list on page 47 of document A/CN.4/2 would not be relevant, unless the emphasis was to be intentionally placed either on the rights or on the duties of States.

30. Mr. SPIROPOULOS recalled that Mr. Alfaro had suggested that the Declaration on the Rights and Duties of States might be regarded as the introduction to, or a general part of, the codification of international law. He did not share that view, in particular since it would be necessary in the codification to take up every one of the rights and duties embodied in the Declaration. That was not so with the provisions found in introductions to codifications.

31. With regard to the form to be taken by the instrument, he strongly favoured a Declaration to be adopted by the General Assembly; it was precisely that that the General Assembly had requested the Commission to prepare. Concerning the contents of the Declaration, Mr. Spiropoulos endorsed the general observations of the Greek Government (A/CN.4/2, pp. 161-169), particularly that the Declaration should be limited to general precepts acceptable to all and should not contain provisions regarding their practical application.

32. Mr. Spiropoulos agreed with the view expressed by Mr. Brierly on the question of defining the concept of a State. No domestic legislation had found it necessary to define a juridical person, though some definition of what was not a juridical person had been found necessary; by analogy, it was not necessary to define what was a State, though it might be necessary to define what was not a State. He could not accept Mr. Scelle's argument that the State did not, in fact, exist as a power or as a concrete entity, for he had felt the one and seen the boundary of the other. The same argument might as well be advanced to prove that the General Assembly, or the present Commission, did not exist.

33. It had not been found necessary to define the concepts of "peoples", "nations" or "States" for the Charter, since the meaning of the words was well known; for the sake of convenience it would be wise to avoid attempting such definitions for the purpose of the Declaration.

34. The CHAIRMAN asked Mr. Alfaro for confirmation of the fact that some Governments

had submitted draft declarations of the rights and duties of States at the Conference on International Organization in San Francisco.

35. Mr. ALFARO said that the representatives of Mexico, Cuba and Panama had introduced the idea of a draft Declaration. The Netherlands representative had proposed that Article 1 of the Charter should begin as follows: "The purposes of the United Nations are: 1. To maintain international peace and security *in conformity with the principles of international law and justice . . .*"; a draft prepared by Dr. James Brown Scott of the American Institute of International Law was to be appended as a provisional list of those principles. The Great Powers had, however, rejected the suggestion, and all mention of international law and justice had been carefully avoided. China had been first to introduce those words, but Panama alone had presented a draft Declaration.

36. In reply to a further question by the Chairman, Mr. Alfaro explained that the word "signatory" in the conclusion of the preamble to his draft did not imply that the Declaration was to be a treaty; the phrase was used in the sense in which it had been used in the United Nations Declarations of 1942. When the Declaration had been drafted in 1945, it had been thought that if it were signed by States it would carry more weight; since then, however, the Universal Declaration of Human Rights had provided a suitable precedent whereby the actual signature by States was not required.

37. The CHAIRMAN suggested that the General Assembly should be requested to adopt the Declaration, not as it had adopted the Declaration on Human Rights, "as a common standard of achievement", but perhaps in the present case "as a common standard of conduct".

38. Mr. ALFARO agreed with the last suggestion.

39. The CHAIRMAN explained that if that view were generally accepted, the task of the Commission would be much simplified.

40. Mr. ALFARO pointed out that when a draft declaration had been prepared, it could be converted into a convention at the discretion of the Commission or other bodies concerned. He thought that for the moment, however a draft declaration would suffice as a standard of conduct for the States in the international community.

41. Mr. CORDOVA, supported by Mr. Spiropoulos, thought that the Commission was in general agreement on that question.

42. Mr. YEPES requested that his proposal that the International Law Commission should draw up a draft Declaration on rights and duties of States should be put to a vote.

43. Mr. KORETSKY thought there was no doubt, from the General Assembly resolution, that the Commission had been requested to prepare a draft declaration and thus there was no

need to vote on the question. Although the matter seemed perfectly clear to him, other proposals had been made he thought that as a matter of procedure none should be voted on until a more thorough discussion had taken place.

44. Mr. YEPES had thought that the Commission was to decide the question during that meeting. If his understanding was correct, he would request a vote on his proposal.

45. The CHAIRMAN thought it might be profitable to expand the discussion a little further. He pointed out that it was possible to have a declaration which could be signed and ratified. There was another proposal before the Commission, namely, that it should state it had in view a draft Declaration on rights and duties of States to be adopted by the General Assembly as a common standard of conduct. That wording would resolve many problems and objections. He wondered whether the sense of the Committee was that it wished to prepare a declaration to be adopted by the General Assembly on the same par as the Declaration of Human Rights.

It was so agreed.

46. Mr. ALFARO pointed out that the question which had been raised with regard to the need for a definition of the term "State" was a clear indication that the codification of that concept was necessary. He might insist at a later date on the inclusion of that topic in the list of matters to be codified. He gave great weight to the opinion of Mr. Spiropoulos, who had pointed out that the terms "State" and "nation" had been used alternately by the authors of the Charter to refer to the same concept.

47. With regard to Mr. Scelle's proposal, he thought it would be useful if Mr. Scelle would agree to draft a preliminary article of the type he had described, to be added to the Declaration instead of a definition of "State". From the practical point of view, a State was an accepted member of an international community. Although many areas might wish to be considered States, they were not usually considered to be such until they had been generally admitted as members of an international community.

48. Mr. François had pointed out that not only the principles, but perhaps also the exceptions to those concepts should be stated in a positive manner. In Mr. Alfaro's opinion, the general purpose of the Commission's work should be to include all the fundamental rights and duties of a State. The enumeration of those rights should therefore be left open for amendment at the discretion of the Commission.

49. With regard to the table of rights and duties listed on page 47 of document A/CN.4/2, every right had a correlative duty just as every duty had a corresponding right; the table in question had been intended to stress the nature of certain

rights from the standpoint of a State, which implied the duty of others to respect those rights.

50. The CHAIRMAN thought it should be pointed out that it would be necessary to consider not only the duty owed by one State to another, but also the duties owed by each State to the international community as a whole.

51. Mr. ALFARO agreed with that point of view. He added that he would distribute to the members of the Commission a table indicating the equivalences of the ten articles appearing in "The International Law of the Future" and the twenty-four articles contained in the preparatory study of the draft Declaration on the Rights and Duties of States, and a document on the formulations prepared by the American Institute of International Law.

52. Mr. SPIROPOULOS thought the Committee should not take a decision on the question until it had examined the contents of the articles.

53. Mr. SCELLE agreed that a right implied a corresponding duty. If the Commission accepted that simple approach to the problem it would mean that when recognizing the right of a State to act according to certain rules, the State would be allowed to carry out a juridical act which was a right for it and a duty for others. He thought further that the notion of competence was sufficient to explain the idea of rights and duties.

54. Mr. ALFARO wondered whether it would be desirable to amend the title of the draft declaration to read "on the Fundamental Rights and Duties of States".

55. The CHAIRMAN pointed out that the General Assembly resolution used the word "on".

56. Mr. CORDOVA preferred to retain the word "on", since it did not imply that all the rights and duties of States had been codified.

57. Mr. BRIERLY thought that the term "fundamental" had a certain specific meaning in natural law, from the eighteenth century. He would prefer to avoid using a word of such technical meaning. He had no objection to the word "important" or "essential" and he would, moreover, favour the retention of the word "on".

58. Mr. SPIROPOULOS pointed out that the task of the Commission was not to codify the rights of States; it need not therefore concern itself with the inclusion or exclusion of any particular rights. He thought that the Declaration had a purely demonstrative character. He also shared the views expressed by Mr. Brierly and would prefer to retain the word "on".

59. Mr. YEPES proposed that the question should be left pending until enough progress had been made in the drafting of the Declaration to enable the Commission to determine the outlines of its final character.

60. Mr. AMADO stated that he could not accept

the term "fundamental", which would indicate a step backward.

61. The CHAIRMAN thought the sense of the Commission was that it was engaged in the preparation of a draft Declaration on the rights and duties of States, the French text to be translated *projet de déclaration sur les droits et les devoirs etc.* The Commission would review that decision after the draft had progressed. The two opinions expressed in the Commission were to be interpreted as guides for the work of the next few meetings.

62. In reply to Mr. Spiropoulos, the Chairman added that Mr. Alfaro and Mr. Scelle would present for the Commission's consideration a draft of a preliminary article intended to replace a definition of the term "State".

63. With regard to the definition of State in Article 1 of the Montevideo Convention to which Mr. Alfaro had referred on the previous day (A/CN.4/2, p. 139), he could not accept the use of the term "permanent population" which, as Mr. Alfaro had explained, had been inserted in order to differentiate between established or fixed populations and nomadic ones. The qualification of a defined territory could be criticized on the grounds that the boundaries of some States had not yet been defined, but that qualification and the succeeding one were objective facts and thus preferable to qualifications (a) and (d). He presumed that the term "capacity" in (d) meant legal capacity, in which case the application of international law to that State was presupposed. He thought that that qualification begged the question.

64. Mr. ALFARO explained that the fourth qualification, "capacity to enter into relations with other States", would more or less correspond to the stipulations of the Charter that "membership in the United Nations is open to all other peace-loving States which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations."

65. Mr. YEPES pointed out that a fifth condition was listed in article 1 of the project prepared by the International Commission of American Jurists, 1927 (A/CN.4/2, p. 142). That definition, including the requirements "degree of civilization such as enables it to observe the principles of international law", had been the basis for the Convention of 1933 drafted at the Montevideo Conference.

66. The CHAIRMAN objected that that qualification seemed to imply that only one kind of civilization was acceptable. He suggested that the Commission could start by stating the fact that there were States in the world bound together in a legal community and that it was attempting to deal with the rights and duties imposed by that system. He had found the United Kingdom statement on that point: "Independence in one

sense will have found its place in the definition of a State" (A/CN.4/2, p. 59) to be extremely persuasive.

67. Mr. SCELLE thought that it would be almost impossible to arrive at a universally satisfactory definition of the term "State". He thought, therefore, that it would be wise to include in the draft declaration a statement as follows: "It is understood that the Declaration, when it speaks of the rights and duties of States, refers to the rights and duties of Governments whose juridical competence is recognized by the international community." He would be willing, with the help of Mr. Alfaro, to draft a text for the Commission's consideration.

68. The CHAIRMAN thought that the question of the recognition of Governments by the international community, and as also the recognition of States by that community, should be left open.

69. Mr. AMADO pointed out that a re-drafting of Article 1 might greatly influence the drafting of succeeding articles.

70. Mr. CORDOVA thought that, instead of being inserted in the Declaration on Rights and Duties of States, the definition of the term "State" should be considered under the question of the recognition of States. In the declaration the Commission should confine itself to codifying the norms of conduct for such entities and should only enumerate rights and duties, without considering the question of capacity.

71. Mr. SPIROPOULOS pointed out that, apart from the legal aspect of the question, which would not require a definition, he felt that by reason of the very nature of the document any definitions should be excluded from the text.

72. The CHAIRMAN pointed out that the definition of a series of terms in legal instruments was common practice, but he hoped that that procedure could be avoided.

The meeting rose 1 p.m.

9th MEETING

Monday, 25 April 1949, at 3 p.m.

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