

DRAFT DECLARATION ON THE RIGHTS AND DUTIES OF STATES

PRESENTED BY PANAMA

(Item 35 of the Agenda for the Second Regular Session)

COMMUNICATION RECEIVED FROM VENEZUELA

Ministry of External Relations,
Caracas, 12 September 1947

With reference to the Secretary-General's note No. 904-3-2/OS of 2 July 1947, regarding the Draft Declaration on the Rights and Duties of States submitted by Panama, I have the honour to forward the attached report containing the Government of Venezuela's observations on the above draft.

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(Signed) Gonzalo Barrios
In Charge of Ministry

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REPORT

Subject: Draft Declaration on the Rights and Duties of States

The draft Declaration on the Rights and Duties of States drawn up by Doctor R. J. Alfaro, the eminent jurist, and submitted by the delegation of the Republic of Panama for consideration by the United Nations, represents an invaluable contribution to the formulation of the cardinal principles of international law and a notable advance as regards their codification. The Government of Venezuela congratulates the author of the draft and the delegation of Panama, and considers that the draft can serve as an excellent basis for discussion for the appropriate Committee and the United Nations Assembly.

The subject under consideration is, however, so delicate and complex, and the principles laid down of such far-reaching importance, that it is not possible at this stage to do more than express general approval of this most interesting draft, and submit some observations prompted by its study.

The first is in regard to the actual form of the Declaration and the general method of exposition adopted. It is clear, to begin with, that the United Nations may choose one of two methods of formulating the rights and duties of States; either that of a formal convention drafted in the plain, clear and exact terms proper to a treaty or a law and eschewing dogmatic statements or abstract formulas so as not to depart from the rigid language of the law, or that of a Declaration of wider and fuller content, more general and comprehensive, but lacking the rigour of a legal text.

The first method offers marked advantages in the codification of international law and was adopted in America in the case of the 1933 Convention of Montevideo which is now an established text of positive law on this continent, capable of being improved or expanded but not set aside. It rejects the theoretical, vague or inexact and sometimes even abstruse formulas employed in other drafts, and embodies in the text of a treaty the basic principles and positive formulas of international law as we conceive it in this continent. Moreover, these principles cease to be a simple declaration and become a text binding on all the States ratifying it. Venezuela has always been in favour of this method, which it believes the more suitable to the codification of international law and offering greater safeguards to States Members.

The second method, that of the simple declaration, similar to that proposed by the delegation of Panama, has been adopted on many occasions by international juridical bodies and authoritative jurists. It is based on the argument that the rights and duties of States as such are not created by the text of a treaty or international Convention but are inherent in their

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quality as States and can only be recognized or stated. Following this line of thought, a declaration would be a more suitable technical instrument than a convention for formulating such fundamental principles. Whilst there is some truth in such an argument, the fact remains that a declaration has neither the firmness, the binding character, nor the force of a convention, and that it is more likely to be disregarded or violated than the latter. The proper method of establishing rights and duties in positive international law, at least at the present stage of development, is the covenant or treaty and not the declaration, which appears to have moral rather than juridical force. Hence, Venezuela, following her traditional policy in the field of international co-operation, would prefer the first to the second method, the more so as the work we do on this subject will be the armature of positive international law on a world-wide scale.

It might be asserted that the American convention method would meet with opposition from the States of other continents which have not yet accepted such advanced principles of positive international law, and which do not possess the now firmly established tradition of the new world in this field. It should be remembered, however, that the adoption of a simple declaration would be a retrograde step for the American republics since, if it was in the end accepted, it would be necessary to make an exception for these countries in the general text, stating that the declaration did not imply the relaxation of existing contractual obligations of a more binding character.

This leads us to a brief consideration of the actual content of the Declaration. The short, concise and prescriptive form adopted in the Montevideo Convention capable of being rounded off and perfected but limited to specific precepts appears, as Dr. Alfaro himself remarks, much more advisable than the vague, abstract or inexact formulas of other drafts. The Panama Declaration, however, does not entirely avoid this defect and it would be preferable to eliminate from it everything other than precepts and leave formulas of other kinds either to the preamble or to a supplementary text in the form of a simple declaration. It is only fair to say that the draft under consideration represents a considerable advance in this direction.

Only a few specific observations will be made on the actual text of the draft:

No. 1: The right to national existence, common to the doctrines of classical law and to other existing drafts, together with the right of self-defence, is indisputable. The limitations contained in the rest of the paragraph not only detract from the force of the precept itself by imposing conditions on it, but make the exercise of this right dependent

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on a subjective appreciation of the justice of the action, difficult to define or state clearly. The theory of the misuse of a right, as applied in the international sphere, may lead to dangerous consequences if it is not defined in the text itself. It would, therefore, be better to delete the second part of this paragraph.

No. 8: The juridical tradition of the American States, now generally accepted in international law, does not admit of diplomatic intervention or protection unless two conditions are fulfilled, namely, the previous exhaustion of the possibilities offered by the national courts and a clear denial of justice. The Venezuelan doctrine in this matter is firmly established and unambiguous. The text of the draft appears to be based on these principles, but it does not develop them with sufficient clarity and precision. It would be desirable to substitute for the text a formula defining these conditions more exactly. Venezuela is in favour of the inclusion of this subject in any document of this kind, but cannot accept any weakening of the doctrine stated.

No. 9: The duty of a State to respect the rights of other States flows from the very existence of the law but the duty of jointly protecting such rights implies a more advanced idea, one of action rather than of abstention, and emerges more properly from international instruments of another kind (United Nations Charter, regional pacts). The statement in such general terms of the right to protection might well go beyond what is now acceptable in international affairs.

No. 12: The principle, exact enough in general terms, that the Constitution and laws of States cannot affect their international rights and duties, either as regards commission or omission, is difficult to apply in practice, since the public authorities of States are bound by their national rules and cannot disregard them without incurring political and constitutional responsibilities. There seems to be no positive way of applying the principle other than the intervention of international justice annulling such national rules and intervention of this kind would threaten the autonomy of States. Each State must be left free to choose the way in which it will discharge its international obligations and, if it fails to do so, sanctions must be applied in accordance with the general agreements. No general formula of the kind proposed seems likely to be acceptable.

No. 13: The limitation of the sovereignty of the States by international law is a result of the recent development of the latter, and is still affected by the imprecision of international law at the present time. It would therefore be desirable to delete the first phrase of this paragraph.

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No. 16: It has not so far been possible to find an acceptable definition of aggression; hence the inclusion of this term in the prohibition of war might give rise to considerable difficulties. Moreover, the very welcome inclusion of the Drago doctrine in its original form, limited to public debts, seems inadequate. The prohibition of the recovery by force of contractual debts is more far-reaching and has wider implications in contemporary law.

No. 21: The principle that each State should avoid creating conditions in its territory which threaten international peace and order and that it must ensure that its population enjoys conditions which do not violate the dictates of humanity and justice, is an excellent one but should be completed by a formula providing for the adoption of minimum standards defining such rights (Bill of Human Rights).

No. 23: Article 23 is too general in character; the obligations it lays down are too far-reaching to be accepted at the present time. Its adoption would expose the economic life of States to the risk of paralysis at a time of grave economic complications. What should be prohibited as a violation of international order is discriminatory treatment directed against a particular State, and not joint measures of economic defence.

As a general remark, it may be added that it would be desirable to re-arrange the clauses of the draft in a more logical order.

Caracas, 7 July 1947
