

Draft Declaration on Rights and Duties of States
with commentaries
1949

Text adopted by the International Law Commission at its first session, in 1949, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries and observations on the draft declaration, appears in *Yearbook of the International Law Commission, 1949*. Text reproduced as it appears in the annex to General Assembly resolution 375 (IV) of 6 December 1949.



Declaration as a whole was finally adopted by eleven votes to two.²¹

The draft Declaration as drawn up by the Commission reads as follows:

DRAFT DECLARATION ON RIGHTS AND DUTIES OF STATES

Whereas the States of the world form a community governed by international law,

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

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

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

Whereas it is therefore desirable to formulate certain basic rights and duties of States in the light of new developments of international law and in harmony with the Charter of the United Nations,

The General Assembly of the United Nations adopts and proclaims this

Declaration of Rights and Duties of States

Article 1

Every State has the right to independence and hence to exercise freely, without dictation by any

²¹ A/CN.4/SR.25. After the vote on the draft Declaration, Mr. Vladimir M. Koretsky and Mr. Manley O. Hudson, who voted against it, made statements in explanation of their votes.

Mr. Koretsky declared that he voted against the draft declaration because of its many shortcomings including, in particular: (1) that it deviated from such fundamental principles of the United Nations as the sovereign equality of all the Members thereof and the right of self-determination of peoples; (2) that it did not protect the interests of States against interference by international organizations or groups of States in matters falling essentially within their domestic jurisdiction; (3) that it did not set out the most important duty of States to take measures for the maintenance of international peace and security, the prohibition of atomic weapons, and the general reduction of armaments and armed forces, and that, further, the draft Declaration did not proclaim the duty of States to abstain from participation in any aggressive blocs such as the North Atlantic Pact and the Western Union, which under the cloak of false phrases concerning peace and self-defence were actually aimed at preparing new wars; (4) that the draft Declaration ignored the most important duty of States to take measures for the eradication of the vestiges of fascism and against the danger of its recrudescence; (5) that the draft Declaration ignored the most important duty of States not to allow the establishment of any direct or indirect

other State, all its legal powers, including the choice of its own form of government.

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

Article 2

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

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

Article 3

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

The substance of this text, which was derived from article 5 of the Panamanian draft, has already found place in various international conventions.

Article 4

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

This text was derived from article 22 of the Panamanian draft. The principle has been enunciated in various international agreements.

restriction of the rights of citizens or the establishment of direct or indirect privileges for citizens on account of their race or nationality, and not to allow any advocacy of racial or national exclusiveness or of hatred and contempt; (6) that the draft Declaration did not recite the most important duty of States to ensure the effectiveness of fundamental freedoms and human rights, notably the right to work and the right to be protected against unemployment, ensured on the part of the State and society by such measures as would provide wide possibilities for all to participate in useful work and as would prevent unemployment. Mr. Koretsky added that the draft Declaration, and especially article 14 thereof, went even further than the Panamanian draft in denying the sovereignty of States. In his view the doctrine of the "super-State" was being resorted to in this fashion by persons or peoples seeking to achieve, or to help others to achieve, world domination. Instead of reinforcing the principles of sovereignty, self-determination, sovereign equality of States, independence, and the freedom of States from dependence upon other States, the draft Declaration, he thought, derogated from the great movements to rid the peoples of the world of the scourges of exploitation and oppression (A/CN.4/SR.22, pages 13-14).

Mr. Hudson stated that he voted against the draft Declaration because the provisions of its article 6 went beyond the Charter of the United Nations, and beyond international law at its present stage of development (A/CN.4/SR.25, pages 3 and 6).

Article 5

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

This text was derived from article 6 of the Panamanian draft. It expresses, in the view of the majority of the Commission, the meaning of the phrase "sovereign equality" employed in Article 2. 1 of the Charter of the United Nations as interpreted at the San Francisco Conference, 1945.²²

Article 6

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

This text was derived from the latter part of article 21 of the Panamanian draft. The reference to human rights and fundamental freedoms is inspired by Article 1. 3, Article 13, paragraph 1. b, Article 55 c, and Article 76 c, of the Charter of the United Nations and by the Universal Declaration of Human Rights.

Article 7

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

This text was derived from the introductory part of article 21 of the Panamanian draft.

Article 8

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

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

Article 9

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

This text was derived from article 16 of the Panamanian draft. The first phrase is fashioned upon a provision in the Treaty of Paris for the Renunciation of War of 1928. The second phrase follows closely the provision in Article 2. 4 of the Charter of the United Nations.

Article 10

Every State has the duty to refrain from giving

assistance to any State which is acting in violation of article 9, or against which the United Nations is taking preventive or enforcement action.

This text was derived from article 19 of the Panamanian draft. The second phrase follows closely the language employed in the latter part of Article 2. 5 of the Charter of the United Nations.

Article 11

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

This text was derived from article 18 of the Panamanian draft.

Article 12

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

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

Article 13

Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty.

This text was derived from articles 11 and 12 of the Panamanian draft. The phrase "treaties and other sources of international law" was borrowed from the Preamble of the Charter of the United Nations. The first phrase is a re-statement of the fundamental principle *pacta sunt servanda*. The concluding phrase reproduces the substance of a well-known pronouncement by the Permanent Court of International Justice.²³

Article 14

Every State has the duty to conduct its relations with other States in accordance with international law and with the principle that the sovereignty of each State is subject to the supremacy of international law.

This text was derived from article 13 of the Panamanian draft.

GUIDING CONSIDERATIONS

47. During the preparation of the foregoing draft Declaration, the Commission took into account certain guiding considerations. It was felt that the draft Declaration should be in harmony

²² Report of Committee 1 to Commission I, Documents of the San Francisco Conference, VI, page 457.

²³ Permanent Court of International Justice, Series A/B, Judgments, Orders and Advisory Opinions, Fascicule No. 44, page 24.

with the provisions of the Charter of the United Nations: that it should be applicable only to sovereign States; that it should envisage all the sovereign States of the world and not only the Members of the United Nations; and that it should embrace certain basic rights and duties of States.

SUMMARY OF CONTENTS

48. In conformity with these considerations, the Commission restricted the draft Declaration to the statement of four rights and ten duties of States. The rights are those of independence, comprehending the right of the State to exercise freely all its legal powers, including the choice of its form of government; of jurisdiction over State territory in accordance with international law; of equality in law; and of self-defence, individual or collective, against armed attack. The duties which are stated are of necessity expressed at greater length. They include the duty of the State to conduct its international relations in accordance with international law and to observe its legal obligations. They also include the duty to settle disputes by peaceful means and in accordance with law and justice, and to refrain from intervention and from resorting to war or other illegal use of force. The duties of refraining from assisting any State resorting to war or other illegal use of force, or any State against which the United Nations is taking preventive or enforcement action, and of refraining from recognizing any territorial acquisition resulting from war or other illegal use of force, are likewise stated as corollaries of the foregoing. And, finally, there are set out the duties of the State to refrain from fomenting civil strife in the territory of other State and to prevent the organized incitement thereof from within its own territory; to ensure in general that conditions in its territory do not menace international peace and order; and to treat all persons within its jurisdiction with due respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language, or religion.

OBSERVATIONS CONCERNING THE DRAFT DECLARATION

49. It will be noted that each of the fourteen articles of the Commission's draft was derived from an article in the Panamanian draft. Some of the twenty-four articles of the latter were not retained; some were combined with other articles; some were found to be unnecessary because their substance was contained in other articles. Two of the articles in the Panamanian draft which were not retained precipitated a lengthy discussion which it may be useful to review.

The Commission concluded that no useful pur-

pose would be served by an effort to define the term "State", though this course had been suggested by the Governments of the United Kingdom and of India. In the Commission's draft, the term "State" is used in the sense commonly accepted in international practice. Nor did the Commission think that it was called upon to set forth in this draft Declaration the qualifications to be possessed by a community in order that it may become a State.

It was proposed that the draft Declaration should be introduced by an article providing that "Each State has the right to exist and to preserve its existence". This was urged as a mainspring for other rights to be declared, and its importance was thought to be underscored because the right had been denied and trampled upon by the Axis Powers in the last war. On the other hand, a majority of the members of the Commission deemed it to be tautological to say that an existing State has the right to exist; that right is in a sense a postulate or presupposition underlying the whole draft Declaration. They also thought it superfluous to declare the right of a State to preserve its existence in view of articles in the draft Declaration concerning self-defence and non-intervention by other States.

50. Another proposed article would have provided that "Each State has the right to have its existence recognized by other States". The supporters of this proposal took the view that, even before its recognition by other States, a State has certain rights in international law; and they urged that, when another State on an appraisal made in good faith considers that a political entity has fulfilled the requirements of statehood, it has a duty to recognize that political entity as a State; they appreciated, however, that, in the absence of an international authority with competence to effect collective recognition, each State would retain some freedom of appraisal until recognition had been effected by the great majority of States. On the other hand, a majority of the members of the Commission thought that the proposed article would go beyond generally accepted international law in so far as it applied to new-born States; and that in so far as it related to already established States the article would serve no useful purpose. The Commission concluded that the whole matter of recognition was too delicate and too fraught with political implications to be dealt with in a brief paragraph in this draft Declaration, and it noted that the topic was one of the fourteen topics the codification of which has been deemed by the Commission to be necessary or desirable.

51. After the draft Declaration was completed, Mr. Shuhsi Hsu proposed the addition of an article on the duty of States to condition military necessity by the principle of humanity in the employment of armed forces, legitimate or illegitimate. Some members objected, holding that no

reference to warfare should find a place in such a Declaration as drafted. The Commission did not accept the proposed addition.

52. In conclusion it will be observed that the rights and duties set forth in the draft Declaration are formulated in general terms, without restriction or exception, as befits a declaration of basic right and duties. The articles of the draft Declaration enunciate general principles of international law, the extent and the modalities of the application of which are to be determined by more precise rules. Article 14 of the draft Declaration is a recognition of this fact. It is, indeed, a global provision which dominates the whole draft and, in the view of the Commission, it appropriately serves as a key to other provisions of the draft Declaration in proclaiming "the supremacy of international law".

SUBMISSION OF THE DRAFT DECLARATION TO THE GENERAL ASSEMBLY

53. The Commission gave careful consideration to the question of the procedure to be followed with respect to the draft Declaration, and in particular to the question whether or not the latter should be submitted immediately to the General Assembly. In this connexion, the Commission was guided by the terms of General Assembly resolution 178 (II) and the relevant provisions of its own Statute. It also took into account the terms of a similar resolution, namely, resolutions 260 (III) B of the General Assembly, whereunder it was assigned the special task of studying the question of an international criminal jurisdiction.

The Commission, with Mr. Vladimir M. Koretsky dissenting, came to the conclusion that its function in relation to the draft Declaration fell within neither of the two principal duties laid upon it by its Statute, but constituted a special

assignment from the General Assembly. It was within the competence of the Commission to adopt in relation to this task such a procedure as it might deem conducive to the effectiveness of its work. In this connexion, it was noted that the Panamanian draft, which had served as a basis of discussion, had, in pursuance of resolution 38 (I) adopted by the General Assembly on 11 December 1946, already been transmitted to the Governments of all Members of the United Nations with a request for comments and observations; it was also noted that this request had been reinforced by a circular letter issued by the Secretary-General in pursuance of General Assembly resolution 178 (II) adopted on 21 November 1947. All Governments had thus had ample opportunity to express their general views on the subject matter and, moreover, all Members of the United Nations would have another opportunity so to do when the General Assembly came to consider the draft Declaration.

The Commission therefore decided, by twelve votes to one, to submit the draft Declaration, through the Secretary-General, to the General Assembly immediately, and to place on record its conclusion that it was for the General Assembly to decide what further course of action should be taken in relation to the draft Declaration and, in particular, whether it should be transmitted to Member Governments for comments.

Mr. Vladimir M. Koretsky dissented from this view, expressing the opinion that articles 16 and 21 of the Statute of the Commission required the publication of any draft prepared by the Commission, together with such explanations and supporting material as the Commission might consider appropriate, and the circulation thereof to Governments with a request for observations to be made within a reasonable time, before the final submission of any document to the General Assembly.