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Summary record of the 9th meeting

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

Request from Mr. Belaúnde, Chairman of the Peruvian delegation to the General Assembly to be heard by the International Law Commission

1. The CHAIRMAN stated that a letter had been received from Mr. Belaúnde, Chairman of the Peruvian delegation to the General Assembly, expressing his interest in the work of the International Law Commission, particularly in the draft Declaration on Rights and Duties of States, on which subject Mr. Belaúnde had been Rapporteur at the Ninth International Conference of American States at Bogotá (1948). He requested permission to be heard by the Commission on that subject. In that connexion the Chairman quoted Article 16, paragraph (e) of the Statute of the International Law Commission (A/CN.4/4):

“The Commission may consult with scientific institutions and individual experts; these experts need not necessarily be nationals of Members of the United Nations. The Secretary-General will provide, when necessary and within the limits of the budget, for the expenses of these consultations of experts;”

and Article 26, paragraphs 1 and 4, of the same Statute:

“1. The Commission may consult with any international or national organization, official or non-official, on any subject entrusted to it if it believes that such a procedure might aid it in the performance of its functions.”

“4. The advisability of consultation by the Commission with inter-governmental organizations whose task is the codification of international law, such as those of the Pan-American Union, is recognized.”

2. Mr. CORDOVA thought the Commission should exercise great caution in a matter of that kind. The Statute of the Commission did not grant the right to be heard to any person or organization. In his opinion the application from the Chairman of the Peruvian delegation should be considered on the basis of the personal qualifications of the applicant and not on the basis of the fact that he had been a member of the Pan-

American Conference. In view of his very high qualifications, Mr. Córdova thought that the Commission might decide to hear Mr. Belaúnde, but did not feel that that should establish a precedent.

3. Mr. SANDSTROM suggested that the Commission might request Mr. Belaúnde to meet informally with the members before a meeting.

4. Mr. SPIROPOULOS thought that as a rule the Commission should hear persons only when it was in need of their expert opinion on specific technical topics, but not in connexion with topics of a general nature.

5. Mr. BRIERLY felt that the application was a little premature. The Commission had hardly begun its work and to solicit an outside opinion at this time would not be particularly useful.

6. The CHAIRMAN said that he would be especially interested in hearing the comments of Mr. Belaúnde on the ideas which had dominated in the drafting of certain articles of the Charter of the Organization of American States during the Ninth International Conference of American States at which Mr. Belaúnde had been the rapporteur on the subject of the fundamental rights and duties of States (A/CN.4/2, pp. 141-142). He did not, however, wish to establish a particular procedure or precedent.

7. Mr. KORETSKY agreed in general with the remarks of Mr. Briery. As a rule, private individuals should not be invited to participate in the work of the International Law Commission. If the Chairman of the Peruvian delegation to the United Nations were invited to attend a meeting a precedent would of necessity have been established. On succeeding occasions the Commission might find itself in the difficult position of having either to refuse similar requests from other eminent personages or of having to open its doors to all applicants who requested a hearing. For that reason he would oppose granting the request of Mr. Belaúnde. If, however, the Commission felt it was important to secure data on documents such as the Charter of the Organization of American States it might be possible to invite the Chairman of the Peruvian delegation to meet informally with the members of the Commission before its meeting on the following day, as Mr. Sandström suggested. That procedure would not create a precedent and would enable members to consult with Mr. Belaúnde on the articles of the said Charter which were relevant to the draft Declaration on the Rights and Duties of States.

8. Mr. KERNO (Assistant Secretary-General) pointed out that the Chairman might extend an invitation to Mr. Belaúnde to attend an unofficial meeting of the group explaining that requests such as his came under item 6 of the agenda (A/CN.4/3) which had not yet been discussed and therefore the Commission could not yet extend an official invitation.

It was agreed that Mr. Belaúnde would be invited

to an informal discussion the next day at 3.00 p.m. and that the meeting of the Commission would be postponed accordingly.

Draft Declaration on the Rights and Duties of States (A/CN.4/2, A/CN.4/2/Add.1)
(continued)

GENERAL DEBATE (concluded)

9. Mr. KORETSKY stated that in his opinion the draft Declaration under consideration was not the document which humanity required at this epic moment in its history. He had reached that conclusion after giving profound thought to the document and he would explain his reasons. He found the document unsatisfactory not only because he perhaps viewed the world otherwise than the other members of the Commission nor because of the fact that the course of Soviet history differed from that of other peoples of the world. Looked at from the principles which the members of the Commission had in common, he still did not consider the document to be a satisfactory one.

10. He had listened with great attention to the comments of other members of the Commission. Attention had been drawn to the difficulty of establishing definitions for some of the basic terminology of the document. It had been asked how the Commission could speak of the relationship between nations and States. Mr. Scelle in particular had been very clear on that subject when he had pointed out the need of defining what was a State. If the Commission followed the proper scientific approach to that problem it would be easy to define both the term "nation" and the term "State"—terms which had been worked out with great clarity by Soviet leaders. Mr. Stalin had written a definition of "nation" in which he had said that a nation was a historically, stable community of language, territory, economic life, and of psychological features which found their expression in a community of culture. There was obviously a need for a definition of the term, as Professor Scelle had pointed out. When the latter had declared that he had never seen a State, he was to a certain extent repeating the philosophy that the world was a question of sensation and that if one could not perceive an object through the senses it did not exist.

11. It would be possible to define the term "State" if an attempt were made to go beyond the concrete concept of a whip in the hands of a policeman. However, although a simple definition could be arrived at, in Mr. Koretsky's opinion, it should be different from that accepted in English and American literature. His approach to the question would necessarily be influenced by the difference in the Soviet materialist or class concept of history. Obviously, there were many approaches to such a definition and he did

not feel that the Commission should attempt at that stage of its work to define such a controversial term. In certain circumstances a definition might be devised which could be interpreted to mean that an international authority would be given the right to decide whether any community was a State or not. However, that right belonged to the community itself. If, however, the Commission should decide that a definition were needed, an explanation of terms might be appended to the completed draft Declaration. Mr. Koretsky would, however, prefer to avoid theoretical discussions of concepts which the Commission knew existed.

12. In evaluating the draft Declaration the Commission should be realistic. By that he did not mean that everything which existed was justified, but the Commission should approach the draft Declaration from a practical point of view. It should not allow the introduction of transcendentalism in the debates but should link the substance of the Declaration to reality.

13. With regard to the document as a whole he could neither approach it dogmatically nor as divorced from reality because each sentence, if viewed historically, was a living thing and would react on every individual as a living being. The draft Declaration should be considered in a historical light. It would undoubtedly develop and the Commission should bear in mind the possibility that it had been conceived in circumstances which could hinder its future development. It was the duty of the Commission to see that the draft Declaration on Rights and Duties of States was not bound and trammelled in its development by a dead past. That document had been born out of historic events and it was difficult to say whether it would prove adequate to the exigencies of the new historic era in which the world was living. Undoubtedly it had a tendency to turn people's minds to the past. The document had been conceived on the basis of relations existing between nations and States in the American continent, on inter-American grounds, where relationships had developed in the shadow of the superiority of one State. In the draft Declaration it was possible to trace the results of a struggle for power, the resultant supremacy of one power and the ways in which that supreme power had intervened in the life of other States of the continent.

14. Non-interventionist principles had always been supported by the smaller countries. Nevertheless, some sixty years earlier in the 1890's, Burgess had contended that it was the duty of Anglo-Saxons to establish law and order wherever the people native to an area were unable to do so. In the interests of civilization it was therefore the duty of the Anglo-Saxon to intervene in the internal affairs of a nation or a people so that law and order would reign supreme; intervention and the use of force were therefore completely

justified. In 1942 Samuel Inman had described the difficult situation of the smaller countries, pointing out that under the heel of the oppressor violent hatreds were being created which were of great potential political significance. In 1923 Charles Evans Hughes had detailed the rights and duties of the United States, thereby causing anxiety in many countries; nations had struggled against interventionist tendencies and had devised covenants and declarations which reflected the feelings of peoples who had fought for their freedom and who wished to reject the claims of spokesmen of the more powerful State.

15. There was not much difference between the draft Declaration on the Rights and Duties of States and the covenants which had preceded it, but that was not strange since the situation between the States of the Western hemisphere had not changed significantly in the preceding centuries. For that reason Mr. Koretsky felt that the draft Declaration really contemplated the problems of the Western hemisphere and could not be applied to the whole of the globe.

16. The Chairman had made reference to the word "signatory" in the Preamble of the draft Declaration. It was possible that that reference might be a vestige from the first drafting prepared at the San Francisco Conference when the document had been intended as an annex to the Charter and consequently subject to the same type of ratification as the Charter.

17. Mr. Koretsky considered that an attempt to extend American interrelationships to the rest of the world was reflected in the draft Declaration. In that connexion he wished to sketch briefly for the Commission the formation of other declarations of that type. The United States Declaration of Independence had been issued at the onset of a struggle to liberate a people from the feudal yoke imposed by the mother country. The principles of national sovereignty of the people and equality were the basic tenets of that document. Each State had declared itself free and independent. The sovereignty of a foreign power had been cast off and immediately bestowed upon the people who had liberated themselves from the yoke of the oppressor. The Declaration of Independence had been a declaration of the hopes of the American people. It had been the instrument most adequate to enable them to continue their struggle for freedom.

18. In the Declaration of the French Revolution the Abbé Grégoire had embodied the principles of independence, freedom, sovereignty, the power to organize a government on the basis of the freely expressed wishes of the people and on the principle of equality. The provisions condemning alliances, if considered in the frame of the age in which they were written, indicated the struggle of a people to be master of its own political destiny against the Holy Alliance organized at that

me. The Declaration of the Rights of the Peoples of Russia of 15 November 1917 had been a declaration of the rights of the people, a challenge to throw off the yoke of the landowner and the employer, to free the people from the principle of class superiority and establish the doctrine of equality. National and religious privileges had been abolished for the sake of establishing a new government based on the true will of the people. Lenin and Stalin in their appeal to all Moslem working people of Russia and the East had exhorted the people no longer to permit their hearths and homes to be plundered, calling upon them to become masters of their land and to fashion their life in their own image. They had told them: "You have a right to that for you hold your fate in your own hands". In the Panamanian draft Declaration, however, there was not the same challenge to the peoples of the world to create for themselves a better future but rather it represented a step backwards, a virtual narrowing of the field.

19. One of the corner-stones of the United Nations was the principle of the sovereign equality of all Members and the principle of self-determination of peoples. The Panamanian Declaration, however, deviated from the basic tenets of the world organization, making no reference to those two cardinal principles. The members of the Commission knew that nations throughout the centuries had fought for equality. The oppressed peoples of both the Eastern and Western Hemispheres had struggled to obtain their freedom. The conditions under which the conception of sovereignty had developed were well-known. However, in the draft Declaration the true sense of sovereign equality had been distorted and deprived of all meaning. Article 2, paragraph 1, of the Charter specifically referred to the sovereign equality of all the Member nations and he wondered why the word "sovereign" had been deleted from the draft Declaration. At San Francisco the representatives had insisted upon its retention, stating that the important principle was not merely the equality of Members but the sovereign equality of nations. That qualification was vital for the protection of their political independence and territorial sovereignty. For States, in order to be equal, must be sovereign, and in order to be sovereign, they must be equal. Those concepts could not be separated and in Mr. Koretsky's view it was consequently not enough to say that "every State is, in law and before the law, equal to all the others . . ." (Article 6) (A/CN.4/2).

20. The reference in Article 13 to the sovereignty of a State was in a limiting context in spite of the fact that sovereignty was one of the main characteristics of a State. While reference was made to independence of States in the draft Declaration, which might be interpreted to mean exactly the same thing as sovereignty, Mr. Koresky felt, however, that the concept of independence was too diluted. He considered that the

author of the draft Declaration had been obliged to retreat from the basic principles of the Charter of the United Nations and of the Atlantic Charter which had proclaimed that it was essential to establish sovereign rights and self-government. Nothing in the draft Declaration was as challenging to the imagination of the world as the Atlantic Charter had been.

21. The omission of reference to sovereignty and sovereign equality only reflected what was happening in the General Assembly and other organs of the United Nations. Professor Brierly had written that States were interested in the social links between themselves, in the recognition of their duties to each other. He had stated further that independence hindered the possibility of developing international relations and had asked for better mutual relationships among nations. Mr. Koretsky thought that that was the desire of everyone in the world but that principle could have dangerous consequences for some nations if it meant that in order to further international relations a country would have to sacrifice part of its independence. In a capitalist society it was true that of necessity one people was dependent upon another. Stalin had written that under capitalism the mutual relationships between peoples and the economic interrelationships of nations were based on the submission of a less developed people to, and on its exploitation by, a more developed people, on the system of colonial slavery and the struggle between "civilized" nations for the control of the so-called uncivilized nations. That was the framework in which mutual relationships had developed. In such a situation, however, it could not be said that the nations in such a community represented the coming together of truly sovereign peoples. If the Commission accepted that principle, it would be tantamount to handing over the control of a country into the hands of those who wished to keep other peoples in slavery. It was not enough to say that sovereignty was important for the nations of the world; that principle had to be carried through. If Soviet statesmen fought for the principle of sovereignty, it was because that principle protected democratic governments and encouraged the battle against world domination by one group. Those who were opposed to sovereignty were mistaken. As the head of the Soviet delegation had said recently in the General Assembly, the sovereignty of States should be shielded from the attacks of those who were attempting to promote their own greedy interests to the detriment of the other nations of the world.

22. The world was being frightened with the atomic weapon, and some people proposed that those who did not possess that weapon should be made to submit to those who did possess it. He felt that one of the basic errors committed by those who had drawn up the draft Declaration

was that they had deviated from the principle of sovereign equality and from that of self-determination which were so clearly set out in the Charter. The draft Declaration did not emphasize the liberation of nations which had been enslaved and did not discriminate between those who own colonies and those who did not. It would be a great mistake to give up the sovereign equality of all Members of the United Nations.

23. The draft Declaration did not protect States from intervention in purely domestic matters by international organizations or groups of States. The sovereignty of the States limited international law. International law must so regulate relationship between States that the mastery or superiority of one State over another could not exist. Sovereignty was so important that the Commission should define it with the greatest care. It was interesting to note in that connexion that Article 2, paragraph 7, one of the most important in the Charter, was being by-passed by certain States. It had also been suggested that the draft Declaration should establish international limits to the powers of States, even to the power of States to decide how to deal with its own citizens. He felt that such suggestions came from reactionary groups who wished to impose their views on other States. For to limit the power of one's own State was to open the gates to the intervention of other States. The international field must not be dominated by those who interfere in the internal affairs of others, by reactionaries who sought to organize other countries by force.

24. The principle of self-determination had been travestied in the draft Declaration. In America the Monroe Doctrine, which had first been progressive, had become aggressive. Now the North Atlantic Treaty was intended to be used as a weapon against the USSR and other people's democracies. Such so-called treaties of collective self-defence had nothing defensive in themselves but were part of a campaign to prevent self-determination and impede the struggle for independence. The concept of the community of nations set down in the draft Declaration was rather vague, and the United Nations would be replaced by some mythical international community. Some people wished to repeat what had happened in the days of the Roman empire when the peasants had been dispossessed of their lands. If States were deprived of their sovereignty and independence, the international community would become a voting machinery, controlled by those Powers which directed that machinery.

25. The draft Declaration did not mention the most important obligation of States—to take measures to ensure peace and security, to prohibit the use of atomic weapons and to carry out an over-all reduction of armaments and armed forces. In taking such measures, States would be lightening the heavy burden of taxation falling upon

their citizens. Mr. Koretsky pointed out that certain States were preparing the ground for the return of Fascism in Germany and Japan. He felt that those members of the Commission who came from countries which had suffered from aggression during the Second World War would agree that the draft Declaration should include a reference to the struggle which must be made against the recurrence of Fascism; in that respect article 21 of the draft Declaration was not sufficient, and it was a dangerous formula in the hands of States which wished to dominate other States.

26. No mention was made in the draft Declaration of the obligation of States to see that the rights and privileges of citizenship were granted to all without distinction as to race, sex, language or religion. Mention should be made in the Declaration of the right to happiness, i.e. the right to work and to protection against poverty. Everyone should have the right to work and to protection against unemployment, but that, too, was not mentioned in the draft Declaration. What has been said in the Declaration of Human Rights must be partly repeated in the Declaration of the Rights and Duties of States. Mr. Koretsky did not believe that man was a subject of international law. He did not agree with the concept of the individual subject of international law. Nevertheless, human rights must be mentioned, particularly in view of the crimes which had been committed by Fascism.

27. In conclusion Mr. Koretsky declared that the authors of the draft Declaration had failed to accomplish their historic task and failed to proclaim that each people had the right to organize its own government. They had also failed to demand general disarmament, which would constitute a defence against the North Atlantic Treaty, which was an organization for war, and they had not arrested the recurrence of Fascism, which was reappearing in some countries occupied by foreign armies, like Japan. Finally it seemed that the draft Declaration did not follow the course laid down by General Assembly resolution 178 (II).

28. Mr. ALFARO wished to reply to the points raised in Mr. Koretsky's speech, which he considered had contained little substance in relation to its length, and had been more political than juridical. Mr. Koretsky apparently wished the Declaration to contain, not those legal rights and duties of States which had been recognized and practised for three centuries, but a political version of such rights and duties. Much ground had been covered, and instances including the ancient Roman struggle between the Plebeians and the Patricians and the allegedly "aggressive" Monroe Doctrine—which, however, had been developed by countries which had freed themselves from the status of colonies—had been quoted, but he proposed to take up only those points which referred directly to the draft Declaration.

29. The first objection raised by Mr. Koretsky had been against the absence of the phrase "sovereign equality" from the Declaration. That phrase, which appeared in Article 2, paragraph 1 of the Charter of the United Nations, had been a novelty in international law when it had first been proposed at the Dumbarton Oaks Conference. Much discussion had resolved the question of its meaning into the exact equivalent of "legal equality", a definition which would be found in the reports of the Drafting Sub-Committee of the First Committee at San Francisco. In any case, the expression would serve no particular purpose in a Declaration on the rights and duties of States, though it might perhaps usefully find a place in a chapter on the codification of the attributes of States. The whole draft Declaration was based on an implicit recognition of the concept of the sovereign State, since a State was taken to mean a people master of its own destiny in internal and external affairs.

30. The concept of sovereignty had been much in the minds of the drafters of the Declaration, as was shown by the sentence on page 43 of document A/CN.4/2: "The manifestation of sovereignty in tangible form is jurisdiction, which constitutes the subject matter of article 7;". If Mr. Koretsky wished that an article dealing with the sovereignty of States should be embodied in the Declaration, Mr. Alfaro would welcome a proposed draft for discussion, but in his view such an article was unnecessary as there could be no State without sovereignty.

31. With regard to Mr. Koretsky's reference to the Atlantic Charter, Mr. Alfaro said he would be glad to incorporate into the Declaration any part of that Charter which appeared to be relevant. Mr. Koretsky had also regretted that the Declaration omitted all reference to self-determination. In Mr. Alfaro's view such a term applied only to a people desirous of becoming a State, and had no place in a Declaration concerned only with communities which had already attained statehood.

32. Referring to Article 2, paragraph 7 of the Charter, which prohibited intervention in matters essentially within the domestic jurisdiction of a state, a principle which Mr. Koretsky would wish to be included in the Declaration, Mr. Alfaro said that there was no place in a Declaration for any reference to such a specific obligation. The draft Declaration conceded the duty of all States to conform with the principles of the Charter, but that did not mean that they should adopt the Soviet Union's interpretation of Article 2, paragraph 7. During the discussion concerning relations with Franco Spain and also concerning the treatment of Indians in the Union of South Africa, however, Mr. Alfaro recalled that the representatives of the USSR had endorsed the view that human rights could be violated only within a State's own jurisdiction, and that collective intervention in the domestic affairs of a State was

justified in such cases. Moreover, Article 12 of the draft Declaration, to the effect that a State might not plead limitations arising out of its own Constitution or its laws as an excuse for failure to discharge its obligations under international law, and Article 21, concerning the treatment of its own population by a State, referred to the relation between an individual and the State in a manner which might meet Mr. Koretsky's requirements. Any further reference to human rights would be out of place in a draft declaration on the rights and duties of States.

33. A further objection had been that the draft failed to mention the duty of States to ensure peace and security. Articles 19, 20, 21 and 22, were in fact aimed at precisely that objective. If those articles did not lead to world peace and security, it would be difficult to draft any that would; however, Mr. Alfaro said he would welcome any such drafts that might be presented.

34. The obligation of a State to give employment to its citizens, which Mr. Koretsky wished to see embodied in the Declaration, was more properly included in the Universal Declaration of Human Rights, but was, nevertheless, implied in the provisions of Article 21 of the draft.

35. In conclusion, Mr. Alfaro said he thought the objections raised by Mr. Koretsky were not well founded. The draft Declaration undoubtedly was not perfect, and suggestions for corrections would be welcomed, though he hoped they might be made without the Commission becoming a political forum. He emphasized that the Declaration concerned the relations between Governments and not between individuals and Governments.

36. In reply to Mr. Alfaro, Mr. KORETSKY agreed that his comments had been made on a political basis, and urged that other members should admit the same in their own cases instead of pretending otherwise. Referring to the specific criticisms made of his speech by Mr. Alfaro, Mr. Koretsky stated that neither Article 2, paragraph 7 of the Charter, nor the USSR position taken in the discussions on Franco Spain and on the treatment of Indians in South Africa referred to the present issue. Mr. Vyshinsky had made it clear that his delegation had regarded the treatment of Indians in South Africa as violating a treaty, and the objection to Franco Spain has been that it was ruled by a Fascist Government which was inimical to every principle of the Charter. Mr. Alfaro had quoted articles 19-21 as providing the necessary measures in favour of peace and security; however, the provision was a negative one, and no specific and positive measures were proposed.

37. Mr. SPIROPOULOS said he had listened with great interest to the statement made by Mr. Koretsky, which had afforded him an opportunity of seeing international law as viewed by a lawyer of the USSR. The ideas put forward by Mr.

Koretsky would be examined in the subsequent detailed discussion, but in the general discussion Mr. Spiropoulos wished to express agreement with the premise that international law was limited by sovereignty, which was as true as his own premise that international law limited sovereignty. Both concepts were correct, though hardly novel and of little practical value. Mr. Spiropoulos said he would welcome the discussion of any proposed amendments to the draft Declaration in which Mr. Koretsky might embody his ideas.

38. Mr. BRIERLY suggested that before proceeding to detailed consideration of the draft, the Committee might wish to decide on three questions concerning the form of the proposed Declaration. He asked whether it was intended that the Declaration should apply to all States, or only to Members of the United Nations. In the latter case, some twenty States of the world would be excluded from its application. If the Declaration were to apply to all States, however, article 17 at least would require modification, as it indicated the duty of a State to advise an organ, presumed to be the Security Council, of any exercise of the right of legitimate defence. Secondly, he asked whether it was intended that all the rights and duties of States laid down in the Charter should be embodied in the Declaration; and thirdly, he proposed that where a right or duty was reproduced from the Charter, the exact words of the Charter should be used, even though it might be possible to suggest improvements.

39. The CHAIRMAN pointed out that the last point was very aptly expressed in the penultimate paragraph of the first communication from the Swedish Government (A/CN.4/2, p. 183), where the fear was expressed that a "double series of partly overlapping rules" might result, unless the Declaration corresponded more closely than the present draft with the wording used in the relevant part of the Charter.

40. Mr. SCALLE pointed out that Article 2, paragraph 6 of the Charter indicated the duty of Members of the United Nations to ensure that non-member States acted in accordance with the principles of the United Nations so far as might be necessary for the maintenance of international peace and security.

41. The CHAIRMAN confirmed that the General Assembly resolution containing the terms of reference of the current discussion did not suggest that the application of the Declaration should be limited to Member States.

42. Mr. SANDSTROM asked whether the Universal Declaration on Human Rights had been limited to Member States.

43. The CHAIRMAN explained that that Declaration had applied to all humanity without exception. He asked whether it was the sense

of the Committee that the Declaration should apply to all States without exception.

44. Mr. KORETSKY emphasized that the General Assembly, to which the Declaration was to be submitted, was not empowered to deal with others than States Members of the United Nations, and that it was therefore illogical that it should address itself to non-member States.

45. Mr. ALFARO agreed with the view expressed by Mr. Brierly; he hoped that the Declaration was an instrument not for the present alone, but also for a future when all States would be Members of the United Nations; that intention had been made clear in his explanatory note given in the Secretariat document on page 40, second and fourth paragraphs and page 42, fifth paragraph.

46. Mr. CORDOVA pointed out that international law in general was not confined in its application to Members of the United Nations, and that there was no reason why the present Declaration should be so limited.

47. Mr. AMADO recalled that he had drawn attention earlier in the discussion to the point which Mr. Brierly was now emphasizing, and he therefore supported that view.

48. Mr. KERNO (Assistant Secretary-General) stressed the fact that no obligation undertaken by Member States in signing the Charter would be affected by the present Declaration.

It was agreed that the Declaration should be drafted so as to apply to all States.

49. The CHAIRMAN asked the Commission to note that Member States would have obligations that non-member States would not have. This should be borne in mind in drafting the Declaration.

50. Mr. SPIROPOULOS endorsed the view of the Greek Government that there was particular international law and general international law; the Charter concerned the former, whereas it was the latter with which the Commission was concerned at present.

51. The CHAIRMAN asked if it was the sense of the Commission that the Declaration should not attempt to repeat all the points contained in the Charter, but should be restricted to cover those parts which it felt belonged to general international law.

It was so agreed.

52. The CHAIRMAN asked if the Commission would agree that where the Declaration repeated rights and duties of States which were included in the Charter, the words of the Charter should be followed literally.

53. Mr. SANDSTROM felt that an attempt should be made to maintain the wording of the Charter, but he wondered whether that could be done in the case of the question of self-defence.

54. Mr. ALFARO, agreeing with Mr. Sandström's remarks, suggested that the wording of the Charter should be adopted as far as possible.

55. Mr. BRIERLY said he had merely wished the Commission to have guidance in its work. He had not wished any fixed rule to be adopted in connexion with the wording of the draft Declaration.

56. The CHAIRMAN felt it was the sense of the Commission that, in order to avoid a double series of partly overlapping rules, it should, in redrafting the Declaration, adhere as closely as possible to the language of the Charter if the subject matter in question was covered by that document.

57. Mr. SCELLE said he was not in favour of drawing up a special article in the Declaration referring to ideas regarding sovereignty, and reserved his right to speak again on that question when the occasion arose.

58. Mr. CORDOVA, referring to the question of non-intervention, reserved his right to speak on that matter when it would be dealt with.

59. The CHAIRMAN said that, as there were no further speakers on his list, the general discussion on the draft Declaration of Rights and Duties of States was closed.

60. Mr. ALFARO suggested that the Committee should discuss the preamble of the draft Declaration last, and that the discussions at the following meeting should begin with article 1.

It was so agreed.

The meeting rose at 5.55 p.m.

10th MEETING

Tuesday, 26 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. LIANG, Director, Division for the Development and Codification of International Law, Secretary to the Commission.