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Chairman : Mr. Manfred LACHS (Poland).

**Draft Declaration on Rights and Duties of States :
report of the Secretary-General (A/1850) (*continued*)**

[Item 48]*

1. The CHAIRMAN invited the Committee to resume the debate on the procedural question whether or not it should discuss the first item on its agenda relating to the draft Declaration on Rights and Duties of States.

2. Mr. VAN GLABBEKE (Belgium) asked for a correction to be made in the title of the draft resolution of Luxembourg and the Netherlands on the draft Declaration on Rights and Duties of States (A/C.6/L.172), which should read : "Belgium, Luxembourg and the Netherlands : joint draft resolution".

The correction was agreed to.

3. Mr. PEREZ PEROZO (Venezuela) said that his delegation considered that the reason for which the General Committee had recommended postponement of the discussion at the fifth session, namely that sufficient governments had not yet furnished their suggestions and comments, still applied. Since that decision had been taken, comments had been received from only one country, Australia.

4. Any discussion of the draft Declaration by the Committee would be likely to last into January. If the Committee then decided to recommend its adoption by the Assembly all the great Powers would be unlikely to vote in favour of it, and its adoption by a simple majority would not give the Declaration the authority it ought to have. On the other hand should the Committee decide to recommend, instead of the Declaration, a convention which would be open for signature at the current session of the Assembly or at a conference of plenipotentiaries, such a convention would obtain the signature of even fewer States, since it would be a legally binding instrument. Although the Universal Declaration of Human Rights only declared what was already recognized by many legislatures, the draft convention to enforce those

rights was still being referred from one United Nations body to another. Even among the relatively homogeneous Latin American States, it had been difficult to secure acceptance of the Convention on Rights and Duties of States drafted at the Seventh International Conference of American States in 1933.

5. He was, frankly, inclined to doubt if the nations were ready for a declaration on the rights and duties of States and sceptical of the outcome of an immediate discussion of the draft. His delegation would support whatever proposal was most likely to keep the draft Declaration before the General Assembly without requiring an outright commitment either way, in the hope of a later opportunity to convert the draft into a reality.

6. Mr. BERNSTEIN (Chile) said that the Committee had to choose between discussing the substance of the draft Declaration and giving the document a solemn but feigned burial by referring it to some subordinate United Nations organ, a policy that was becoming a tradition in the Organization. His delegation believed that there was no reason for the Committee not to discuss it.

7. The draft Declaration had been drawn up by the International Law Commission with great care, and if it were not discussed by the Committee and adopted in some form by the Assembly, world opinion would consider that the Assembly had failed in its duty.

8. Obviously, the subject was controversial; but if delegations decided not to deal with matters on the pretext that they were too difficult, they could easily be dealt with in a small meeting of plenipotentiaries.

9. The fact that only twelve States had sent in their comments did not, as had been urged, indicate that discussion was premature. Representatives in the Assembly could give the views of their governments more accurately than could any written communication from a foreign office.

10. The General Assembly had not only the power but the duty to deal with the draft, which had been under

* Indicates the item number on the General Assembly agenda.

¹ See *Official Records of the General Assembly, Fifth Session, Annexes*, agenda items 8, 67, document A/1386.

consideration for six years. The small countries attached particular value to the Declaration, for their sole protection was the rule of law.

11. Mr. LERENA ACEVEDO (Uruguay) observed that the twelve replies received from States made it clear that the difficulties were still at least as great as in 1949 when, by resolution 375 (IV), States had first been asked for their comments. The real objection was that the draft Declaration neither constituted a codification of existing law, since it also included other matters, nor possessed the form of a binding convention regulating relations between States, since it lacked the necessary legal precision.

12. A declaration was not sufficient: a proper legal text was required. The suggestion had been made at the previous session that the Sixth Committee might draft such a text, but it was not sufficiently specialized for the task. More States would, it was to be hoped, send in their comments; those comments should be referred to the International Law Commission for consideration. His delegation would vote for the joint draft resolution of Belgium, Luxembourg and the Netherlands.

13. Mr. BUNGE (Argentina) took the view that, the General Assembly having placed the item on the Committee's agenda, that was reason enough for the Committee to discuss it. There had been an opportunity to take the opposite decision when the Assembly examined the General Committee's recommendations. Furthermore, he saw no reason why delegations which so wished should not express their views on the subject at once, without prejudice to the United Nations going on studying it. His delegation would vote against the Ukrainian draft (A/C.6/L.170) for the reasons given and because the reference to articles 22 and 23 of the Statute of the International Law Commission was not relevant.

14. Mr. HOLMBACH (Sweden) felt that it was necessary to postpone discussion of the item till the next session, by which time more comments might have been sent in, but that those and subsequent comments ought not to be referred to the International Law Commission, as was proposed in the Ukrainian draft resolution, because the Commission was already overburdened with work. Of the fourteen subjects for codification selected at its first session it had decided to give priority to three, but it had still not completed its work on those because special assignments given it by the General Assembly had used up more than half its time. He would therefore vote for the joint draft resolution of Belgium, Luxembourg and the Netherlands.

15. Mr. HERRERA BAEZ (Dominican Republic) said that though his delegation still supported the draft Declaration, it felt it would be advisable to wait for more comments from governments before a decision was taken on the substance of the document.

16. It was necessary to adopt a text which would have the moral and legal force of the Charter of the United Nations, making good the omissions of the Charter on the subject. In that connexion he expressed agreement with the view taken by Israel in its comments (A/1338) on the draft Declaration. A vague declaration was not sufficient. The Latin American States had evolved such a code. But any codification would have to proceed in stages, after technical meetings and consultation with governments, and take into account the world situation and existing relations between States. The final position must be adopted with the greatest care.

17. A general discussion on the draft Declaration would advance matters little beyond the 1949 stage. Nor was there much object in referring governments' comments to the International Law Commission, since so few had been received. A procedural resolution, not entering into the substance, might be helpful. He therefore supported the proposal made by the representative of Ecuador at the previous meeting.

18. Mr. CASTAÑEDA (Mexico) said he would vote in favour of a general debate on the draft Declaration as likely to clarify the attitude of the United Nations. Though the existing text was a good one, it could be improved; and if possible the improvement should be effected at the current session. The smaller States were interested in the draft because it would help to strengthen the principle of the juridical equality of States.

19. Mr. ESCUDERO (Ecuador) wished to clarify some points in his delegation's position. It was convinced that the rights and duties of States should be embodied in an instrument with the widest possible binding force in the field of international behaviour. Having in mind the very considerable progress made in that connexion in the Western Hemisphere since the adoption in Montevideo in 1933 of the Convention on Rights and Duties of States and in the light of all the efforts made by the General Assembly and the International Law Commission on the subject under consideration, his delegation would welcome an immediate debate on the draft Declaration, if the Committee so decided.

20. At the previous meeting he had suggested that, because of the paucity of replies to the Secretary-General's communication of 3 January 1950, the existing serious international situation and the fact that the majority of the provisions of the draft Declaration were covered in one form or another by the United Nations Charter, it might be a useful practical step to adopt a resolution inviting the Member States which had not yet done so to send in comments so that, once the majority of the States had replied, it could be decided whether further consideration of the draft Declaration was desirable. The smaller States would directly benefit by the declaration, and accordingly he hoped that most Member States would respond to the Secretary-General's invitation so as to enable the International Law Commission to make recommendations in accordance with articles 22 and 23 of its Statute, as was proposed in the Ukrainian draft, or simply adopt the joint Belgian, Luxembourg and Netherlands draft resolution. There was no inconsistency between agreeing the need for a declaration on the rights and duties of States and a careful study of the question. As the Charter protected all Member States equally, it might be dangerous to proceed to the elaboration of a legally binding instrument that might not be exactly in keeping with the provisions of the Charter. Consequently, the best course might be to await the replies of other Member States to the Secretary-General's communication before further considering the draft Declaration, including the eventual incorporation of its principles in the United Nations Charter, as the Israel Government suggested in its reply. Whatever the Committee's decision, the draft Declaration had to be recognized as a valuable contribution towards the statement of the rights and duties of States as part of the codification of international law.

21. Mr. HEALD (United Kingdom) said that, while his delegation had considered it best to dispose of the matter by accepting the draft Declaration as it stood, it appre-

ciated the view of some delegations that the matter should be kept open. Accordingly it supported the proposal to defer consideration of the draft Declaration pending the receipt of comments from the majority of Member States.

22. In that connexion, however, he could not accept the Ukrainian delegation's proposal for two reasons. In the first place, it was not desirable to refer the matter back to the International Law Commission, for nothing new in substance had emerged since it had dealt with the draft Declaration. In the second place, the reference to articles 22 and 23 of the Commission's Statute seemed misplaced, for they related to codification, and the declaration did not involve codification. In the circumstances his delegation would support the joint draft resolution.

23. Mr. BARTOS (Yugoslavia) stressed the importance of the adoption of the draft Declaration for the development of peaceful international relations and deplored the attempt made by certain members of the Committee to postpone a solution of the question on purely procedural grounds. The arguments, often purely procedural, advanced in favour of postponing a question so important as the declaration were in line with the consistent hostility displayed by certain delegations to any such instrument. Ever since 1947 lack of time had been pleaded as an excuse for not considering the draft and more recently it had been argued that only a very small number of Member States had sent in written comments. The argument of time was not valid. Members had been repeatedly and urgently asked to comment ever since 1946.

24. There was little point in again consulting Member States. He agreed with the Bolivian representative that some States might not have replied to the Secretary-General's communication either because they had previously stated their views or because they tacitly accepted the draft Declaration as a basis for discussion, or because they expected to have the opportunity of explaining their position at the current session.

25. The proposal to refer the matter back to the International Law Commission for further study after more replies had been received was but a concealed attempt to dispose summarily of an important question and a reflection of the avowed hostility of certain States to the draft Declaration. The Ukrainian draft resolution was merely another manifestation of that attitude.

26. It was the clear duty of the General Assembly to adopt the draft Declaration. As Article 13, paragraph 1 *a* of the Charter suggested, collaboration in the political field was closely linked with the progressive development of international law and its codification. The draft Declaration offered the means of making progress in both directions.

27. To postpone the question indefinitely would be to fail in giving effect to the general principles set forth in Article 11 of the Charter, with which the draft Declaration was perfectly consistent.

28. The time had come for action on a problem so vital to international harmony and understanding and to the freedom and rights of States great and small. While, as his delegation had stated on a previous occasion, the relations between States could not be regulated only by declarations, it considered that the adoption of the draft Declaration would be a powerful moral and political weapon for the defence of small and medium States and of world peace. Accordingly, his delegation opposed any

proposal that would remove the question from the agenda before being fully debated. It might admittedly not be possible to adopt the draft Declaration at the current session and it might be necessary to refer the matter back to the International Law Commission. But the latter would certainly be in a better position to fulfil its task if the discussions of the Committee clearly revealed the wished of the United Nations. The mere fact of providing such guidance would be a great step forward and if the Committee carried out that part of the task, the International Law Commission would most probably be able to submit a detailed report for consideration at the seventh session of the General Assembly.

29. For all those reasons, his delegation had submitted its draft resolution contained in document A/C.6/L.171.

30. Mr. HSU (China) was of the opinion that the draft Declaration should be the subject of a general debate. If it was not discussed, he hoped that it would not be dropped entirely but merely deferred. It was clear that the reluctance of many States to embark on a general discussion was due to the political tension between East and West. Despite that tension, however, his delegation did not share their reluctance. An attempt was being made in the First Committee to bring about disarmament in order to ease the strained international situation, yet the trend in the Sixth Committee seemed to be towards a refusal to establish common principles with a view to relieving the tension if disarmament negotiations failed. The Committee would be judged an abject failure unless it rose to the occasion.

31. The draft Declaration satisfied a clearly felt need and was preferable to a multilateral convention. It required the backing of the General Assembly's authority, though before it could be adopted it would have to be discussed and improved. If the discussion were postponed, he hoped that at least it would not be too long delayed.

32. Mr. CHAUMONT (France) said his delegation had an open mind. It had, of course, certain definite views but it also appreciated the validity of the points of view expressed in the several draft resolutions before the Committee.

33. Obviously, inaction was not the proper course, for the rights and duties of States were as important as those of individuals. His delegation had shown interest in the draft Declaration in 1949, subject to improvements. It still held the view it had expressed in 1949 that the draft Declaration was only a preliminary document requiring further study by the General Assembly. The real issue was not the attitude of the International Law Commission but that of the General Assembly. Thus, although sympathizing with the legal ideas behind the Ukrainian draft resolution he joined issue on the suggestion that the International Law Commission should complete the task in accordance with articles 22 and 23 of its Statute. The General Assembly had not yet settled the question whether the draft Declaration was a matter of codification or of progressive development of international law, so that it was still undecided whether article 22 or article 16 was relevant.

34. The question was not one of expediency but of interpretation. It was for the General Assembly to define what legal principles should be expressly set forth in the draft Declaration, and that required knowledge of the considered views of governments. Governments could not be coerced, and the fact that many had not sent in their written comments might be interpreted as an indi-

cation that they considered a discussion of the subject premature in the existing state of international law. That might be regrettable, but from a legal point of view little could be expected of a theoretical discussion if governments attached no importance to such a declaration.

35. The essential thing was to see that all that was of value in the draft Declaration was not lost and to draw the attention of governments to the need for sending in their comments and suggestions. His delegation would therefore vote for the joint draft resolution (A/C.6/L.172) and, in the light of the statement he had just made, would propose an amendment (A/C.6/L.173) that the following paragraph be inserted before the last paragraph of that draft resolution:

"Urges the States Members which have not yet done so to reply as soon as possible to the questions put by the General Assembly in resolution 375 (IV), paragraph 4, of 6 December 1949;"

36. Finally, while, as he had said, he sympathized with both the other draft resolutions, he would abstain in the vote on them.

37. Mr. ALEMAYCHON (Ethiopia) briefly analysed the three main trends of opinion emerging from the discussion, and stated that his delegation supported the suggestion to open a general discussion on the draft Declaration.

38. Ethiopia was one of the States that had not so far sent in written comments on the draft, not from lack of interest but because it had expected that delegations would have ample opportunity at the current session to present their views.

39. It had been argued that world conditions today were such as to rule out any useful outcome to a discussion on the rights and duties of States. Yet it was precisely because existing world conditions were not normal that some standard of conduct for States was needed. If the Assembly failed even to discuss the draft Declaration the world would be sorely disappointed.

40. Mr. MAJID ABBAS (Iraq) disagreed with the speakers who had spoken in favour of postponing a discussion.

41. The Committee had an undoubted competence—and hence duty—to deal with legal questions referred to it by the General Assembly. If the draft Declaration were still incomplete, and too vague, discussion would offer an excellent opportunity for introducing to needed amplification and changes. Moreover, the argument of existing political tensions was equally applicable to the discussion of any question in any of the Assembly Committees, and was not a valid excuse for deferring the discussion of important matters.

42. A more comprehensive convention on the same subject had been adopted by the Seventh International Conference of American States, and some criticism had been voiced in the score that the draft Declaration was not wide enough in scope. Nevertheless, it was perhaps better for a larger number of States to reach a limited agreement than that nothing at all should be achieved.

43. The French representative had queried the usefulness of adopting what he termed a merely theoretical declaration. But discussion need not necessarily lead to adoption; the Committee could choose from among a number of possibilities for future action. Nor was it any obstacle that many States had not so far sent in their written comments. The oral presentation of views was surely equally valuable and binding; besides, views

presented orally could be modified in the light of the discussion.

44. The Ukrainian draft resolution was not acceptable to his delegation, since no useful purpose could be served by referring the draft Declaration back to the International Law Commission without the benefit of the Committee's comments thereon. There was no reason why the draft Declaration should not be fully discussed, and his delegation would be prepared to support a motion to discuss it. It would also be willing to support any resolution again calling upon Member States to submit their comments on the draft text.

45. Mr. PETRZELKA (Czechoslovakia) observed that the discussion had once more brought out the fact that the draft Declaration was regarded as an important step in the codification and development of international law. Accordingly, any study of its text would entail a prior examination of the Articles of the Charter, *inter alia* Article 2.

46. There could be no denying that the text of the draft Declaration as it stood was not complete. A large majority of Member States had not yet submitted their comments on it, and, in view of the importance of the subject, it could not be assumed that silence on the part of a government signified tacit acceptance of the text. Accordingly, his delegation considered that the best course would be to postpone discussion until further replies had been received and studied by the International Law Commission, and hence would vote in favour of the Ukrainian draft resolution.

47. Mr. ROMERO HERNANDEZ (El Salvador) said the main arguments in favour of postponing action on the draft Declaration were invalid. The fact that the General Assembly had approved the item for inclusion in its agenda was in itself sufficient, and delegations ought to discharge their proper function, which was to discuss it. It was, as had been pointed out, a matter of United Nations prestige to proceed with a document that affected the interests and rights of the smaller countries, though the nature of the instrument would have to be decided by the General Assembly itself.

48. There was a certain element of justice in the procedural argument advanced at the Committee's 253rd meeting. Nevertheless, all progress in the matter would be delayed indefinitely by deferring consideration now. His delegation unhesitatingly desired immediate discussion.

49. U ZAW WIN (Burma) stated that he had not received precise instructions from his Government on the subject under consideration. He had therefore listened with an open mind to the views expressed in the discussion and had finally been convinced that postponement of consideration would be the wisest course.

50. Burma was one of the countries that had not yet sent in its comments on the draft Declaration, partly because the text as it stood was not wholly acceptable to it. He now noted that many other countries had not yet replied, possibly because of the difficulties inherent in reaching agreement on legal terms and questions of law. The delay might have arisen from a desire on the part of those countries to adjust their ideas and reach a compromise on terms and concepts that would be acceptable to the large majority of Member States. It had been suggested that the Sixth Committee was fully competent to discuss the text of the draft; but discussion might lead to a most undesirable "hostility of views openly arrived at", to use a phrase recently

employed in a General Assembly debate. Accordingly, it would be better to await the receipt of further comments from Member States and then submit the whole question to a smaller and more technical body, such as the International Law Commission, to study and amend the draft text in accordance with the views expressed.

51. His delegation would support any proposal for postponement of the discussion which did not at the same time rule out the further participation of the International Law Commission.

52. Mr. MAKTOS (United States of America) reiterated his delegation's view that no further action should be taken in the matter of the draft Declaration, for the outcome of further consideration in any of the ways proposed during the discussion might not be entirely in accord with the objectives of its sponsors.

53. The heart of the matter, and one to be thoroughly studied by the Committee members as legal experts, was the nature of the document. The International Law Commission had been established in pursuance of and for the purposes described in Article 13 of the Charter. Unfortunately, when beginning its consideration of this question, the Commission had failed to decide under which part of its terms of reference the draft Declaration fell: codification of existing international law or progressive development of international law. A decision on that issue would have facilitated discussion.

54. Any provision, to be binding on States, had to be expressed in existing international law or embodied in a convention. The draft declaration did not meet either of those requirements and to adopt it would merely weaken existing international law. Furthermore, an open discussion in the Sixth Committee would only serve to stress the divergencies of views, and so detract from the recognized value of the draft Declaration in its present form. There was obviously a great desire in the Committee for further discussion, and he could only hope that his prognostications would not be borne out by events.

55. Mr. MOUSSA (Egypt) agreed with the representative of El Salvador, who had observed that the General Assembly, in referring the item to the Committee, had ruled that it was desirable to discuss it. Objective discussion of the draft text should have been possible in a body of experts like the Committee; yet the United Kingdom representative, who had described the Committee as experts, had been led to the opposite conclusion.

56. He did not wish to touch upon the substance of the matter but rather would appeal to the consciences of delegations. In that connexion, he paid a tribute to the smaller States represented on the Committee who had urged full discussion of the question. The issue had been raised whether the draft text could be regarded as codification of existing law. That brought to mind the Hague Conventions of 1899 and 1907, as well as the Geneva Convention relative to the Treatment of Prisoners of War. The fact that the Hague Conventions had not been ratified by some States had not prevented the great Powers, on the outbreak of the First World War, from announcing their intention to abide by them. Similar action had been taken with respect to the Geneva Convention on the outbreak of the Second World War. Yet it was still a moot point whether those instruments were part of international law. In the same way, whatever the nature of the draft declaration, it would be an important addition to the international code.

57. He was in agreement with the Yugoslav representative's proposal for a full discussion, which would enable the Committee to ascertain whether or not those States which had not yet replied to the Secretary-General's communication had any views to put forward. It was, of course, monstrous that discussion of such a serious question should be postponed simply because governments had not taken the trouble to reply. He accordingly proposed an amendment (A/C.6/L.174) to the Yugoslav draft resolution (A/C.6/L.171):

1. Add to the preamble the following paragraph:

"*Considering* that, in spite of the small number of States which have responded to the Assembly's invitation, a general discussion on the matter in the Committee will certainly enable the other States to make known their points of view;"

2. Replace the operative part of the draft resolution by the following:

"*Decides* to open a general discussion on the draft declaration on rights and duties of States with a view to making such recommendations to the General Assembly as may appear necessary, including, if appropriate, the communication of the discussion to the International Law Commission".

58. The CHAIRMAN proposed that the list of speakers on the item should be closed at the end of the meeting.

It was so agreed.

The meeting rose at 6 p.m.