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Summary record of the 15th meeting

Topic:
Fundamental rights and duties of States

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130. Mr. SPIROPOULOS considered that the principle should be established without going into detail about methods of implementation.

131. The CHAIRMAN proposed the following text: " Every State has the duty to refrain from recognizing any territorial acquisition made by another State through force or the threat of force. " The addition of the words " by another State " eliminated the case of secession.

That text was adopted by 9 votes to 1.

The meeting rose at 5.55 p.m.

15th MEETING

Wednesday, 4 May 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 CÓRDOVA, 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. LIANG, Director of the Division for the Development and Codification of International Law, Secretary to the Commission.

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

ARTICLE 19: CO-OPERATION IN THE PREVENTION OF ACTS OF FORCE

1. The CHAIRMAN opened the debate on article 19 of the draft Declaration (A/CN.4/2, p. 114). He drew the Commission's attention to the fact that the Greek Government thought that that article should be deleted and that the United States Government had expressed the opinion that the first part of the article presupposed the existence of an organization of the entire community of States. As that community was not yet organized, States might not be willing to agree to lend " every kind of assistance in whatever action " it might take.

2. Mr. ALFARO admitted that some articles of the draft Declaration, articles 19, 20 and 24, for example, mentioned the " community of States " or the " competent organs " of that community. He wished to explain that in using those expressions, which he had borrowed from " The International Law of the Future ", (See A/CN. 4/2, p. 118), he had wished to include not only the States signatory of the Charter which formed the United Nations, but also those which by the Bogotá Charter had constituted the regional international association known as the Organization of American States, as well as States already existing or likely to be formed in the future which might be admitted to the United Nations. He was convinced that a day would come when all the States in the world would be Members of the United Nations. The Declaration on the Rights and Duties of States should be a perpetual instrument, and none of its provisions should bear the mark of temporary situations or conditions.

3. In his opinion, the Commission should first decide whether or not the " community of States " should be mentioned in the Declaration. He pointed out that that procedure would be in accordance with the United Kingdom Government's view that it was for the Commission to consider whether, and to what extent, propositions, such as those in articles 15, 16, 17, 19 and 20 could be laid down as part of general international law applicable to States not members of the United Nations (A/CN.4/2, p. 92).

4. The CHAIRMAN pointed out that " The International Law of the Future " had been published at a time when the United Nations had not been formed; its first proposal was aimed at the organization of the community of States on a universal basis. Personally, he found the expression " community of States " felicitous, but, because of the existence of the United Nations, which did not include all the States of the world, it seemed to him difficult to envisage en action undertaken by the community of States.

5. Mr. SCELLE agreed with the Chairman. In view of the fact that there was as yet no community of States properly speaking, but that there were competent organs of the community of States, he proposed that article 19 should be amended as follows: " It is the duty of every State to afford the competent organs of the community of States . . . ". Drafted in that way, the article would include the United Nations as well as existing or future regional organizations.

6. Mr. SPIROPOULOS noted that article 19 as it stood seemed to give a new definition of the duties of Members of the United Nations. He

wondered whether in general international law all States were obliged to come to the assistance of a State victim of aggression. He thought there was no such obligation on States not members of the United Nations. As article 19 was in contradiction with existing international law, it could not be retained in the Declaration on the Rights and Duties of States.

7. Mr. SANDSTROM thought it would be preferable to refrain from reference to an abstract community of States. He recalled that he had had occasion to suggest that one article in the Declaration should be devoted to the relationship between it and the Charter of the United Nations. Some of the ideas expressed in article 19 might be retained and incorporated in such an article.

8. Mr. BRIERLY agreed with Mr. Spiropoulos' comments. He was afraid that in imposing such a duty as that affirmed in article 19, on all States, the Declaration might be going further than existing positive law permitted.

9. The CHAIRMAN thought that the first part of article 19 should be deleted. However, if the Commission did not share that point of view, it might adopt the following text: " Every State has the duty to give the United Nations assistance in any action it takes for the maintenance of international peace and security. "

10. For the second part of article 19 he proposed to substitute the following draft, based on the provisions of Article 2, paragraph 5, of the Charter: " Every State has the duty to refrain from rendering assistance to a State against which the United Nations is taking preventive or enforcement action. "

11. The Chairman explained that in that form, article 19 would extend to States not members of the United Nations a duty which Members of that Organization had assumed on signing the Charter.

12. Mr. KORETSKY was somewhat surprised that the Commission should tend to regard the organization of the community of States as belonging to the realm of the future, whereas the United Nations had in fact been established specifically to struggle, in the common interest, for the maintenance of international peace and security. Some of his colleagues seemed to forget that and spoke too much of non-member States. Like Mr. Sandström, he thought that abstract wording should not be used in article 19; it should be close to Article 2, paragraph 6, of the Charter. There should be no fear of mentioning the United Nations by name. The United Nations was the centre in which all efforts to accomplish a common task should be harmonized; non-member States should join in those efforts as Article 2, paragraph 6, of the Charter laid down.

13. It should be acknowledged that the United Nations was playing a decisive part in organizing the struggle for international peace and security. It was the Commission's duty to support it to the utmost in its difficult task. Only those who favoured a new war could profit from systematically ignoring the United Nations and omitting any reference to it in the text of the Declaration.

14. The wording proposed by Mr. Scelle was quite unsatisfactory as it made ambiguity possible in article 19. No one really knew exactly what were the " competent organs " mentioned in his text. It put an unknown quantity in the place of the Security Council, and that unknown quantity might be the Atlantic Treaty, which leads to war.

15. Mr. Koretsky, unlike the Chairman, thought that the first part of article 19 should be retained and that it should include a direct reference to the United Nations. He thought that members were closing their eyes to the essential questions: maintenance of peace, prohibition of the atomic weapon and limitation of armaments.

16. Mr. SCELLE emphasized that the text proposed by the Chairman to replace the second part of article 19 implied recognition of the fact that the United Nations was the main organ of the community of States. He felt that that text was satisfactory and accepted it willingly with the hope that, in the near future, the whole international community would be included in the United Nations.

17. Following on Mr. Koretsky's observations, the CHAIRMAN thought that it would be advisable to add the following words from Article 2, paragraph 6, of the Charter to the text he had proposed to substitute for the second part of article 19: " for the maintenance of international peace and security ". He asked Mr. Alfaro whether he would agree to the deletion of the first part of article 19.

18. Mr. ALFARO replied that the provisions of that part of article 19 would place upon non-member States the duty of aiding the Security Council in the re-establishment of international peace and security.

19. Mr. SANDSTROM thought that such a statement should not derogate from the duties of Members of the United Nations.

20. The CHAIRMAN observed that the duties of Members of the United Nations were not being decreased, but that the duties of non-member States were being increased.

It was decided by 9 votes to 3 to retain the idea expressed in the first part of article 19.

21. The CHAIRMAN proposed that that part should read as follows: " Every State has the duty to give the United Nations assistance in any action it takes for the maintenance of international peace and security. "

That text was adopted by 8 votes to 4.

22. The CHAIRMAN then proposed to add: " . . .and the duty to refrain from rendering assist-

ance to any State against which the United Nations has taken preventive or enforcement action."

23. Mr. HSU observed that, as constituted, the United Nations did not comprise the whole community of States. In the circumstances, it might be asked whether the Commission had the power to legislate for all States, whether Members of the United Nations or not. For his part, he had some doubts on the point. Article 2, paragraph 6 of the Charter provided that the Organization should " ensure " that States which were not Members acted in accordance with the Principles of the Charter so far as might be necessary for the maintenance of international peace and security. That provision clearly gave the Organization the power to take political action against non-member States in order to make them comply with the Principles of the Charter, but it did not allow it in any way to impose upon those States the duty of rendering assistance in any action it might take.

24. Mr. Hsu thought that the principle that States should refrain from assisting a State engaged in acts of aggression was excellent. The Commission could lay it down in an article replacing article 19 to be inserted immediately after article 16. He proposed that the article should be as follows: " Every State has the duty to refrain from giving assistance to any State which has failed to perform the duty set forth in article 16."

25. Mr. SPIROPOULOS agreed with Mr. Hsu's interpretation of the provisions of Article 2, paragraph 6 of the Charter. He stressed that the Charter was in no sense a convention containing conditions for others; it could therefore not create duties for States which were not part of the United Nations. It could not create any duty for third parties, for example, a duty which might be contrary to Swiss neutrality. He thought the United Nations should not be mentioned.

26. Mr. SANDSTROM pointed out that the question raised by Mr. Hsu regarding the Commission's power to legislate for States not members of the United Nations had already been raised in connexion with the article on the duty of non-intervention. The Commission had then decided that it was possible to include provisions affecting non-member States as well as States Members of the United Nations in a declaration which was in the form of a resolution and not of a convention.

27. Mr. KORETSKY, in reply to Mr. Hsu's remarks, emphasized that, if the United Nations was not yet universal, it was none the less true that the Charter provided that all peace-loving States could become members of the Organization. The Declaration on the Rights and Duties of States would not be a convention but an appeal addressed to all States, asking them to take cognizance of the need to ensure peace and security in the world. Mr. Hsu's doubts were in no way justified. It was important to fight for world peace, and that fight could only be carried on within the framework of the United Nations by united support of the Security Council.

28. The CHAIRMAN recalled that the Commission had decided at the beginning of its work that the Declaration on Human Rights and Duties of States, like the Universal Declaration of Human Rights, would be a common ideal to be attained. The Commission was not, strictly speaking, legislating by proclaiming the duty of co-operation in article 19. History offered many examples of declarations of the kind the Commission was engaged in drafting. Such declarations had in no way attempted to legislate for all States. They had merely reflected the opinions of their authors.

29. The Chairman thought that States not members of the United Nations could hardly be required to assist the Organization in any action it might take, but that it was quite permissible to request them to refrain from assisting States against which the Organization was taking preventive or enforcement action for the maintenance of international peace and security.

30. Mr. HSU explained that he had used the word " legislate " in its broadest sense. What he had wanted to say was that, in his opinion, the Commission did not have the power to extend to non-member States a duty imposed on Members of the United Nations by the Charter.

31. Mr. ALFARO opposed Mr. Hsu's amendment because it did not express the essential principle which should be laid down. The Declaration should say that it was the duty of States to refrain from assisting States against which the United Nations had taken preventive or enforcement action. That was the principle set forth in Article 2, paragraph 5 of the Charter. It was thus not sufficient to declare that States should not render aid to States which committed acts of aggression. Having said that, Mr. Alfaro was prepared for the sake of compromise to accept the text proposed by the Chairman.

32. The CHAIRMAN explained that according to Mr. Hsu's text, States should refrain from giving assistance to a State which had failed to perform its duty under article 16, namely, the duty not to commit acts of aggression. Under the text he himself proposed, States must refrain from giving assistance to States whose failure to fulfil their duties under article 16 had been established by the Security Council. The whole difference lay in the Security Council's establishing the facts.

33. Mr. SPIROPOULOS considered that the text proposed by the Chairman was narrower than that of Mr. Hsu. By merely saying that it was the duty of States to refrain from giving assistance to States against which the United Nations had taken preventive or enforcement action, cases in which the Security Council had taken no decision were omitted. In Mr. Hsu's formula, no State

should render assistance to an aggressor State, even if the Security Council had not ordered any preventive or enforcement action against it. His proposal thus covered all acts of aggression and not only those acts which had been " established " by the Security Council. Mr. Spiropoulos suggested the addition of the word " aggressor " before the word " State ".

34. Mr. ALFARO proposed to add the following phrase to the text proposed by Mr. Hsu: " and against which the United Nations is taking preventive or enforcement action for the maintenance of international peace and security".

35. Mr. HSU said that he would vote against Mr. Alfaro's amendment although he would have liked to see a provision of that kind included in the Declaration, had that been possible in the existing state of international law.

36. The CHAIRMAN put to the vote the first part of article 19 which was worded as follows: " Every State has the duty to give assistance to the United Nations in any action it takes for the maintenance of international peace and security." He pointed out that if the first part was adopted, the second would be superfluous as any State which had fulfilled its duty to lend assistance to the United Nations would have accomplished *ipso facto* its duty to abstain from rendering assistance to an aggressor State.

37. Mr. CORDOVA was against the first part of article 19. He explained that Mr. Hsu's amendment was based on the principle that the duty of giving assistance to the United Nations could not be imposed upon non-member States. On the other hand, the duty to abstain from rendering assistance to aggressors could be imposed upon all States. Mr. Hsu's amendment was thus designed to preservet he substance of Mr. Alfaro's text, while respecting legal principles.

The first part of article 19 was rejected, only one vote being cast in favour.

38. The CHAIRMAN put to the vote Mr. Alfaro's amendment which read: " and against which the United Nations has taken preventive or enforcement action for the maintenance of international peace and security."

The amendment was rejected by 6 votes to 5.

39. The CHAIRMAN then put to the vote Mr. Hsu's amendment, which read: " Every State has the duty to refrain from giving assistance to any State which has failed to perform the duty set forth in article 16."

The amendment was adopted by 8 votes to 2.

40. Mr. ALFARO wished it to be noted in the records that the new text had only a purely negative significance. It was limited to prohibiting States from rendering assistance to an aggressor State, whereas what was needed was a declaration of the positive duty of States to come to the assistance of the State victim of aggression.

Article 20: Co-operation in the pursuit of the aims of the community of States

41. Mr. HSU considered that the article contained an excellent idea which should be set forth in the Declaration, but he proposed that it should be expressed as follows: " Every State has the right to take measures in support of any State resorting to its right under article 17."

42. The CHAIRMAN felt that the expression " competent organs of the community of States " in the Panamanian draft was dubious, as the community of States did not have any competent organs. Moreover, in his view, the article merely repeated in a different form principles already set forth in the Declaration.

43. Mr. SCELLE recognized that the article presented in a different form ideas expressed, but did not share the Chairman's view of the expression " competent organs of the community of States ". In his opinion, the community of States was identical with the United Nations. Some jurists, like Mr. Brierly and Mr. Spiropoulos, were opposed to such identification in the existing state of international law. However, not only existing international law, but also that of the future, should be taken into consideration. Once such identification was made, the Security Council might be considered the principal organ of the community of States. It was to be hoped that all States would one day be a part of the United Nations and so form a universal community of States.

44. Mr. Scelle concluded by saying that the Declaration should avoid being too specific in stating the principles of existing international law. Otherwise, it would become obsolete in a very short time.

45. Mr. KORETSKY was against deleting article 20, which, he thought, had a wider scope than article 19. Article 20 referred to measures which the United Nations, under the name of community of States, might take with a view to promoting not only peace and security, but also friendly co-operation of nations in the cultural, economic and other fields.

46. The CHAIRMAN affirmed that no organ of the community of States, if there were any, was competent to " prescribe " measures of any kind. Only the Security Council could take decisions. The General Assembly of the United Nations itself had only the power of recommendation. He therefore considered that there was no universal organization of States in existence which would make it possible for the article to be implemented. Moreover, the meaning of the words " or in the general interest " was much too wide.

47. Mr. CORDOVA thought that the question raised by Mr. Hsu's proposal was already covered by article 17.

48. The CHAIRMAN put to the vote the question of deleting article 20.

The Commission decided to delete article 20 by 10 votes to none.

ARTICLE 21: MAINTENANCE OF CONDITIONS CALCULATED TO ENSURE INTERNATIONAL PEACE AND ORDER

49. The CHAIRMAN recalled that the article was based on the second principle of " International Law of the Future " (A/CN.4/2, p. 161). He proposed, with Mr. Alfaro's assent, that the original text of the second principle should be maintained except for the deletion of the word " legal ", and should read: " Each State has a duty to see that conditions prevailing within its own territory do not menace international peace and order, and to this end it must treat its own population in a way which will not violate the dictates of humanity and justice or shock the conscience of mankind."

50. He recalled, in that connexion, that the expression " conscience of mankind " was currently used in international instruments and that it had been sanctioned by the second Hague Conference in 1907. The authors of the article had thought that in view of the bad treatment certain populations suffered at the hands of their own Governments, it was of the highest importance to declare that States had the duty so to treat their populations as not to violate the principles of justice and humanity.

51. Mr. ALFARO also stated that the individual, having become the subject of international law, had a right to protection by the international community.

52. Mr. KORETSKY agreed that the principles of " International Law of the Future ", which dated from 1944, had taken on historic importance at the time when the peoples had been struggling against fascism. But, as he had many times pointed out to members, fascism, or at least the vestiges of fascism, survived in other forms; consequently, a declaration of principles which had marked a milestone in 1944 today stood in need of completion.

53. It was well known that some States followed a consistent policy of discrimination against a part of their population, as was proved by lynching and the lack of civic equality in some countries. The text of the article failed to mention the need to put an end to the policy of religious, racial or other discrimination. In that connexion, Mr. Koretsky pointed out that measures against priests convicted of common law crimes could not be regarded as religious discrimination.

54. Turning to another aspect, Mr. Koretsky remarked that it was not enough to proclaim that every man had the right to work in order to raise the standard of living of peoples. It was necessary to go further and to declare that it was the duty of every State to ensure that its people had work. For all those reasons and because of its omissions, Mr. Koretsky considered the 1944 text insufficient.

55. In reply to the CHAIRMAN, who asked whether he wished to make a definite proposal embodying those ideas, Mr. KORETSKY said that he might submit a proposal later, when the Commission had finished discussing the draft Declaration. In his opinion, article 21 of the Declaration on the Rights and Duties of States was not in conformity with the Universal Declaration of Human Rights, which contained much more far-reaching provisions on the subject.

56. Sir Benegal RAU was in favour of keeping article 21, but proposed the addition to it of the following phrase, reproducing almost exactly the language of Article 1, paragraph 3 of the Charter: " and in a manner which promotes respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion." That proposal had already been made by the Indian Government (A/CN.4/2, p. 121).

57. Mr. ALFARO supported Sir Benegal's proposal, because it brought out the main idea of the article more clearly.

58. Mr. BRIERLY thought that article 21 thus amended would be too long. The Indian Government's proposal, which Sir Benegal Rau had introduced, might be considered as an alternative.

59. Mr. SANDSTROM remarked that Sir Benegal's amendment was outside the scope of article 21, which was intended to prevent the development within the boundaries of the State of any policy threatening international peace and order.

60. The CHAIRMAN stated that the purpose was, indeed, to prohibit any behaviour likely to give rise to such a threat. Peace and order could in fact be threatened by discriminatory measures based on race, language or religion, but they could not be threatened by discrimination as to sex.

61. Sir Benegal RAU agreed that the word " sex " could be deleted from the amendment.

62. The CHAIRMAN suggested that use of the word " promotes " was also unnecessary. It appeared in the Charter because Article 1 dealt with international co-operation. The task in hand was to determine the legal duties of States and not—as had been done in the Declaration of Human Rights—to prescribe general standards of conduct. It would be better, in his opinion, to draft Sir Benegal's amendment as follows: " and

to treat its population with respect for human rights and for fundamental freedoms for all without distinction as to race, language or religion."

63. Sir Benegal RAU remarked that for brevity he was even prepared to delete the last phrase, after the words " without distinction ".

64. Mr. SPIROPOULOS felt that the amendment would make article 21 needlessly cumbersome. It was unnecessary to repeat in the Declaration statements contained not only in the Declaration of Human Rights but in Articles 55 and 56 of the Charter.

65. Mr. ALFARO explained that the main purpose of article 21 was to lay on States the duty to respect human rights and to encourage implementation of them. If, therefore, it was felt that Sir Benegal's amendment was inconsistent with the concept of international peace and order, Mr. Alfaro would prefer to delete the latter, inasmuch as it appeared elsewhere in the Declaration, and to retain the substance of the amendment. The article might then read: " Every State has the duty to treat its own population with respect for human rights and fundamental freedoms and in a manner which does not offend the conscience of mankind."

66. The CHAIRMAN thought that that would be going too far. It had not yet been stipulated in the Declaration that States must not tolerate the existence on their territories of conditions likely to endanger peace and security. That duty had to be stated, as well as the duty not to treat the population in a manner which shocked the conscience of civilized nations. That had been the pronouncement of the Council of the League of Nations in 1937, in connexion with Spain.

67. Mr. BRIERLY would have been in favour of Sir Benegal's amendment, had it not been that, on the one hand, a new element inconsistent with the first part was introduced into the article if the concept of discrimination as to sex were maintained, and that, on the other hand, the deletion of that concept might make a poor impression, as it might appear that the Commission had deliberately eliminated that type of discrimination from the Charter formula which it repeated.

68. Mr. AMADO said that he personally preferred the original text which appeared on page 161 of the memorandum (A/CN.4/2), except that he wished to delete the word " legal ".

69. The CHAIRMAN proposed that the Commission should first decide whether it was desirable to include the idea contained in Sir Benegal's amendment in the article.

Retention of the idea was approved by 7 votes to 6.

70. The CHAIRMAN read the text of article 21 as it would appear with the addition of Sir Benegal Rau's amendment: " Every State has the duty to see that conditions prevailing within its own territory do not menace international peace and order, and to this end, it must treat its own population in a manner that respects human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion." In his opinion, it would be better for the text to end with the words " fundamental freedoms for all ". Article 62 of the Charter merely said " human rights and fundamental freedoms for all."

71. Mr. ALFARO also thought that that formula would be sufficient.

72. The CHAIRMAN then proposed another wording, which read: " . . .and to this end, it must treat its own population with respect for human rights and fundamental freedoms for all."

73. Mr. KORETSKY wished to maintain the phrase " without distinction as to sex, race, language or religion ", which was, as it were, the banner of the peoples' struggle for equality. To delete that formula would give the impression that the Committee wished to draw a veil over the discriminatory measures still in force in some States.

74. Sir Benegal RAU accepted the second draft proposed by the Chairman rather than lose both. Although less satisfactory than the first, it seemed likely to obtain more support.

75. The CHAIRMAN then put to the vote the text of article 21 amended as follows: " Every State has the duty to see that conditions prevailing within its own territory do not menace international peace and order, and to this end, it must treat its own population with respect for human rights and fundamental freedoms for all."

That text was adopted by 8 votes.

Article 22: Duty not to foment civil disturbances in other States

76. The CHAIRMAN recalled that the article was based on principle 4 of " International Law of the Future " and appeared on page 161 of the Secretary-General's memorandum (A/CN.4/2). The difference between that text and the Panamanian draft was due to the fact that its authors had considered it necessary to be circumspect with regard to freedom to criticise the situation in other States and that, consequently, the activities in question should be forbidden only if they were of such a kind as to foment disturbances in other States. Even in that form, the text had met with some opposition, which was based on fear of an unjustified intervention to suppress the right of free criticism of another State. However, the Committee might at least substitute the word " calculated " for the words " for the purpose of " in the draft text.

77. Mr. ALFARO said that that principle was already included in the Convention relating to Duties and Rights of States in the Event of Civil

Strife between the American Republics, signed at Havana in 1928.

78. The CHAIRMAN pointed out that the detailled provisions of that Convention appeared on page 210 of the Secretary-General's Memorandum. He added that behind that principle there was an ancient principle of international law that States could not tolerate the organization on their territories of armed forces intended for an attack on another State.

79. The Chairman informed the Committee that he had received a letter from Mr. Kerno, Assistant Secretary-General, who, on the instructions of the Secretary-General, had transmitted a communication from the American Federation of Labor, dated 28 April 1949; the annex contained a copy of a note which the Federation wished to submit to the Commission in connexion with the discussion of article 22 of the draft Declaration on the Rights and Duties of States.

80. Mr. LIANG (Secretary to the Commission) remarked that the Commission had not yet decided how it would deal with such communications, and that it was therefore free to take any decision on the matter.

81. Mr. BRIERLY, supported by Mr. CORDOVA; Mr. HSU and Mr. ALFARO, requested that cognizance should be taken of the document.

82. Mr. KORETSKY observed that it was for the Chairman to decide whether the document was relevant to the Commission's discussions.

83. The CHAIRMAN said that he would examine the document with Mr. Brierly and Mr. Córdova. The Commission would be kept informed of the result of their study, so that, if necessary, it could discuss the contents of the document at the time of the second reading of the draft Declaration.[1] He requested the Commission to continue the debate on article 22.

84. Mr. HSU approved the principle of article 22, but felt that its scope was too limited inasmuch as it did not forbid the State itself to foment civil war in another State. The article should first state that primary duty of the State and then the duty to prevent all activities with the same purpose on its territory.

85. The CHAIRMAN objected that the case of a State fomenting civil war constituted a form of intervention which was already prohibited by article 5; it was not possible to enumerate all the forms of intervention in the Declaration.

86. Mr. HSU insisted that that other aspect, of the duty not to foment civil war, which was moreover the most important, should be expressly referred to in the Declaration, whether in article 22 or at some other point.

87. Mr. SCELLE thought that, in view of the very general character of article 5, it would be good to adopt Mr. Hsu's amendment, which emphasized a most important point.

88. The CHAIRMAN asked the Commission to decide on the amendment, which read: " Every State has the duty to refrain from fomenting civil strife in the territory of another State."

That text was adopted by 9 votes to 2.

89. The CHAIRMAN read the whole of article 22, as it stood with Mr. Hsu's amendment and the changes in wording suggested as a result of the comparison with principle 4 of " International Law of the Future ": " Every State has the duty to refrain from fomenting civil strife in the territory of another State, and the duty to prevent the organization within its territory of activities calculated to foment such civil strife."

90. Mr. KORETSKY thought that article 22 was still topical. Its historical origin lay in the *pronunciamientos* which had been rife in Central American countries and there were still reactionary circles which would like to hinder the inescapable course of history by military expeditions. But the scope of the article was too limited, because it did not mention the still active organizations which were seeking to provoke a new world war. That was why Mr. Koretsky reserved the right to make observations on the subject during the second reading of the draft.

91. The CHAIRMAN put article 22 as amended to the vote.

The article, as amended, was adopted by 12 votes.

Article 23: Equality of opportunity and interdependence in the economic sphere

92. The CHAIRMAN recalled that the Governments of Greece and India were of the opinion that the article was out of place in the Declaration. The Government of Venezuela felt that its text was too general.

93. Mr. ALFARO said that article 23 was based on article 4 of the Atlantic Charter and article 2 of the Economic Charter of the Americas, both of which were quoted on pages 210 and 211 of the Secretary-General's Memorandum (A/CN.4/2). Those texts had been the subject of exhaustive commentaries and had raised many difficult questions. That was why the draft of article 23 was, in its author's opinion, nothing more than an attempt to put into effect one of the purposes set forth in the United Nations Charter.

94. The CHAIRMAN wondered whether the article did not duplicate a provision of the Havana Charter establishing the International Trade Organization.

95. Mr. FRANÇOIS felt that the problems raised by the article were not within the Commission's province. The subject had already been dealt with at the Havana Conference and only experts

[1] See A/CN.4/SR.16, paras. 59-66.

in economic science would be competent to discuss it. The meaning of the article was too vague and too general. All the principles established therein called for restrictions without which its adoption would be exceedingly dangerous and would arouse the opposition of all economists.

96. Mr. YEPES recognized the importance of the principle of economic co-operation and free access to raw materials, but felt that economic questions were not the Commission's business. Moreover, the second part of the article, restricting the power of States to control national economy, might constitute a grave danger for those countries which still needed to protect newborn industries. Mr. Yepes was therefore in favour of deleting the article or at least the last part of it.

97. The CHAIRMAN noted that the consensus of opinion in the Commission appeared to be in favour of deleting the article.

98. Mr. ALFARO felt that at least the first part of the article, which dealt with the principle of equal access, should be retained.

99. Mr. AMADO did not think that equal access was a principle of international law, as international law had not yet evolved to that point.

100. Mr. ALFARO recalled that the principle was related to paragraph 3 of Article 1 of the Charter.

101. The CHAIRMAN pointed out that the Charter only established the necessity for co-operation in the economic field.

102. Mr. BRIERLY remarked that Article 1 of the Charter merely expressed a hope for the future.

103. In view of the opinions expressed by the other members of the Commission, Mr. ALFARO withdrew his proposal.

The Chairman stated that article 23 was therefore deleted.

ARTICLE 24: PROHIBITION OF PACTS INCOMPATIBLE WITH THE DISCHARGE OF INTERNATIONAL OBLIGATIONS

104. The CHAIRMAN said that the first part of the article repeated principle 10 of " International Law of the Future " (A/CN.4/2, p. 161).

105. Mr. SPIROPOULOS was categorically opposed to the inclusion of that article in the Declaration. Such inclusion could not be justified as the article did not set forth a basic principle of international law on the rights and duties of States.

106. Mr. FRANÇOIS said that the idea reflected in the article already appeared in article 13 of the draft, dealing with the supremacy of international law.

107. Mr. ALFARO emphasized that article 24 was also based on Article 103 of the Charter.

108. Mr. FRANÇOIS remarked that Article 103 simply declared that the obligations of the Members of the United Nations under the Charter should always prevail over their obligations under any other international agreement.

109. Mr. SCELLE thought that article 24 raised the very difficult problem of contradiction between treaties, which might be summed up as follows: could State A conclude with State B a treaty incompatible with the provisions of a treaty previously concluded between A and C? The study of that problem required careful thought. The Commission could, for the moment, only repeat Article 103 of the Charter by stating, for instance, that when a State joined a community of States, it could do nothing which was contrary to the Charter of that community.

110. In view of the divergences of opinion, the CHAIRMAN thought it better to adjourn the discussion until the next meeting.

The meeting rose at 6 p.m.

16th MEETING

Thursday, 5 May 1949, at 3 p.m.

CONTENTS

Chairman: Mr. Manley O. HUDSON.

Rapporteur: Mr. Gilberto AMADO.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. James L. BRIERLY, Mr. Roberto CÓRDOVA, 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 Development and Codification of International Law, Secretary to the Commission.