

**PREPARATORY STUDY  
CONCERNING A DRAFT DECLARATION  
ON THE RIGHTS AND DUTIES  
OF STATES**

*(Memorandum submitted by the Secretary-General)*



**United Nations — General Assembly  
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### NOTE

All United Nations documents are designated by symbols, i.e., capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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## INTRODUCTORY NOTE

The present study has been prepared for the International Law Commission by the Secretary-General in accordance with General Assembly resolution 175(II) of 21 November 1947 which reads as follows:

*"The General Assembly,*

*"Considering that, in accordance with Article 98 of the Charter, the Secretary-General performs all such functions as are entrusted to him by the organs of the United Nations;*

*"Considering that, in the interval between the first and the second sessions of the General Assembly, the Secretariat of the United Nations contributed to the study of problems concerning the progressive development of international law and its codification,*

*"Instructs the Secretary-General to do the necessary preparatory work for the beginning of the activity of the International Law Commission, particularly with regard to the questions referred to it by the second session of the General Assembly, such as the draft declaration on the rights and duties of States."*

The subject of the rights and duties of States is, in fact, the entire domain of international law. This study does not purport to be a study of rights and duties of States as such but it is rather a study of attempts to state these rights and duties in the form of a concise declaration. The draft Declaration on the Rights and Duties of States presented by Panama has been used as a basis for this study. Other declarations have been examined and utilized and the complete texts of many of them are reproduced in part VI, appendix A.

Parts I and II deal with the history of declarations on the rights and duties of States. In part I antecedents prior to the United Nations are examined. In regard to the jurists and publicists whose views are presented it should be pointed out that they have been selected, not on the basis of their pre-eminence in international law, but on the basis that they have formulated concise statements on rights and duties of States which might be of value in drafting a declaration. This observation also applies to the references to jurists and publicists in part IV. Attention is directed to the inter-American achievements described in part I, as the official inter-American organs have devoted many years to the study and preparation of declarations on the rights and duties of States which have been embodied in conventions and conference resolutions.

Part II contains a summary of the proceedings before organs of the United Nations concerning a declaration on rights and duties of States. This summary presents a detailed analysis of United Nations discussions

and decisions in order to make it unnecessary, in most instances, to refer to the original documents. However, should recourse to the original documents become necessary, a complete list of United Nations documents on the subject is presented in part VI, appendix D.

Part III contains the text of the draft Declaration on Rights and Duties of States presented by Panama together with the explanatory note prepared by the Foreign Minister of Panama, Mr. Ricardo J. Alfaro. The principal part of the study, namely Part IV, contains annotations to the draft Declaration presented article by article. The material under each article is arranged in accordance with the following outline:

- A. Comments and observations of Governments.
- B. Texts of treaties, conventions, declarations and statements:
  - 1. Treaties and conventions.
  - 2. Resolutions, declarations and projects adopted by inter-governmental bodies.
  - 3. Draft declarations proposed by Governments.
  - 4. Declarations by non-governmental organizations and scientific institutions.
  - 5. Statements by jurists and publicists.

This study is completed by part V (Bibliography) and part VI (Appendices).

## I. CONSIDERATION OF A DECLARATION ON THE RIGHTS AND DUTIES OF STATES PRIOR TO THE UNITED NATIONS

### A. LEADING UNOFFICIAL ANTECEDENTS

The subject of a declaration of rights and duties of states has attracted considerable attention on the part of international jurists during the nineteenth and twentieth centuries, and has also been the subject for discussion and resolution by several international and national organizations and scientific institutions interested in the development and codification of international law. For a compilation of the texts of the most important of these unofficial precedents see appendix A, No. 13-19.

One of the earliest writers on the subject was Christian Wolff, said to be the originator of the theory of fundamental rights and duties of States.<sup>1</sup> One of the first systematic presentations of a declaration of rights and duties of States, however, was that of the Abbé Grégoire, who presented a Declaration of Rights and Duties of States to the French National Convention in 1793 and again in 1795.<sup>2</sup> He urged this declaration as a supplement to the famous Declaration of the Rights of Man and of the Citizen.

Several of the enumerations of rights and duties of States compiled by international jurists have appeared as parts of detailed codes of international law or in general treatises on international law. Leading examples of rights and duties appearing as part of more detailed codes are those of Jeremy Bentham (1827),<sup>3</sup> Pasquale Fiore (1890)<sup>4</sup> and Jerome Internocia (1910).<sup>5</sup>

Other proposed declarations have been published independently as succinct statements of rights and duties of States. Some of these have been suggested as a preliminary basis of codification, or as a declaration of principles for an organization of international society. The preliminary

<sup>1</sup> Christian Wolff, *Institutiones Juris Naturae et Gentium*, 1750, sections 1073-1124; *Jus Gentium Methodo Scientifica Pertractatum*, 1749 (English translation in *Classics of International Law*, 1934) sections 77-155; 156-273.

<sup>2</sup> Abbé Grégoire, *Déclaration du Droit des Gens*, 1793, G. Lallement, *Choix de rapports, opinions et discours prononcés à la Tribune Nationale*, vol. 12, p. 397. See *Proceedings of American Society of International Law*, 1910, vol. 49, pp. 226-27.

<sup>3</sup> Jeremy Bentham, Introduction to an International Code, *Law Quarterly Review*, vol. 1, 1885, pp. 225-231. See *Proceedings of the American Society of International Law*, 1910, vol. 4, pp. 223-240.

<sup>4</sup> Pasquale Fiore, *International Law Codified and its Legal Sanctions*, or the Legal Organization of the Society of States (English translation, 1918) sections 59-65, 545-547.

<sup>5</sup> Jerome Internocia, *New Code of International Law*, 1910, sections 73-75.

part of Henri La Fontaine's *Magnissima Charta* of world law and organization (1916)<sup>6</sup> and Baltasar Brum's *Draft Statute of the Association of American States* (1923)<sup>7</sup> are examples.

Of even more significance may be the leading drafts of certain publicists presented to non-governmental organizations and scientific institutions for consideration. M. Albert de Lapradelle as reporter of a commission of the Institute of International Law submitted a text of his Declaration of the Rights and Duties of Nations to the Institute for consideration at its 1921 session in Rome and its 1925 session at The Hague.<sup>8</sup> A draft prepared by Mr. Victor M. Maúrtua in 1931 was communicated by the American Institute of International Law to the Seventh International Conference of American States at Montevideo in 1933.<sup>9</sup> Following a suggestion which he had made to the Hague Conference for the Codification of International Law, Dr. Alejandro Alvarez in 1931 presented a Declaration of Great Principles of Modern International Law to several international associations.<sup>10</sup> Amended declarations were approved by the International Juridical Union and the International Diplomatic Academy in 1935, and by the International Law Association in 1936.<sup>11</sup>

Several non-governmental organizations have dealt with the subject of rights and duties of States in their conferences and meetings. Among the earliest of these were the sessions of the Universal Peace Congress.<sup>12</sup> The Third Universal Peace Congress in 1891 adopted a short declaration of basic principles of international law. This declaration was revised and enlarged at the Seventh Congress held in Budapest in 1896. The Inter-Parliamentary Union has shown sustained interest on the subject. This unofficial body composed of members of parliaments of some thirty States recommended preparation of a declaration of rights and duties of States as early as 1899. A draft before its conference held at Washington in

<sup>6</sup> H. La Fontaine, *The Great Solution: Magnissima Charta; Essay on Evolutionary and Constructive Pacifism* (Boston, 1916) pp. 99-102.

<sup>7</sup> República oriental del Uruguay, *Boletín del Ministerio de Relaciones Exteriores*, 1923, vol. 11, pp. 180-82.

<sup>8</sup> *Annuaire de l'Institut de Droit International*, 1921, vol. 28, pp. 203-224. *Annuaire de l'Institut de Droit International*, 1925, vol. 32, pp. 238-245. See *Revue de Droit International*, 1931, vol. 8, pp. 56-63.

<sup>9</sup> Pan American Union, Documents for the Use of Delegates to the Seventh International Conference of American States, Montevideo, Uruguay, 3 Dec. 1933, No. 4, pp. 12-16.

<sup>10</sup> Alejandro Alvarez, *Exposé de Motifs et Déclaration des grands principes du Droit International Moderne*, 2e édition (Paris, 1938), pp. 52-56.

<sup>11</sup> L'Académie Diplomatique Internationale, 1935; l'Union Juridique Internationale, 1935; The International Law Association, 1936. International Law Association, *Report of 39th Conference*, Paris, 1936, pp. 333-339. For prior discussion by the International Law Association see *Report of 1st Conference*, Brussels, 1873, pp. 16-22. *Report of 3rd Conference*, Stockholm, 1924, pp. 345-347. *Report of 37th Conference*, Oxford, 1932, pp. 27-57. *Report of 39th Conference*, Paris, 1936, pp. 248-250. See also *Revue de Droit International*, 1931, vol. 8, pp. 7-55; 64-85; *Idem.*, 1932, vol. 10, pp. 86-141.

<sup>12</sup> *Bulletin officiel du VIIème Congrès Universel de la Paix*, tenu à Budapest du 17 au 22 septembre 1896. Rédigé et publié par les soins du Bureau International de la Paix à Berne (Berne, 1896), pp. 139-40. See appendix A, No. 13.



1925 was the subject of prolonged discussion, and a declaration was adopted at the 25th Conference in Berlin in 1928.<sup>13</sup> The question was again discussed at the 36th Conference in 1947 in connexion with the subject of codification of international law.<sup>14</sup>

One of the most important single drafts, judged from its distribution and the general attention that it has attracted, is that prepared on the initiative of Mr. James Brown Scott and adopted by the American Institute of International Law in 1916, under the name of "Declaration of the Rights and Duties of Nations". The American Institute of International Law, being an unofficial scientific association of the national societies of international law established in the American Republics, has played a leading role in the codification of international law in the western hemisphere. The draft of six articles was published with comment citing leading American and British cases, and statements of the South American publicists, Calvo and Bello, and some constitutional provisions and legislation.<sup>15</sup> The American Institute draft has been widely discussed officially and unofficially. Secretary of State Hughes in 1923 stated that the declaration "embodies the fundamental principles of policy of the United States in relation to the Republics of Latin America".<sup>16</sup> With the addition of a seventh article this draft served as one of the projects presented by the American Institute of International Law as a basis of study to the International Commission of American Jurists,<sup>17</sup> and was eventually one of the precedents for the Convention on Rights and Duties of States signed at Montevideo in 1933. The American Institute draft was also presented to the United Nations Conference on International Organization at San Francisco by the delegation of Panama.<sup>18</sup> The International Juridical Union, established in Paris in 1919, by a group of forty international jurists, devoted its first two sessions to the discussion of the American Institute draft, and adopted its own draft on 11 November 1919.<sup>19</sup> As already mentioned, the International Juridical Union in 1935 also approved an amended version of the draft prepared by Dr. Alvarez.<sup>20</sup>

Finally, reference should be made to "International Law of the Future: Postulates, Principles and Proposals" which was prepared by some two

<sup>13</sup> Union Interparlementaire, *Compte Rendu de la XXVème Conférence*, tenue à Berlin du 23 au 28 août 1928, Publié par le Bureau Interparlementaire (Lausanne, 1928), pp. 525-27. See appendix A, No. 18.

<sup>14</sup> Union Interparlementaire, *Compte Rendu de la XXXVIème Conférence*, tenue au Caire du 7 au 12 avril 1947. See also *Compte Rendu de la XXIIIème Conférence*, 1925.

<sup>15</sup> J. B. Scott, *The American Institute of International Law: Its Declaration on the Rights and Duties of Nations* (Washington, 1916). For text see appendix A, No. 14.

<sup>16</sup> American Journal of International Law, 1925, vol. 19, p. 336.

<sup>17</sup> American Journal of International Law Special Supplement, 1926, vol. 20, p. 311.

<sup>18</sup> United Nations Conference on International Organization, document 2 G/7, vol. 3, pp. 272-273.

<sup>19</sup> *Séances et Travaux de l'Union Juridique Internationale*, 1920, vol. 2, pp. 174-175. See appendix A, No. 15.

<sup>20</sup> *Séances et Travaux de l'Union Juridique Internationale*, 1935.

hundred jurists, mostly American and Canadian, under the chairmanship of Professor Manley O. Hudson and which in its ten principles laid down specific legal duties for States.<sup>21</sup> After two years of discussion and numerous regional conferences the Postulates, Principles and Proposals were issued on 1 January 1944 as a confidential statement. They were released for general circulation on 27 March 1944, and have been widely distributed by the American and Canadian Bar Associations and the Carnegie Endowment for International Peace. They have been translated into the Chinese, French, German and Spanish languages. In 1945 they were cited by the Netherlands and Mexican delegations at San Francisco as an example for a draft Declaration on Rights and Duties of States.<sup>22</sup>

When the delegation of Panama, in January 1946, submitted to the first part of the first session of the General Assembly the Draft Declaration on the Rights and Duties of States, Dr. Ricardo J. Alfaro, Minister for Foreign Affairs of the Republic of Panama, in an explanatory note accompanying this draft, acknowledged the extent to which the drafts of the American Institute of International Law of 1916 and the Principles of the International Law of the Future of 1944 had served as a basis for the Panamanian Draft.<sup>23</sup> Mention was also made by Dr. Alfaro of these drafts at the 40th meeting of the First Committee of the General Assembly during the second part of the first session, 5 December 1946.<sup>24</sup> He also paid tribute to the declaration prepared by Dr. Alejandro Alvarez in 1931.<sup>25</sup>

At the present time several non-governmental organizations are working on the subject of rights and duties. Of particular importance is the work carried out under the auspices of the American Bar Association Committee for Peace and Law through United Nations. Collections of the texts of twenty-two Declarations on Rights and Duties of States have been published together with bases for discussion, and have been the subject of discussion at regional bar association meetings.<sup>26</sup>

<sup>21</sup> *The International Law of the Future, Postulates, Principles and Proposals* (Washington, 1944). See appendix A, No. 19.

<sup>22</sup> United Nations Conference on International Organization, document 2 G/7, vol. 3, pp. 58 and 324.

<sup>23</sup> United Nations Conference on International Organization, A/19, A/19/Corr. 1 and A/285, A/285 Corr. 1.

<sup>24</sup> United Nations *Journal No. 52*, Supplement No. 1, A/C.1/118, p. 275.

<sup>25</sup> United Nations *Journal No. 52*, Supplement No. 1, A/C.1/118, p. 276: "The declaration of rights and duties of States which seemed the most comprehensive and the most far-reaching was the one issued in 1931 by Dr. Alejandro Alvarez, which consisted of six articles under eight headings and covered all subject matters of international law. It was only open to one criticism; namely that as a declaration it was too extensive."

<sup>26</sup> American Bar Association document No. 2, 1 January 1947: *The Progressive Development of International Law, Proposed Declarations on Rights and Duties of States*, and American Bar Association document No. 2A.

## B. INTER-AMERICAN EFFORTS AND ACHIEVEMENTS

The subject of a declaration of rights and duties of States has attracted not only the attention of international jurists and of non-governmental organizations but also that of the Governments.<sup>27</sup> This is particularly noticeable in the New World.

In the inter-American system, the question of the rights and duties of States has always been closely connected with the work for the codification of international law. But even before the machinery for such codification was established, the subject had been frequently dealt with at the international conferences of the American Republics.

As will be seen subsequently, the American Republics did not adopt any general declaration of the rights and duties of States until the Seventh Inter-American Conference (1933). Before this date, they had agreed from time to time concerning specific rights and duties, and thus prepared the way for the conclusion of the Montevideo Convention.

The first collective proclamation relating to certain duties of States may be traced to the Congress of Panama, held in 1826. The Treaty of Perpetual Union, League, and Confederation signed at the Congress<sup>28</sup> stipulated the duty to use pacific methods for the settlement of international disputes, such as good offices, mediation, conciliation, and in some situations, arbitration, and thus established the duty to resort to peaceful and conciliatory procedures for the adjustment of international controversies. The Latin-American nations met subsequently at Lima in 1847 and 1864, signing other treaties in which the non-recognition of territorial acquisitions by force was agreed upon.<sup>29</sup>

When late in the nineteenth century these gatherings became pan-American in scope, new attempts were made to proclaim and define in a more precise form the rights and duties of States. The First International Conference of American States, which met at Washington in 1888-1889, issued two recommendations bearing on other rights and duties of States. One of them outlawed conquest as a means of acquiring territory. The other, dealing with claims and diplomatic protection, set forth the principle that nationals and foreigners stood on an equal footing before the

<sup>27</sup> For a compilation of the texts of the most important official precedents, see appendix A, No. 1-12. It will be noted that the proposal prepared by the Italian delegation to the Peace Conference (1919) is the only official precedent not prepared in the inter-American system.

<sup>28</sup> The Republics of Colombia, Central America, Peru, and the United Mexican States were the signatories to the Treaty, which was never ratified by any one of the parties. Cf. *International American Conference, Reports of Committees and Discussions thereon*, vol. IV, p. 184.

<sup>29</sup> *The Basic Principles of the Pan American System*. Pan American Union, Washington, 1943, p. 5. These treaties failed to be ratified.

local law.<sup>30</sup> Further steps were taken at the Mexico Conference of 1902, at which the American Republics signed two fully detailed treaties concerning the duty to resort to arbitration for solving international controversies relating to pecuniary claims. These were the Treaty on Compulsory Arbitration and the Treaty of Arbitration for Pecuniary Claims.<sup>31</sup> A few years later, both the Third and the Fourth International Conferences of American States, held at Rio de Janeiro in 1904 and Buenos Aires in 1910 respectively, also dealt with arbitration in general and with particular reference to disputes arising from pecuniary claims.<sup>32</sup>

The Fifth Conference (Santiago de Chile, 1923) adopted a resolution in regard to "the best means to give wider application to the principle of the judicial or arbitral settlement of disputes that may arise between the Republics of the American Continent".<sup>33</sup> In addition, a new treaty was signed providing for the means "to avoid or prevent conflicts between the American States". This agreement, generally known as the Gondra Treaty, was widely ratified by or adhered to by the American States.<sup>34</sup> In connexion with the achievements of this Conference, special mention should be made of a resolution dealing with the codification of international law. According to this resolution the Congress of Jurists was to resume its work and submit to the next International Conference of American States "its resolutions, in order that, if approved, they may be communicated to the Governments and incorporated in Conventions".<sup>35</sup> As it will be seen subsequently, the task performed by the Commission of Jurists had a decisive influence on the convention and resolutions on the rights and duties of States drafted by subsequent Inter-American Conferences.

At the Conference held at Mexico City in 1901-1902, the American nations agreed to set up the codification machinery.<sup>36</sup> However, the Convention providing for this endeavour failed to obtain the ratifications needed to make it effective, and it was not until the next Conference met that a body entrusted with the task of the codification of international law became a reality.<sup>37</sup> The International Commission of American Jurists created by the Third Inter-American Conference met for the first time at Rio de Janeiro in 1912 and prepared a number of projects on both public and private international law. Special reference should be

<sup>30</sup> *The International Conference of American States, 1889-1928* (Carnegie Endowment). New York, 1931, pp. 44-45.

<sup>31</sup> *Ibid.*, pp. 100-104 and 104-105.

<sup>32</sup> *Ibid.*, pp. 124 and 183-185.

<sup>33</sup> *Ibid.*, pp. 283-284.

<sup>34</sup> *Ibid.*, pp. 285-289.

<sup>35</sup> *Ibid.*, pp. 245-247.

<sup>36</sup> *Ibid.*, pp. 69-70.

<sup>37</sup> The Convention on International Law providing for the creation of the *International Commission of American Jurists* was ratified by Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Panama, Peru, El Salvador, United States of America and Uruguay. *Ibid.*, pp. 144-146.

made to the projects on rights and duties of States prepared by Dr. E. Pessoa to facilitate the task of the Conference.<sup>38</sup> Owing to World War I further progress could not be made until the next regular Conference met at Santiago de Chile in 1923. At this Conference the Commission of Jurists was reorganized and instructed to submit its resolutions to the Sixth International Conference of American States, to be held at Havana in 1928.<sup>39</sup> The Commission resumed its task at Rio de Janeiro in 1927, and with the valuable preparatory work undertaken by the American Institute of International Law<sup>40</sup> drafted twelve projects dealing with certain subjects of public international law and a code of private international law (the "Bustamante Code"). Among those projects five at least bore directly on the rights and duties of States, namely, Fundamental Bases of International Law (project I); States: Existence, Equality, Recognition (project II); Status of Aliens (project III); Obligations of States in the Event of Civil War (project XI); Pacific Settlement of International Conflicts (project XII).<sup>41</sup>

The Sixth Inter-American Conference held at Havana did not make a substantial contribution to the progressive development of the rights and duties of States. In fact, of the five projects referred to above, only two were adopted as Conventions: Status of Aliens and Duties and Rights of States in the Event of Civil strife. The Havana Conference, however, took a further step concerning the use of force in international relations by adopting a resolution declaring that aggression was "considered illicit and as such declared prohibited", and that "the American States will employ all pacific means to settle conflicts which may arise between them".<sup>42</sup> Furthermore, the Conference was responsible for the great progress made nearly a year later at the International Conference of American States on Conciliation and Arbitration, held in Washington in pursuance of a resolution adopted in Havana.<sup>43</sup> Three relevant instruments on the subject were signed at the Washington Conference: a General Convention

<sup>38</sup> See Fifth International Conference of American States, *Actas de las Sesiones de las Comisiones de la Conferencia* (Santiago de Chile) p. 207.

<sup>39</sup> *International Conference of American States, 1889-1928*, p. 246.

<sup>40</sup> The Institute at the request of the Governing Board of the Pan American Union, had prepared in 1925 thirty projects on international law. Some of them were directly concerned with the rights and duties of States: Fundamental Rules of International Law (project No. 4); Nations (project No. 5); Recognition of New Nations and New Governments (project No. 6); Declaration of Rights and Duties of Nations (project No. 7); Fundamental Rights of American Republics (project No. 8); National Domain (project No. 10); Jurisdiction (project No. 12) Responsibility of Governments (project No. 15); Diplomatic Protection (project No. 16); Pacific Settlement (project No. 27); Conquest (project No. 30) *American Journal of International Law, Supplement* (1926), vol. 20, pp. 304, 309-313, 318-20, 325-325, 328-329, 368, 384.

<sup>41</sup> International Commission of Jurists (Sessions held at Rio de Janeiro, Brazil, 18 April to 20 May 1927), *Public International Law*, Washington, D. C., 1927, pp. 5-12, 35-40.

<sup>42</sup> *International Conference of American States, 1889-1928*, p. 441-442.

<sup>43</sup> *Ibid.*, p. 437.

of Inter-American Conciliation, a General Treaty of Inter-American Arbitration, and a Protocol of Progressive Arbitration.<sup>44</sup>

In 1933 the American Republics made the first attempt to embody in a single instrument a declaration of the rights and duties of States. The political atmosphere prevailing at the time and the exhaustive technical work done by both the official and non-official codification agencies, suggested to the delegates meeting at Montevideo that such a declaration should be given conventional rank. The Convention on Rights and Duties of States signed therein, and later ratified by sixteen American nations, was the outcome of those favourable circumstances. The rights declared by the Convention were as follows: political existence (independent of recognition), territorial integrity, independence, self-preservation, jurisdiction and equality; and the duties were non-intervention, respect for others' rights, non-recognition of territorial acquisitions or special advantages obtained by force, and finally, the obligation to resort to pacific means in settling international disputes.<sup>45</sup> The Montevideo Conference took further steps for implementing this general declaration. Reference should be made in this connexion to a Resolution on Responsibility of States, to an Additional Protocol to the General Convention on Inter-American Conciliation, and to a Resolution on Good Offices and Mediation.<sup>46</sup>

Subsequently, the rights and duties of States incorporated in the above-mentioned Convention were reaffirmed from time to time by a series of declarations of principles of continental solidarity and co-operation, as well as by other agreements formulated by the Inter-American Conferences. By way of illustration the following instruments might be mentioned: the Declaration of Principles of Inter-American Solidarity and Co-operation (Buenos Aires, 1936); the Additional Protocol relative to Non-Intervention (*ibid.*);<sup>47</sup> the Declaration of the Principles of the Solidarity of America (Declaration of Lima) and the Declaration of American Principles (Lima, 1938);<sup>48</sup> the Declaration on the Maintenance of Peace and Union among the American Republics (Havana, 1940);<sup>49</sup> the Declaration on Reciprocal Assistance and American Solidarity (Act of Chapultepec) and the Declaration of Mexico (Mexico, 1945).<sup>50</sup>

Seemingly because certain rights and duties of States have often been declared and drafted in similar but not identical terms, the Inter-American Conference held at Mexico City in 1945 resolved that a draft Declara-

<sup>44</sup> *International Conference of American States, 1889-1928*, pp. 455-457, 458-461, 462-468.

<sup>45</sup> *The International Conference of American States, First Supplement, 1933-1940*. Washington, 1940, pp. 121-123.

<sup>46</sup> *Ibid.*, pp. 91-92, 120-121, 65.

<sup>47</sup> *Ibid.*, pp. 160-161, 191-192.

<sup>48</sup> *Ibid.*, pp. 308-310.

<sup>49</sup> *Ibid.*, pp. 360-361.

<sup>50</sup> *Inter-American Conference on Problems of War and Peace*, Mexico City, 21 Feb.-8 Mar. 1945. Pan American Union, Washington, 1945, pp. 32-39-40.

tion of the Rights and Duties of States be prepared by the Governing Board of the Pan American Union.<sup>51</sup>

The Governing Board was requested to take into account similar declarations of principles issued by previous Inter-American Conferences, as well as the draft Declaration on the Reaffirmation of Fundamental Principles of International Law prepared by the Inter-American Juridical Committee in 1942.<sup>52</sup> Although the Committee's draft declaration was intended to reaffirm fundamental principles of international law on which the peace and continental solidarity of the American Republics were based, it actually embodied a comprehensive statement of the rights and duties of States.<sup>53</sup>

In pursuance of the above-mentioned Resolution, the Governing Board of the Pan American Union approved, on 17 July 1946, a draft Declaration of the Rights and Duties of American States, and submitted it to the Governments of the American Republics for their comments and observations.<sup>54</sup> The draft declaration was a detailed document which served as the basis for discussion at the recent Bogota Conference.

The latest contribution of the Pan American system on the question of rights and duties of States is found in the Charter of the Organization of American States, signed at the Ninth Inter-American Conference in April, 1948. In addition to the declaration of principles contained in article 5, which includes several rights and duties of States, the Charter devotes a whole chapter to the subject.<sup>55</sup> This chapter is, in fact, a reaffirmation of the rights and duties of States in the form of a restatement of previous declarations. It may be noted, however, that some additions have been made in order to adjust the new inter-American system within the structure of the United Nations Organization.

<sup>51</sup> *Ibid.*, p. 36.

<sup>52</sup> The Inter-American Juridical Committee was created by Resolution XXVI of the Third Meeting of Foreign Ministers, held at Rio de Janeiro in January, 1942.

<sup>53</sup> The rights and duties thus reaffirmed were the following: personality, sovereignty and independence; non-intervention, legal equality, *pacta sunt servanda*, repudiation of the use of force, non-recognition of acquisitions obtained by force, and pacific settlement of international disputes. Cf. *The American Journal of International Law*, 1942, vol. 37, pp. 21-24.

<sup>54</sup> Draft Declaration of the Rights and Duties of American States. Pan American Union, Washington, 1946.

<sup>55</sup> Chapter III of the Charter of the Organization of the American States.

## C. DISCUSSIONS IN THE LEAGUE OF NATIONS

The question of a declaration of rights and duties of States was suggested to the Assembly of the League of Nations on several occasions. For example, it was mentioned by Dr. Alvarez (Chile)<sup>56</sup> and Mr. Frangulis (Greece)<sup>57</sup> in 1921, and by Mr. Pella (Romania)<sup>58</sup> in 1927. But a more thorough discussion of the question took place only once, and that in 1928 by Committee I of the Ninth Assembly.

At the third meeting of Committee I of the Ninth Assembly of the League of Nations, Mr. Ferrera of Cuba, during the debate on the draft resolution to be submitted to the Assembly concerning the progressive codification of international law, proposed that any work on codification of public international law should be prefaced by a declaration regarding the rights and duties of States.<sup>59</sup>

The Chairman, Mr. Scialoja of Italy, raised the proposal of Mr. Ferrera for discussion at the fourth meeting of Committee I on 13 September 1928.<sup>60</sup> Delegates representing El Salvador, Sweden, Greece, India and Belgium questioned the expediency of the Cuban proposal. M. Guerrero of El Salvador thought the Cuban proposal a departure from the slow and thorough method of procedure adopted for codification of international law, and suggested that the Committee of Experts for the Progressive Codification of International Law be invited to study the question at such time as it should meet. This proposal was reluctantly adopted by Mr. Ferrera, and adopted by the Committee subject to drafting changes.

The Chairman, Mr. Scialoja of Italy, thought that inquiry should not be made of the existence of rights and duties, but of the possibility of finding a formula.<sup>61</sup> The Rapporteur, Mr. Rolin of Belgium, could not agree to pronouncing immediately upon the desirability of determining rights and duties of States. He argued that: "Fundamental rights and duties were, most fortunately, in process at the moment of a marked progressive evolution. A restrictive declaration of rights and duties of States, so far from having a favourable effect, would, he thought, be liable to hinder the work in one of its most vital aspects."

<sup>56</sup> Second Assembly Meetings of Committee I, p. 114 (1921).

<sup>57</sup> Second Assembly Plenary Meetings, p. 276, (1921).

<sup>58</sup> Eighth Assembly Plenary Meetings, p. 206 (1927).

<sup>59</sup> Ninth Assembly Committee I, p. 17 (12 September 1928).

<sup>60</sup> Ninth Assembly Committee I, p. 24 (1928). The proposal as stated by the Chairman is: "In conformity with various precedents, the Codification Conference should be called upon to preface its work with something in the form of a declaration regarding the rights and duties of States."

<sup>61</sup> He suggested the following text: "The Assembly requests the Council to invite the Committee to consider whether it would be possible to propose a formula regarding the rights and duties of States that would be the most satisfactory formula."



However, he thought it proper to request the opinion of the Committee of Experts and proposed the following text:

"The Assembly recommends that the Committee of Experts should, when it next holds a session—without on that account requiring a special session during the year 1929—consider the possibility and the desirability of seeking by the procedure of codification the establishment of a declaration on the fundamental rights and duties of States."

This text, as approved by Committee I, was embodied as a concluding paragraph in the resolution adopted by the Assembly of the League of Nations on 24 September 1928 concerning Preparatory Work for Further Conferences on Codification of International Law.<sup>62</sup>

The Committee of Experts for the Progressive Codification of International Law did not meet in 1929.<sup>63</sup> However, Baron Marks de Wurtemberg of Sweden at the fourth meeting of Committee I, 16 September 1929, reminded the Committee that at the ninth Assembly of the League of Nations, the Committee of Experts had been instructed to consider the possibility of formulating a declaration of the fundamental rights and duties of States. He thought it desirable that the Committee should meet shortly after the session of the Assembly to be held in 1930.<sup>64</sup>

After the Conference for the Codification of International Law which met at The Hague from 13 March to 12 April 1930, the subject of a declaration of the rights and duties of States does not seem to have received further attention.

<sup>62</sup> Ninth Assembly Plenary Meetings, p. 144 (1928).

<sup>63</sup> Tenth Assembly Plenary Meetings, annex 2, p. 193 (1929).

<sup>64</sup> Tenth Assembly Committee I, p. 22 (1929).

## II. CONSIDERATION OF A DECLARATION ON THE RIGHTS AND DUTIES OF STATES IN THE UNITED NATIONS

### A. UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION

(25 April—26 June 1945)

Suggestions for a declaration on the rights and duties of States have been presented to the United Nations since the organizational conference at San Francisco in 1945. The preparation of such a declaration is thus one of the earliest and most persistently urged projects to be considered by the United Nations.

Amendments and additions to the Dumbarton Oaks Proposals suggesting the inclusion of a declaration of rights and duties of States in the Charter of the United Nations were submitted by several Governments for consideration by the United Nations Conference on International Organization at San Francisco. Some delegations submitted complete or partial texts of a Declaration on Rights and Duties of States, some of which were based on previous drafts by noted international jurists and proposals by national and international organizations.

#### Proposals of Mexico

The Department of Foreign Relations of Mexico submitted certain proposals for an international organization with a comparative study of the Dumbarton Oaks Proposals and these Mexican proposals.<sup>65</sup> The original memorandum submitted by the Mexican Government commenced with the statement that "International law is recognized as the fundamental basis for the conduct of Governments".<sup>66</sup> The Mexican Government maintained that a precise statement of the essential principles of international law, in the form of a "Declaration of Rights and Duties of States" and a "Declaration of International Rights and Duties of Man" should be drafted by a Committee of Experts of the United Nations.<sup>67</sup> In drafting a Declaration on Rights and Duties of States, Mexico suggested the advisability of making a comparative study of the principles incorporated in Chapter II of the Dumbarton Oaks Proposals and those contained in various national and international proposals on the subject.<sup>68</sup>

<sup>65</sup> United Nations Conference on International Organization document 2 G/7 (c), 23 April 1945, vol. 3, pp. 54-188.

<sup>66</sup> *Ibid.*, p. 60.

<sup>67</sup> *Ibid.*, p. 64.

<sup>68</sup> *Ibid.*, p. 57-58.

Any declaration on rights and duties of States, Mexico emphasized, should include the following principles: (1) Respect for territorial integrity and for political independence; (2) Non-intervention in external or internal affairs of another State; (3) Equality of jurisdiction over nationals and aliens.<sup>69</sup>

This first memorandum (Opinion of the Ministry of Foreign Affairs of Mexico on the Dumbarton Oaks Proposals for the Creation of a General International Organization) proved too extensive for study by the San Francisco Conference. Consequently, the Mexican delegation submitted an additional document, containing the conclusions of the above-mentioned paper and the observations presented by Mexico to the Inter-American Conference on the Problems of War and Peace.<sup>70</sup> As a concession to expediency, this second opinion omitted the explicit mention of a declaration on rights and duties of nations. The principle of equality of jurisdiction over nationals and aliens was also omitted. However, the principles of respect for territorial integrity, and of non-intervention were retained, although in slightly altered form.<sup>71</sup>

### Proposals of the Netherlands

The Netherlands delegation submitted the following alternative amendments to the Dumbarton Oaks Proposals for consideration by the United Nations Conference on International Organization:<sup>72</sup>

#### 1

#### CHAPTER 1 (PURPOSES) AND (PRINCIPLES)

##### *Alternative amendment*

A (in case B is not accepted)

Insert in chapter 1 sub 1 after the words "to maintain international peace and security," "in conformity with the elementary principles of morality and justice and on the basis of due regard for international law."

or

B (in case A is not accepted)

Insert in or add to the chapter a statement setting forth the fundamental rights and duties of States.

As an example of a document setting forth the fundamental rights and duties of States as mentioned in sub B, the Netherlands delegation submitted the "Principles for the International Law of the Future".<sup>73</sup>

In chapter I of the Dumbarton Oaks Proposals it is stated: that one of the purposes of the organization is the maintenance of international peace

<sup>69</sup> United Nations Conference on International Organization document 2 G/7 (c), 23 April 1945, vol. 3, pp. 57-58.

<sup>70</sup> United Nations Conference on International Organization document 2 G/7 (c) (1), 5 May 1945, vol. 3, pp. 175-188.

<sup>71</sup> *Ibid.*, p. 179.

<sup>72</sup> United Nations Conference on International Organization document 2 G/7 (j) (1), 1 May 1945, vol. 3, pp. 322-330.

<sup>73</sup> *Ibid.*, pp. 328-329.

and security. The Netherlands delegation pointed out that the basis on which international peace and security could be maintained was not explained. They felt that an express statement such as one setting forth the rights and duties of States, fulfilled that requirement.

The Netherlands delegation also believed that the adoption of either of the amendments under A and B would afford some reasonable compensation for the unequal position of permanent and non-permanent members on the Security Council, created by the proposed voting procedure for that body.<sup>74</sup>

### Proposals of Cuba

The Cuban delegation, on 2 May 1945, submitted the following amendment to chapter II of the Dumbarton Oaks Proposals:<sup>75</sup>

#### CHAPTER II. PRINCIPLES

In pursuit of the purposes mentioned in chapter I, the States which are members of the Organization, shall conform their acts to the principles contained in the "Declaration of the Duties and Rights of Nations" and the "Declaration of the International Rights and Duties of the Individual," which the General Assembly shall adopt within the shortest possible time after it is constituted.

The Cuban delegation maintained that a declaration of duties and rights of nations would act as a guide in the maintenance of international peace and security, and serve as a basis for all agreements which may be concluded in accordance with international practice and the enforcement of international law.<sup>76</sup> The Cuban delegation submitted a draft Declaration of Duties and Rights of Nations which follows closely a draft that was prepared by Mr. Gustave Gutiérrez Sánchez and presented by the Cuban delegation to the Inter-American Conference on Problems of War and Peace, held at Mexico City in 1945.<sup>77</sup>

<sup>74</sup> The Belgian delegation also expressed concern lest influence or political pressure might induce the Security Council to impose modifications on essential State's rights. The Belgian delegation wished to give the Security Council the responsibility for ensuring the observation of engagements entered into by the States. They insisted that those States which submit their differences to the Security Council should also be permitted to have the Court of International Justice give an opinion on the existence of any essential rights which may be invaded by a decision of the Security Council. If the Court should consider that such rights have in fact been disregarded, it would be the duty of the Council either to reconsider the question maintaining or modifying its conclusions, or refer the matter to the General Assembly. United Nations Conference on International Organization document 2 G/7 (k) (1), 4 May 1945, vol. 3, pp. 336-337.

<sup>75</sup> *Ibid.*, p. 495.

<sup>76</sup> The inclusion of the "Declaration of the Duties and Rights of Nations" was not insisted upon at the time of presentation by the Cuban delegation. Nevertheless, they wished that note should be taken of the fact that the Cuban delegation had made these suggestions and hoped that the Assembly of the World Organization would give them due consideration. United Nations Conference on International Organization, document 382 1/1/ 19, 17 May (1945) vol. 6, p. 303.

<sup>77</sup> United Nations Conference on International Organization, document 2 G/14 (g), 2 May 1945, vol. 3, pp. 496-499, see appendix A, No. 11.

## Proposals of Panama

The delegation of the Republic of Panama submitted several amendments and additions to chapters I and II of the proposals agreed upon at the Conference of Dumbarton Oaks. The suggestion for a declaration of rights and duties of States appeared as a proposed amendment to paragraph 1, chapter I. It read as follows:

### CHAPTER I. PURPOSES

The purposes of the Organization are:

1. To maintain international peace and security in conformity with the fundamental principles of international law and to maintain and observe the standards set forth in the "Declaration of the Rights and Duties of Nations" and the "Declaration of Essential Human Rights" which are appended to the present charter, and which are made an integral part thereof.<sup>78</sup>

The delegation proposed that the Declaration of the Rights and Duties of Nations referred to above be the declaration adopted by the American Institute of International Law in Washington, 6 January 1916.<sup>79</sup>

### Proposals of other delegations

Many other delegations submitted amendments and observations to the United Nations Conference on International Organization which were in the form of suggestions of specific rights and duties of States. Several such proposals were essentially similar in content to those declarations on rights and duties submitted by the above-mentioned delegation, while others contained additional enumerations.<sup>80</sup>

### Consideration by Committee I of Commission I

The Government suggestions for a draft Declaration on Rights and Duties of States were submitted to Commission I Committee I/1 for consideration.<sup>81</sup>

At the seventh meeting of Committee I/1, the delegate of Cuba desired that it be made a matter of record that the "Declaration of the Duties and Rights of Nations" and the "Declaration of the International Duties of the Individual" were not at present insisted upon by his delegation, but that note should be taken of the fact that the Cuban delegation had made these specific suggestions and hoped that the Assembly of the World Organization would give them due consideration.<sup>82</sup>

<sup>78</sup> United Nations Conference on International Organization, document 2 G/7 (g) 2, 5 May 1945, vol. 3, p. 265.

<sup>79</sup> *Ibid.*, p. 266; for text of declaration see pp. 272-273; see appendix A, No. 14.

<sup>80</sup> See Cuban proposals on chapter II document 2 G/7 (g) (2), 6 May 1945, vol. 3, pp. 269-271. For an explicit enumeration of rights and duties of States see also Ecuadorian draft proposals document 2 G/7 (p), 1 May 1945, pp. 398-399.

<sup>81</sup> United Nations Conference on International Organization, document 215 1/1/10, 11 May 1945 (Documentation for meetings of Committee 1/1) vol. 6, pp. 525-571; Panama amendment document 215 1/1/10, 11 May 1945, p. 546; 565-566; Cuban amendment, *ibid.*, p. 560; Mexico, *ibid.*, p. 563-564).

<sup>82</sup> United Nations Conference on International Organization document 382, 1/1/19, 17 May 1945, vol. 6, pp. 303-304.

In the report of the Rapporteur of Committee 1 to Commission I of Chapter I—Purposes, it was stated that in connexion with paragraphs 2 and 3 a suggestion was made to draft or to include an already drafted Bill of Rights of Nations and of individuals in the Charter of the International Organization.

The Report states:

“The Committee received the idea with sympathy, but decided that the Conference, if only for lack of time, could not proceed to realize such a draft in an international contract. The organization, once formed, could better proceed to consider the suggestion for such a bill of rights of nations and to deal effectively with it through a special commission or by some other method.”<sup>88</sup>

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<sup>88</sup> United Nations Conference on International Organization document 944, I/1/34 (1), 13 June 1945, vol. 6, p. 456. Article 2 of the United Nations Charter which sets forth the principles in accordance with which the Organization and its Members agree to act, is in a sense a declaration of rights and duties of States. See Appendix A, No. 2. (The General Committee of the First Part of the First Session of the General Assembly stated that the Charter of the United Nations itself constitutes a declaration of rights and duties of nations, and represented the farthest extent to which such rights and duties could be formulated at that time. A/BUR/6.) Dr. Alfaro, in presenting the Panamanian draft Declaration, has stated that, in his opinion, Article 2 is far from being a thorough enumeration of the rights and duties of States. (A/285, pp. 14-15; *Journal No. 52*, Supplement No. 1. A/C.1/118, p. 275).

## B. FIRST SESSION OF THE GENERAL ASSEMBLY

(10 January—14 February 1946 and 23 October—15 December 1946)

In a communication to the Executive Secretary, the Cuban delegation proposed that the question of the declaration of the duties and rights of nations be included in the agenda of the General Assembly for the first part of the first session. The Cuban delegation stated that in the event of the inclusion in the agenda of this subject they would at the proper time present a draft text to serve as a basis for discussion by the Assembly.<sup>84</sup>

The General Committee in their first meeting on 13 January 1946 considered the supplementary list of items containing the Cuban proposal.<sup>85</sup> After discussion, the General Committee agreed that the draft resolution submitted by the Cuban delegation relating to the declaration on the duties and rights of nations, while of great importance, could not appropriately be included in the supplementary list. The General Committee stated that the Charter of the United Nations itself constitutes such a declaration and represents the furthest extent that such duties and rights can be formulated at the present time.<sup>86</sup> The General Committee's report on the supplementary items to be included in the agenda was considered at the seventh plenary meeting of the General Assembly on 14 January 1946. The President, M. Spaak of Belgium, stated that it was the opinion of the General Committee that the declaration on the rights and duties of nations can form the subject of a general debate in view of the fact that the Charter itself is already an attempt to determine the rights and duties of nations.<sup>87</sup>

Mr. Dihigo, representative of Cuba, urged that his proposal for a declaration on duties and rights of nations be taken up at once. He said:<sup>88</sup>

"In regard to the Declaration on the Rights and Duties of Nations, the General Committee says that the Charter of the United Nations itself constitutes such a declaration, and that this is really the furthest extent to which such duties and rights can be formulated at the present time. With great respect for what the General Committee has said, we think that, though the Charter contains many of the principles from which are

<sup>84</sup> A/3, p. 6, 5 January 1946; A/BUR/1.

<sup>85</sup> *Official Records of the first part of the first session of the General Assembly*, General Committee, Summary Records of the Meetings, p. 2.

<sup>86</sup> A/BUR/6.

<sup>87</sup> *Official Records of the first part of the first session of the General Assembly*, General Committee, Summary Records of the Meetings, p. 101.

<sup>88</sup> *Idem*, p. 102.

derived the rights and duties of nations, the Charter does not exhaust this subject, and if we are to live in a world of peace, in a world of justice, everlasting peace can only be based on justice and not indefinitely on force. It is absolutely necessary that we have an enumeration of the rights and duties of nations, so that all nations may know what are their rights and what are their obligations."

The President replied:<sup>80</sup>

"As regards the rights of nations, the General Committee points out that the Charter itself constitutes a first attempt to codify their rights and duties, and that this subject can therefore be taken up in the general discussion without any special provision being made for it in the agenda.

"The only divergence between the views of the Cuban delegation and those of the General Committee is not whether these questions should be discussed—there is complete agreement as to that—but whether there is any need to make special provision for them in the agenda. The General Committee feels there is no need, as this question can be dealt with in the discussion of the report of the Preparatory Commission."

Mr. Manuilsky, representative of the Ukrainian SSR, urged postponement of the subject. He stated:<sup>80</sup>

"Unfortunately, when we seek to determine the rights of nations, no text is to be found; legislation is silent on this point. Our own Charter lays down that the nations shall have the right to self-determination. But difficulties arise as to what is meant by the right of nations to self-determination.

"In Spain, the people expressed their right in perfectly legal elections, but subsequently a General came along who challenged their right to express their will in that way. I do not know whether the Spanish question is ripe, but I foresee a good many difficulties. The question now is that of the right of nations.

.....

"I greatly sympathize with the idea underlying the Cuban proposal and I am prepared to collaborate to the utmost of my power in seeking for a solution to these problems, but I think the question is not yet ripe. We are at the beginning of our Organization. Let us get on with our work and, later, we shall find formulas upon which we can agree. For the time being, I think the Cuban proposal should be withdrawn."

The Cuban representative formally proposed an amendment to the General Committee's report to place the subject of duties and rights of nations on the agenda. The amendment was seconded by the representative of Lebanon but not accepted by the General Assembly.<sup>81</sup> A companion proposal submitted by Cuba to include in the agenda the question of a declaration of the international rights and duties of man was rejected by a roll-call vote of 27 against, 12 in favour, and 10 abstentions. Follow-

<sup>80</sup> *Official Records of the first part of the first session of the General Assembly, General Committee, Summary Records of the Meetings, p. 104.*

<sup>81</sup> *Idem, p. 106.*

<sup>82</sup> *Idem, p. 107.*



ing this unfavourable vote the Cuban delegation did not insist on a vote concerning the Declaration on the Rights and Duties of Nations. The recommendation of the General Committee that the declaration be omitted from the agenda was then approved by a vote of 21 to none, with 2 abstentions.<sup>92</sup>

The delegation of Panama had presented a draft declaration for consideration of the General Assembly at its first session. Since the subject had not been included on the agenda of the first part of the first session, the Panamanian draft declaration was not discussed. Nevertheless at the request of the Panamanian delegation, the document was circulated to the Members of the United Nations in order to give them ample time to study the proposals in the interval between the first and second parts of the first session of the General Assembly.<sup>93</sup>

Consideration of the draft Declaration on the Rights and Duties of States together with a draft Declaration on Fundamental Human Rights and Freedoms, each submitted by the delegation of Panama, was placed on the provisional agenda for the second part of the first session of the General Assembly at the request of the Government of Panama.<sup>94</sup> At the 20th meeting of the General Committee of the General Assembly, 25 October 1946, at the suggestion of Mr. Vyshinsky (USSR) the Secretary-General was requested to consult with the Chairmen of the First and Third Committees with regard to the allocation to Committee of the two Panamanian draft declarations.<sup>95</sup> The consultation was held on 28 October 1946 and it was agreed that the part of the item concerning the rights and duties of States should be referred to the First Committee.<sup>96</sup> The part of the item concerning fundamental human rights should be referred to the First and Third Committees. This report was approved by the General Committee at its 21st meeting on 28 October 1946<sup>97</sup> and the draft Declaration on the Rights and Duties of States was referred to the First Committee as item 7 on its agenda by the General Assembly at its 46th plenary meeting on 31 October 1946.<sup>98</sup>

The First Committee began the discussion of rights and duties of States at its 40th meeting on 5 December 1946.<sup>99</sup> Dr. Alfaro, the representative

<sup>92</sup> *Official Records of the first part of the first session of the General Assembly, Summary Records of the Meetings*, p. 108.

<sup>93</sup> A/19, 29 January 1946. For other documents containing the draft Declaration on the Rights and Duties of States submitted by the delegation of Panama see A/19/Corr. 1; A/170; A/285.

<sup>94</sup> A/101, 20 October 1946. Item 6 of Supplementary List of Items for the Provisional Agenda for the second part of the first session of the General Assembly: "Draft Declaration on Fundamental Human Rights and Freedoms and on the Rights and Duties of States. (Item proposed by Panama)", A/118, 16 October 1946.

<sup>95</sup> *Official Records of the second part of the first session of the General Assembly, General Committee, Summary Record of Meetings*, p. 76.

<sup>96</sup> A/BUR/40, 28 October 1946.

<sup>97</sup> *Official Records*, supra. p. 77. A/163, 29 October 1946.

<sup>98</sup> *Journal No. 20*; Supplement A—A/P.V. 46, p. 272, 1 November 1946.

<sup>99</sup> For the full discussion in Committee 1 see *Journal No. 52*; Supplement 1—A/C.1/118, and *Journal No. 53*; Supplement 1—A/C.1/124, pp. 283 and 284.

of Panama, recalled that he had introduced a draft resolution concerning the rights and duties of States at the United Nations Conference on International Organization at San Francisco. Since it had not been possible to discuss it at that time, it was referred to the first session of the General Assembly. "It was fitting," he said, "that the United Nations subscribe to a declaration of the rights and duties of States which would constitute a basis for re-codification of international law."

After recalling the proposals for a declaration on the rights and duties of States which had been made in the past, he summarized his proposal examining the twenty-four articles in turn. He drew the attention of the jurists to the fact that his draft declaration did not contain any postulates or any dogmatic affirmation or maxims which did not express duties or rights of States. "As a matter of fact, this draft declaration put the emphasis on the duties of States, as was evidenced by the proportion of articles dealing with duties. Six articles dealt with rights of States; three with rights and duties; whereas fifteen exclusively concerned duties of States."<sup>100</sup>

Mr. Manuilsky, Ukrainian representative, stated "that the origin and the nature of the problem dealt with in this draft declaration seemed specific to Latin America". He said that conditions were different in Europe and other countries of the world and that these differences should be taken into consideration if a declaration of rights and duties of States were to be accepted by the United Nations. Dr. Alfaro replied: "The subject was one of interest and concern not only to the Latin American Republics but to all the world, since international law governed the action of the whole civilized community of States. The purpose of the draft was to take account of varying geographic and political conditions, and to synthesize them to represent the unified juridical thinking of the whole world."

"The adoption of such a declaration was a matter of urgency to abolish disparities between nations. . . . The twenty-four rules set out as the basis for codification of international law did not contain some defects of previous formulations."<sup>101</sup>

Mr. Gromyko, representative of the USSR, emphasized that the question was not altogether juridical but also presented political considerations. He stated: "Whatever decision might be made by the General Assembly should take into account new conditions which affected relations between States, for example, conditions arising as a result of the war and the defeat of the Axis Powers, and potential conditions arising as a result of the application of those articles of the Charter relating to trusteeship and non-self-governing territories."<sup>102</sup>

<sup>100</sup> *Journal No. 52: Supplement 1-A/C.1/118, p. 276.*

<sup>101</sup> *Journal No. 52: Supplement 1-A/C.1/118, p. 277.*

<sup>102</sup> *Journal No. 52: Supplement 1-A/C.1/118, p. 279.*

Mr. Popovic of Yugoslavia considered the draft defective in that it did not mention the "new relationships between States which resulted from the defeat of Fascism".

Mr. Cuenco, representative of the Philippine Republic, emphasized the importance that a statement of the fundamental rights and duties of States would have for the small States of the world.

In the course of the discussion, agreement was reached that no definite action could be taken by the General Assembly at this session. The following proposals were endorsed in the speeches of several representatives: (1) the draft Declaration on the Rights and Duties of States submitted by the delegation of Panama should be communicated to Governments and to national and international bodies concerned with the study of international law and a request should be made for observations and comments;<sup>103</sup> (2) the draft Declaration should be referred to the Committee on the Progressive Development of International Law and its Codification;<sup>104</sup> (3) the Committee should report to the next session of the General Assembly and should present recommendations as to the draft.<sup>105</sup>

The Chairman of the First Committee requested the representatives of the United States, El Salvador and Poland to reach agreement on the text of a proposal. A proposal drafted by these three delegates, together with the delegate of Panama, was submitted to the 41st meeting of the First Committee on 6 December 1946.<sup>106</sup> The representative of New Zealand suggested that the proposal be amended in order to request that the comments and observations should be submitted prior to 1 June 1947 so that the Codification Committee might consider them. The representative of Belgium also suggested an amendment to the proposal to place these questions on the agenda of the second session of the General Assembly. Subject to these two amendments, the proposal of the delegations of the United States, Panama, El Salvador and Poland was unanimously adopted by the First Committee.<sup>107</sup>

The report of the First Committee<sup>108</sup> was submitted by the Rapporteur, Dr. Viteri (Ecuador), to the 55th plenary meeting of the General Assembly on 11 December 1946.<sup>109</sup> The resolution which was recommended in the report was adopted unanimously by the General Assembly without discussion. This resolution reads as follows:

<sup>103</sup> Suggested by representatives of Iran, Philippine Republic, El Salvador, Denmark, Lebanon, Yugoslavia, Syria, Netherlands, Poland, United States.

<sup>104</sup> Suggested by representatives of United States, Philippine Republic, United Kingdom, Paraguay, Mexico, Peru, Uruguay, Lebanon, Brazil, El Salvador, Syria, Panama, Netherlands, Poland.

<sup>105</sup> Suggested by representatives of Syria and United States.

<sup>106</sup> A/C.1/120, 5 December 1946.

<sup>107</sup> *Journal No. 53: Supplement 1—A/C.1/124*, p. 284.

<sup>108</sup> A/228, 8 December 1946.

<sup>109</sup> *Journal No. 58: Supplement A—A/P.V. 55*, pp. 474-475, 13 December 1946.

*"The General Assembly resolves:*

"1. To request the Secretary-General to transmit immediately to all Member States of the United Nations and to national and international bodies concerned with international law, the text of the draft Declaration on the Rights and Duties of States presented by Panama, with the request that they submit their comments and observations to the Secretary-General before 1 June 1947;

"2. To refer the said Declaration to the Committee established by the General Assembly during the present session to study the methods of codification of international law, and to request the Secretary-General to transmit to this Committee the comments and observations as they are received from the Governments and institutions referred to in the preceding paragraph;

"3. To request this Committee to report thereon to the second regular session of the General Assembly;

"4. To include this matter in the agenda of the second regular session of the General Assembly."<sup>110</sup>

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<sup>110</sup> General Assembly resolution 38 (I): Draft Declaration on the Rights and Duties of States, 11 December 1946.

## C. COMMITTEE ON THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW AND ITS CODIFICATION

(12 May—17 June 1947)

The draft Declaration on the Rights and Duties of States appeared as item 5 on the provisional agenda of the Committee on the Progressive Development of International Law and its Codification. Dr. Kerno, Assistant Secretary-General in charge of the Legal Department, in opening the first meeting of the Committee on 12 May 1947, called attention to the fact that one of the tasks given to the Committee by the General Assembly was "a study of the replies by the Governments of the Member States on the Panamanian Declaration with regard to the rights and duties of States".<sup>111</sup>

The subject of rights and duties of States was discussed by the Codification Committee at its 22nd, 23rd, 25th, and 29th meetings.<sup>112</sup> The Committee had before it a memorandum prepared by the Secretariat on the draft Declaration on the Rights and Duties of States submitted by Panama,<sup>113</sup> and comments and observations from six Governments and three national and international bodies concerned with international law.<sup>114</sup>

At the 22nd meeting on 13 June 1947, the Argentine delegation suggested that in view of the small number of comments and observations submitted by Member States and institutions concerned with the study of international law the Committee was not in a position to undertake discussion of substantive provisions of the draft Declaration on the Rights and Duties of States. The proposal continues: "However, in view of the importance of the question, the consideration of which is essential for the maintenance of international peace and security, the delegation of Argentina proposes the following recommendation to the General Assembly:

"(a) That the International Law Commission should be instructed to prepare a draft convention on the rights and duties of States, as embodied in the draft declaration presented by the Government of Panama to the General Assembly, following the procedure envisaged in chapter II of document A/AC.10/33.

<sup>111</sup> A/AC.10/SR.1, p. 2, 12 May 1947.

<sup>112</sup> For full discussions see A/AC.10/SR.22, 13 June 1947; A/AC.10/SR.23, pp. 1-2, 14 June 1947; A/AC.10/SR.25, pp. 1-5, 14 June 1947; A/AC.10/SR.29, pp. 1-3, 11, 24 June 1947.

<sup>113</sup> A/AC.10/4, 30 April 1947.

<sup>114</sup> A/AC.10/39, 5 June 1947 (comments from Canada, El Salvador, United Kingdom, United States, and from the American Bar Association, American Society of International Law and International Law Association); A/AC.10/39/Add.1, 10 June 1947 (comments from Sweden); A/AC.10/39/Add.2, 10 June 1947 (comments from Mexico).

"(b) That the International Law Commission should give to the preparation of a draft convention on the rights and duties of States the highest possible priority."<sup>116</sup>

Professor Donnedieu de Vabres of France associated himself with the Argentine delegate's proposal. He stressed three fundamental reasons which argued in favour of postponing the discussion of the Panama draft:

"1. Although such a declaration might seem familiar to the American Republics, the same was not true for the European States, which did not clearly grasp the binding force of such a document.

"2. The draft appeared to modify certain provisions of the Charter, and hence co-ordination with the latter was called for.

"3. Finally, it contained a certain number of new provisions which ought possibly to be incorporated in the Charter."<sup>118</sup>

Amendments to the Argentine proposal were suggested by the representatives of Brazil,<sup>117</sup> Australia,<sup>118</sup> Yugoslavia,<sup>119</sup> and the USSR.<sup>120</sup>

The Chairman stated that the Committee had failed to reach agreement on two points:

"1. Whether it should be indicated that the question of the declaration on the rights and duties of States should be given a certain priority or not; and

"2. Whether the report should mention that the Committee considered that the Panama draft should be used as a basis for the International Law Commission's work."<sup>121</sup>

A vote was taken on these questions and it was decided first, by 9 votes to 7, that there should be no mention in the report of the priority to be given to the subject; and second, by 9 votes to 4 with 3 abstentions, that the Panamanian draft should be used as the basis of the work of the International Law Commission.

A drafting sub-committee was appointed composed of the delegates of Argentina, Brazil, Yugoslavia and Australia.<sup>122</sup> This sub-committee presented a draft report to the 25th meeting of the Codification Committee on 12 June 1947. Professor Bartos (Yugoslavia), Chairman of the sub-committee, pointed out that the sub-committee had been restricted in its work by three decisions taken in the full Committee:

1. That the question of substance should not be studied;

<sup>116</sup> A/AC.10/45, p. 2, 7 June 1947; A/AC.10/SR.22, p. 3, 13 June 1947.

<sup>117</sup> A/AC.10/SR.22, p. 4, 13 June 1947.

<sup>118</sup> *Idem*, p. 7.

<sup>119</sup> *Idem*, p. 8.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Idem*, p. 9.

<sup>122</sup> *Item*, pp. 9-10.

<sup>123</sup> A statement by Professor Yepes, representative of Colombia, was read into the record of the 23rd meeting of the Committee on the Progressive Development of International Law and its Codification. In this statement, the Colombian delegation expressed regret that the interpretation given to the terms of reference had not permitted a discussion of substantive issues on the question of rights and duties of States. See A/AC.10/SR.23, pp. 1-2, 14 June 1947, for text of this statement.

2. That the recommendation should not contain any suggestion about the priority which the International Law Commission should give to this Committee;

3. That the draft of the Government of Panama should be used as a basis for the work of the International Law Commission.<sup>123</sup>

The preamble of the report was amended to contain a statement that comments had been received from six Governments and three non-governmental bodies. The question was discussed whether the Committee's recommendation should mention "progressive development" of international law or should only mention "codification". Professor Jessup (United States) proposed deleting the words "progressive development". Representatives of Poland and France raised objections stating that certain of the articles, for example, that relating to the right of existence, were beyond the question of codification. Professor Jessup did not insist on his proposal "provided the report stated that it was for the International Law Commission to decide on the procedure to be followed in this matter".<sup>124</sup>

Professor Rudzinski (Poland) proposed the adoption of the following phrase: "It being understood that the matters already provided for by the Charter of the United Nations and by the United Nations Declaration of 1 January 1942 do not require further examination." This amendment was later withdrawn.<sup>125</sup>

Professor Bartos (Yugoslavia) stated that his delegation was against using the Panamanian draft as the basis for the work of the International Law Commission. He proposed as a compromise formula the addition of the words "it being understood that other existing sources of international law shall be taken into account". When this proposal was opposed, Professor Bartos stated that he was prepared to withdraw his amendment provided the summary record mentioned that the Committee's recommendation that the draft submitted by the Panamanian Government should serve "as a basis of study" did not exclude consideration of other sources of international law.<sup>126</sup>

A proposal by the representative of Colombia that the Secretary-General should again appeal to Governments to submit their comments on the draft Declaration on the Rights and Duties of States was accepted by the Committee.<sup>127</sup>

At the 29th meeting on 16 June 1947, Professor Brierly (United Kingdom), Rapporteur, presented his report.<sup>128</sup> Professor Koretsky (USSR) considered that the statement "that the International Law Commission should take the draft Declaration on the Rights and Duties of States

<sup>123</sup> A/AC.10/SR.25, p. 1, 14 June 1947.

<sup>124</sup> *Idem*, p. 3.

<sup>125</sup> *Ibid.*

<sup>126</sup> *Idem*, p. 4.

<sup>127</sup> *Idem*, pp. 5-6.

<sup>128</sup> A/AC.10/49, 14 June 1947.

presented by Panama as the basis of study" excluded other drafts from being considered on an equal footing. He preferred to use "a basis" instead of "the basis". Professor Yepes (Colombia) proposed the words "one of the bases" and this was accepted by the Committee. Subject to this amendment and two minor drafting changes,<sup>129</sup> the Rapporteur's report was adopted by the Committee.<sup>130</sup>

The report of the Committee on the draft Declaration on the Rights and Duties of States presented by Panama is as follows:

"The Committee, noting that a very limited number of comments and observations from the Member States of the United Nations (6) and national and international non-governmental bodies (3) had been received on the draft Declaration on the Rights and Duties of States presented by Panama, and considering that the majority of these comments and observations recommended postponement of the study of the substance of this question, recommends:

"(a) That the General Assembly entrust further studies concerning this subject to the International Law Commission in accordance with the procedure finally adopted by the General Assembly for the progressive development of international law and its codification.

"(b) That the International Law Commission should take the draft Declaration on the Rights and Duties of States presented by Panama as one of the bases of its study."<sup>131</sup>

<sup>129</sup> See A/AC.10/SR.29, pp.1-2.

<sup>130</sup> *Idem*, p. 3.

<sup>131</sup> A/AC.10/53, 16 June 1947; A/333, 19 July 1947.



## D. SECOND SESSION OF THE GENERAL ASSEMBLY (16 September—29 November 1947)

In accordance with General Assembly resolution No. 38 (I) of the second part of the first session, the "Draft Declaration on the Rights and Duties of States presented by Panama: Report of the Committee on the Progressive Development of International Law and its Codification" was placed on the provisional agenda<sup>132</sup> of the second session of the General Assembly which met at Lake Success on 16 September 1947.

A draft Charter of the Duties and Rights of States consisting of twenty-three articles had been submitted by the delegation of Ecuador with the request that it be included on the provisional agenda.<sup>133</sup> By a subsequent communication from the Chairman of the delegation of Ecuador it was requested that this draft charter be considered as the explanation of the points of view of the Government of Ecuador on the draft declaration submitted by Panama.<sup>134</sup>

The Secretary-General suggested that item 36 of the Provisional Agenda (the draft declaration submitted by Panama) be allocated to the Sixth Committee and that item 14 of the Supplementary List (the draft charter presented by Ecuador) be deleted from the agenda on the understanding that the Government of Ecuador desired that this charter be considered as embodying its comments and observations on the Panamanian draft. These recommendations were accepted by the General Committee<sup>135</sup> and by the General Assembly.<sup>136</sup>

The Secretariat suggested a proposed plan of work for the Sixth Committee under which the three items reported on by the Committee on the Progressive Development of International Law and its Codification should be considered by the full Committee without reference to a sub-committee since they had already been considered by a Committee of the General Assembly established for the purpose.<sup>137</sup> It was decided however that the proposal for the creation of an International Law Commission should be referred to Sub-Committee 2. The representative of Panama suggested that the draft Declaration on the Rights and Duties of States should be referred to a special sub-committee, as reference of the matter to the International Law Commission would involve too long a delay.<sup>138</sup> At the 39th meeting of the Sixth Committee on 29 September 1947, several delegations supported the proposal for the creation of a special sub-committee. In the

<sup>132</sup> Item 36 of the provisional agenda, A/329, p. 3, 18 July 1947.

<sup>133</sup> A/340, 21 August 1947; item 14 of Supplementary List, A/369, 28 August 1947.

<sup>134</sup> A/390, 13 September 1947.

<sup>135</sup> A/392, pp. 3, 11, 22 September 1947.

<sup>136</sup> A/P. V. 91, p. 67, 23 September 1947.

<sup>137</sup> A/C.6/136, 24 September 1947.

<sup>138</sup> A/C.6/SR.36, p. 3, 24 September 1947.

discussion of whether immediate action might be taken, Dr. Alfaro stated that although during the general debate on the progressive development of international law and its eventual codification many difficulties, doubts and fears regarding the success of the project of the Declaration on the Rights and Duties of States had been expressed, the delegation of Panama felt that no effort should be spared in proclaiming and promoting the reign of law in international life. He thought it most urgent that the Committee should proceed at once to adopt a declaration of the rights and duties of States, in other words, a compressed code of international law governing the vital aspects of international relationship. Such a declaration would in his opinion have to precede restatement and codification of international law; and the consideration and adoption of such an instrument should not take a great deal of time or offer any serious difficulties. He then commented in detail on the draft declaration presented by Panama, and expressed the view that the best way to tackle the problem would be to refer the draft to a special sub-committee.<sup>139</sup>

Other representatives however thought that the draft declaration would have to be considered by the International Law Commission and therefore believed little could be gained by setting up a new sub-committee. The proposal for the creation of a special sub-committee was rejected by a vote of 21 to 16, and the matter was referred to Sub-Committee 2.<sup>140</sup>

The draft Declaration on the Rights and Duties of States was discussed by Sub-Committee 2 first in relation to the question whether the Committee on the Progressive Development of International Law and its Codification should be continued as an interim body, and second in connexion with the report of the Codification Committee on the Rights and Duties of States.

After it had been determined that the members of the International Law Commission should not be elected until the third session of the General Assembly, the Chinese delegation proposed that an interim body be set up to function until such time as the members of the International Law Commission were elected.<sup>141</sup> Among the suggested functions it was proposed that the Preparatory Committee should prepare "(d) a text of a draft declaration of the rights and duties of States, taking as one of the bases of its study the draft declaration prepared by Panama".<sup>142</sup>

<sup>139</sup> A/C.6SR. 39, p. 2, 29 September 1947.

<sup>140</sup> *Idem*, p. 3. Sub-Committee 2 had for its consideration the following documents dealing with the draft Declaration on the Rights and Duties of States presented by Panama: Report of the Committee on the Progressive Development of International Law and its Codification, A/333, 19 July 1947; Comments and observations of Governments, A/AC.10/39, 5 June 1947; Add.1, 10 June 1947; Add.2, 10 June 1947; A/400, 29 September 1947; Corr.1; Add.1, 30 September 1947; Add.2, 13 November 1947; and the following proposals or amendments: A/C.6/139, 25 September 1947; 141, 26 September 1947; 144, 26 September 1947; 158, 3 October 1947; A/C.6/SC.5/W.15, 13 October 1947 (Restricted).

<sup>141</sup> A/C.6/158, 3 October 1947.

<sup>142</sup> *Ibid.*

The Sub-Committee was divided on the question of establishing an interim body. Among the arguments advanced in favour of establishing an interim body was the contention that the draft Declaration on Rights and Duties of States should not be further postponed. Against this contention it was argued by other representatives that this draft Declaration would be dealt with more adequately by the International Law Commission composed of independent experts than by an interim body whose members would be Government representatives. The Sub-Committee, by a vote of 8 to 4, determined to recommend the establishment of an interim body. By a majority of 10 to 2 the Sub-Committee decided that this interim body should be the Committee on the Progressive Development of International Law and its Codification. The Sub-Committee recommended that the interim body be instructed to prepare "the text of a draft Declaration on the Rights and Duties of States, taking as a basis for discussion the draft declaration submitted by Panama, and considering for its study other documents and works related thereto". A proposal seeking to modify the last clause of this instruction to read "taking as one of the bases of its study the draft declaration presented by Panama" received only three votes and was not adopted.<sup>143</sup>

The Sub-Committee also proposed that the Sixth Committee should recommend to the General Assembly the adoption of the following resolution:

"DRAFT RESOLUTION ON THE RIGHTS AND DUTIES OF STATES

*"The General Assembly*

*"Recognizes* the desirability of proceeding without delay to the study of a draft Declaration on the Rights and Duties of States;

*"Directs* the Committee charged as an interim organ to study the progressive development of international law and its codification, to prepare a draft Declaration on the Rights and Duties of States, taking as a basis for discussion the draft declaration presented by Panama and taking into consideration other documents and works on this subject;

*"Informs* the Committee that it should not await the reception of observations from all the Governments before commencing its work."<sup>144</sup>

Mr. Kaeckenbeeck (Belgium), Rapporteur, presented the report recommending the continuation of the Committee on the Progressive Development of International Law and its Codification at the 59th meeting of the Sixth Committee on 20 November 1947. He stated that the continuance of the Committee had been proposed in order that this body might (1) submit a report to the third session of the General Assembly suggesting the question which the Assembly might refer to the International Law Commission and (2) prepare the text of a draft Declaration

<sup>143</sup> A/C.6/194, 18 November 1947.

<sup>144</sup> A/C.6/181/Rev.1, 18 November 1947.

on the Rights and Duties of States, taking as a basis for discussion the draft declaration submitted by Panama.

Mr. Kaeckenbeeck stated that, in taking over the function of Rapporteur of the Sub-Committee from Professor François (Netherlands), he had reserved the right to express opposition to the setting up of an interim body. He felt that the tasks in the field of codification could best be given to the International Law Commission itself. He proposed that the General Assembly should ask the International Law Commission to give priority to the question of the rights and duties of States. This was an important matter and should be studied by experts before it was studied by a group which represented the various Governments. The best procedure would be to have the preparatory work done by the Secretariat, then refer it to independent experts and then later to all Governments concerned; he desired to have an amendment made to that effect.<sup>145</sup>

The representatives of the Netherlands, Australia and France likewise opposed the continuation of the Codification Committee and suggested that the preparatory work might be done by the Legal Department of the Secretariat. Mr. Spyropoulos, representative of Greece, in also expressing his opposition to the setting up of an interim body stated: "As regards the draft Declaration on the Rights and Duties of States, that formed an integral part of the codification of international law. Accordingly the International Law Commission, since it was to deal with the entire problem, should also deal with this section of it. Moreover an interim committee would not be in as favourable a position to consider the substance of the matter, since it would not have access to the documents which would be placed at the disposal of the International Law Commission."<sup>146</sup>

The representatives of China, Argentina and Brazil supported the establishment of an interim body. Mr. Liu pointed out that it had been decided that the matter of rights and duties of States should be proceeded with as soon as possible. "The mere fact that it had been proposed to refer this work to the Secretariat showed the necessity of undertaking it. Since the Secretariat had been assigned work of a different nature, it would be unfair to assign this matter to the Secretariat as now constituted"<sup>147</sup> He therefore recommended the acceptance of the Sub-Committee resolution as it stood.

Mr. Ferrer Vieyra (Argentina) felt "that the work of the Codification Committee should be continued, since the question of the rights and duties of States was not entirely a legal matter but also political, and therefore could not be handled as expeditiously by a committee of experts."<sup>147</sup>

Mr. Guerreiro, representative of Brazil, also argued that the considera-

<sup>145</sup> A/C.6/SR.59, pp. 1-2, 26 November 1947.

<sup>146</sup> *Idem*, p. 4.

<sup>147</sup> *Idem*, p. 3.

tion of the draft declaration of Panama which had been postponed since the San Francisco Conference should no longer be delayed.

The draft resolution of Sub-Committee 2 on the continuance of the Committee on the Progressive Development of International Law and its Codification as an interim body was put to the vote of the Sixth Committee and rejected by a majority of 25 to 15.<sup>148</sup>

The Committee then considered a draft resolution submitted by the delegation of France which proposed that the preparatory work for the International Law Commission be performed by the Secretariat.<sup>149</sup> An amendment submitted by the USSR<sup>150</sup> was accepted in part. However, the specific reference to work on rights and duties of States which appeared in the French proposal was retained. The draft resolution of the French delegation was then adopted by 36 votes to 1.<sup>151</sup>

The Sixth Committee next considered the report of Sub-Committee 2 concerning the draft Declaration on the Rights and Duties of States. The representative of Egypt, Mr. Rafaat, called attention to the fact that since the proposal for an interim committee had been rejected, the draft resolution contained in the Sub-Committee's report had lost its usefulness. He suggested an alternative draft resolution.<sup>152</sup> This draft resolution would instruct the International Law Commission to prepare a draft Declaration on the Rights and Duties of States, accepting the Panamanian draft as "one of the bases of its study". Dr. Alfaro, representative of Panama, objected that it had been agreed that the Panamanian draft should be taken as "the basis of study, not merely as one of the bases". The Rapporteur prepared a compromise solution between the Egyptian proposal and the proposal of the Sub-Committee. This draft resolution instructed the International Law Commission to prepare a draft Declaration on the Rights and Duties of States "taking as a basis of discussion the draft Declaration on the Rights and Duties of States submitted by Panama and taking into consideration other documents and drafts on this subject". Mr. Durdenevsky (USSR) moved the deletion of the phrase starting "taking as a basis of discussion". This amendment was rejected by 5 votes to 30, and the whole draft resolution was adopted by 39 votes to none.<sup>153</sup>

The two draft resolutions<sup>154</sup> containing reference to the Declaration on the Rights and Duties of States were submitted to the 123rd plenary meeting of the General Assembly on 21 November 1947. These resolutions, 175 (II) and 178 (II), were accepted without objection by the General Assembly.<sup>155</sup> They read as follows:

<sup>148</sup> *Idem*, p. 4.

<sup>149</sup> A/C.6/196, 18 November 1947.

<sup>150</sup> A/C.6/200, 20 November 1947.

<sup>151</sup> A/C.6/SR.59, p. 5, 26 November 1947.

<sup>152</sup> A/C.6/197, 18 November 1947.

<sup>153</sup> A/C.6/SR.59, p. 6, 26 November 1947.

<sup>154</sup> A/506, 20 November 1947; A/508, 20 November 1947.

<sup>155</sup> A/P.V.123, pp. 136-141, 21 November 1947.

*"175 (II). Preparation by the Secretariat of the work of the International Law Commission.*

*"The General Assembly,*

*"Considering that, in accordance with Article 98 of the Charter, the Secretary-General performs all such functions as are entrusted to him by the organs of the United Nations;*

*"Considering that, in the interval between the first and the second sessions of the General Assembly, the Secretariat of the United Nations contributed to the study of problems concerning the progressive development of international law and its codification,*

*"Instructs the Secretary-General to do the necessary preparatory work for the beginning of the activity of the International Law Commission, particularly with regard to the questions referred to it by the second session of the General Assembly, such as the draft Declaration on the Rights and Duties of States."*

*"178 (II). Draft Declaration on the Rights and Duties of States.*

*"The General Assembly,*

*"Noting that very few comments and observations on the draft Declaration on the Rights and Duties of States presented by Panama have been received from the States Members of the United Nations,*

*"Requests the Secretary-General to draw the attention of States to the desirability of submitting their comments and observations without delay;*

*"Requests the Secretary-General to undertake the necessary preparatory work on the draft Declaration on the Rights and Duties of States according to the terms of resolution 175 (II);*

*"Resolves to entrust further study of this problem to the International Law Commission, the members of which in accordance with the terms of resolution 174 (II) will be elected at the next session of the General Assembly,*

*"And accordingly*

*"Instructs the International Law Commission to prepare a draft Declaration on the Rights and Duties of States, taking as a basis of discussion the draft Declaration on the Rights and Duties of States presented by Panama, and taking into consideration other documents and drafts on this subject."*

In spite of the fact that Member States have been twice requested to send their comments and observations on the draft declaration submitted by the delegation of Panama, only seventeen States and five national and international bodies have thus far replied. Of these only the Governments of Denmark, the Dominican Republic, Greece, India, Mexico, the Philippines, Turkey, the United Kingdom and Venezuela have presented detailed comments on the substance of the draft declara-

tion, and the Government of Ecuador submitted a draft Charter of the Duties and Rights of States which it desired to have considered as an expression of its point of view. One of the Governments which did not present comments on the substance of the draft expressed full approval of the Panama draft declaration, while the others either recommended the reference of the subject to the International Law Commission or expressed doubts concerning the wisdom of proceeding at this time to prepare a draft Declaration on Rights and Duties of States.<sup>156</sup>

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<sup>156</sup> A/AC.10/39; A/AC.10/39/Add.1; A/AC.10/39/Add.2; A/AC.10/39/Add.2/Corr.1; A/400; A/400/Corr.1; A/400/Add.1; A/400/Add.2; A/340 and A/390. For text of comments see appendices, B and C.

### III. DRAFT DECLARATION ON THE RIGHTS AND DUTIES OF STATES AND EXPLANATORY NOTE SUBMITTED BY PANAMA

*Whereas* the co-existence of States in the juridical community should be based on the determination in the most accurate terms possible of the rights which each may exercise and the duties which all must fulfil;

*And whereas* the definition of the rights and duties of States necessarily involves fundamental principles and rules, the observance of which is essential for the maintenance of international peace and security, the supreme aim of the community of States; and

*Whereas* a declaration of the kind set forth hereunder will be a decisive factor in ensuring the reciprocal respect of all rights and the harmonious development of international life, and in strengthening solidarity, co-operation and fellowship among nations and peoples,

The representatives of the signatory States have agreed to make the following:

#### DECLARATION OF THE RIGHTS AND DUTIES OF STATES<sup>156a</sup>

##### 1. *The Right to National Existence*

Every State has the right to exist and the right to protect and preserve its existence; this right does not however imply that a State is entitled to commit, or is justified in committing, unjust acts towards other States in order to protect and preserve its existence.

##### 2. *Recognition of the Existence of the State*

Every State is entitled to have its existence recognized. The recognition of the existence of a State merely signifies that the State recognizing it accepts the person of the State recognized, together with all the rights and duties which arise out of international law. Recognition is unconditional and irrevocable.

##### 3. *The Right to Existence, Independent of Recognition*

The political existence of the State is independent of its recognition by other States. Even before it has been recognized, the State has the right to defend its integrity and independence, to provide for its preservation and prosperity and, consequently, to organize itself as it sees fit, to legislate in regard to its interests, to administer its services and to determine the jurisdiction and competence of its courts of justice.

##### 4. *The Right to Independence*

Every State has the right to its own independence in the sense that it

<sup>156a</sup> The precedents and equivalents referred to by Dr. Alfaro in respect of each article so that its origin might be determined at a glance, have not been reproduced here, since they may be found in full in Part IV of this study.



is free to provide for its own well-being and to develop materially and spiritually without being subjected to the determination of other States, provided always that in so doing it shall not impair or violate the legitimate rights of other States.

#### 5. *The Duty of Non-Intervention*

No State has the right to interfere in the internal or external affairs of another State.

#### 6. *Legal Equality*

Every State is, in law and before the law, equal to all the others which make up the community of States, and has the right to claim and assume, as among the Powers of the world, that position of equality to which natural law entitles it.

#### 7. *Exclusive Jurisdiction*

Every State is entitled to exercise exclusive jurisdiction over its territory and over all nationals or foreigners within that territory.

Foreigners may not claim rights different from, or more extensive than, those enjoyed by nationals.

#### 8. *Diplomatic Intervention*

Every State is entitled to intervene with another State in favour of its own nationals, acting through diplomatic channels and in a reasonable and courteous manner; it is its duty to refrain from alleging any denial of justice so long as its nationals have not claimed the right which they allege to possess from the courts of justice of the State to which such diplomatic representations are being made; if, however, this State should deny the foundation of fact or law of the intervention, and the intervening State does not accept this denial, it may only resort to the procedure of peaceful settlement for the solution of the dispute.

#### 9. *Respect of the Rights of the State by Other States*

Any State which has a right under international law is entitled to have this right respected and protected by all the other States, since rights and duties are correlative, and the right of one creates for the others the duty to respect it.

#### 10. *Limitation of the Rights of the State*

No other limit is set to the exercise of the rights of a State than the exercise of the rights of other States, in accordance with international law. It is the duty of every State not to overstep this limit.

#### 11. *Observance of Treaties and Sanctity of the Pledged Word*

It is the duty of every State to fulfil, in good faith, the obligations arising from public treaties, and to respect the sanctity of the pledged word.

## 12. *Discharge of International Obligations*

It is the duty of every State to discharge, in good faith, its obligations under international law, and it may not plead limitations arising out of its own Constitution or its laws as an excuse for failure to discharge this duty.

## 13. *Authority of International Law*

The sovereignty of the State is subject to the limitations of international law, and it is the duty of every State to adjust its conduct to international law in its relations with other States and with the community of States.

## 14. *National and International Scope of the Law of Nations*

International law is at once national and international. It is national in the sense that it is the law of the country and that it is the duty of the States to apply it as such in solving questions concerned with its principles; it is international in the sense that it is the law of the community of States and that it is the duty of each State to apply it to all questions which arise among the members of that community and which are concerned with its principles.

## 15. *Peaceful Settlement of Disputes*

It is the duty of every State to settle its international disputes by peaceful means and in such a manner that neither peace and security nor justice are imperilled.

## 16. *Condemnation of War as an Instrument of National and International Policy and of the Threat or Use of Force*

It is the duty of every State to refrain from the use of war of aggression as an instrument of national or international policy, and from resorting to the threat or use of force against the territorial integrity and political independence of another State, or for the recovery of public debts from another State, or in any other form which is inconsistent with international order.

## 17. *Right of Legitimate Defence*

Every State has the inherent right of individual or collective legitimate defence, and in the exercise of this right, it may use force to counter the unauthorized use of force by another State, provided that it shall immediately advise the competent organ of the community of States.

## 18. *Non-Recognition of Territorial Acquisitions Obtained by Force*

It is the duty of every State to refrain from recognizing territorial acquisitions obtained through force or the threat of force.

## 19. *Co-operation in the Prevention of Acts of Force*

It is the duty of every State to afford the community of States every kind of assistance in whatever action that community undertakes, and it

should abstain from rendering assistance to any State against which the community is conducting preventive or coercive action.

20. *Co-operation in the Pursuit of the Aims of the Community of States*

It is the duty of every State to take, in co-operation with other States, the measures prescribed by the competent organs of the community of States in order to prevent or put down the use of force by a State in its relations with another State, or in the general interest.

21. *Maintenance of Conditions Calculated to Ensure International Peace and Order*

It is the duty of every State to ensure that the conditions prevailing within its territory do not threaten international peace and order and, to that end, it must treat its own population in a manner which does not violate the dictates of humanity and justice, or offend the conscience of mankind.

22. *Duty not to Foment Civil Disturbances in Other States*

It is the duty of every State to ensure that, within its own territory, no activities are organized for the purpose of fomenting civil strife within the territory of another State.

23. *Equality of Opportunity and Interdependence in the Economic Sphere*

Every State has the right of access, on equal terms, to the trade, commodities and raw materials of the world which are necessary to its economic prosperity.

It is the duty of every State to eliminate from its economic activities every artificial means tending to establish differences in the acquisition of the natural products of the soil of another State, and to refrain from exercising control over means of transport, from restricting trade, or bringing about restrictions in commercial credits and currency of another State.

24. *Prohibition of Pacts Incompatible with the Discharge of International Obligations*

It is the duty of every State to refrain from concluding with other States agreements, the observance of which is inconsistent with the discharge of its obligations under international law or under the constituent pact of the community of States.

**Explanatory note by**

**The Minister for Foreign Affairs of the Republic of Panama,  
Dr. Ricardo J. Alfaro**

When the Powers which met at Dumbarton Oaks sent to the various Governments the proposals which had been agreed upon in regard to

international organization, the Governments which received them proceeded to submit their observations and amendments for the important discussions which were to take place at the San Francisco Conference.

Three of the Republics which attended the Conference, namely, Panama, Mexico and Cuba, made proposals to the effect that the Conference should adopt a *Declaration of the Rights and Duties of Nations*, and a *Declaration of the Essential Rights of Man*, that is, an *International Bill of Rights*. Mexico and Cuba limited their proposition to a request that such declarations be adopted, but Panama presented drafts to serve as a basis for discussion.

The proposal of Panama, which partly modified the first part of Article 1 of the draft Charter, read as follows:

"The purposes of the Organization are:

"1. To maintain international peace and security in conformity with the fundamental principles of international law and to maintain and observe the standards set forth in the 'Declaration of the Rights and Duties of States' and the 'Declaration of Essential Human Rights' which are appended to the present Charter, and made an integral part thereof."

The text proposed by Panama as Declaration of the Essential Rights of Man is the one drawn up by the Special Committee set up by the American Institute of Law of Philadelphia, a Committee on which I had the honour to sit.

As a draft Declaration of the Rights and Duties of Nations, I proposed on behalf of the delegation of Panama the well known text prepared by that eminent North American internationalist, James Brown Scott, and adopted by the American Institute of International Law at its meeting of 6 January 1916. I recognized that notwithstanding its precision of wording, the document failed to enumerate all the rights and essential duties of nations, since it comprised only six articles, and omitted many of the great principles of international law. Since, however, I had not been able to prepare a fuller draft before the holding Conference, I submitted Scott's text as an excellent basis of discussion.

It was evident at San Francisco that it was impossible for the Conference to undertake the work of discussing two documents so important and so open to possible debate as the two declarations proposed. It need only be remembered that the Declaration of the Essential Rights of Man was the result of more than two years' study and discussion among twenty-five members of the above-mentioned Philadelphia Committee, representing the cultures of the principal countries and regions of the world, and at the same time the most divergent political views.

It would have been necessary at San Francisco to reconcile the views of the delegates of the fifty United Nations on these vital and delicate matters; and to illustrate the impossibility of achieving this, it will be sufficient to recall that the Assembly which met in California had to perform two months of intense labour to produce the one hundred and eighty-one Articles which constitute the Charter of the United Nations and the Statute of the International Court of Justice.

Nevertheless, it was agreed among the delegates that these two declarations should be discussed by the first General Assembly to be convened after the Charter had come into force; and the Government of Panama,

which I have now the honour to represent at the Ministry of Foreign Affairs, proposes to submit to the Assembly the Declaration of the Essential Rights of Man already submitted at San Francisco, together with a new draft Declaration of the Rights and Duties of States, which I have prepared as a basis for discussion. Panama wishes to submit this declaration not only for adoption by the United Nations, but also for incorporation in a possible covenant of association of the American Republics to be discussed at the Pan American Conference scheduled to meet in Bogotá in 1946—such a covenant being the subject of another draft I have prepared.

It is clearly desirable that nations should subscribe to a conventional instrument setting forth the basic principles which constitute, as it were, the foundations on which stands the structure of international law.

Some European authors consider such a declaration neither practical nor feasible, but American opinion rejects this view and the experience of the New World shows that a declaration of the rights and duties of nations is an admirable basis for the codification of international law and offers a useful substitute therefor, until such time as this great juridical task can be accomplished. The nations of America have already agreed on a Convention on the Rights and Duties of States, signed at Montevideo on 26 December 1933, and there is no reason why a like effort could not be made by the United Nations as a starting point for the codification of the international law of the future. . . .

In a number of international agreements and in various works by jurists, an effort has been made to embody in a few articles the basic elements of international law. However, these agreements and these works are all incomplete, whilst at the same time, some of these drafts set forth not only positive principles expressing either a right or a duty but also mere abstract postulates belonging rather to the field of writings on international law than to clauses of a multilateral convention among nations.

The declaration by the Institute of International Law, remarkable for its precision and profundity, comprises, as I have said, six articles, covering the following topics:

1. The right to a national existence;
2. The right to independence, a right entailing the duty to abstain from unilateral intervention;
3. The right to juridical equality;
4. The right to exclusive jurisdiction;
5. Respect of the rights of a State by other States; and lastly,
6. The national and international scope of the law of nations.

It will be seen at a glance that some essential principles are missing here, such as the observance of public treaties; the fulfilment of international obligations; the pacific settlement of disputes; the condemnation of the threat or use of force; the right of legitimate defence; the co-operation in the maintenance of international peace and order, and other points unnecessary to enumerate.

A fuller statement is made in the ten principles of the draft prepared by a Committee of Jurists of different nationalities, mostly from the United States and Canada, presided over by the distinguished Judge of

the Permanent Court of International Justice and Professor of Harvard University, Dr. Manley O. Hudson, and published under the title of "Postulates, Principles and Proposals" concerning the international law of the future.

Article 2 of the Charter of the United Nations states that in pursuit of the purposes of the Organization, the Members should act in accordance with the principles set forth in the seven paragraphs into which Article 2 is divided. It is evident, however, that, technically, as a statement of principles, it leaves much to be desired and merits the criticism levelled at it by several delegations at San Francisco, more especially in the debates of the Drafting Committee and Committee 1 of Commission 1. In effect, the first paragraph of this Article deals with the principle of juridical equality of States; the second imposes the duty of fulfilling the obligations assumed under the Charter, the third makes mandatory the settlement of international disputes by peaceful pacific means; the fourth consecrates abstention from the threat or use of force; the fifth prescribes the duty of co-operation to prevent the use of force; the sixth provides that the organization will make those States which are not Members of the United Nations behave in a manner which shall not endanger international peace and security; and lastly, the seventh excludes from joint action by the United Nations matters falling essentially within the domestic jurisdiction of States.

It will be seen that this Article is far from being a true enumeration of principles of international law, inasmuch as all its clauses, save the first, are drafted in the form of treaty engagements.

At the Pan American conferences efforts have been made on several occasions to formulate declarations of principles, generally under the denomination of American principles. Yet, these enumerations are all incomplete.

The Montevideo Convention on Rights and Duties of States contains fifteen articles, of which eleven are normative; among these several of the basic principles of international law are missing. On the other hand, notwithstanding the title of the Convention, some of its articles in no way define rights or duties, for instance, the second, fifth, sixth and seventh articles. It is also debatable whether article 1 really defines a duty of the State, since it only states the conditions which are required for the existence of the State. In my opinion, this article is out of place in the convention because if a given people does not satisfy these conditions it is not a State and, therefore, it cannot have any duties as such. On the other hand, if a State exists, that is because it fulfils the conditions necessary for its existence, and as it does in fact exist, it cannot number among its duties that of possessing the attributes which are a condition precedent to its existence. Its duties are those which arise for it as a State and not those of fulfilling the conditions required to become what it already is.

Article 2, which reads: "The federal State constitutes a sole person in the eyes of international law", does not express either a right or a duty, but merely a truth of international life, more appropriately to be stated in legal textbooks than in a convention designed to proclaim rights and impose obligations, the one and the other of a specific character.

The Buenos Aires Conference issued a declaration which, besides

stating the vital dogma of continental solidarity, attempts an enumeration of principles. Of these, however, it barely covers four.

The Eighth Pan American Conference issued in Lima the so-called "Declaration of American Principles", consisting of eight articles of which the first five state principles. The remaining three are remarks of assertions lacking entirely reciprocally binding or mandatory character.

And lastly, the Conference on Problems of Peace and War held in Mexico in 1945 issued the so-called Declaration of Mexico consisting of seventeen articles, covering some of the basic principles, but including also mere statements that really have no place in a multilateral instrument which should offer positive formulae, mandatory or obligatory in character, or formulae yielding, at least, a clear indication of a right or duty of the States. The following will serve as an example:

"14. Education and material well-being are indispensable to the development of democracy.

"15. Economic collaboration is essential to the common prosperity of the American nations. Want among any of the peoples, whether in the shape of poverty, malnutrition or ill-health, affects each one of them, consequently all of them jointly."

More far-reaching than all statements above referred to was that presented in 1931 by the eminent Chilean internationalist, Dr. Alejandro Alvarez, consisting of sixty articles distributed under eight headings and covering in fact the whole subject matter of international law. Viewed as an epitomized codification of international law, this work seems too short, whilst viewed as a declaration of the rights and duties of States contained in a brief concise normative instrument like that adopted at Montevideo, it is too extensive.

The need for a declaration incorporating *all* the basic principles that are the sources of the rights and duties to which the States should adjust their mutual relations, is hence evident. Such a document may be drafted by extracting from the various declarations, resolutions, public treaties and other multilateral instruments or acts all elements of technical value for the purpose of formulating a precise, concise, harmonious and complete body of doctrine, free alike of superabundance and of insufficiency and truly adapted to the purpose of those pronouncements.

In this line of thinking, I have attempted a new draft embodying all the cardinal principles which are to be found here and there in the aforementioned texts, but discarding whatever does not properly constitute real law but mere abstract statement. In a word, I have attempted a draft which should be a true epitome or syllabus of the basic elements of the law by which the States should govern their mutual relations in the community of nations.

The declaration drafted by me consists of twenty-four articles containing as many principles expressed in the form of rights or duties and, occasionally of both in a single article. For this new draft I have availed myself of the following texts as sources:

The Charter of the United Nations;

The Montevideo Convention on Rights and Duties of States (1933);

The Declaration of Mexico (1945);

The Act of Chapultepec (1945);

The Lima Declaration of American Principles (1938);

The Convention and Resolutions of the Buenos Aires Conference on the Maintenance of Peace (1936);

The Postulates, Principles and Proposals concerning Future International Law, presented by the Committee of Jurists presided over by Dr. Manley O. Hudson (1944);

The Declaration of the Rights and Duties of Nations prepared by James Brown Scott and adopted by the American Institute of International Law on 6 January 1916;

The Covenant of the League of Nations (1919).

The articles of the proposed statement have been grouped according to their interrelation to each other.

According to this method, the first three articles deal with the matters which come first in the natural order of things, to wit: the existence of the State, the recognition of this fact, and the doctrine that the right of the State to exist and develop is independent of such recognition.

There follow three articles (numbers 4, 5 and 6) which set forth the doctrine of the independence of States, comprising the three principles that may be said to constitute the three main aspects of the concept of sovereignty, i.e., independence, non-intervention and legal equality.

The manifestation of sovereignty in tangible form is jurisdiction, which constitutes the subject matter of article 7; and following on this question of jurisdiction, article 8 defines the norm which I consider right in matters of diplomatic intervention and which itself contains the Calvo Doctrine—a doctrine especially dear to the legal mind of America and accepted by the majority of lawyers of the world.

The two following articles refer to the rights of the State. The ninth deals with the respect of those rights and the tenth with the limit set to them, which is none other than the rights of others.

Articles 11 and 12 are closely related and refer, the first to the observance of treaties and the second to the fulfilment of international obligations in general.

Articles 13 and 14 deal with the authority of international law, including, naturally, everything agreed upon in the Charter of the United Nations and in the Statute of the World Court, which are international treaty law. Article 13 proclaims that international law is obligatory for all States. Article 14 defines its national and international scope.

The four articles that follow contain the general doctrine of submission to law and the proscription of force. The fifteenth establishes as a general duty of States the settlement of their disputes by peaceful means; the sixteenth pronounces the condemnation of war and force, thereby including the Drago Doctrine which prohibits the recovery of debts of States by coercive action. As an exception to the general rule concerning the use of force, article 17 accepts the right of legitimate defence in the terms of Article 51 of the Charter of the United Nations. Lastly, article 18, which is really a corollary of article 16, establishes as a duty of States the refusal to recognize territorial acquisitions obtained by force.

There follow immediately two articles that deal with international co-operation. Article 19 states the duty to co-operate in the prevention or



suppression of violence; and article 20 refers to co-operation in the pursuit of the general objectives of the community of States.

The two articles that follow deal with two duties that conduce to the preservation of peace. Number 21 establishes the obligation on the part of the State to maintain within its territory just conditions that will not constitute a threat to peace and international order or violate the dictates of justice and humanity. Article 22 limits itself to the exclusive duty of the State not, by action or omission, to foment civil disturbances in other States.

The next two articles are not interrelated.

The first, article 23, establishes the principle of equality of opportunity and of interdependence and co-operation in the economic sphere.

Article 24, the last in the declaration, is virtually consequential upon, and is a requisite of, all the precepts previously set forth; it is based on the provision of Article 103 of the Charter of the United Nations. This final article lays it down as a duty of the State, that it should refrain from concluding agreements that are inconsistent with its international obligations, both those which arise generally out of international law and those specifically imposed by the San Francisco Charter.

There are, of course, many principles of international law that are not included in the draft declaration, but I think that the twenty-four articles to which I have referred comprise what can be called *fundamental principles*, that is to say the basic norms of the co-existence of States as members of a legal community. It should be pointed out in this connexion that many principles of international law are implicitly covered by some of the clauses of the draft.

Four of these articles are very closely related, and must be understood to embrace many principles of international law which are of manifest importance but are not mentioned by the declaration. These articles are the following:

Article 13, which sets forth as a general rule, the authority of international law; article 12, which asserts the duty of States, to fulfil their international obligations; article 9, which lays down the obligation to respect the rights of others; and article 10, which states that the limit set to the exercise of the rights of one State is the exercise of their rights by other States.

Thus, the reign of international law, being established among the States, and all the States being required to fulfil the obligations that arise for them under that law, it is evident that article 13 and the related articles cover the principles of international law which govern, *inter alia*, the following matters:

1. Freedom of navigation on international waterways;
2. Territorial waters;
3. Peaceful use of air space over national territories;
4. Use of radio-electric channels and the need for interdependence and co-operation in the use of electro-magnetic waves;
5. Maritime and land neutrality;
6. Right of legation and diplomatic immunities;
7. Right to consular representation;
8. Condition of aliens;

9. Relations ruled by private international law;
10. Public treaties;
11. Asylum;
12. Duties of States in case of civil war;
13. Responsibilities of States in case of civil war;
14. In regard to the States of the New World, the principle of *uti possidetis* as criterion or norm for the decision of frontier problems; and
15. The principle of continental solidarity that unites the American Republics by virtue of their regional agreements.

It is a well known fact that there is no unanimity of view as to the principles governing these matters, and that what, in the opinion of some States and jurists, should be considered an accepted rule of international law, is not so regarded by other States and jurists. If, however, such a divergence of opinion should arise as to what constitutes the duty of the State, under article 13 and related clauses, it will have to be resolved by peaceful means, mainly through arbitration or international justice, under article 15. In other words, so long as international law has not been codified, it will be for the courts of arbitration and the International Court of Justice to determine which are the true rules of international law. Even when the codification of international law has taken place, and even after the Declaration of the Rights and Duties of States has been made, there is no doubt that there will occasionally be disagreements between two States in regard to the interpretation and application of the principles contained, not only in these sources of law, but even in the Charter of the United Nations itself, which is today positive law in the community of nations.

I have thought it convenient, in order to facilitate consultation and references, to state, after each article, its precedents and equivalents, so that the origin and scope of each one of the articles of the Declaration may be determined at a glance. Comparison will show that, although in the normative and fundamental aspects there are no inventions or innovations, i.e., nothing that deviates from what may be regarded as established by the legal thinking of mankind, in the matter of formulation, however, I have thought it convenient, for the sake of simplicity and of that method which is necessary in a document of this kind, occasionally to merge into a single article principles which have been culled from sources wholly unconnected and separated by a great interval of time.

This is true, for instance, of article 16, which refers, in a general way, to the condemnation of wars of aggression and of force. This article combines the proscription of aggressive war as an instrument of national and international policy, in the now classical terms of the Havana Declaration and the Kellogg-Briand Pact, using the text of section 4 of Article 2 of the Charter of the United Nations almost *ad pedem litterae*, but adding the phrase "or for the recovery of public debts from another State", thus expressly including within the scope of this article the celebrated Drago Doctrine.

It may be pointed out in this connexion that the Drago Doctrine should be regarded as included in the aforesaid clause of the United Nations Charter, which forbids "the use of force against the territorial integrity or political independence of any State". It is evident that coercive ac-

tion of the kind taken against Venezuela by Germany, England and Italy in 1902 and 1903—an action which led to the declaration of the famous doctrine of the Argentine minister—constitutes an attack on the political independence of the State subjected thereto. It follows inevitably that Article 2 of the Charter of the United Nations has implicitly incorporated the Drago Doctrine. In order, however, to call attention to the matter as well as to make the article as clear as possible in this respect, I have included in it the additional provision that it will not be permissible to resort to force of threats or force “for the recovery of public debts from another State”.

On the other hand, ideas reflecting a like doctrine are to be found in two other articles of the declaration. Thus, in article 7, concerning the exclusive jurisdiction of the State, I have combined the clear text of the Declaration of the Rights and Duties of Nations, adopted by the American Institute of International Law in 1916, with the final part of article 9 of the Montevideo Convention on Rights and Duties of States establishing that “foreigners may not claim rights other or more extensive than those of nationals”.

This second part of the article is, in reality, part of the Calvo Doctrine which is also embodied in article 8, concerning diplomatic intervention, which lays down the duty of the State not to allege a denial of justice so long as its nationals have not first appealed to the local courts of justice. Of the Calvo Doctrine there remains to be mentioned the more concrete question of the liability of the States for damages sustained by aliens as a result of civil disturbances; that liability is subject, however, in case of dispute, to the decisions of international justice or arbitration regarding the interpretation and application of the principles concerned.

Lastly, I would like to call the attention of the jurists who may consider this draft to the following point which I would repeat and emphasize. This declaration does not contain what may be called *postulates* of international law, that is to say, dogmas or maxims which do not, really, establish rights or duties of States, but merely expound certain truths of international life, without stating in any specific, concrete, direct or positive manner what could be properly called a *right* or *duty*. It has been my intention that all such clauses as specifically state a right or a duty be included in my draft. Consequently, it will be useless to look in the declaration for most of the postulates to be found in juridical works of acknowledged merit, as for example, the splendid drafts by Alvarez and Maúrtua which have already been mentioned, or some of the inter-American instruments and acts. This is true, for example, of article 13 of the Alvarez draft, which establishes that the relations between States are governed by international law; it is also true of article 21, which lays down that international law forms part of the legislation of each State; of article 29, which deals with juridical equality; and of article 35, which establishes the principle of non-intervention.

Of the fifteen articles which constitute the Normative Law of Maúrtua, I would point out that eleven find an equivalent or corresponding provision in as many articles formulated by me, but I have not included those bearing numbers I, X, XII and XIV, as their text is merely doctrinal and explanatory.

Of the postulates which were put forward by the Committee of Jurists, presided over by the distinguished judge of the Permanent Court of International Justice, Dr. Manley O. Hudson, I have taken the third, which is not merely explanatory, but mandatory and concrete, inasmuch as it implies the *duty* of every State to adjust its conduct to international law in its relations with other States and with the community of States.

The draft which I propose refers, it will have been noted, only to the duties of the State towards other States. The duties of the State towards individuals are dealt with in the draft Declaration of the Essential Rights and Liberties of Man which I proposed at the San Francisco Conference and to the first Assembly of the United Nations on behalf of the delegation of Panama, and to which I made reference at the beginning of this statement.

Finally, it may be mentioned that while the declaration includes the most fundamental rights of States, the great majority of the articles establish duties of the States, as the following table will show:

<i>Article</i>	<i>Matter</i>	<i>Contents</i>
1.	Existence of the State	Right
2.	Recognition of the existence of the State	Right
3.	Existence of the State independent of recognition	Right
4.	Independence	Right and duty
5.	Non-intervention	Duty
6.	Equality	Right
7.	Jurisdiction	Right
8.	Diplomatic intervention	Right and duty
9.	Respect of rights	Right and duty
10.	Limitation of rights	Duty
11.	Observance of treaties	Duty
12.	Fulfilment of international obligations	Duty
13.	Authority of international law	Duty
14.	Scope of international law	Duty
15.	Peaceful settlement of disputes	Duty
16.	Condemnation of war and of force	Duty
17.	Legitimate defence	Right
18.	Repudiation of conquest	Duty
19.	Co-operation against force	Duty
20.	Co-operation for the ends of the community of nations	Duty
21.	Maintenance of just conditions	Duty
22.	Duty to refrain from encouraging disturbances in other States	Duty
23.	Equality of opportunity and economic interdependence	Duty
24.	Pacts inconsistent with international obligations	Duty

Such is the draft which I submit to the learned consideration of the internationalists and statesmen. I should be happy and grateful to receive constructive criticisms which may enable me to correct errors and perfect, as far as it is possible, this modest effort towards juridical harmony in the international field.

## IV. ANNOTATIONS TO THE DRAFT DECLARATION

### ARTICLE 1

#### THE RIGHT TO NATIONAL EXISTENCE

*Every State has the right to exist and the right to protect and preserve its existence; this right does not however imply that a State is entitled to commit, or is justified in committing, unjust acts towards other States in order to protect and preserve its existence.*

#### A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

##### *Denmark*

"This item seems to be superfluous and the wording too abstract and tautological. The very question is, what is to be understood by 'unjust acts'. It is proposed to give the provision a more concrete wording, e.g., in accordance with Article 10 of the League of Nations Covenant; cf. also item [article] 16:

'Every State is entitled to recognition of its territorial integrity and existing political independence. Changes herein can only be made with its own voluntary consent.'"

##### *Dominican Republic*

"The texts of the first and third rights of States might be combined, one dealing with the *right to national existence*, and the other with the *right to existence, independent of recognition.*"

##### *Greece*

"Substitute the following wording: 'Every State has the right to exist.' We think it sufficient to proclaim the right to existence. The right to maintain existence is covered by the right of legitimate defence laid down in article 17 of the draft. The right to exist implies the right to maintain existence. The sentence: 'this right does not, however, imply that a State is entitled to commit, or justified in committing, unjust acts towards other States in order to protect and preserve its existence', is too vague, particularly because of the use of the term 'unjust', and should be deleted."

##### *India*

"Every State has the right to exist, and subject as hereinafter provided:  
"(1) The right to protect itself against an impending injury of a grave character which is immediately threatened from the territory of

another State in circumstances where an appeal to the latter would be of no avail;

"(2) The right to protect itself against an impending injury of a grave character which is threatened from the high seas by a vessel flying a foreign flag;

"(3) The right to exercise a jurisdiction over vessels reasonably suspected of piracy, to the extent of ascertaining their true character;

"(4) The right in time of war to protect itself against acts done by neutrals likely to prejudice the conduct of its military or naval operations;

"(5) The right to vindicate any infraction of its territorial laws by immediate pursuit and arrest;

"(6) The right to intervene for the protection of the person, property and interests of its nationals outside the limits of its own territory."

"In the alternative the Government of India suggests that the second part of this article should read as follows:

'This right does not, however, imply that a State is entitled to commit or is justified in committing acts towards other States which are not in accordance with the principles of international law or the United Nations Charter.'

#### *United Kingdom*

"His Majesty's Government consider that a declaration on the rights and duties of States should begin with a definition of the word 'State'. This seems to be essential for the interpretation of the whole declaration. . . ."

"The analogy between a State and a natural person cannot be carried to the length that it should be held that a State cannot of its own free will put an end to its own existence as a State, for instance by amalgamating with another State or entering into a federation. The real question, however, which arises in this connexion (with which the existing draft does not deal) is whether in any circumstances and if so in what, an end can be put to the existence of a State otherwise than by the free will of that State. It would appear that this is a question which must be answered one way or the other, if the draft is to contain any provision on the right of existence, and it is hoped that the International Law Commission will consider it."

#### *Venezuela*

"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 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."

## B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

### 1. *Treaties and Conventions*

#### *The Bogotá Charter (1948)*

Article 11. The right of each State to protect itself and to live its own life does not authorize it to commit unjust acts against another.

### 2. *Resolutions, declarations and projects adopted by inter-governmental bodies*

#### *Pan American Union. Governing Board (1946)*

IV. The conservation of peace based on justice and law is the fundamental criterion of conduct in the relations among the American States. Every State has the right to a peaceful and secure existence.

### 3. *Draft declarations proposed by Governments*

#### *Cuba (1945)*

1. Every State has the right to exist, to protect and maintain its existence. This right does not imply the right, or justify any action by a State, to protect or maintain its existence by committing illegal acts against innocent States or States which are not aggressors.

#### *Ecuador (1947)*

VI. It is the duty of States to guarantee the political existence of each and all of them and to withhold recognition of new States which attempt to constitute themselves on the basis of the dismemberment of existing States.

### 4. *Declarations by non-governmental organizations and scientific institutions*

#### *American Institute of International Law (1916)*

1. Every nation has the right to exist, and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the State to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending States.

#### *International Juridical Union (1919)*

1. The State has the right to conserve and perpetuate its existence.

### 5. *Statements by jurists and publicists*

#### *Leone Levi (1888)*

67. The State has a right to do whatever is calculated to secure its own preservation and independence.

*Albert de Lapradelle (1921)*

Article 3. None of them has the right, even in order to safeguard its own existence, to undertake any steps against that of another nation which does not threaten it.

*Victor M. Maúrtua (1931)*

Article 5. The conservation of the State is a purpose justifying resistance in self-defence. But no right of action exists, on the ground of necessity, against the right of another State.

*Francesco Cosentini (1935)*

31. *Right to constitute a State.* Every people has the right to constitute itself as a State, under a supreme Power, in a given territory, by forming a legal entity with a view to the attainment of collective aims.

99. *Right of existence.* Every State has the right to exist and to protect and preserve its existence. That right does not imply the power to commit, or justify the commission by a State, of unjust actions against other States.

## ARTICLE 2

## RECOGNITION OF THE EXISTENCE OF THE STATE

*Every State is entitled to have its existence recognized. The recognition of the existence of a State merely signifies that the State recognizing it accepts the person of the State recognized, together with all the rights and duties which arise out of international law. Recognition is unconditional and irrevocable.*

## A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

*Greece*

"This article should be shortened to read as follows:

'Every State is entitled to have its existence recognized.' The rest of the wording concerning the detailed application of the right to recognition of existence should be deleted."

*India*

"With a view to allowing a State the discretion to recognize or not a particular State and removing the unconditionality and irrevocability of recognition, the Government of India suggest either the omission of this article or its replacement by an article in the following terms:

'Every State has the right to recognize another State. The recognition of the existence of a State signifies that a State recognizing it accepts the person of the State recognized together with all the rights and duties which arise out of international law.'



*United Kingdom*

"His Majesty's Government consider that the second point to be dealt with is the question of recognition of States, which appears in articles 2 and 3 of the present draft. They suggest that it should consist of two propositions: (a) that where an entity fulfils the conditions of statehood as laid down in the definition, there is a duty on all other States to recognize it; (b) that there is also a duty on all States not to recognize as a State any entity which does not fulfil these conditions. Though neither point is free from controversy in current doctrine, His Majesty's Government agree with the draft declaration in considering that (i) the recognition and non-recognition of States is a matter of legal duty and not of policy. Inevitably there is bound to be considerable scope for political judgment in deciding whether an entity fulfils the conditions for recognition as a State. They consider, nevertheless, that the interests of international law require that the sphere, necessarily left to a purely political judgment, should be reduced to as narrow limits as possible and that international relations will benefit by the question of recognition and non-recognition being regarded, as far as possible, as a matter of legal duty and removed to the utmost practical extent from the political sphere; (ii) the existence of a State should not be regarded as depending upon its recognition but on whether in fact it fulfils the conditions which create a duty for recognition. It should be made clear that recognition of an entity as a State in no way requires the entry into diplomatic, or any other particular relations with, the entity so recognized. Whether a State enters into diplomatic or other relations with another State is, and must remain, a matter for purely political decision. On the other hand, the entry into diplomatic or other relations with an entity does necessarily imply that the entity is recognized as something. Whether it implies recognition *de jure* or *de facto* as a State, or as a belligerent community, or as an insurgent Government, will depend upon the particular facts with regard to the relations so entered upon. It is thought that the above suggestions cover the ground which is at present covered by articles 2 and 3 of the existing draft.

"There is some reason to think that the whole subject of recognition of States, Governments (*de jure* and *de facto*), belligerency and insurgency is one which might well form the subject of a special study by the International Law Commission. There is an abundance of material on the subject, and it is thought that a full consideration of this matter by a body such as the International Law Commission, leading to the formulation of a certain number of rules or principles, might very greatly conduce to the development of international law, whether or not this formulation was, in the ultimate result, accepted by States in the binding form of an international convention."

## B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

1. *Treaties and Conventions**Convention of Montevideo (1933)*

Article 6. The recognition of a State merely signifies that the State which recognizes it accepts the personality of the other with all the rights and duties determined by international law. Recognition is unconditional and irrevocable.

*The Bogotá Charter (1948)*

Article 10. Recognition implies that the State granting it accepts the personality of the new State, with all the rights and duties that international law prescribes for the two States.

2. *Resolutions, declarations and projects adopted by inter-governmental bodies**International Commission of American Jurists (1927)*

## Project II. Existence—Equality—Recognition.

Article 6. The recognition of a State signifies that the State which recognizes it accepts the personality of the other State, with all the rights and obligations established by international law.

Recognition is unconditional and irrevocable.

*Pan American Union. Governing Board (1946)*

Article VII. The political existence of a new State is independent of its recognition by other States. Recognition—which is unconditional and irrevocable—signifies that the States which recognize the new State accept its personality with all the rights and duties which international law prescribes.

3. *Draft declarations proposed by Governments**Ecuador (1947)*

Article VI. It is the duty of States to guarantee the political existence of each and all of them and to withhold recognition of new States which attempt to constitute themselves on the basis of the dismemberment of existing States.

4. *Declarations by non-governmental organizations and scientific institutions**American Institute of International Law (1925)*

Project No. 6. Recognition of new nations and of new Governments.

Article 1. The recognition of a nation by an American Republic has for its object to accept its personality with all the rights and all the duties established by international law.

Article 3. Recognition of a new nation should be made unconditionally. It may be express or tacit. Tacit recognition results from any act of an American Republic implying the intention to recognize the new nation.

5. *Statements by jurists and publicists*

*Pasquale Fiore* (1890-1915)

59. Every State having some form of political constitution and a Government capable of entering into political relations with other States and of assuming responsibility for its acts, has the right in its relations with other States to be considered as politically constituted.

*Albert de Lapradelle* (1921)

Article 1. Every people which has established in the territory which it occupies a Government capable of maintaining order internally, and of co-operating externally in the continually developing organization of relations founded upon the common good, justice, and peace, is entitled to international recognition of its nation as a State.

*Victor M. Maurtua* (1931)

Article XV. The political existence of the State is a matter independent of the recognition of the State. This recognition is simply declarative, and irrevocable. International relations are outside the sphere of political forms, systems of economic and social organization, and transformations of Governments. Any possible modification of international relations, upon occasions of changes of Government, shall be determined solely by the lack of a convincing demonstration on the part of the States involved of a capacity to carry on their juridical relations in the international community.

*Francesco Cosentini* (1935)

40. *Recognition of international personality.* While subject to international law from the inception of its legal existence, the State nevertheless cannot assume the quality of a person in international society, nor enjoy and exercise its international rights in regard to other States except in so far as it has entered into relations with, or has been recognized by them.

### ARTICLE 3

#### THE RIGHT TO EXISTENCE, INDEPENDENT OF RECOGNITION

*The political existence of the State is independent of its recognition by other States. Even before it has been recognized, the State has the right to defend its integrity and independence, to provide for its preservation and prosperity and, consequently, to organize itself as it sees fit, to legislate*

*in regard to its interests, to administer its services and to determine the jurisdiction and competence of its courts of justice.*

#### A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

##### *Dominican Republic*

See comments on article 1.

##### *Greece*

"This article should be confined to the simple statement that the political existence of the State is independent of its recognition by other States."

##### *United Kingdom*

See comments on article 2.

#### B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

##### 1. *Treaties and Conventions*

##### *Convention of Montevideo (1933)*

Article 3. The political existence of the State is independent of recognition by the other States. Even before recognition the State has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts.

##### *The Bogotá Charter (1948)*

Article 9. The political existence of the State is independent of recognition by other States. Even before being recognized, the State has the right to defend its integrity and independence, to provide for its preservation and prosperity, and consequently to organize itself as it sees fit, to legislate concerning its interests, to administer its services, and to determine the jurisdiction and competence of its courts. The exercise of these rights is limited only by the exercise of the rights of other States in accordance with international law.

##### 2. *Resolutions, declarations and projects adopted by inter-governmental bodies*

##### *International Commission of American Jurists (1927)*

Project II. States: existence, equality, recognition.

Article 5. The political existence of the State is independent of its recognition by other States. Even before recognition the State has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to adopt whatever organization it considers proper, to legislate concerning its own interests, to administer its own services, and to determine the jurisdiction and competency of its

tribunals. The exercise of these rights is limited only by the exercise of the rights of other States, by treaties and by the principles of international law.

*Pan American Union. Governing Board (1946)*

Article VII. The political existence of a new State is independent of its recognition by other States. Recognition, which is unconditional and irrevocable, signifies that the States which recognize the new State accept its personality with all the rights and duties which international law prescribes.

3. *Draft declarations proposed by Governments*

*Cuba (1945)*

1. (paragraph 2). The political existence of a State is independent of its recognition by the other States. A State has the right, even before recognition, to defend its integrity and independence, to provide for its maintenance and prosperity, to organize itself as it sees fit, to legislate on its interests, to administer its services, and to determine the jurisdiction and qualification of its courts.

4. *Declarations by non-governmental organizations and scientific institutions*

*American Institute of International Law (1925)*

Project No. 6. Recognition of new nations and of new Governments.

Article 2. The political existence of a nation is independent of any recognition. Consequently it has the enjoyment of the fundamental rights and it is bound by the fundamental obligations mentioned in the "Declaration of the Rights and Duties of Nations".

Article 3. Recognition of a new nation should be made unconditionally. It may be express or tacit. Tacit recognition results from any act of an American Republic implying the intention to recognize the new nation.

5. *Statements by jurists and publicists*

*Pasquale Fiore (1890-1915)*

60. Every State which is considered as politically constituted, is entitled to assume *jure suo* the status of a person, independently of the formality of recognition (compare rule 168) and may require in its relations with other States the application of international law.

61. Every State politically constituted must be considered *ipso jure ipsoque facto* as possessed of all the rights which ought to be considered as its rational rights and of the ability to assume international obligations in its relations with other States.

*Victor M. Maúrtua (1931)*

Article XV. The political existence of the State is a matter independent of the recognition of the State. This recognition is simply declarative, and irrevocable. International relations are outside the sphere of political

forms, systems of economic and social organization, and transformations of Governments. Any possible modification of international relations, upon occasions of changes of Government, shall be determined solely by the lack of a convincing demonstration on the part of the States involved of a capacity to carry on their juridical relations in the international community.

*Francesco Cosentini (1935)*

40. *Recognition of international personality.* While subject to international law from the inception of its legal existence, the State nevertheless cannot assume the quality of a person in international society, nor enjoy and exercise its international rights in regard to other States except in so far as it has entered into relations with, or has been recognized by, them.

41. *Purpose of recognition.* A State is recognized in order that its international personality may be established by the attribution of all the rights and obligations incumbent on it under the law of nations. The Government of a State is recognized simply in order that diplomatic relations may be entered into with the said State or the continuity of existing relations ensured.

46. *Political existence and recognition.* The political existence of a State does not depend on recognition. The State consequently enjoys the fundamental rights, and is bound by the fundamental obligations of international society even if it is not recognized.

47. *Rights which do not depend on recognition.* Pending its recognition the State has the right to defend its integrity and independence, provide for its preservation and prosperity, and consequently set up what organization it pleases, legislate on its interests, administer its services, and determine the jurisdiction and competence of its courts. The exercise of these rights is only limited by the exercise of the rights of other States in conformity with the law of nations.

## ARTICLE 4

### THE RIGHT TO INDEPENDENCE

*Every State has the right to its own independence in the sense that it is free to provide for its own well-being and to develop materially and spiritually without being subjected to the domination of other States, provided, always that in so doing, it shall not impair or violate the legitimate rights of other States.*

#### A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

##### *Greece*

"This article should be replaced by the following text: 'Every State shall be bound to respect the independence and territorial integrity of

other States and to prevent the organization on its territory of activities directed against another State or designed to foment civil war on the territory of another State' ”.

### *United Kingdom*

“The draft then might proceed to the matters dealt with in articles 4 and 5. These two articles seem to His Majesty’s Government to go together. They are two aspects of the same matter. Independence in one sense will have found its place in the definition of a State. Article 4 deals with the exercise of independence, or, as it may sometimes be put, the exercise of sovereignty, or the exercise of jurisdiction. It would seem that the general principle is that, provided that a State keeps within the limits prescribed by international law and treaties, its freedom to act as it pleases must be recognized and respected by all other States. But the question arises as to whether there are or not exceptions to this principle. The instances of a State acting with the utmost barbarity and inhumanity to its own nationals, or making preparations which appear to foreshadow a policy of aggression, or again of pursuing a course which leads to the economic strangulation of another State, occur to the mind in this connexion. These points are touched on to some extent in articles 21 and 23 of the draft. The question, whether these limitations are regarded as exceptions to the general principle of freedom of action within the limits of international law and treaties, depends upon whether these limitations are regarded as part of international law itself. The important doctrine of ‘abuse of rights’ may fall for consideration in this connexion. As stated above, it is thought that draft articles 4 and 5 are two facets of the same principle and that they should be expressed as such. Article 22 falls for consideration in close connexion with article 5. His Majesty’s Government fully recognize the principle which article 22 sets out to express. This principle is, it is thought, a particular and important aspect of the more general principle set forth in article 5. It is a question whether in the same context something should not be said as to the general right of each State to have such form of constitution and such forms of national institutions as it may decide for itself.”

## B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

### 1. *Treaties and Conventions*

#### 2. *Resolutions, declarations and projects adopted by inter-governmental bodies*

### *Atlantic Charter (1941)*

Third, they respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them.

### 3. Draft declarations proposed by Governments

*Cuba* (1945)

II. Every State has the right to independence, to secure its well-being and its free development without interference by other States, provided that in the pursuit of those objectives it does not violate or infringe upon the rights of other States.

### 4. Declarations by non-governmental organizations and scientific institutions

*American Institute of International Law* (1916)

Declaration of the Rights and Duties of Nations.

Every nation has the right to independence in the sense that it has a right to the pursuit of happiness and is free to develop itself without interference or control from other States, provided that in so doing it does not interfere with or violate the rights of other States.

*Ibid.* (1925)

Project No. 8. Fundamental rights of American Republics

Article 1. The following principles are declared to constitute American public law and shall be applied and respected in America by all nations. The American Republics, equal before international law, have the rights inherent in complete independence, liberty, and sovereignty. Such rights can in no way be restricted to the profit of another nation, even with the consent of the interested American Republics.

*International Juridical Union* (1919)

Article II. The State is independent. The independence of the State is to be understood in the sense that it may freely develop without interference on the part of any other State, acting on its own authority, in the exercise, either internal or external, of its activity.

*Inter-Parliamentary Union* (1928)

8. The independence of each State is inviolable. There is no right of conquest.

### 5. Statements by jurists and publicists

*Abbé Grégoire* (1793)

2. The nations are respectively independent and sovereign whatever may be the number of inhabitants composing them and the extent of the territory which they occupy.

*Pasquale Fiore* (1890-1915)

62. The rational international rights which every State possesses are those which by reason of its nature as an institution must be considered indispensable in order that it may exist, with its necessary characteristics. These are:

(a) The right of autonomy, independence and liberty.



*David Dudley Field* (1872)

“Sovereignty” defined.

12. Every nation is sovereign within its own jurisdiction; that is to say, it is, of right, independent of all foreign interference, and free to express and enforce its will, by action within its jurisdiction, without opposition from any foreign Power.

The independence and liberty thus enjoyed by each nation are not absolute, but are limited by the equal freedom and independence of others, by the provisions of this Code, and by the special compacts to which the nation is a party.

*Victor M. Maúrtua* (1931)

I. The competence of States is determined by international law. This determination comprises not only the field and the limits of competence, but also the modalities of an exercise of competence in so far as those modalities affect other States or the international community.

II. The political independence of States is the first object of international solidarity. States are obliged to withhold their recognition of situations, treaties and agreements which, in the judgment of the community, tend to destroy that (independence).

*Alejandro Alvarez* (1931)

Article 13. The State is sovereign.

Sovereignty is to be understood in the sense that the State is master in its own territory, that it has the right to govern itself, to enact laws within its borders, and to enter freely into relations with other States.

*Francesco Cosentini* (1935)

79. *Sovereignty.* Every State is sovereign in its jurisdiction, that is to say it is entitled to independence from all foreign intervention and free to express and execute its will within its jurisdiction without impediment from any foreign Power. This independence and freedom are not absolute; they are limited by the equal freedom and independence of other States and by the provisions of the international conventions and special treaties signed by every State.

80. *Scope of sovereignty.* The sovereignty of States extends over their actual territory, their territorial waters, the corresponding air space, and the persons and things situated within these limits.

81. *Imprescriptible and inalienable sovereignty.* In principle, sovereignty is imprescriptible and inalienable.

82. *Rights implicit in sovereignty.* By virtue of its sovereignty, each State has the right: (1) to draw up and amend its constitution; (2) to have an independent legislation for its people and its territory; (3) to govern and administer itself autonomously; (4) to choose its officials freely; (5) to appoint and accredit its representatives to other States.

95. *Right to independence.* Every State has the right to independence. Independence for the State consists in being its own master in every respect (self-government). It is expressed by the right to free development without interference or control by other States, the right to prohibit, and if necessary, prevent any event taking place or any act being committed, within the territory subject to its sovereignty, which directly or indirectly implies or might imply the exercise of *publica auctoritas, jus imperii* or *jus juridicendi* by a foreign sovereignty.

101. *Legal freedom of States.* The freedom which belongs to every State in its relations with other States consists in the legal power to exercise an activity within the limits defined by international law and compatible with the possession of the same attribute by other States and with the exigencies of the regular organization of international society.

## ARTICLE 5

### THE DUTY OF NON-INTERVENTION

*No State has the right to interfere in the internal or external affairs of another State.*

#### A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

##### *Dominican Republic*

"The Dominican Chancellery suggests that articles 5 and 23 might be changed in such a way that the fundamental questions with which they deal, namely, the principle of non-intervention and equal treatment in international commercial relations, should be better defined.

"Thus article 5 might say:

*'The duty of non-intervention. No State has the right to interfere in the internal or external affairs of another State individually or in conjunction with others'*."

"In this manner, it would be made clear that States are bound not only to individual non-intervention but also to collective non-intervention—which an attempt has been made to introduce on some occasions—except in cases where international peace might be menaced and in accordance with the specific rules of the Charter of the United Nations."

##### *India*

"The proviso 'except in so far as permitted by the provision of the United Nations Charter or of the principle of international law' might be added to the article as it stands."

##### *United Kingdom*

See comments on article 4.

## B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

1. *Treaties and Conventions**Convention of Montevideo (1933)*

Article 8. No State has the right to intervene in the internal or external affairs of another.

*Additional Protocol relative to Non-Intervention (Buenos Aires, 1936)*

Article 1. The High Contracting Parties declare inadmissible the intervention of any one of them, directly or indirectly, and for whatever reason, in the internal or external affairs of any other of the Parties.

The violation of the provisions of this article shall give rise to mutual consultation, with the object of exchanging views and seeking methods of peaceful adjustment.

*Charter of the United Nations (1945)*

Article 2 (7). Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

*The Bogotá Charter (1948)*

Article 15. No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements.

2. *Resolutions, declarations and projects adopted by inter-governmental bodies**International Commission of American Jurists (1927)*

Project II. States: existence, equality, recognition.

Article 3. No State may intervene in the internal affairs of another.

*Declaration of Principles of Inter-American Solidarity and Co-operation (Buenos Aires, 1936)*

Intervention by one State in the internal or external affairs of another State is condemned.

*Declaration of American Principles (Lima, 1938)*

1. The intervention of any State in the internal or external affairs of another is inadmissible.

*Declaration of Mexico (1945)*

3. Each State is free and sovereign, and no State may intervene in the internal or external affairs of another.

*Inter-American Juridical Committee (1942)*

Reaffirmation of Fundamental Principles of International Law.

II. Hence no State may intervene in the internal or external affairs of another.

*Pan American Union. Governing Board (1946)*

VIII. Intervention by any one or more States, directly or indirectly, and for whatever reasons in the internal or external affairs of another State is inadmissible.

3. *Draft declarations proposed by Governments**Cuba (1945)*

II. Therefore direct or indirect intervention by a State in the internal or external affairs of another State for any reason whatever is inadmissible.

*Mexico (1945)*

No State has a right to intervene, directly or indirectly, and whatever be the reason, in the domestic or foreign affairs of another.

*Ecuador (1947)*

Article VIII. No State has the right to intervene in matters which appertain solely to the domestic jurisdiction of another.

4. *Declarations by non-governmental organizations and scientific institutions**American Institute of International Law (1925)*

Project No. 8. Fundamental rights of American Republics

Article 1 (paragraph 4). No nation has a right to interfere in the internal or foreign affairs of an American Republic against the will of that Republic. The sole lawful intervention is friendly and conciliatory action without any character of coercion.

*The International Law of the Future (1944)*

Principle 3. Each State has a legal duty to refrain from intervention in the internal affairs of any other State.

5. *Statements by jurists and publicists**Abbé Grégoire (1793)*

7. A nation has not the right to meddle in the government of the others.

*Pasquale Fiore (1890-1915)*

547. The principal international duties of States are:

(a) The duty of non-intervention.

*Baltasar Brum (1923)*

Article 8. With due allowance for the provisions that may be laid down in other clauses of the present Statutes, the rights and duties of members (of the Association) are:

(g) To refrain from intervention in any matter, of whatsoever nature, pertaining to the internal affairs of another country, except at the request of the authorities duly empowered to make such a request; and also to refrain from soliciting the intervention of the Association of American Countries in such matters.

*Victor M. Maurtua (1931)*

VI. Every individual policy of conservation or defence in a regional community must be confined within the limits of the exclusive competence of the State exercising that policy. The exercise of the said policy does not justify intervention in the exclusive affairs of another State or group of States.

Every permanent clause regarding protection of interests or international rights, affecting a regional group of States, must be bilateral and must, through free consent, develop solidarity in that group or regional community.

*Alejandro Alvarez (1931)*

Article 22. In the absence of special legal title, no State has the right to intervene, especially by force, in the internal or external affairs of another State without its consent, even if the person or property of its nationals is threatened.

The only form of intervention that is permissible is collective intervention on the part of all States or of a group of States in conformity with the provisions of pacts of world, continental, or regional organization.

*Francesco Cosentini (1935)*

96. *Non-intervention.* No State has the right to intervene in the internal or external affairs of another State against the will of that State. Friendly and conciliatory action without any constraint is the only legal form of intervention.

97. *Illegality of intervention.* Intervention cannot be legalized by the existence of a treaty authorizing it in the case of civil war, or by the formal consent of the Government against which a revolution has been started.

98. *Intervention and mediation based on conventions.* The law of nations does not admit of any intervention or mediation in the affairs of another State unless it is based on positive conventions or the right of every State to self-preservation.

## ARTICLE 6

### LEGAL EQUALITY

*Every State is, in law and before the law, equal to all the others which make up the community of States, and has the right to claim and assume, as among the Powers of the world, that position of equality to which natural law entitles it.*

#### A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

##### *Greece*

"This article should merely state the principle that States are juridically equal, the rest of the wording being a natural consequence of the adoption of that principle. Article 6 should follow article 3 and should simply say: 'Every State is, in law, equal to all the others which make up the community of States.'"

##### *India*

"The words 'and has the right to claim and assume, as among the Powers of the world, that position of equality to which natural law entitles it' may be deleted."

##### *Mexico*

"The Government of Mexico feels that for the purpose of substantiating and strengthening the very sound principle of the legal equality of States laid down by clause 6, it would be preferable to omit any allusion to philosophical ideas and hence not to refer to natural law as the basis of such equality, which is established in various international instruments."

##### *United Kingdom*

"Article 6 is an example of the difficulty of expressing in a legislative form a generally accepted principle. The essence, as His Majesty's Government understand it, is that all States enjoy an *equality* of rights but this does not mean that they have the *same* rights. The rights and duties of a State, which has a sea coast, are necessarily different from those of a State which is landlocked. The rights of a State, which is a member of an international organization, such as the United Nations, are different in some respects from those of States, which are not members of such an organization. Every State to some extent circumscribes, or increases, its rights and duties by the treaty commitments into which it has entered. His Majesty's Government doubt whether the words 'assume a position of equality' in article 6 of the draft are quite appropriate in a legal statement."

#### B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

##### 1. *Treaties and Conventions*

##### *Convention of Montevideo (1933)*

Article 4. States are juridically equal, enjoy the same rights, and have

equal capacity in their exercise. The rights of each one do not depend upon the power which it possesses to assure its exercise, but upon the simple fact of its existence as a person under international law.

*Charter of the United Nations (1945)*

Article 2 (1). The Organization is based on the principle of the sovereign equality of all its Members.

*The Bogotá Charter (1948)*

Article 6. States are juridically equal, enjoy equal rights and equal capacity to exercise these rights, and have equal duties. The rights of each State depend not upon its power to ensure the exercise thereof, but upon the mere fact of its existence as a person under international law.

2. *Resolutions, declarations and projects adopted by inter-governmental bodies*

*International Commission of American Jurists (1927)*

Project II. States: existence, equality, recognition.

Article 2. States are equal before the law, enjoy equal rights, and have equal capacity to exercise them. The rights of each are dependent not upon the power which it possesses to ensure the exercise of them but solely upon the fact of their existence as a person of international law.

*Inter-American Juridical Committee (1942)*

Reaffirmation of fundamental principles of international law.

III. States are juridically equal, in the sense that they have the same fundamental rights.

This equality derives from the existence of the State as a person of international law and not from the power which the individual State may possess to defend or maintain it.

In like manner this juridical equality is independent of the territorial size of the particular State or of the degree of its material progress.

In consequence, no State may be held bound by changes in the rules of law, whether in political or in economic matters, to which it has not freely consented.

*Declaration of Mexico (1945)*

2. States are juridically equal.

*Act of Chapultepec (1945)*

1. That all sovereign States are juridically equal among themselves.

*Pan American Union. Governing Board (1946)*

Article I. States are juridically equal among themselves. They have the same rights and the same obligations. This equality derives from the existence of the State as a person of international law and not from the power which the State may possess to defend or maintain it nor from the territorial size or degree of progress of each State.

### 3. Draft declarations proposed by Governments

#### *Italy (1919)*

1. Every State is equal before the law. Inequalities of power cannot be invoked in justification of any act of commission or omission, or of any claim or pretention incompatible with the respect due to the rights of others and with the fulfilment of international duties.

#### *Cuba (1945)*

III. All States are equal before the law, and each one has the same rights as any other which is a member of the international community. In the same way, all States have the right to claim and to assume, among the Powers of the world, the equal and independent position to which they are entitled by natural and divine laws.

#### *Brazil (1945)*

I. All sovereign States are legally equal to one another.

#### *Ecuador (1947)*

Article I. States are juridically equal between themselves; they have the same rights and the same obligations.

### 4. Declarations by non-governmental organizations and scientific institutions

#### *Seventh Universal Peace Congress (1896)*

Article 14. Nations are sovereign and equal.

#### *American Institute of International Law (1916)*

III. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, "to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them".

#### *Ibid. (1925)*

#### Project No. 5. Nations.

Article 2. Nations are legally equal. The rights of each do not depend upon the power at its command to ensure their exercise. Nations enjoy equal rights and equal capacity to exercise them.

#### *International Juridical Union (1919)*

Article III. States are equal before the law.

Equality in law implies equal co-operation in the regulation of the interests of the international community, without necessarily conferring the right of equal participation in the constitution and functioning of the organs established for the administration of these interests.



*Inter-Parliamentary Union (1928)*

3. The members of the community of States are equal before the law. Each of them possesses within that community only those rights conferred on it by the law of nations.

5. *Statements by jurists and publicists**Jeremy Bentham (1827)*

Article 2. The equality of all is hereby recognized by all.

*David Dudley Field (1872)*

Equality in rights and rank.

16. All nations are equal in rights. No distinction in rank between them is permitted; and wherever, in treaties or other official acts, two or more of them are named in juxtaposition, they shall be named in alphabetical order, according to the first letter of their names, respectively, as expressed in the French language, except that each nation may have its own name first in the document which it retains.

*Pasquale Fiore (1890-1915)*

62. The rational international rights which every State possesses are those which by reason of its nature as an institution must be considered indispensable in order that it may exist, with its necessary characteristics. These are:

(c) The rights to legal equality.

*Henri La Fontaine (1916)*

Article 25. The States are equal, whatever may be the extent of their territory or the importance of their population. Equal respect is assured to the name, flag, seal, blazon and device adopted by each State.

*Albert de Lapradelle (1921)*

Article 2. Without distinction of race or religion, or of power, States are, in proportion to their degree of civilization, that is to say, of consciousness of their international duties, free and equal in law.

*Victor M. Maúrtua (1931)*

IX. States have the right to require that no one of them shall attribute to itself, in reciprocal relations or in relations with the (international) community, rights different from or more extensive than the rights enjoyed by the other States. All must participate equally in the creation and regulation of international institutions. In principle, there shall be no differences as to co-operation in the functioning of these institutions. Those differences in actual fact which may prove necessary by way of exception, shall be determined exclusively by greater fitness for the rendering of more efficacious services in the administration or conduct of general interests. The said differences shall be conceived of as a fortuitous

functioning in behalf of international public welfare. They may not be transformed into instruments of national policy or motives for domination.

*Alejandro Alvarez* (1931)

Article 16. States are equal before the law.

Juridical equality does not necessarily confer the right of equal co-operation in the constitution and functioning of the organs established to administer the interests of the international community.

*Francesco Cosentini* (1935)

126. *Legal equality of States.* From the legal point of view all States are equal in international society whatever their race, the extent of their territory or their population. Nations enjoy equal rights in law, equal legal capacity, and an equal power to exercise their rights and fulfil their obligations.

## ARTICLE 7

### EXCLUSIVE JURISDICTION

*Every State is entitled to exercise exclusive jurisdiction over its territory and over all nationals or foreigners within that territory.*

*Foreigners may not claim rights different from, or more extensive than, those enjoyed by nationals.*

#### A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

*Denmark*

"Denmark has a limited consular jurisdiction in Egypt."

*Greece*

"As there are exceptions to the rule laid down in this article, it should be drafted as follows: 'Every State is, in principle, entitled to exercise exclusive jurisdiction over its territory.'

"The second paragraph of article 7 should be deleted as it does not correspond to existing international law."

*India*

"The second sentence dealing with rights is out of place in the article on jurisdiction. It may be omitted."

*Mexico*

"The Government of Mexico interprets clause 7 (which concerns the exclusive jurisdiction of the State over its territory and over all nationals or foreigners within that territory) to mean that the State is under no obligation to grant to aliens all the rights enjoyed by nationals, for such a procedure would, at least so far as political rights are concerned, be improper."

*United Kingdom*

"His Majesty's Government cannot entirely agree with the formulation of either of the two sentences in article 7. It is, they consider, not correct that a State's jurisdiction over foreigners within its territory is completely exclusive. International law recognizes both territorial jurisdiction over all persons and things within the territory, and a personal jurisdiction over nationals wherever they may be. In general, in case of conflict, the personal jurisdiction cedes to the territorial jurisdiction. If the International Law Commission could produce a formulation of the relationship of the State's territorial and personal jurisdictions, they would perform a great service.

"The second sentence of this article is not in accord with existing international law, as His Majesty's Government apprehend it. There is much international authority for the existence of a minimum international standard, with which States are obliged to comply in their treatment of foreigners, whether or not they do so in the treatment of their nationals. If, and in so far as international law develops so as to limit the domestic jurisdiction of States in the treatment of their nationals to such an extent that every treatment of a national, which falls below the international standard, is a breach of international law (and therefore a matter on which other States may intervene), then the existing principle of international law with regard to the 'international standard' will apply to both nationals and foreigners. Unless and until that position is reached, His Majesty's Government consider that the doctrine of the minimum international standard, with regard to the treatment of foreigners, remains part of international law and that agreement to abolish that doctrine will not be attained. In fact, this point was one on which the Hague Conference of 1930 with regard to the responsibility of States broke down. His Majesty's Government are very willing that the International Law Commission should devote most careful study to this question."

## B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

### 1. *Treaties and Conventions*

#### *Convention on Status of Aliens (Havana, 1928)*

Article 1. States have the right to establish by means of laws the conditions under which foreigners may enter and reside in their territory.

Article 2. Foreigners are subject as are nationals to local jurisdiction and laws, due consideration being given to the limitations expressed in conventions and treaties.

#### *Convention of Montevideo (1933)*

Article 9. The jurisdiction of States within the limits of national territory applies to all the inhabitants.

Nationals and foreigners are under the same protection of the law and

the national authorities and the foreigners may not claim rights other or more extensive than those of the nationals.

*The Bogotá Charter (1948)*

Article 12. The jurisdiction of States within the limits of their national territory is exercised equally over all the inhabitants, whether nationals or aliens.

2. *Resolutions, declarations, and projects adopted by inter-governmental bodies*

*International Commission of American Jurists (1927)*

Project III. Status of Aliens

Article 1. States have the right to establish by means of laws the conditions under which foreigners may enter and reside in their territory.

Article 2. The nationals of one State who may be found in the territory of other States shall enjoy therein all the individual guarantees and all the civil rights which States grant to their own nationals, with due regard to the prescriptions of their political constitutions and to the laws of the State.

Article 4. Foreigners as well as nationals are subject to the jurisdiction of the local laws, due consideration being given to the limitations expressed in conventions and treaties.

*Pan American Union. Governing Board (1946)*

XIII. The jurisdiction of States within the limits of national territory applies to all the inhabitants. Nationals and aliens are under the same protection of and owe the same obedience to the law and the national authorities.

3. *Draft declarations proposed by Governments*

*Cuba (1945)*

IV. Every State has the right to the territory included within defined frontiers and the right to exercise exclusive jurisdiction over that territory and over all persons thereon, whether native or alien.

*Ecuador (1947)*

Article XII. Jurisdiction of States within the limits of their national territory applies to all inhabitants. Nationals and aliens are under the same protection and must obey the national laws and the national authorities.

4. *Declarations by non-governmental organizations and scientific institutions*

*American Institute of International Law (1916)*

IV. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons whether native or foreign found therein.

*Ibid.* (1925)

### Project No. 12 Jurisdiction

Article 1. Jurisdiction is the right and power of the nation to exercise its sovereign will within its territory.

Article 2. As each sovereign nation exercises exclusive jurisdiction, any derogation from its exercise must be derived from the consent of the nation itself.

Article 3. The jurisdiction of a nation being conterminous with its boundaries, it is presumed to legislate for itself alone, and its laws have no effect in any foreign country or portion of territory subject to the jurisdiction of another nation, unless in accordance with the principles of private international law.

Article 4. Nationals of the American Republics are subject to the jurisdiction of the country in which they are found, and may be punished by the latter for offences which they commit.

However, a nation may render its nationals liable for offences against its laws committed in a foreign jurisdiction.

#### 5. *Statements by jurists and publicists*

*Abbé Grégoire* (1793)

12. A nation has the right of entrance to its territory, and to exclude foreigners when its safety requires it.

13. Foreigners are subject to the laws of the country and punishable by them.

*Leone Levi* (1897)

75. The State has a right to exercise exclusive jurisdiction over all the inhabitants and property within the State, as well as over all suits and actions in courts of justice, whether civil or criminal, arising within its limits.

77. Foreigners residing in any part of the State are subject to its laws.

*Henri La Fontaine* (1916)

Article 26. Foreigners enjoy in all States the liberties and rights guaranteed to nationals. The States proclaim that these liberties and rights essentially include individual liberty and security, inviolability of domicile and property, freedom of conscience, freedom of speech, inviolability of correspondence, freedom of association, freedom of religion. Restrictions may, however, be enacted in respect to the enjoyment of certain rights of elective franchise and of eligibility.

*Victor M. Maúrtua* (1931)

VIII. The jurisdiction of States within the limits of their national territory extends over all the inhabitants (of that territory). Inhabitants

who are nationals and those who are foreigners are under one and the same protection, as extended by the laws and by the national authorities. Foreigners may not demand rights different from or more extensive than the rights of nationals. This equal protection shall assure to nationals and to foreigners the minimum of rights demanded by international law.

*Francesco Cosentini* (1935)

103. *Jus imperii* and *jus juridicendi*. Every State has exclusive *jus imperii* and *jus juridicendi* throughout its territory and other assimilated localities with regard to persons and things situated therein.

105. *Nationals residing abroad*. The right of personal jurisdiction even over nationals residing abroad must be recognized while taking into account the limitations established by international law as well as the respect due to the rights of territorial sovereignty.

## ARTICLE 8

### DIPLOMATIC INTERVENTION

*Every State is entitled to intervene with another State in favour of its own nationals, acting through diplomatic channels and in a reasonable and courteous manner; it is its duty to refrain from alleging any denial of justice so long as its nationals have not claimed the right which they allege to possess from the courts of justice of the State to which such diplomatic representations are being made; if, however, this State should deny the foundation of fact or law of the intervention, and the intervening State does not accept this denial, it may only resort to the procedure of peaceful settlement for the solution of the dispute.*

#### A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

##### *Greece*

"If it is in principle agreed to insert this article in the declaration, it should be limited to a statement of the principle that 'Every State is entitled to intervene with another State for the protection of its nationals'. The rest of the text of this article merely lays down rules for the application of the general principle and should be deleted. This article should come after article 5."

##### *India*

"This [article] may be replaced by the following:

'Every State is entitled to intervention with another State in favour of its own nationals acting through diplomatic channels and in a reasonable and courteous manner.'

##### *Mexico*

"The Government of Mexico considers that clause 8 should provide that the right to intercession or diplomatic representations (words which

seem preferable to 'intervention' as used in the draft) should be subject to the condition that all legal processes (and not only appeals to the same) should have been exhausted, and that such right should be limited by the duty of an alien not to invoke his Government's protection, and of the Government not to grant it, whenever such alien has freely and unreservedly undertaken to submit himself exclusively to the decision of the local courts. Hence it is recommended that the draft declaration should contain a provision expressly stating that diplomatic intervention is out of place in cases where the persons concerned have previously waived it. It should also be mentioned expressly that recourse to diplomatic representations should be subject to the condition that legal processes have been exhausted."

### *United Kingdom*

"The second proposition of this article no doubt refers to the international rule with regard to the exhaustion of municipal remedies. The International Law Commission might well make a full formulation of this rule the subject of a special study. It is again a matter on which there is abundant material. Perhaps this rule received the fullest consideration and exploration from all its aspects in the Finnish ships arbitration between the United Kingdom and Finland, and in this connexion both the written pleadings of the parties as well as the award of the arbitrator might be studied. Whether or not this detailed formulation of the municipal remedies rule should form part of this particular chapter of the elementary rights and duties of States is a matter on which His Majesty's Government wish to express no view at present. They do, however, consider that, if such a formulation does not form part of the present declaration, it would be preferable to replace the existing second proposition in article 8 by something on the following lines: 'This right is subject to the international rule with regard to the exhaustion of municipal remedies.'

"The third proposition in article 8 is fully accepted by His Majesty's Government but it is incompletely stated since there are two aspects of the matter. It is just as much the duty of the State, against whom the complaint is made, to agree to some satisfactory method of deciding the dispute as it is the duty of the State making the complaint only to resort to such peaceful methods. These two duties go side by side and it is the more important that both sides should be expressed because most of the difficulties, which have arisen, have arisen precisely because of the refusal of the defendant State to agree to any peaceful method by which a decision on the dispute can be arrived at. These States, of course, who have accepted the Optional Clause of the Statute of the International Court of Justice without any relevant reservation have fully complied with this duty by making recourse possible to the court in such cases."

*Venezuela*

"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."

## B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

1. *Treaties and Conventions*2. *Resolutions, declarations and projects adopted by inter-governmental bodies*

*Recommendation, Claims and Diplomatic Intervention* (Washington, 1890)

(1) Foreigners are entitled to enjoy all the civil rights enjoyed by natives; and they shall be accorded all the benefits of said rights in all that is essential as well as in the form or procedure, and the legal remedies incident thereto, absolutely in like manner as said natives.

(2) A nation has not, nor recognizes in favour of foreigners, any other obligations or responsibilities than those which in favour of the natives are established, in like cases, by the constitution and the laws.

*Resolution, International Responsibility of the States* (Montevideo, 1933)

2. That, notwithstanding this, it reaffirms once more, as a principle of international law, the civil equality of the foreigner with the national as the maximum limit of protection to which he may aspire in the positive legislations of the States.

3. Reaffirms equally that diplomatic protection cannot be initiated in favour of foreigners unless they exhaust all legal measures established by the laws of the country before which the action is begun. There are excepted those cases of manifest denial or unreasonable delay of justice which shall always be interpreted restrictively, that is, in favour of the sovereignty of the State in which the difference may have arisen. Should no agreement on said difference be reached through diplomatic channels, within a reasonable period of time, the matter shall then be referred to arbitration.

3. *Draft declarations proposed by Governments*

*Cuba* (1945)

V. No State has the right to intervene before another State in favour



of its nationals, except through diplomatic channels, in a considered and courteous manner. In the event of a claim that the administrative authorities of the State in which an alien is residing have prevented him materially from exercising his rights before the courts of justice, or if it is proved that these courts have denied him justice, the procedure for peaceful settlement of international conflicts must be followed.

*4. Declarations by non-governmental organizations and scientific institutions*

*American Institute of International Law (1925)*

Project 8. Fundamental rights of American Republics

4. No nation has a right to interfere in the internal or foreign affairs of an American Republic against the will of that Republic. The sole lawful intervention is friendly and conciliatory action without any character of coercion.

Project No. 16. Diplomatic protection.

Article 1. The American Republics do not recognize in favour of foreigners other obligations or responsibilities than those established for their own nationals in their constitutions, their respective laws, and the treaties in force.

Article 2. In accordance with the present convention, every American Republic has the right to accord diplomatic protection to its native or naturalized citizens.

The conditions under which an American Republic may grant diplomatic protection depend entirely on its internal legislation.

Article 3. Every nation has the right to accord diplomatic protection to its nationals in an American Republic in cases in which they do not have legal recourse to the authorities of the country, or if it can be proved that there has been denial of justice by the said authorities, undue delay, or violation of the principles of international law.

Article 5. Every American Republic has the power to protect not only its own nationals but those of other countries when the latter have entrusted it with diplomatic representation or the supervision of their interests in the country where the claim is made.

Article 6. The American Republic to which the diplomatic claim is presented may decline to receive this claim when the person in whose behalf it is made has interfered in internal or foreign political affairs against the Government to which the claim is made. The republic may also decline if the claimant has committed acts of hostility toward itself.

*5. Statements by jurists and publicists*

*Leone Levi (1897)*

80. No State can by its laws affect persons or property out of its own country. Nevertheless the State has a right and also a duty to protect its

subjects in foreign parts, and to see that the due and ordinary means of redress are open to them in the courts of justice, both civil and criminal.

## ARTICLE 9

### RESPECT OF THE RIGHTS OF THE STATE BY OTHER STATES

*Any State which has a right under international law is entitled to have this right respected and protected by all the other States, since rights and duties are correlative, and the right of one creates for the others the duty to respect it.*

#### A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

##### *Greece*

"This article should be deleted as being out of place in a Declaration of the Rights and Duties of States."

##### *India*

"The words 'and protected' may be omitted, as it would be neither possible nor desirable to throw the responsibility of protecting any other State in the world on the rest of the States."

##### *United Kingdom*

"Omitting the words 'and protected' the statement in this article is virtually platitudinous. The words 'and protected' raise the question as to what precisely is meant thereby."

##### *Venezuela*

"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."

#### B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

##### *1. Treaties and Conventions*

##### *Convention of Montevideo (1933)*

Article 5. The fundamental rights of States are not susceptible of being affected in any manner whatsoever.

##### *The Bogotá Charter (1948)*

Article 7. Every American State has the duty to respect the rights enjoyed by every other State in accordance with international law.

2. *Resolutions, declarations and projects adopted by inter-governmental bodies*

*Inter-American Juridical Committee (1942)*

Reaffirmation of Fundamental Principles of International Law.

II. Respect by each State for the personality, sovereignty and independence of every other State constitutes the basis of international order, just as in the relations of individuals mutual respect constitutes the basis of the democratic social order.

*Act of Chapultepec (Mexico, 1945)*

Declare: That every State has the right to the respect of its individuality and independence, on the part of the other members of the international community.

*Pan American Union. Governing Board (1946)*

II. The rights which each State enjoys in accordance with international law must be respected and protected by all other States, since right and duty are correlative and each State has the duty to respect the rights of all the other States.

3. *Draft declarations proposed by Governments*

*Cuba (1945)*

VII. A State to which a right has been granted by international law may demand that this right be supported and protected by all other States. The right and the duty are correlative, and upon all there rests the obligation to respect the right of each and to perform the duties devolving upon them.

The rights of each State are not dependent upon the power available to the State to enable it to exercise its rights, but depend on the mere existence of such rights as provided for by international law. The fundamental rights of the States cannot be affected in any way.

*Ecuador (1947)*

Article II. The rights enjoyed by each State, in accordance with international law must be respected and protected by all the others; for rights and duties are interdependent, and each State has the obligation to respect the rights of all others.

4. *Declarations by non-governmental organizations and scientific institutions*

*American Institute of International Law (1916)*

V. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe.

5. *Statements by jurists and publicists**Leone Levi* (1897)

81. Every State is bound to respect the rights of other States, and to fulfil its own obligations, whether moral or conventional, towards them.

*Pasquale Fiore* (1890-1915)

545. Each State is bound to respect the international rights of the other members of the international society and to exercise all its functions, activities and rights in such a way as not to infringe upon the rights of others.

*Alejandro Alvarez* (1931)

Article 25. States must: (e) Respect the rights of every State, which cannot be modified without the consent of the interested State.

*Francesco Cosentini* (1935)

76. *Inviolability of fundamental rights.* The fundamental rights of States may not be infringed in any way.

78. *Correlative rights and obligations.* Every State which has a right under the law of States has also the right to have it respected and protected by all other States, for rights and obligations are correlative, and where one State has a right, all the others have the obligation to observe it.

## ARTICLE 10

## LIMITATION OF THE RIGHTS OF THE STATE

*No other limit is set to the exercise of the rights of a State than the exercise of the rights of other States, in accordance with international law. It is the duty of every State not to overstep this limit.*

## A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

*Denmark*

"This provision seems to be superfluous and so ought to be deleted. A limit to the rights of the State is set not alone by the rights of other States, but also by the rights of its own nationals; cf. also item [article] 21."

*Dominican Republic*

"Articles 10 and 13, whose provisions are connected, and which deal respectively with the *limitation of the rights of the State* and with the *authority of international law* might be combined in one text."

*Greece*

"This article should be replaced by the following text: 'When a State exercises the rights conferred on it by international law it should refrain from the abusive exercise of such rights.'"

*United Kingdom*

"The idea expressed in article 10 seems to fall for consideration with article 4 (see comments on article 4) and should, it is thought, form part of the formulation of that proposition. The same remark applies to article 13."

## B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

1. *Treaties and Conventions**Convention of Montevideo (1933)*

Article 3. The exercise of these rights has no other limitation than the exercise of the rights of other States according to international law.

2. *Resolutions, declarations and projects adopted by inter-governmental bodies**International Commission of American Jurists (1927)*

Project II. States: existence, equality, recognition.

Article 5. The exercise of these rights is limited only by the exercise of the rights of other States, by treaties, and by the principles of international law.

3. *Draft declarations proposed by Governments**Cuba (1945)*

Article 1. The exercise of these rights has no other limits than respect for the rights of other States, in conformity with international law.

4. *Declarations by non-governmental organizations and scientific institutions**International Juridical Union (1919)*

Article IV. The rights of each State are limited by the rights of other States.

States have duties toward one another.

All States likewise have duties toward the international community.

5. *Statements by jurists and publicists**Pasquale Fiore (1890-1915)*

65. No limitation upon the enjoyment and exercise of the rational rights of the State can exist except by virtue of a general treaty subscribed and ratified by the State, or of a special treaty concluded and ratified by two States, or of the constitutional law of both countries.

No limitation of the said rights can be based on analogy or induction.

*Henri La Fontaine (1916)*

Article 3. In the exercise of their rights, States may not do injury to the rights of other States.

*Francesco Cosentini* (1935)

77. *Limits of fundamental rights.* The exercise of the fundamental rights of the State is only limited by the exercise of the rights of other States and the provisions of this Code or of treaties.

## ARTICLE 11

### OBSERVANCE OF TREATIES AND SANCTITY OF THE PLEDGED WORD

*It is the duty of every State to fulfil, in good faith, the obligations arising from public treaties, and to respect the sanctity of the pledged word.*

#### A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

##### *Greece*

"The texts of articles 11 and 12, which partly repeat each other, should be combined to form a single article drafted as follows: 'States shall be bound to discharge their international obligations in good faith, and not to plead their national legislation as an excuse for failure to honour their international obligations.'"

##### *Mexico*

"Clause 11 refers to the duty of every State to fulfil in good faith the obligations arising from treaties and to respect the sanctity of the pledged word. In this case, it would seem advisable to make provision for the possibility of an unforeseen change in the circumstances determining an international obligation, when such change occurs through no fault of the party bound but prevents such party from carrying out the agreement. In such a case it should be provided that good faith must be shown not only by the party bound but also by the party benefiting under the agreement."

##### *United Kingdom*

"Article 11 might deal with both obligations under treaties and obligations under international law together. It is questionable whether the adjective 'public' in front of 'treaties' is necessary or even desirable. The authors of the draft may have, however, some reference to Article 102 of the Charter, with regard to the registration of treaties, in their minds."

#### B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

##### 1. *Treaties and Conventions*

##### *Covenant of the League of Nations* (1919)

###### Preamble.

The High Contracting Parties, in order to promote international co-operation and to achieve international peace and security . . . by the

maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another, agree to this Covenant of the League of Nations.

*Convention on Treaties* (Havana, 1928)

Article 10. No State can relieve itself of the obligations of a treaty or modify its stipulations except by the agreement, secured through peaceful means, of the other contracting parties.

*Charter of the United Nations* (1945)

Preamble.

We the peoples of the United Nations determined . . . to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained. . . .

Article 2 (2). All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

*The Bogotá Charter* (1948)

Article 5. The American States reaffirm the following principles:

(c) Good faith shall govern the relations between States;

Article 14. Respect for and the faithful observance of treaties constitute standards for the development of peaceful relations among States. International treaties and agreements should be public.

2. *Resolutions, declarations and projects adopted by inter-governmental bodies*

*International Commission of American Jurists* (1927)

Project IV. Treaties.

Article 10. No State can relieve itself of the obligations of a treaty nor modify its stipulations except by the agreement, secured by peaceful means, of the other contracting parties.

*Declaration of Lima* (1938)

5. Respect for and the faithful observance of treaties constitute the indispensable rule for the development of peaceful relations between States, and treaties can only be revised by agreement of the contracting parties.

*Declaration, Continental Solidarity in Observance of Treaties* (Rio de Janeiro, 1942)

*Whereas:*

3. Respect for the pledged word in international treaties rests upon incontestable juridical principles as well as on precepts of morality in accordance with the maxim of canon law: *Pacta sunt servanda*;

4. Such agreements, whether bilateral or multilateral, must not be modified or nullified unilaterally, except as otherwise provided, as in the case of "denunciation" clearly authorized by the parties.

*Declares:*

1. That should the Government of an American nation violate an agreement or a treaty duly perfected by two or more American Republics or should there be reason to believe that a violation which might disturb the peace or solidarity of the Americas is being contemplated, any American State may initiate the consultation contemplated in Resolution XVII of Havana with the object of agreeing upon the measures to be taken.

*Inter-American Juridical Committee (1942)*

Reaffirmation of Fundamental Principles of International Law.

IV. Good faith, which is a sacred principle of international law, should govern the relations of States. Mutual trust in the pledged word is an essential condition of the peaceful co-operation of States. Treaty obligations, freely and voluntarily entered into, must be faithfully observed.

*Pan American Union Governing Board (1946)*

V. Good faith, as an elementary requirement of law and equity, should guide the relations of States among themselves and govern the interpretation of their duties and the fulfilment of their obligations. Mutual confidence in the pledged word is indispensable for peaceful co-operation among States.

VI. Treaties must be in the nature of open covenants and must be faithfully observed.

3. *Draft declarations proposed by Governments*

*Italy (1919)*

7. No State can release itself from the obligations assumed, by entering into any international treaty outside the scope hereof, except by the consent of all the parties concerned or by recourse to bodies competent to solve disputes arising from such independent action.

*Ecuador (1947)*

Article V. Good faith, a fundamental principle of international law, must govern relations between States. Mutual trust in the pledged word is essential for peaceful co-operation between them. Treaties freely and voluntarily concluded must be faithfully observed, without its being lawful for parties to raise questions which may change their substance or obstruct their legal execution; accordingly, Member States do not recognize as treaties those which have been concluded in violation of the foregoing principles. Nevertheless, those treaties shall be examined and revised which, by virtue of new circumstances, admit of changes tending to improve or perfect relations between the High Contracting Parties.



There shall be no secret treaties, agreements or understandings between Member States.

4. *Declarations by non-governmental organizations and scientific institutions*

*International Juridical Union* (1919)

Article V. States must, in particular:

(c) Scrupulously respect treaties.

*American Institute of International Law* (1925)

Project No. 21. Treaties.

Article 5. Treaties must be executed in good faith and cannot be modified except by an amicable agreement of the parties which have signed them.

*Inter-Parliamentary Union* (1928)

4. Treaties have the force of law between States. It is their strict duty to respect them.

A treaty may only be annulled or modified with the consent of the States concerned or in accordance with international law.

*Harvard Research in International Law* (1935)

Draft Convention on the Law of Treaties.

Article 20. *Pacta sunt servanda*. A State is bound to carry out in good faith the obligations which it has assumed by a treaty (*pacta sunt servanda*).

5. *Statements by jurists and publicists*

*Pasquale Fiore* (1890-1915)

547. The principal international duties of States are: . . .

In addition, States have the general duty of performing honestly and in good faith the obligations contracted by virtue of treaties, or express or tacit agreements, or which arise out of any acts they may have undertaken in international society.

*Henri La Fontaine* (1916)

Article 17. Conventions freely concluded between States are binding upon them as long as they are in force. They may be broken, except through an express clause to the contrary, only by the consent of all the signatories.

*Albert de Lapradelle* (1921)

Article 5. Respect for treaties freely entered into is exacted of States as well as of individuals.

*Alejandro Alvarez* (1931)

Article 25. States must: . . . .

(d) Rigorously observe the rules of international law and the treaties which they have signed.

No Power may withdraw from the engagements of a treaty or modify the stipulations thereof except in agreement with the other contracting party or parties.

## ARTICLE 12

### DISCHARGE OF INTERNATIONAL OBLIGATIONS

*It is the duty of every State to discharge, in good faith, its obligations under international law, and it may not plead limitations arising out of its own Constitution or its laws as an excuse for failure to discharge this duty.*

#### A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

*Greece*

See comments on article 11.

*Mexico*

"The Government of Mexico is of the opinion that so long as the codification of the international law is not an accomplished fact, the application of the noble principles enunciated in clauses 12, 13 and 14 of the Panama draft (the value of which the Government of Mexico fully recognizes) may give rise to serious difficulties owing to the variety of opinions on institutions or principles of international law which are not universally recognized. The Government of Mexico would like the United Nations to endeavour to define the areas of international jurisdiction and of exclusively domestic jurisdiction. Pending an acceptable solution of this problem, the Government of Mexico suggests that, to avoid sacrificing the noble ideas of clauses 12, 13 and 14, the relevant part of the draft declaration should confine itself to stating explicitly that the sovereignty of States shall be subject to such provisions of international law as are embodied in the Declaration on the Rights and Duties of States."

*United Kingdom*

"The second part of article 12, relating to limitations arising under its law or constitution, is a correct proposition, but it is thought that it applies to obligations under treaties as well as to obligations under international law or Constitution, is a correct proposition, but it is thought that it applies article 12."

*Venezuela*

"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."

## B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

### 1. *Treaties and Conventions*

#### *Convention on Treaties* (Havana, 1928)

Article 11. Treaties shall continue in effect even though the internal constitution of the contracting States has been modified. If the organization of the State should be changed in such a manner as to render impossible the execution of treaties, because of division of territory or other like reasons, treaties shall be adapted to the new conditions.

### 2. *Resolutions, declarations and projects adopted by inter-governmental bodies*

#### *International Commission of American Jurists* (1927)

##### Project I. Fundamental Bases of International Law.

Article 3. National laws shall not contain dispositions contrary to international conventional law.

### 3. *Draft declarations proposed by Governments*

### 4. *Declarations by non-governmental organizations and scientific institutions*

#### *American Institute of International Law* (1925)

##### Project No. 4. Fundamental Bases of International Law.

Article 4. National laws should not contain provisions contrary to international law.

#### *International Law of the Future* (1944)

Principle 1. Each State has a legal duty to carry out in full good faith its obligations under international law, and it may not invoke limitations contained in its own constitution or laws as an excuse for a failure to perform this duty.

### 5. *Statements by jurists and publicists*

## ARTICLE 13

## AUTHORITY OF INTERNATIONAL LAW

*The sovereignty of the State is subject to the limitations of international law, and it is the duty of every State to adjust its conduct to international law in its relations with other States and with the community of States.*

## A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

*Dominican Republic*

See comments on article 10.

*Greece*

"This text does not seem essential in a general proclamation such as the Declaration of the Rights and Duties of States."

*Mexico*

See comments on article 12.

*United Kingdom*

See comments on article 10.

*Venezuela*

"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."

## B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

1. *Treaties and Conventions**Covenant of the League of Nations (1919)*

## Preamble.

The High Contracting Parties, in order to promote international cooperation and to achieve international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just, and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another, agree to this Covenant of the League of Nations.

*The Bogotá Charter (1948)*

Article 5. The American States reaffirm the following principles:

(a) International law is the standard of conduct of States in their reciprocal relations.

2. *Resolutions, declarations and projects adopted by non-governmental bodies*

*Declaration of American Principles* (Lima, 1938)

4. Relations between States should be governed by the precepts of international law.

*Inter-American Juridical Committee* (1942)

Reaffirmation of Fundamental Principles of International Law.

1. It is a basic principle of international law that there are certain general standards of conduct which take priority over the will of the individual State. . . .

No distinction is recognized between the moral laws as applied to individual citizens and to nations. There is but one single standard of conduct between nation and nation and between man and man. The development of international law should be marked by the gradual extension to nations of the obligations recognized as binding between individual citizens.

Hence no nation may claim to be exempt from the observance of the moral law on the ground of political, economic or racial supremacy or of a particular national culture which it believes to be inherently superior to that of other States.

*Declaration of Mexico* (1945)

1. International law is the rule of conduct for all States.

3. *Draft declarations proposed by Governments*

4. *Declarations by non-governmental organizations and scientific institutions*

*Inter-Parliamentary Union* (1928)

1. Relations between States are governed by the same general principles of law and morality as relations between individuals.

5. *Statements by jurists and publicists*

*Victor M. Maúrtua* (1931)

I. The competence of States is determined by international law. This determination comprises not only the field and the limits of competence, but also the modalities of an exercise of competence in so far as those modalities affect other States or the international community.

Competence is to be estimated, in every case, in accordance with the general or special conventions established by the rules of law which are recognized by States; in accordance with international custom, accepted as constituting law; (and) in accordance with the general principles of law recognized by civilized nations. The application of these norms cannot be affected by the unilateral judgment of States, but is rather to be effected by authorized international organs.

In matters coming under their competence—both in relations involving international law, and in matters of internal law—States possess complete independence, and supreme governmental and legislative power. The sanction of their exclusive activities is their own responsibility.

Discretionary competence on the part of States, however, is subject to the action of the organs of the (international) community, when the intervention of these organs is indispensable for the maintenance of peace; or for the regulation of activities among States, the free exercise of which activities, owing to the employment of certain means or to the fact that certain bounds are exceeded, is not compatible with juridical order in the community.

*Alejandro Alvarez* (1931)

Article 25. States must: . . . (d) Rigorously observe the rules of international law and the treaties which they have signed.

#### ARTICLE 14

#### NATIONAL AND INTERNATIONAL SCOPE OF THE LAW OF NATIONS

*International law is at once national and international. It is national in the sense that it is the law of the country and that it is the duty of the State to apply it as such in solving questions concerned with its principles; it is international in the sense that it is the law of the community of States and that it is the duty of each State to apply it to all questions which arise among the members of that community and which are concerned with its principles.*

#### A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

##### *Denmark*

“Denmark accepts in principle this opinion. Danish courts of law and other public authorities are obliged to apply the principles and rules of international law generally acknowledged when their application is at issue. But, on the other hand, according to the Danish conception of law, Danish authorities cannot apply more specific rules of international law warranted by international treaties or other agreements till they have been publicly announced in Denmark, by way of acts of law or in other official ways, as legally binding.”

##### *Greece*

“This article does not correspond with the practice of several States and would be unlikely to be adopted. Moreover, it seems inadvisable to include a text such as this among the principles of a Declaration on the Rights and Duties of States.”

*India*

"The Government of India cannot subscribe to the view that international law is also national. They agree however that national law should be in conformity with international law."

*Mexico*

See comments on article 12.

**B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS**

*1. Treaties and Conventions*

*2. Resolutions, declarations and projects adopted by inter-governmental bodies*

*International Commission of American Jurists (1927)*

Project 1. Fundamental Bases of International Law.

Article 2. Positive international law forms part of the law of every State, and as such shall be applied in cases appertaining thereto by the national authorities in accordance with the prescriptions of the respective political constitutions.

*Resolution, Incorporation of International Law into Municipal Law (Mexico, 1945)*

1. To proclaim the need for all States to strive toward the incorporation of the essential principles of international law into their constitutions and other municipal law.

2. To recommend that, in studying the reorganization of the inter-American system, the charter of the future organization of the American Republics contain an article reiterating the above-mentioned proposal and requiring that the appropriate permanent inter-American organization be informed as to its fulfilment.

*3. Draft declarations proposed by Governments*

*4. Declarations by non-governmental organizations and scientific institutions*

*American Institute of International Law (1916)*

VI. International law is at one and the same time both national and international: national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among the members of the society of nations involving its principles.

*Ibid. (1925)*

Project No. 4. Fundamental Bases of International Law.

Article 3. International law forms a part of the national law of every

country. In matters which pertain to it, it should therefore be applied by the national authorities as the law of the land.

5. *Statements by jurists and publicists*

ARTICLE 15

PEACEFUL SETTLEMENT OF DISPUTES

*It is the duty of every State to settle its international disputes by peaceful means and in such a manner that neither peace and security nor justice are imperilled.*

A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

*India*

"To make this article definite and precise it may be redrafted as follows:

'It is the duty of every State to settle its international disputes by peaceful means.'

*United Kingdom*

"Articles 15, 16, 17, 19 and 20 deal with matters which, for Members of the United Nations, are regulated by the Charter. It will be for the International Law Commission to consider whether, and to what extent, propositions of this kind can be laid down as part of general international law applicable to non-member States."

B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

1. *Treaties and Conventions*

*Treaty of Perpetual Union, League, and Confederation (Panama, 1826)*

Article 13. The principal objects of the general assembly of ministers plenipotentiary of the confederated Powers are . . . Third. To endeavour to secure conciliation, or mediation, in all questions which may arise between the allied Powers, or between any of them and one or more Powers foreign to the confederation, whenever threatened of a rupture, or engaged in war because of grievances, serious injuries, or other complaints.

Article 16. The contracting parties solemnly obligate and bind themselves to amicably compromise between themselves all differences now existing or which may arise in the future, and in case no settlement can be reached between the disagreeing Powers the question shall be taken for settlement to the judgement of the assembly, whose decision shall not be obligatory, however, unless said Powers shall have expressly agreed that it shall be.



*Treaty on Compulsory Arbitration* (Mexico, 1902)

Article 1st. The High Contracting Parties obligate themselves to submit to the decision of arbitrators all controversies that exist, or may arise, among them and which diplomacy cannot settle, provided that in the exclusive judgment of any of the interested nations said controversies do not affect either the independence or the national honour.

Article 2nd. Independence or national honour shall not be considered as involved in controversies with regard to diplomatic privileges, boundaries, rights of navigation, and validity, construction and enforcement of treaties.

*Convention on Pecuniary Claims* (Buenos Aires, 1910)

1st. The High Contracting Parties agree to submit to arbitration all claims for pecuniary loss or damage which may be presented by their respective citizens and which cannot be amicably adjusted through diplomatic channels, when said claims are of sufficient importance to warrant the expense of arbitration.

The decision shall be rendered in accordance with the principles of international law.

*Covenant of the League of Nations* (1919, as amended subsequently)

Article 13. The Members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration or judicial settlement, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration or judicial settlement.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of an international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared among those which are generally suitable for submission to arbitration or judicial settlement.

For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.

The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award, or decision, the Council shall propose what steps should be taken to give effect thereto.

*Treaty to Avoid or Prevent Conflicts between the American States* (Santiago de Chile, 1923)

Article 1. All controversies which for any cause whatsoever may arise between two or more of the High Contracting Parties and which it has

been impossible to settle through diplomatic channels, or to submit to arbitration in accordance with existing treaties, shall be submitted for investigation and report to a commission to be established in the manner provided for in article IV. The High Contracting Parties undertake, in case of disputes, not to begin mobilization or concentration of troops on the frontier of the other Party, not to engage in any hostile acts or preparations for hostilities, from the time steps are taken to convene the commission until the said commission has rendered its report or until the expiration of the time provided for in article VII.

This provision shall not abrogate nor limit the obligations contained in treaties of arbitration in force between two or more of the High Contracting Parties, nor the obligations arising out of them.

It is understood that in disputes arising between nations which have no general treaties of arbitration, the investigation shall not take place in questions affecting constitutional provisions, nor in questions already settled by other treaties.

*General Convention of Inter-American Conciliation* (Washington, 1928)

Article 1. The High Contracting Parties agree to submit to the procedure of conciliation established by this convention all controversies of any kind which have arisen or may arise between them for any reason and which it may not have been possible to settle through diplomatic channels.

*General Treaty of Inter-American Arbitration* (Washington, 1928)

Article I. The High Contracting Parties bind themselves to submit to arbitration all differences of an international character which have arisen or may arise between them by virtue of a claim of right made by one against the other under treaty or otherwise, which it has not been possible to adjust by diplomacy and which are juridical in their nature by reason of being susceptible of decision by the application of the principles of law.

*Protocol of Progressive Arbitration* (Washington, 1929)

Article 1. Any Party to the General Treaty of Inter-American Arbitration signed at Washington the fifth day of January, 1929, may at any time deposit with the Department of State of the United States of America an appropriate instrument evidencing that it has abandoned in whole or in part the exceptions from arbitration stipulated in the said treaty or the reservation or reservations attached by it thereto.

*Convention of Montevideo* (1933)

Article 10. The primary interest of States is the conservation of peace. Differences of any nature which arise between them should be settled by recognized pacific methods.

*Inter-American Treaty on Good Offices and Mediation* (Buenos Aires, 1936)

Considering that, notwithstanding the pacts which have been con-

cluded between them, it is desirable to facilitate, even more, recourse to peaceful methods for the solution of controversies:

Article 1. When a controversy arises between them, that cannot be settled by the usual diplomatic means, the High Contracting Parties may have recourse to the good offices or mediation of an eminent citizen of any of the other American countries, preferably chosen from a general list made up in accordance with the following article.

*Charter of the United Nations (1945)*

Article 2 (3). All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

*Inter-American Treaty of Reciprocal Assistance (Rio de Janeiro, 1947)*

Article 2. As a consequence of the principle set forth in the preceding article, the High Contracting Parties undertake to submit every controversy which may arise between them to methods of peaceful settlement and to endeavour to settle any such controversy among themselves by means of the procedures in force in the Inter-American System before referring it to the General Assembly or the Security Council of the United Nations.

*The Bogotá Charter (1948)*

Article 5. The American States reaffirm the following principles:  
... (g) Controversies of an international character arising between two or more American States shall be settled by peaceful procedures.

Article 20. All international disputes that arise among the American States shall be submitted to the peaceful procedures set forth in this Charter, before being referred to the Security Council of the United Nations.

Article 21. The following are peaceful procedures: direct negotiation, good offices, mediation, investigation and conciliation, judicial settlement, arbitration, and those which the parties to the dispute may especially agree upon at any time.

Article 22. In the event that a dispute arises between two or more American States which, in the opinion of one of them, cannot be settled through the usual diplomatic channels, the Parties shall agree on some other peaceful procedure that will enable them to reach a solution.

Article 23. A special treaty will establish adequate procedures for the pacific settlement of disputes and will determine the procedures appropriate for each of the peaceful means, in such a manner that it will not be possible for a dispute among American States to fail of definitive settlement within a reasonable period.

*Pact of Bogotá (1948)*

Article I. The High Contracting Parties, solemnly reaffirming their commitments made in earlier international conventions and declarations, as well as in the Charter of the United Nations, agree to refrain from the

threat or the use of force, or from any other means of coercion for the settlement of their controversies and to have recourse at all times to pacific procedures.

Article II. The High Contracting Parties recognize the obligation to settle international controversies by regional pacific procedures before referring them to the Security Council of the United Nations.

Consequently, in the event that a controversy arises between two or more signatory States which, in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels, the parties bind themselves to use the procedures established in the present Treaty, in the manner and under the conditions provided for in the following articles, or, alternatively, such special procedures as in their opinion, will permit them to arrive at a solution.

2. *Resolutions, declarations and projects adopted by inter-governmental bodies*

*Resolution on Arbitration (Rio de Janeiro, 1906)*

Resolves: To ratify adherence to the principle of arbitration; and to the end that so high a purpose may be rendered practicable, to recommend to the nations represented at this Conference that instructions be given to their delegates to the Second Conference to be held at The Hague, to endeavour to secure by the said Assembly, of world-wide character, the celebration of a General Arbitration Convention, so effective and definite that, meriting the approval of the civilized world, it shall be accepted and put in force by every nation.

*Resolution; Consideration of the best means to give wider application to the principle of the judicial or arbitral settlement of disputes that may arise between the Republics of the American Continent (Santiago de Chile, 1923)*

2. Expresses the hope that the nations may adopt the system of Conferences, such as that of Washington in 1922, and of committees of investigation for all matters of fact, before proceeding to an armed conflict, as a means of establishing the nature of their controversies, to avoid the influence of momentary passions, to verify facts, and to bring to the controversy the light of international opinion, all of which may induce the parties to submit their cases to arbitration when contemplated.

*International Commission of American Jurists (1927)*

Project XII. Pacific Settlement of International Disputes.

Article 1. In case of serious disagreement or conflict which it has not been possible to settle by direct diplomatic negotiations the States shall before entering upon any other procedure and providing that circumstances permit, request the good offices or the mediation of one or more friendly States.

Article 5. Every controversy of fact, which for whatever cause, arises between two or more States and which it has not been possible to adjust through diplomatic channels, or to submit to arbitration in conformity with existing treaties, shall be subjected to investigation and to the opinion of a commission constituted in agreement with the terms of article 8. None of the parties shall start mobilization or concentration of troops on the frontier of the other nor undertake any hostile act or preparations for hostilities from the moment that preparations for the meeting of the commission are begun until the latter has given its opinion or until the expiration of the term indicated in article 16.

Article 17. In the event of a serious question which endangers the peace of nations any one of the parties can have recourse to the Governing board of the Pan American Union, which shall thereupon exercise the functions of a council of conciliation.

Article 19. Arbitration has as its object the legal solution of conflicts by means of judges chosen by the interested States.

*Resolution on Aggression (Havana, 1928)*

That there is no international controversy, however serious it may be, which cannot be peacefully arranged if the parties desire in reality to arrive at a pacific settlement;

*Resolves:* 2. The American States will employ all pacific means to settle conflicts which may arise between them.

*Resolution; Arbitration and Conciliation Conference. (Havana, 1928)*

The Sixth International Conference of American States resolves:

*Whereas:* The American Republics desire to contribute in every possible manner to the development of international means for the pacific settlement of conflicts between States:

1. That the American Republics adopt obligatory arbitration as the means which they will employ for the pacific solution of their international differences of a juridical character.

*Resolution on Good Offices and Mediation (Montevideo, 1933)*

It shall never be deemed an unfriendly act for any State or States to offer good offices or mediation to other States engaged in a controversy threatening or rupturing their peaceful relations, to the end that such differences may be so composed as to avoid recourse to or to end measures of force between the differing States. The afore-mentioned good offices or mediation shall not be applicable when other methods of peaceful solution emanating from treaties or agreements between the parties for the peaceful settlement of international disputes shall have begun to function.

*Declaration of Principles of Inter-American Solidarity and Co-operation*  
(Buenos Aires, 1936)

Any difference or dispute between the American nations, whatever its nature or origin, shall be settled by the methods of conciliation, or unrestricted arbitration, or through operation of international justice.

*Declaration on Improvement in the Procedure of Consultation* (Lima, 1938)

1. That the procedure of consultation, provided for in the conventions and resolutions adopted by the Inter-American Conference for the Maintenance of Peace, may also be applied, on the initiative of one or more Governments and with the previous agreement of the others, to any economic, cultural or other question which, by reason of its importance, justifies this procedure and in the examination or solution of which the American States may have a common interest.

*Declaration of Lima* (1938)

Fourth. That in order to facilitate the consultations established in this and other American peace instruments, the Ministers for Foreign Affairs of the American Republics, when deemed desirable and at the initiative of any one of them, will meet in their several capitals by rotation and without protocolary character. Each Government may, under special circumstances or for special reasons, designate a representative as a substitute for its Minister for Foreign Affairs.

*Resolution on the Peaceful Solution of Conflicts* (Havana, 1940)

To recommend to the Governing Board of the Pan American Union that it organize, in the American capital deemed most suitable for the purpose, a committee composed of representatives of five countries, which shall have the duty of keeping constant vigilance to ensure that States between which any dispute exists or may arise, of any nature whatsoever, may solve it as quickly as possible, and of suggesting, without detriment to the methods adopted by the parties or to the procedures which they may agree upon, the measures and steps which may be conducive to a settlement.

The Committee shall submit a report to each Meeting of the Ministers of Foreign Affairs and to each International Conference of American States regarding the status of such conflicts and the steps which may have been taken to bring about a solution.

*Declaration, Maintenance of Peace and Union among the American Republics* (Havana, 1940)

Three: That they will also make every effort to settle in a friendly manner and as soon as possible the differences which exist between them, in order that their reciprocal confidence and their co-operation for continental defence against any foreign aggression may be further strengthened;

Four: That they reaffirm their strong desire to avoid the use of force in this continent as a means of solving differences between nations and, therefore, to resort exclusively to juridical and pacific methods.

*Resolution, Procedure on Consultation (Havana, 1940)*

One: The Government which desires to initiate consultation in any of the cases contemplated in the conventions, declarations and resolutions of the Inter-American Conferences, and to propose a meeting of the Ministers of Foreign Affairs or of their representatives, shall address the Governing Board of the Pan American Union indicating the questions with which it desires the consultation to deal, as well as the approximate date on which the meeting should be held.

*Declaration of Mexico (1945)*

6. The mission of the American States is the preservation of peace and the maintenance of the best possible relations with all States.

7. Conflicts between States are to be settled exclusively by peaceful means.

*Declaration, Inter-American Peace System (Mexico, 1945)*

1. To reaffirm the principle of law that all international controversies should be settled by peaceful means.

*Inter-American Juridical Committee (1942)*

Reaffirmation of Fundamental Principles of International Law.

VI. All differences or disputes between States, whatever their nature or origin, must be settled by peaceful procedures, in accordance with the provisions of international conventions, treaties and agreements, and on the basis of established principles of international law.

When two or more States in controversy are unable to reach a peaceful agreement, the good offices or the mediation of other States between the parties are in order. These good offices or mediation are a friendly act in the interest of law and justice.

When these or other measures fail, consultation should take place among the States, with the object of formulating a collective recommendation or of seeking to renew friendly intervention.

*Pan American Union, Governing Board (1946)*

XII. All disputes that may arise between two or more American States, whatever their nature or origin, must be settled exclusively by peaceful procedure.

*3. Draft declarations proposed by Governments*

*Brazil (1945)*

IV. All international controversies, whatever their cause or nature, must be resolved by pacific means.

*Ecuador (1947)*

Article XI. Any controversy which may arise between two or more States, whatever its nature or origin shall be settled exclusively by peaceful means in order that neither peace nor justice nor international security may be endangered.

4. *Declarations by non-governmental organizations and scientific institutions*

*International Juridical Union (1919)*

Article V. States must, in particular:

(e) Not have recourse to arms without having exhausted all peaceful means for the settlement of disputes.

*American Institute of International Law (1925)*

## Project No. 27. Pacific Settlement.

Article 1. General peace should be maintained by means of good offices, mediation, commissions of inquiry and conciliation, friendly composition, arbitration, and the judicial power.

Article 2. In case of serious disagreement the American Republics shall have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly nations.

Article 7. All controversies which for any cause whatsoever may arise between two or more of the American Republics and which it has been impossible to settle through diplomatic channels, or to submit to arbitration in accordance with existing treaties, shall be submitted for investigation and report to a commission to be established in the manner provided for in article 10. In case of dispute none of the parties shall begin mobilization or concentration of troops on the frontier of the other, nor engage in any hostile act or preparations for hostilities from the time steps are taken to convene the commission until the said commission has rendered its report, or until the expiration of the time provided for in article 18.

Article 19. In case of a serious question endangering the peace of any of the American Republics, resort may be had by one of the parties to the Governing Board of the Pan American Union, which shall thereupon exercise the functions of a council of conciliation.

The request shall be directed to the Director General of the Union, who shall lay the request without delay before the chairman of the Governing Board. The latter shall immediately call a meeting of the Board to consider what recommendation must be adopted. The interested republics shall refrain from all direct intercourse until the Governing Board may have decided the nature and form of its recommendation.

Article 20. Any question which has not been resolved by any of the methods stipulated in the present convention shall, at the request of all the parties, be submitted to the Chief Executive of any one of the Amer-



ican Republics or to any person possessing the confidence of said parties. The Chief Executive or person so selected shall assume the functions of "friendly compositor" and render an award.

A special agreement of the parties shall state the terms of the question and the procedure to be followed by them and by the friendly compositor.

Article 21. International arbitration has for its object the settlement of questions between States by judges of their own choice and on the basis of respect for law.

Article 22. The arbitration convention may be concluded for questions already existing or for those which may arise.

It may embrace any question or only those of a certain class.

Article 23. The arbitration convention implies the duty to submit to the award.

#### *Inter-Parliamentary Union (1928)*

5. Every dispute between States which cannot be settled amicably must be settled by jurisdictional means, whether conciliatory, arbitral or contentious. All States must carry out in good faith the judgement given.

#### *International Law of the Future (1944)*

Principle 6. Each State has a legal duty to employ pacific means and none but pacific means in seeking to settle its disputes with other States, and failing settlement by other pacific means to accept the settlement of its disputes by the competent agency of the community of States.

#### *5. Statements by jurists and publicists*

##### *F. N. Keen (1922)*

II. Peaceful settlement of disputes. If a State is party to any dispute (including a dispute as to existing rights, obligations, interests or boundaries, or a disputed claim for the alteration of rights, obligations, interests or boundaries, or a dispute of any other kind), and such dispute is not settled by other means, the State shall, in conjunction with the other disputant, submit the same to the decision of an impartial tribunal. If the parties to the dispute do not agree upon a tribunal, and a permanent tribunal appropriate for the particular type of dispute is provided by the League of Nations, the submission shall be to that tribunal.

##### *Alejandro Alvarez (1931)*

Article 15. No State may occupy any part of the territory of another State for any reason whatsoever, even temporarily, except by virtue of a title to do so.

In case of dispute, the question shall be immediately submitted to international justice.

Article 25. States must . . . (f) Resolve peacefully the conflicts which may arise among them.

## ARTICLE 16

CONDEMNATION OF WAR AS AN INSTRUMENT OF  
NATIONAL AND INTERNATIONAL POLICY AND OF THE  
THREAT OR USE OF FORCE

*It is the duty of every State to refrain from the use of war of aggression as an instrument of national or international policy, and from resorting to the threat or use of force against the territorial integrity and political independence of another State, or for the recovery of public debts from another State, or in any other form which is inconsistent with international order.*

A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

*Denmark*

"It is proposed to delete the words: 'as an instrument of national or international policy,' as these words seem to be superfluous and apt to efface the rule."

*Greece*

"This article should be replaced by the following text: 'States shall be bound to refrain from the use of force in their relations with other States.' This drafting seems simpler and at the same time covers all the cases mentioned in article 16 of the draft."

*Mexico*

"It is suggested that in addition to the reference to international order (which is inviolable), clause 16 should contain a reference to the concepts of international justice or law."

*Turkey*

"In the opinion of the Turkish Government, it is advisable to give further consideration to article 16 of the draft Declaration. This article, after having stated, in general terms, that 'it is the duty of every State to refrain from resorting to the threat or use of force against the territorial integrity and political independence of another State,' adds 'or for the recovery of public debts from another State'. By this last phrase, the draft declaration acknowledges without reserve the Drago Doctrine, as is set forth in the explanatory note by His Excellency Dr. Ricardo J. Alfaro (document A/285, pages 22 and 23). But according to generally accepted principles of international law, and particularly according to article 1, paragraph 2, of the Convention II signed at The Hague in 1907, the Drago Doctrine 'is not applicable when the debtor State refuses or neglects to reply to an offer of arbitration, or after accepting the offer, prevents any compromise from being agreed upon, or, after arbitration, fails to submit to the award'.

"On the other hand, article 19 of the draft declaration provides expressly for coercive action by the community of States against another State. It seems that one of the cases when this collective coercive action should be taken is precisely the case of a debtor State refusing to pay its public debts in the circumstances envisaged in article 1, paragraph 2, of the Convention II signed at The Hague.

"It is therefore desirable that the type and conditions of the coercive action to be taken against a refractory debtor State, in the above-mentioned circumstances, be defined more clearly and in a more detailed manner in the Declaration."

#### *United Kingdom*

See comments on article 15.

#### *Venezuela*

"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."

### B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

#### 1. *Treaties and Conventions*

*Treaty of Perpetual Union, League, and Confederation between the Republics of Colombia, Central America, Peru, and the United Mexican States* (Panama, 1826)

Article 17. Whatever complaints for injuries, serious damage, or other grounds there be that one of the contracting parties can bring against another or others, neither of them shall declare war, nor order acts of reprisal against the Republic believed to be the offender without first submitting its case, supported by the necessary documents and proofs, with a detailed relation of the acts complained of to the conciliatory decision of the general assembly.

*Treaty for the Renunciation of War* (Kellogg-Briand Pact, Paris, 1928)

Article 1. The High Contracting Parties solemnly declare, in the names of their respective peoples, that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations with one another.

*Anti-War Treaty of Non-Aggression and Conciliation* (Rio de Janeiro, 1933)

Article 1. The High Contracting Parties solemnly declare that they condemn wars of aggression in their mutual relations or in those with

other States, and that the settlement of disputes or controversies of any kind that may arise among them shall be effected only by the pacific means which have the sanction of international law.

*Charter of the United Nations (1945)*

Article 2 (4). All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.

*Inter-American Treaty of Reciprocal Assistance (Rio de Janeiro, 1947)*

Article 1. The High Contracting Parties formally condemn war and undertake in their international relations not to resort to the threat or the use of force in any manner inconsistent with the provisions of the Charter of the United Nations or of this Treaty.

Article 9. In addition to other acts which the Organ of Consultation may characterize as aggression, the following shall be considered as such:

(a) Unprovoked armed attack by a State against the territory, the people, or the land, sea or air forces of another State.

(b) Invasion, by the armed forces of a State, of the territory of an American State, through the trespassing of boundaries demarcated in accordance with a treaty, judicial decision, or arbitral award, or, in the absence of frontiers thus demarcated, invasion affecting a region which is under the effective jurisdiction of another State.

*The Bogotá Charter (1948)*

Article 5. The American States reaffirm the following principles: . . .  
(e) the American States condemn war of aggression: victory does not give rights.

Article 18. The American States bind themselves in their international relations not to have recourse to the use of force, save in the case of self-defence in accordance with existing treaties or in fulfilment thereof.

2. *Resolutions, declarations and projects adopted by inter-governmental bodies*

*Resolution on Aggression (Havana, 1928)*

Considering:

That the American nations should always be inspired in solid co-operation for justice and the general good:

That nothing is so opposed to this co-operation as the use of violence:

That there is no international controversy, however serious it may be, which cannot be peacefully arranged if the parties desire in reality to arrive at a pacific settlement:

That war of aggression constitutes an international crime against the human species:

*Resolves:*

1. All aggression is considered illicit and as such is declared prohibited.

*Declaration of American Principles (Lima, 1938)*

To proclaim, support and recommend, once again, the following principles, as essential to the achievement of the aforesaid objectives:

3. The use of force as an instrument of national or international policy is proscribed.

*Atlantic Charter (1941)*

Eighth, they believe that all the nations of the world, for realistic as well as spiritual reasons, must come to the abandonment of the use of force. Since no future peace can be maintained if land, sea or air armaments continue to be employed by nations which threaten, or may threaten, aggression outside of their frontiers, they believe, pending the establishment of a wider and permanent system of general security, that the disarmament of such nations is essential. They will likewise aid and encourage all other practicable measures which will lighten for peace-loving peoples the crushing burden of armaments.

*Inter-American Juridical Committee (1942)*

V. The use of force between States is repudiated and outlawed; and no State may take the law into its own hands or seek to enforce its claims by violence.

War as an instrument of national policy must be condemned.

*Declaration of Mexico (1945)*

8. War of aggression in any of its forms is outlawed.

9. An aggression against an American State constitutes an aggression against all American States.

*Pan American Union, Governing Board (1946)*

X. The use of armed force is repudiated and outlawed.

*3. Draft declarations proposed by Governments**Italy (1919)*

2. Every action or attempted action constituting a curtailment of or menace to the political independence or territorial integrity of a State contradicts the principles by which international solidarity can alone be assured.

*Cuba (1945)*

VIII. The nations belonging to the Organization condemn war as an instrument of international action.

*Brazil (1945)*

III. Once again, the American States condemn wars of aggression

and repudiate the use of force in international relations, except in the exercise of legitimate defence, duly proven, or by virtue of collective action determined by the competent organ of the international community.

*Ecuador (1947)*

Article IX. It is illicit and unlawful to employ force between States, and no State may take justice into its own hands, nor impose its demands by violence. War is prohibited as an instrument of national policy. Accordingly, conquests, occupations or territorial transfers effected by force or other means of effective compulsion are not valid nor shall they be recognized as lawful in any degree. Similarly, agreements or treaties concluded under duress or other forms of coercion shall not be considered as binding between the parties nor in relation to third parties.

4. *Declarations by non-governmental organizations and scientific institutions*

*Seventh Universal Peace Congress (1896)*

Article 3. No State can of right declare war against another State.

Article 6. No right of conquest exists.

*International Juridical Union (1919)*

Article V. States must, in particular:

(e) Not have recourse to arms without having exhausted all peaceful means for the settlement of disputes.

(f) Unite their efforts to anticipate, prevent, and, eventually put an end to wars.

*Inter-Parliamentary Union (1928)*

6. No State has the right to be judge in its own case. All armed aggression is a crime. The culprits shall be prosecuted in conformity with the law of nations.

*International Law of the Future (1944)*

Principle 7. Each State has a legal duty to refrain from any use of force and from any threat to use force in its relations with another State, except as authorized by the competent agency of the community of States; but subject to immediate reference to and approval by the competent agency of the community of States, a State may oppose by force an unauthorized use of force made against it by another State.

5. *Statements by jurists and publicists*

*Henri La Fontaine (1916)*

Article 24. The States shall not have recourse to force as a means of sanction, coercion or defence before having exhausted all moral, political and economic means of constraint.

*Albert de Lapradelle* (1921)

Article 4. Except for the purpose of legitimate defence, no State has the right to resort to arms before it has exhausted all other means of obtaining recognition of and respect for its rights. Within a society of States, war cannot be sanctioned save by the will of a people for separation, internally, or by the decision of international justice externally.

*F. N. Keen* (1923)

I. No aggressive war. No State shall make aggressive war upon another State, or use or threaten to use armed force against another State, except in self-defence or in performance of a common duty of all States to co-operate for the purpose of restraining any breach of the peace of the world, or for the purpose of ensuring compliance with international laws, conventions or obligations.

*Victor M. Maúrtua* (1931)

XII. The international community rests upon the solidarity of States, and upon justice in their relations. Its necessary condition is peace. Vigilance in the realization of peace is a function of the organized community of States. The intervention of the community is obligatory in all cases involving grave danger to pacific relations among States. All political or juridical points of difference or cases of conflict, which disturb harmony or peace of nations, shall be adjusted or decided by conciliatory proceedings or by international jurisdictions. The exceptional circumstance of exclusive competence cannot be invoked for the purpose of impeding the pacificatory action of international organs.

*Alejandro Alvarez* (1931)

Article 21. No State may be both judge and party in its own case.

No State may take the law into its own hands.

Aside from cases involving the right of legitimate defence, no State may unilaterally undertake coercive measures against another State, even to compel the latter to fulfil its obligations.

## ARTICLE 17

### RIGHT OF LEGITIMATE DEFENCE

*Every State has the inherent right of individual or collective legitimate defence, and in the exercise of this right, it may use force to counter the unauthorized use of force by another State, provided that it shall immediately advise the competent organ of the community of States.*

#### A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

*Denmark*

"According to Danish opinion a statement of the limitations of the right of self-defence and its distinction from the traditional unlimited

defensive war is needed. The following addition is proposed: 'The exercise of the right of self-defence presupposes that an attack by some other State is imminent or has already been commenced, and it must not be used to any further extent than necessary to repel such an attack. To protect any rights which one State may have in the territory of another State, the right of self-defence must not be exercised to any greater extent than is generally permitted by the national law of the latter State.'

*Greece*

"It should be sufficient to proclaim the right of legitimate defence without further explanations or details of its implementation."

*United Kingdom*

See comments on Article 15.

B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

1. *Treaties and Conventions*

*The Charter of the United Nations (1945)*

Article 51. Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

*The Inter-American Treaty of Reciprocal Assistance (Rio de Janeiro, 1947)*

Article 3. 1. The High Contracting Parties agree that an armed attack by any State against an American State shall be considered as an attack against all the American States and, consequently, each one of the said Contracting Parties undertakes to assist in meeting the attack in the exercise of the inherent rights of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations.

2. On the request of the State or States directly attacked and until the decision of the Organ of Consultation of the Inter-American System, each one of the Contracting Parties may determine the immediate measures which it may individually take in fulfilment of the obligation contained in the preceding paragraph and in accordance with the principle of continental solidarity. The Organ of Consultation shall meet without delay for the purpose of examining those measures and agreeing upon the measures of a collective character that should be taken.



3. The provisions of this article shall be applied in case of any armed attack which takes place within the region described in article 4 or within the territory of an American State. When the attack takes place outside of the said areas, the provisions of article 6 shall be applied.

4. Measures of self-defence provided for under this article may be taken until the Security Council of the United Nations has taken the measures necessary to maintain international peace and security.

*The Bogotá Charter (1948)*

Article 25. If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an armed attack or by an act of aggression that is not an armed attack, or by an extra-continental conflict, or by a conflict between two or more American States, or by any other fact or situation that might endanger the peace of America, the American States, in furtherance of the principles of continental solidarity or collective self-defence, shall apply the measures and procedures established in the special treaties on the subject.

2. *Resolutions, declarations and projects adopted by inter-governmental bodies*

*Pan American Union. Governing Board (1946)*

XI. The measures taken by the Inter-American System or by the United Nations for the maintenance of peace and security in accordance with international agreements, and the measures which any State may take in the exercise of the inherent right of self-defence against armed attack, do not constitute a violation of principles set forth in articles VIII, IX, and X of the present declaration.

3. *Draft declarations proposed by Governments*

*Ecuador (1947)*

Article X. The measures prescribed herein, or in the Charter of the United Nations, for the maintenance of peace and security, in accordance with international conventions, and those which any State may adopt in the exercise of the inherent right of legitimate defence in case of armed attack, do not constitute a violation of the principles enumerated in this Charter.

4. *Declarations by non-governmental organizations and scientific institutions*

*Seventh Universal Peace Congress (1896)*

Article 7. Every nation has the right of legitimate self-defence.

*Inter-Parliamentary Union (1928)*

7. A State victim of an armed aggression has the right of legitimate defence and the community of States is obliged to lend it its support. A

State is also entitled to that support in the case of disregard or violation of an acknowledged right.

*International Law of the Future (1944)*

Principle 7. Each State has a legal duty to refrain from any use of force and from any threat to use force in its relations with another State, except as authorized by the competent agency of the community of States; but subject to immediate reference to and approval by the competent agency of the community of States, a State may oppose by force an unauthorized use of force made against it by another State.

5. *Statements by jurists and publicists*

*Henri La Fontaine (1916)*

Article 23. A State which is attacked, outside of the conditions conventionally and collectively established by the States, has a right of legitimate defence. The other States are obliged to participate in this defence and to make it efficacious.

*Albert de Lapradelle (1921)*

Article 4. Except for the purpose of legitimate defence, no State has the right to resort to arms before it has exhausted all other means of obtaining recognition of and respect for its rights. Within a society of States, war cannot be sanctioned save by the will of a people for separation, internally, or by the decision of international justice, externally.

*F. N. Keen (1923)*

I. No State shall make aggressive war upon another State, or use or threaten to use armed force against another State, except in self-defence or in performance of a common duty of all States to co-operate for the purpose of restraining any breach of the peace of the world, or for the purpose of ensuring compliance with international laws, conventions or obligations.

*Victor M. Maurtua (1931)*

V. The conservation of the State is a purpose justifying resistance in self-defence. But no right of action exists, on the ground of necessity, against the right of another State.

*Alejandro Alvarez (1931)*

Article 21. No State may be both judge and party in its own case. No State may take the law into its own hands.

Aside from cases involving the right of legitimate defence, no State may unilaterally undertake coercive measures against another State, even to compel the latter to fulfil its obligations.

## ARTICLE 18

NON-RECOGNITION OF TERRITORIAL ACQUISITIONS  
OBTAINED BY FORCE

*It is the duty of every State to refrain from recognizing territorial acquisitions obtained through force or the threat of force.*

## A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

*Mexico*

"The Government of Mexico proposes adding the principle that territorial acquisitions effected by means incompatible with international law or justice shall also not be recognized."

*India*

"The Government of India agree to the principle underlying this article but desire to point out the practical difficulties, e.g., a territory may be acquired by a State and be under its administration for a very long time. In such a case it would not be possible or practical to refuse recognition."

*United Kingdom*

"In this connexion His Majesty's Government consider that the primary question here is that of the duty of the international community to prevent acquisitions by illegal force, or restore any so obtained. To the extent that the community of nations do not fulfil this function, it is more than questionable whether any purpose is served by a barren duty of non-recognition. In the past, in the absence of any common action by the community to prevent or restore such acquisitions, international law has proceeded on the basis of recognizing established situations even though brought about by illegal force, and acquisitive and extinctive prescription form, it is thought, part of existing international law. Mere non-recognition, when the community of States does not fulfil the function of preventing or restoring acquisitions by illegal force, has not appeared to serve any useful purpose but has, instead, tended to create innumerable legal fictions, under which at times States have acted in a manner really inconsistent with any other basis than that of recognition of the acquisition, whereas at the same time they purport not to have done so."

## B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

1. *Treaties and Conventions*

*Anti-War Treaty of Non-Aggression and Conciliation (Rio de Janeiro, 1933)*

Article 2. They declare that as between the High Contracting Parties territorial questions must not be settled by violence, and that they will not recognize any territorial arrangement which is not obtained by pacific

means, nor the validity of the occupation or acquisition of territories that may be brought about by force of arms.

*Convention of Montevideo (1933)*

Article 11. The contracting States definitely establish as the rule of their conduct the precise obligation not to recognize territorial acquisitions or special advantages which have been obtained by force whether this consists in the employment of arms, in threatening diplomatic representations, or in any other effective coercive measure. The territory of a State is inviolable and may not be the object of military occupation nor of other measures of force imposed by another State directly or indirectly or for any motive whatever even temporarily.

*The Bogotá Charter (1948)*

Article 17. The territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatever. No territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized.

2. *Resolutions, declarations and projects adopted by inter-governmental bodies*

*Recommendation, The Right of Conquest (Washington, 1890)*

First. That the principle of conquest shall not, during the continuance of the treaty of arbitration, be recognized as admissible under American public law.

Second. That all cessions of territory made during the continuance of the treaty of arbitration shall be void if made under threats of war or in the presence of an armed force.

*Inter-American Declaration of 3 August 1932*

. . . The American nations further declare that they will not recognize any territorial arrangement of this controversy (Chaco dispute) which has not been obtained by peaceful means nor the validity of territorial acquisitions which may be obtained through occupation or conquest by force of arms.

*Declaration of Principles of Inter-American Solidarity and Co-operation (Buenos Aires, 1936)*

*Declares:*

That the following principles are accepted by the American community of nations:

Proscription of territorial conquest and that, in consequence, no acquisition made through violence shall be recognized.

*Atlantic Charter (1941)*

Second, they desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned.

*Inter-American Juridical Committee (1942)*

Hence, no territorial conquest, occupation or transfer of territory brought about by force or by other methods of effective coercion, shall be valid or be recognized as having any degree of legality whatever.

*Declaration of Mexico (1945)*

The American community maintains the following essential principles as governing the relations among the States composing it:

4. The territory of the American States is inviolable and also immutable, except when changes are made by peaceful agreement.

5. The American States do not recognize the validity of territorial conquests.

*Pan American Union. Governing Board (1946)*

IX. The territory of a State is inviolable and may not be the object of military occupation or of other measures of force taken by another State directly or indirectly for whatever motive, even temporarily. No territorial acquisitions or special advantages obtained by force or other means of coercion shall be recognized.

*3. Draft declarations proposed by Governments**Ecuador (1947)*

Article VI. It is the duty of States to guarantee the political existence of each and all of them and to withhold recognition of new States which attempt to constitute themselves on the basis of the dismemberment of existing States.

Article IX. It is illicit and unlawful to employ force between States, and no State may take justice into its own hands, nor impose its demands by violence. War is prohibited as an instrument of national policy. Accordingly, conquests, occupations or territorial transfers effected by force or other means of effective compulsion are not valid nor shall they be recognized as lawful in any degree. Similarly, agreements or treaties concluded under duress or other forms of coercion shall not be considered as binding between the parties nor in relation to third parties.

*4. Declarations by non-governmental organizations and scientific institutions**Seventh Universal Peace Congress (1896)*

Article 6. No right of conquest exists.

*American Institute of International Law (1925)*

Project No. 8. Fundamental rights of American Republics.

2. No American Republic can cede any part whatever of its territory to a non-American nation, even if it consents to do so.

3. No nation shall hereafter, for any reason whatsoever, directly or indirectly, occupy even temporarily any portion of the territory of an

American Republic in order to exercise sovereignty therein, even with the consent of the said Republic.

Project No. 30. Conquest.

The American Republics . . . animated by the desire of preserving the peace and prosperity of the continent, for which it is indispensable that their mutual relations be based upon principles of justice and upon respect for law, solemnly declare as a fundamental concept of American international law that, without criticizing territorial acquisitions effected in the past, and without reference to existing controversies:

In the future territorial acquisitions obtained by means of war or under the menace of war or in presence of an armed force, to the detriment of any American Republic, shall not be lawful; and that

Consequently territorial acquisitions effected in the future by these means cannot be invoked as conferring title; and that

Those obtained in the future by such means shall be considered null in fact and in law.

5. *Statements by jurists and publicists*

*David Dudley Field* (1872)

48. Conquest includes any mode of obtaining possession of territory against the will of the Power by which it was previously occupied.

Acquisition by conquest becomes complete by the continuance of peaceful possession.

*Victor M. Maúrtua* (1931)

III. States are obliged to withhold their recognition of territorial acquisitions effected by means of war, under threat of war, or in the presence of an armed force.

*Alejandro Alvarez* (1931)

Article 14. No territory may be acquired except by peaceful means.

Territorial acquisitions or special advantages which have been obtained by force, whether this consists in the employment of arms, in threatening diplomatic representations, or in any other effective measures of coercion, shall not be recognized.

**ARTICLE 19**

**CO-OPERATION IN THE PREVENTION OF ACTS OF FORCE**

*It is the duty of every State to afford the community of States every kind of assistance in whatever action that community undertakes, and it should abstain from rendering assistance to any State against which the community is conducting preventive or coercive action.*

## A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

*Dominican Republic*

"Articles 19 and 20 which refer to *co-operation among States* and have the same objective might be combined in one text."

*Greece*

"Articles 19 and 20 ought not to appear in the proposed declaration, since the obligations in question are established by particular international law (Charter of the United Nations) and not by general international law. The Greek Government thinks it inadvisable to include in the declaration principles which are laid down solely by particular international law, but are not recognized by general international law. In its opinion, a proclamation of such general scope as the declaration in question should be confined to principles which can be based on general international law or on generally accepted postulates."

*Turkey*

See comments on article 16.

*United Kingdom*

See comments on article 15.

## B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

1. *Treaties and Conventions**Convention for the Maintenance, Preservation and Re-establishment of Peace.* (Buenos Aires, 1936)

Article I. In the event that the peace of the American Republics is menaced, and in order to co-ordinate efforts to prevent war, any of the Governments of the American Republics signatory to the Treaty of Paris of 1928 or to the Treaty of Non-Aggression and Conciliation of 1933, or to both, whether or not a member of other peace organizations, shall consult with the other Governments of the American Republics, which, in such event, shall consult together for the purpose of finding and adopting methods of peaceful co-operation.

Article II. In the event of war, or a virtual state of war between American States, the Governments of the American Republics represented at this Conference shall undertake without delay the necessary mutual consultations, in order to exchange views and to seek, within the obligations resulting from the pacts above mentioned and from the standards of international morality, a method of peaceful collaboration; and, in the event of an international war outside America which might menace the peace of the American Republics, such consultation shall also take place to determine the proper time and manner in which the signatory States, if they so desire, may eventually co-operate in some action tending to preserve the peace of the American continent.

*Inter-American Treaty of Reciprocal Assistance (Rio de Janeiro, 1947)*

Article 3. (1) The High Contracting Parties agree that an armed attack by any State against an American State shall be considered as an attack against all the American States and, consequently, each one of the said Contracting Parties undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations.

(2) On the request of the State or States directly attacked and until the decision of the Organ of Consultation of the Inter-American System, each one of the Contracting Parties may determine the immediate measures which it may individually take in fulfilment of the obligation contained in the preceding paragraph and in accordance with the principle of continental solidarity. The Organ of Consultation shall meet without delay for the purpose of examining those measures and agreeing upon the measures of a collective character that should be taken.

*Charter of the United Nations (1945)*

Article 2. (5) All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action.

*The Bogotá Charter (1948)*

Article 5. The American States reaffirm the following principles:

(f) An act of aggression against one American State is an act of aggression against all the other American States;

Article 24. Every act of aggression by a State against the territorial integrity or the inviolability or against the sovereignty or political independence of an American State shall be considered an act of aggression against the other American States.

*2. Resolutions, declarations and projects adopted by  
inter-governmental bodies*

*Declaration of Principles of Inter-American Solidarity and Co-operation (Buenos Aires, 1936)*

(1) That the American Nations, true to their republican institutions, proclaim their absolute juridical liberty, their unqualified respect for their respective sovereignties and the existence of a common democracy throughout America.

(2) That every act susceptible of disturbing the peace of America affects each and every one of them, and justifies the initiation of the procedure of consultation provided for in the Convention for the Maintenance, Preservation and Re-establishment of Peace, signed at this Conference. . . .



*Declaration of American Principles (Lima, 1938)*

(6) Peaceful collaboration between representatives of the various States and the development of intellectual interchange among their peoples is conducive to an understanding by each of the problems of the other as well as of problems common to all, and makes more readily possible the peaceful adjustment of international controversies.

(8) International co-operation is a necessary condition to the maintenance of the afore-mentioned principles.

*The Second Meeting of the Ministers of Foreign Affairs of the American Republics (Havana, 1940)*

## Resolution XV.

Declares: That any attempt on the part of a non-American State against the integrity or inviolability of the territory, the sovereignty or the political independence of an American State shall be considered as an act of aggression against the States which sign this declaration.

In case acts of aggression are committed or should there be reason to believe that an act of aggression is being prepared by a non-American nation against the integrity or inviolability of the territory, the sovereignty or the political independence of an American nation, the nations signatory to the present declaration will consult among themselves in order to agree upon the measures it may be advisable to take.

All the signatory nations, or two or more of them, according to circumstances, shall proceed to negotiate the necessary complementary agreements so as to organize co-operation for the defence and the assistance that they shall lend each other in the event of aggressions such as those referred to in this declaration.

*3. Draft declarations proposed by Governments**Brazil (1945)*

V. The American States are firmly resolved to keep themselves united as a bloc against any extra-continental aggression, and they still consider as a wrong committed against themselves any aggression against any one of them; they are therefore determined to participate in the defence of the sister nation attacked, in the way and under the conditions that may be agreed upon among them all.

VI. However, if the aggression against an American State should come from another American State, the other States should, through procedures of consultation, reach an immediate agreement in order to examine the circumstances of the case and lend proper help to the victim of the aggression.

**4. Declarations by non-governmental organizations and scientific institutions**

*International Juridical Union* (1919)

Article V. (f) Unite their efforts to anticipate, prevent, and, eventually put an end to wars.

*International Law of the Future* (1944)

Principle 8. Each State has a legal duty to take, in co-operation with other States, such measures as may be prescribed by the competent agency of the community of States for preventing or suppressing a use of force by any State in its relations with another State.

**5. Statements by jurists and publicists**

*Alejandro Alvarez* (1931)

Article 25. States must: . . . (h) Unite their efforts to anticipate, prevent, and eventually put an end to wars.

**ARTICLE 20**

**CO-OPERATION IN THE PURSUIT OF THE AIMS  
OF THE COMMUNITY OF STATES**

*It is the duty of every State to take, in co-operation with other States, the measures prescribed by the competent organs of the community of States in order to prevent or put down the use of force by a State in its relations with another State, or in the general interest.*

**A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS**

*Dominican Republic*

See comments on article 19.

*Greece*

See comments on article 19.

*United Kingdom*

See comments on article 15.

**B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS**

**1. Treaties and Conventions**

**2. Resolutions, declarations and projects adopted by inter-governmental bodies**

*Pan American Union. Governing Board* (1946)

**XIX.** The American States, aware of the evident efficacy of the friendly interchange of views, especially through the procedure of con-

sultation, may bring for the consideration of the American Governments any proposal or situation in the examination or solution of which the said States have a common interest.

XX. The American States reiterate their adherence to the policy of the "Good Neighbour," which expresses an aspiration that is common to all the American nations; and consider that this policy is a standard which should govern their common relations.

XXI. The American States, fully cognizant of the geographic and historical factors to which the Pan American movement owes its origin, reaffirm their faith in the principle of continental solidarity and proclaim their unswerving loyalty to the Inter-American System; and, in consequence, they will fulfil in good faith all their obligations as members of that System.

XXII. The American States, in renewing their intention to strengthen continental solidarity, also proclaim their determination to conduct themselves as members of the world community; and, in consequence, they will fulfil in good faith all their obligations as members of the world organization.

### *3. Draft declarations proposed by Governments*

#### *Cuba (1945)*

IX. The nations belonging to the Organization proclaim the need for accepting the decisions of the latter through the acceptance of the agreements of the majority, the unqualified respect for the individual national sovereignties, and the solidarity among all peoples of the world, and affirm their decision to maintain and defend these principles against any foreign intervention or activity which might endanger them.

X. Every State has the duty to employ all the spiritual and material means at its disposal in order to maintain and strengthen peace, harmony, and trade among all the nations of the world, as indispensable requisites for the effective discharge of the duty which rests upon them in the universal historic process of civilization and culture.

#### *Ecuador (1947)*

Article XV. Economic co-operation is the duty of each State with the object of promoting the common prosperity of all peoples and of avoiding distress, poverty, malnutrition or ill-health, which, in affecting one of them, affects them all.

Article XVIII. The States pledge themselves to observe the "Good Neighbour" policy in their mutual relations.

### *4. Declarations by non-governmental organizations and scientific institutions*

#### *International Juridical Union (1919)*

Article V. (g) Participate in the creation, functioning, and development of all international services.

*International Law of the Future* (1944)

Principle 5. Each State has a legal duty to co-operate with other States in establishing and maintaining agencies of the community of States for dealing with matters of concern to the community, and to collaborate in the work of such agencies.

5. *Statements by jurists and publicists**F. N. Keen* (1923)

VI. Preservation of Peace and Enforcement of International Obligations. Every State shall do all things within its power which are necessary to give effect to a requisition (issued by a tribunal or authority having jurisdiction to issue the same) requiring all States to co-operate for the purpose of restraining any breach of the peace of the world or for the purpose of ensuring compliance with international laws, conventions or obligations.

X. Information and Evidence. All States shall afford to the League of Nations and its Tribunals, Bureaux and Commissions, and to the Permanent Court of International Justice, all such information and evidence, within their power, as may be required for the purpose of the investigation of international questions, the settlement of international relations, and the adjustment of international differences.

*Victor M. Maúrtua* (1931)

VII. In matters affecting the community of States, and especially in so far as concerns the creation and sanction of general rules of law and the organization of public international services, it is the duty of States to enter into harmonious collaboration. They must restrict their activities to the limits necessarily set in consideration of general interests and of the protection of those individual rights which are directly recognized by international law. No State may be exonerated from the obligations of co-operation, or from the limits imposed upon all, by the State comprising the international community.

*Alejandro Alvarez* (1931)

Article 25. States must: . . . (j) Participate in the creation, functioning, and development of international services.

## ARTICLE 21

MAINTENANCE OF CONDITIONS CALCULATED TO  
ENSURE INTERNATIONAL PEACE AND ORDER

*It is the duty of every State to ensure that the conditions prevailing within its territory do not threaten international peace and order and, to that end, it must treat its own population in a manner which does not violate the dictates of humanity and justice; or offend the conscience of mankind.*

## A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

*India*

"The following words may be added to this article: '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.'"

*Mexico*

"The Government of Mexico proposes with reference to clause 21 that it should be established that the fulfilment of such an obligation should not be subject to the unilateral pressure of another State or States, since any such action would violate the principle of non-intervention and might offer a pretext for undue political coercion, as happened during the Nazi regime in the case of German minorities living in various countries of Europe before the war."

*United Kingdom*

See comments on articles 4 and 23.

*Venezuela*

"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)."

## B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

1. *Treaties and Conventions*2. *Resolutions, declarations and projects adopted by inter-governmental bodies**Resolution, Peaceful Orientation of the American Peoples (Mexico, 1945)*

1. That the American States shall, by all means at their disposal, strive to spread the ideals of peace and the principles of mutual respect, and shall curb all activities or propaganda that directly or indirectly tend to sow hatred or division between their respective peoples.

2. That the work of dissemination and propaganda shall be carried out principally in the primary schools in the manner determined by the respective educational and technical agencies, and, to this end, express mention shall be made of the contents of this Declaration in the relevant curricula.

3. That, in order to accomplish the objectives referred to under paragraph one hereof, the Governments shall take steps leading to the

initiation of an active campaign through the Press, radio, motion pictures and public lectures, or any other means of dissemination.

4. That the text of this Declaration shall be widely disseminated and, by agreement of the American States, efforts shall be made to extend its application to other countries. This provision can be implemented at the next International Conference of American States.

5. That the Pan American Union study the possibility of creating an agency for peaceful orientation and of recommending the establishment of national commissions for peaceful orientation to complement the activities of the projected world body.

### 3. *Draft declarations proposed by Governments*

#### *Italy (1919)*

6. All laws and regulations intended to protect the rights and interests of workpeople shall be applied in every country without distinction of nationality. This principle, however, is not to be considered as interfering with the right of a State to limit the following by foreigners of particular professions and the employment of foreign labour in certain kinds of work.

#### *Ecuador (1947)*

Article XIII. It is the duty of States to guarantee the essential rights of men, without distinction of race, sex or religion and to forbid anything which tends to menace, suspend or violate them.

Article XIV. Each State must watch over public health, strive to raise the standard of living, combat unemployment and disseminate popular education, so as to ensure the development of democracy and to bring about economic, social and cultural progress.

### 4. *Declarations by non-governmental organizations and scientific institutions*

#### *American Institute of International Law (1925)*

##### Project No. 7. Declaration of Rights and Duties of Nations

VII. The American Republics recognize it as a fundamental duty to furnish instructions to their nationals in their international obligations and duties as well as in their rights and prerogatives, thus creating the "international mind" and the public opinion which shall in the future obtain by persuasion what force has failed to gain in the past.

##### Project No. 15. Responsibility of Governments

Article 1. The Government of each American Republic is obliged to maintain on its own territory the internal order and governmental stability indispensable to the fulfilment of international duties.

5. *Statements by jurists and publicists*

*Leone Levi* (1889)

83. A State is bound to uphold law and order, and to repress sedition, so as not to be a source of danger to itself and neighbouring States.

*Victor M. Maúrtua* (1931)

XIV. The conservation of order within States and the guarantee of the rights of man are essential conditions of international juridical life. In the cases laid down by general or regional treaties of organization, the (international) community shall be able to intervene, by means of organs enjoying international authorization, for the purpose of ensuring the existence, in the territory of any member State, of the minimum degree of order necessary in order that the international rights of States and of individuals may be effective.

*Alejandro Alvarez* (1931)

Article 25. States must (b) Maintain a political and juridical organization which will permit all persons residing in their territory to exercise the rights and enjoy the advantages which the sentiment of international justice today imposes upon all civilized people.

## ARTICLE 22

### DUTY NOT TO FOMENT CIVIL DISTURBANCES IN OTHER STATES

*It is the duty of every State to ensure that, within its own territory, no activities are organized for the purpose of fomenting civil strife within the territory of another State.*

#### A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

*Greece*

See the drafting of article 4 as proposed above.

*United Kingdom*

See comments on article 5.

## B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

1. *Treaties and Conventions*2. *Resolutions, declarations and projects adopted by inter-governmental bodies*3. *Draft declarations proposed by Governments*4. *Declarations by non-governmental organizations and scientific institutions**International Law of the Future (1944)*

Principle 4. Each State has a legal duty to prevent the organization within its territory of activities calculated to foment civil strife in the territory of any other State.

5. *Statements by jurists and publicists**Leone Levi (1889)*

82. The State must not allow plots or conspiracies to be organized within the State against the Sovereign of other States.

*Alejandro Alvarez (1931)*

Article 25. States must: (c) Prevent the plotting on their territory of conspiracies against the security or internal order of another State.

## ARTICLE 23

EQUALITY OF OPPORTUNITY AND INTERDEPENDENCE  
IN THE ECONOMIC SPHERE

*Every State has the right of access, on equal terms, to the trade, commodities and raw materials of the world which are necessary to its economic prosperity.*

*It is the duty of every State to eliminate from its economic activities every artificial means tending to establish differences in the acquisition of the natural products of the soil of another State, and to refrain from exercising control over means of transport, from restricting trade, or from bringing about restrictions in commercial credits and currency of another State.*



## A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS

*Dominican Republic*

"An additional clause might be added at the end of the second paragraph of article 23 as follows:

'Equality of treatment and the adoption of just and equitable procedures in commercial exchange are recognized as fundamental principles of the law of nations.'

*Greece*

"Though the principles it expresses are important, this article seems out of place in the present declaration."

*India*

"The Government of India feel that this article is out of place in the draft declaration and point out that its consideration properly belongs to the International Trade Organization."

*Mexico*

"The Government of Mexico considers that the principle stated in clause 23 of the draft calls for specially careful consideration. Due recognition should be given to the reasons which might prompt industrially less-developed countries with low standards of living to adopt specified measures of protection with a view to stimulating yield and legitimate development for the purpose not of attaining self-sufficiency, but of being able truly and actively to co-operate in the various economic forms of international solidarity. It should also be clearly stated what legal or economic means are to be considered as artificial and whether in the economic development of a country there should be preferential treatment for nationals."

*Philippines*

"The Republic of the Philippines cannot conform to this article in view of the Executive Agreement concluded between the United States of America and the Republic of the Philippines of 4 July 1946, providing for reciprocal trade preferences between the two countries. This agreement is calculated to operate for a period of 28 years. The Republic of the Philippines found it necessary to enter into a special trade arrangement with the United States in view of its economic, material, and financial needs arising from the establishment of its sovereign existence which coincided with the terrific devastation wrought upon our economy by the last war.

"It is likewise the impression of this Government that the first paragraph of the said article appears too vague to be acceptable. The statement that every State has the right of access to the raw materials of the world which are necessary to its economic prosperity may give rise to claims by industrial States that they are entitled as a matter of right to the exploitation of the natural resources and raw materials. Such claims might impair the sovereign right of the small countries to the unhampered determination of their national policies affecting the utilization of their natural resources and the raw materials extracted therefrom.

"In general, it is the view of this Government that it will give its conformity to the draft provided article 23 thereof be eliminated."

### *United Kingdom*

"Reference has already been made above in connexion with article 4 to draft articles 21 and 23. As there stated, these two articles must be considered in close connexion with article 4. In regard to article 23 in particular, His Majesty's Government will await with much interest the results of the efforts of the International Law Commission to state the idea which is contained in the present draft in a form which could be accepted as a legislative proposition."

### *Venezuela*

"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."

## B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS

### *1. Treaties and Conventions*

#### *Economic Agreement of Bogotá (1948)*

Article 1. The American States, represented at the Ninth International Conference of American States and which hereinafter shall be called the States, declare that it is their duty to co-operate toward the solution of their economic problems, and to conduct their international economic relations in the American spirit of good neighbourliness.

Article 3. The States declare their intention to co-operate individually and collectively and with other nations to carry out the principle of facilitating access, on equal terms, to the trade, products, and means of production including scientific and technical advances, that are needed for their industrial and general economic development.

2. *Resolutions, declarations and projects adopted by inter-governmental bodies*

*Resolution V, Economic, Commercial and Tariff Policy* (Montevideo, 1933)

Resolves: That the Government of the American Republics will promptly undertake to promote trade among their respective peoples and other nations and to reduce high trade barriers through the negotiations of comprehensive bilateral reciprocity treaties based upon mutual concessions; and

That the Governments of the American Republics do each subscribe, and call upon other Governments of the world to subscribe, to the policy and undertaking, through simultaneous action of the principal nations, of gradually reducing tariffs and other barriers to mutually profitable movements of goods, services, and capital between nations, such policy and undertaking being in words and figures as follows: . . .

The subscribing Governments declare that the principle of equality of treatment stands and must continue to stand as the basis of all acceptable commercial policy. Accordingly they undertake that whatever agreements they enter into shall include the most-favoured-nation clause in its unconditional and unrestricted form, to be applied to all types of control of international trade, limited only by such exceptions as may be commonly recognized as legitimate, and they undertake that such agreements shall not introduce features which, while possibly providing an immediate advantage for the contracting parties, might react disadvantageously upon world trade as a whole.

*Recommendation, Equality of Treatment in International Trade* (Buenos Aires, 1936)

Recommends: That the Governments of the American Republics reaffirm the statement enunciated by the Seventh International Conference of American States that "the principle of equality of treatment stands and must continue to stand as the basis of all acceptable commercial policy".

That each Government declare its determination to bend every effort, having in mind the different national economies, towards the objective of enforcing in all the phases of its general commercial policy the peaceful and equitable principles of equality of treatment, and recommends that the Governments of all countries adopt this principle in their commercial policies, and in accordance therewith suppress as soon as possible all discriminatory practices including those arising in connexion with import licence systems, exchange control, and bilateral clearing and compensation agreements.

*Recommendations, Restrictions on International Trade* (Buenos Aires, 1936)

Recommends: 1. That the American States abstain, so far as possible, from raising or augmenting tariff barriers and every other kind of restrictions which directly or indirectly hinder international trade and resulting payments;

2. That immediately, and to the extent that the several national economies permit, a policy of abolishing and gradually reducing the said excessive or unreasonable prohibitions and restrictions upon international commerce be undertaken and carried forward by each of the said States, through the conclusion or revision of bilateral economic or commercial agreements and treaties and through unilateral action by each country.

*Economic Charter of the Americas* (Mexico, 1945)

The fundamental economic aspiration of the peoples of the Americas, in common with peoples everywhere, is to be able to exercise effectively their natural right to live decently, and work and exchange goods productively, in peace and with security.

Declaration of Objectives. The American Republics collaborating in the war effort, fully aware of their traditionally close relations and of their position and responsibility as an integral part of the world community, declare their firm purpose to collaborate in a programme for the attainment of:

1. The continuation of mobilization of their economic resources until the achievement of total victory.

2. An orderly transition of the economic life of the Americas from war-time conditions with joint action looking to the maintenance of the economic stability of the American Republics during such transition period.

3. A constructive basis for the sound economic development of the Americas through the development of natural resources; increased industrialization; improvement of transportation; modernization of agriculture; development of power facilities and public works; the encouragement of investment of private capital, managerial capacity, and technical skills; and the improvement of labour standards and working conditions, including collective bargaining, all leading to a rising level of living and increased consumption.

Declaration of principles: 1. Rising levels of living; 2. Equality of access; 3. International commercial policy; 4. Private agreements which restrict international trade; 5. Elimination of excesses of economic nationalism; 6. Just and equitable treatment for foreign enterprise and capital;

7. Endorsement of financial and agricultural proposals; 8. Private enterprise; 9. International action to facilitate distribution of production surpluses; 10. Labour.

*Atlantic Charter (1941)*

Fourth, they will endeavour, with due respect for their existing obligations, to further the enjoyment by all States, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity.

*Pan American Union. Governing Board (1946)*

XVIII. The American States proclaim the principle of equality of access to the trade and raw materials of the world and to the producers' goods which are needed for their industrial and commercial development. In order to realize these aims, the American States recognize the duty to co-operate for the prevention or elimination of unjust discriminations; to reduce barriers injurious to international trade; to avoid practices which obstruct international trade and to eliminate the excesses which may result from economic nationalism.

*3. Draft declarations proposed by Governments*

*Italy (1919)*

3. Every State has the right to participate in international commerce and traffic in conditions of legal equality. This freedom or equality shall, however, not be affected by any restrictions, such as customs and sanitary regulations, which a State in its own interest may require to impose.

5. The international distribution of the foodstuffs and raw materials required to sustain healthy conditions of life and industry, must be controlled in such a way as to secure to every country whatever is indispensable to it in this respect.

*Cuba (1945)*

VI. All States have the right to access, on equal terms, to the trade, the markets, and the raw materials of the world needed for their economic prosperity.

The economic independence of the nations requires the elimination from their activities in this regard of all artificial measures leading to discrimination against the natural or spontaneous products of the soil of another State, to control of the means of transportation, to restriction of reciprocal trade, or to contraction of commercial credit or of the foreign exchange of another country.

The principle of economic reciprocity is the foundation of and the guide to world solidarity.

*Ecuador (1947)*

Article XVI. States shall have equal access to trade and the raw materials of the world, and to the factors of production necessary for their industrialization and economic development. Consequently they recognize the duty to co-operate in order to prevent and eliminate unjust discriminations; to lower barriers harmful to international trade; to avoid practices which obstruct such trade and eliminate the excesses which may result from economic nationalism.

4. *Declarations by non-governmental organizations and scientific institutions*

5. *Statements by jurists and publicists*

*Henri La Fontaine (1916)*

Article 11. The exploitation of the globe is managed by the States in the collective interest of men, and so as to facilitate and develop to the utmost the exchange of raw materials and of manufactured products.

**ARTICLE 24**

**PROHIBITION OF PACTS INCOMPATIBLE WITH THE  
DISCHARGE OF INTERNATIONAL OBLIGATIONS**

*It is the duty of every State to refrain from concluding with other States agreements, the observance of which is inconsistent with the discharge of its obligations under international law or under the constituent pact of the community of States.*

**A. COMMENTS AND OBSERVATIONS OF GOVERNMENTS**

*Greece*

"Same observation for this article (as for article 23). While the first part of the text appears to require no comment, the second part pertains to particular international law (Charter of the United Nations)."

**B. TREATIES, CONVENTIONS, DECLARATIONS AND STATEMENTS**

*Treaties and Conventions*

*Charter of the United Nations (1945)*

Article 2. (2) All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

Article 103. In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their

obligations under any other international agreement, their obligations under the present Charter shall prevail.

*Inter-American Treaty of Reciprocal Assistance (Rio de Janeiro, 1947)*

Article 10. None of the provisions of this Treaty shall be construed as impairing the rights and obligations of the High Contracting Parties under the Charter of the United Nations.

*The Bogotá Charter (1948)*

Article 102. None of the provisions of this Charter shall be construed as impairing the rights and obligations of the Member States under the Charter of the United Nations.

2. *Resolutions, declarations and projects adopted by inter-governmental bodies*

3. *Draft declarations proposed by Governments*

*Ecuador (1947)*

Article XIX. It is the duty of States to fulfil in good faith the obligations imposed upon them as Members of the Regional Community, of the United Nations and of the World Community.

4. *Declarations by non-governmental organizations and scientific institutions*

*International Law of the Future (1944)*

Principle 10. Each State has a legal duty to refrain from entering into any agreement with another State, the performance of which would be inconsistent with the discharge of its duties under general international law.

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## VI. APPENDICES

### A. TEXTS OF TREATIES, CONVENTIONS AND DECLARATIONS

#### 1. TREATIES AND CONVENTIONS

##### No. 1

SEVENTH INTERNATIONAL CONFERENCE OF AMERICAN STATES (1933)

*Convention on Rights and Duties of States*<sup>157</sup>

*Article 1.* The State as a person of international law should possess the following qualifications; (a) a permanent population; (b) a defined territory; (c) a government; and (d) capacity to enter into relations with the other States.

*Article 2.* The Federal State shall constitute a sole person in the eyes of international law.

*Article 3.* The political existence of the State is independent of recognition by the other States. Even before recognition the State has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts.

The exercise of these rights has no other limitation than the exercise of the rights of other States according to international law.

*Article 4.* States are juridically equal, enjoy the same rights, and have equal capacity in their exercise. The rights of each one do not depend upon the power which it possesses to assure its exercise, but upon the simple fact of its existence as a person under international law.

*Article 5.* The fundamental rights of States are not susceptible of being affected in any manner whatsoever.

*Article 6.* The recognition of a State merely signifies that the State which recognizes it accepts the personality of the other with all the rights and duties determined by international law. Recognition is unconditional and irrevocable.

*Article 7.* The recognition of a State may be express or tacit. The latter results from any act which implies the intention of recognizing the new State.

*Article 8.* No State has the right to intervene in the internal or external affairs of another

*Article 9.* The jurisdiction of States within the limits of national territory applies to all the inhabitants.

Nationals and foreigners are under the same protection of the law and the national authorities and the foreigners may not claim rights other or more extensive than those of the nationals.

*Article 10.* The primary interest of States is the conservation of peace. Dif-

<sup>157</sup> This Convention has been ratified by the following sixteen American States: Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, United States and Venezuela. Text from *The International Conferences of American States, First Supplement, 1933-1940*, Washington, 1940, pp. 121-124.

ferences of any nature which arise between them should be settled by recognized pacific methods.

*Article 11.* The Contracting States definitely establish as the rule of their conduct the precise obligation not to recognize territorial acquisitions or special advantages which have been obtained by force whether this consists in the employment of arms, in threatening diplomatic representations, or in any other effective coercive measure. The territory of a State is inviolable and may not be the object of military occupation nor of other measures of force imposed by another State directly or indirectly or for any motive whatever even temporarily.

*Article 12.* The present Convention shall not affect obligations previously entered into by the High Contracting Parties by virtue of international agreements.

## No. 2

### UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION (1945)

#### *Charter of the United Nations*<sup>158</sup>

*Article 2.* The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that States which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

<sup>158</sup> The content of Article 2 of the United Nations Charter is primarily based on the Dumbarton Oaks Proposals. According to the report of Committee I to Commission I, "The chapter on 'Principles' sets, in the same order of ideas, the methods and regulating norms according to which the Organization and its Members shall do their duties and endeavour to achieve the common ends".

## CHAPTER III

*Fundamental Rights and Duties of States*

*Article 6.* States are juridically equal, enjoy equal rights and equal capacity to exercise these rights, and have equal duties. The rights of each State depends not upon its power to ensure the exercise thereof, but upon the mere fact of its existence as a person under international law.

*Article 7.* Every American State has the duty to respect the rights enjoyed by other States in accordance with international law.

*Article 8.* The fundamental rights of States may not be impaired in any manner whatsoever.

*Article 9.* The political existence of a State is independent of its recognition by other States. Even before being recognized, the State has the right to defend its integrity and independence, to provide for its preservation and prosperity, and, consequently, to organize itself as it thinks best, to legislate concerning its interests, to administer its services, and to determine the jurisdiction and competence of its courts. The exercise of these rights is limited only by the exercise of the rights of other States in accordance with international law.

*Article 10.* Recognition implies that the State granting it accepts the personality of the new State with all the rights and duties that international law provides for the two States.

*Article 11.* The right of each State to protect itself and to live its own life does not authorize it to commit unjust acts against another State.

*Article 12.* The jurisdiction of States within the limits of their national territory is exercised equally over all the inhabitants, whether nationals or aliens.

*Article 13.* Each State has the right to develop its cultural, political and economic life freely and naturally. In this free development, the State shall respect the rights of the individual and the principles of universal morality.

*Article 14.* Respect for and the faithful observance of treaties constitute a standard for the development of peaceful relations among States. International treaties and agreements should be public.

*Article 15.* No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements.

*Article 16.* No State may use or encourage the use of enforcement measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind.

*Article 17.* The territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any ground whatever. No territorial

<sup>159</sup> According to Article 109 the Charter shall enter into force among the ratifying States when two-thirds have deposited their ratifications. English text released by the Pan American Union.



acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized.

*Article 18.* The American States bind themselves in their international relations not to have recourse to the use of force, save in the case of self-defence in accordance with existing treaties, or in fulfilment thereof.

*Article 19.* Measures adopted for the maintenance of peace and security in accordance with existing treaties do not constitute a violation of the principles set forth in articles 15 and 17.

## 2. RESOLUTIONS, DECLARATIONS AND PROJECTS ADOPTED BY INTER-GOVERNMENTAL BODIES:

### No. 4

INTERNATIONAL COMMISSION OF AMERICAN JURISTS (1927)

*Project II, States: Existence, Equality, Recognition*<sup>100</sup>

*Article 1.* The State, as a person of international law, must fulfil the following requirements:

- (1) Permanent population;
- (2) Definitely determined territory;
- (3) Constituted government;
- (4) Capacity to enter into relations with other States;
- (5) Degree of civilization such as enables it to observe the principles of international law.

*Article 2.* States are equal before the law, enjoy equal rights, and have equal capacity to exercise them. The rights of each are dependent not upon the power which it possesses to ensure the exercise of them but solely upon the fact of their existence as a person of international law.

*Article 3.* No State may intervene in the internal affairs of another.

*Article 4.* A Federal State constitutes a single international person.

*Article 5.* The political existence of the State is independent of its recognition by other States. Even before recognition the State has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to adopt whatever organization it considers proper, to legislate concerning its own interests, to administer its own services, and to determine the jurisdiction and competency of its tribunals. The exercise of these rights is limited only by the exercise of the rights of other States, by treaties and by the principles of international law.

*Article 6.* The recognition of a State signifies that the State which recognizes it accepts the personality of the other State, with all the rights and obligations established by international law.

Recognition is unconditional and irrevocable.

The recognition of a Government has for its object the commencement of

<sup>100</sup>The International Commission of American Jurists was provided for in a resolution of the Third Pan American Conference, held at Rio de Janeiro in 1906. The Commission met for the first time in 1912 and again in 1927. In this second meeting the Commission prepared twelve draft conventions on public international law to be submitted to the Sixth Conference, Project II being one of them. Text from International Commission of Jurists, Public International Law, Pan American Union, 1927, pp. 8-9.

diplomatic relations with such Government, or the normal continuation of relations previously existing.

*Article 7.* The recognition of a State or Government may be express or tacit. Tacit recognition results from any act implying an intention to recognize the new State or Government.

*Article 8.* A Government is to be recognized whenever it fulfils the following conditions:

(1) Effective authority with a probability of stability and consolidation, the orders of which, particularly as regard taxes and military service, are accepted by the inhabitants.

(2) Capacity to discharge pre-existing international obligations, to contract others, and to respect the principles established by international law.

*Article 9.* A State loses its international personality only when it separates into two or more States, when it voluntarily incorporates itself with another State, or when it unites with another to form a single State.

## No. 5

### EIGHTH INTERNATIONAL CONFERENCE OF AMERICAN STATES (1938)

#### *Declaration of American Principles*<sup>161</sup>

##### *Whereas:*

The need for keeping alive the fundamental principles of relations among nations was never greater than today; and

Each State is interested in the preservation of world order under law, in peace with justice, and in the social and economic welfare of mankind,

##### *The Governments of the American Republics*

##### *Resolve:*

To proclaim, support and recommend, once again, the following principles, as essential to the achievement of the aforesaid objectives:

1. The intervention of any State in the internal or external affairs of another is inadmissible.

2. All differences of an international character should be settled by peaceful means.

3. The use of force as an instrument of national or international policy is proscribed.

4. Relations between States should be governed by the precepts of international law.

5. Respect for and the faithful observance of treaties constitute the indispensable rule for the development of peaceful relations between States, and treaties can only be revised by agreement of the contracting parties.

6. Peaceful collaboration between representatives of the various States and the development of intellectual interchange among their peoples is conducive to an understanding by each of the problems of the other as well as of problems common to all, and makes more readily possible the peaceful adjustment of international controversies.

7. Economic reconstruction contributes to national and international well-being, as well as to peace among nations.

<sup>161</sup> This declaration restates in a single instrument various basic principles of the Inter-American Principles which had been proclaimed by previous International Conferences of American States. Text from *The International Conference, First Supplement*, pp. 309-310.

8. International co-operation is a necessary condition to the maintenance of the afore-mentioned principles.

## No. 6

## INTER-AMERICAN JURIDICAL COMMITTEE (1942)

*Reaffirmation of Fundamental Principles of International Law*  
*Project of Resolution submitted to the Governments, Members of*  
*the Pan American Union*<sup>162</sup>

*Whereas:*

1. It has been the practice of the American Republics at their conferences, in their joint or individual declarations, and at the consultative meetings of their Foreign Ministers, to reaffirm fundamental principles of international law upon which their peace and continental solidarity are based;

2. This reaffirmation of fundamental principles has always been useful and expedient because of the moral force which derives from it and because it tends to strengthen the position of the American States when confronted with new situations which challenge those principles;

3. In the presence of the grave violations of international law on the part of non-American aggressor States, this reaffirmation of principles becomes now all the more necessary in order to emphasize those principles and to clarify them in the light of the new conditions with which the American community is confronted;

4. The American continent has developed, and desires to develop in the future, its international life on the basis of respect for morality, traditional principles, the observance of treaties, good faith, and the rules of humanity, repudiating every act contrary to these essential standards of civilization.

*The American Republics* resolve to reaffirm in the most solemn manner the following principles which they believe to be fundamental in the relations of States and essential to the maintenance of peace and justice in international relations, and declare:

I. It is a basic principle of international law that there are certain general standards of conduct which take priority over the will of the individual State.

These standards are derived from the moral law which is the inheritance of Christian States and which came during the nineteenth century to be accepted also by non-Christian States as the rule of international conduct.

No distinction is recognized between the moral law as applied to individual citizens and to nations. There is but one single standard of conduct between nation and nation and between man and man. The development of international law should be marked by the gradual extension to nations of the obligations recognized as binding between individual citizens.

Hence no nation may claim to be exempt from the observance of the moral law on the ground of political, economic or racial supremacy or of a particular national culture which it believes to be inherently superior to that of other States.

<sup>162</sup>The Inter-American Juridical Committee was set up by a resolution of the Third Meeting of the Ministers of Foreign Affairs, held at Rio de Janeiro in 1942, being the latest agency of the Inter-American codification machinery. In pursuance of the same resolution the Committee issued this Reaffirmation of Fundamental Principles. Text from the *American Journal of International Law*, 1943, vol. 27, pp. 21-24.

II. Respect by each State for the personality, sovereignty and independence of every other State constitutes the basis of international order, just as in the relations of individuals mutual respect constitutes the essence of democracy.

Hence no State may intervene in the internal or external affairs of another.

The policy of the "Good Neighbour" is an expression of this respect for the fundamental rights of States.

III. States are juridically equal, in the sense that they have the same fundamental rights.

This equality derives from the existence of the State as a person of international law and not from the power which the individual State may possess to defend or maintain it.

In like manner this juridical equality is independent of the territorial size of the particular State or of the degree of its material progress.

In consequence, no State may be held bound by changes in the rules of law, whether in political or in economic matters, to which it has not freely consented.

IV. Good faith, which is a sacred principle of international law, should govern the relations of States. Mutual trust in the pledged word is an essential condition of the peaceful co-operation of States. Treaty obligations, freely and voluntarily entered into, must be faithfully observed.

It is proper to examine treaties which, by reason of new circumstances, may admit revision with the object of improving or of bringing into complete accord the relations between the contracting parties.

Treaties must be in the nature of open covenants openly arrived at; and there must be no secret agreements or understandings between States.

V. The use of force between States is repudiated and outlawed; and no State may take the law into its own hands or seek to enforce its claims by violence.

War as an instrument of national policy is condemned.

Hence no territorial conquest, occupation or transfer of territory brought about by force or by other methods of effective coercion, shall be valid or be recognized as having any degree of legality whatever.

In like manner no treaties or other agreements entered into under violence or other form of compulsion shall be recognized as binding contracts, whether as between the parties themselves or in relation to third States.

VI. All differences or disputes between States, whatever their nature or origin, must be settled by peaceful procedures, in accordance with the provisions of international conventions, treaties and agreements, and on the basis of established principles of international law.

When two or more States in controversy are unable to reach a peaceful agreement, the good offices or the mediation of other States between the parties are in order. These good offices or mediation are a friendly act in the interest of law and justice.

When these or other measures fail, consultation should take place among the States, with the object of formulating a collective recommendation or of seeking to renew friendly intervention.

## INTER-AMERICAN CONFERENCE ON PROBLEMS OF WAR AND PEACE (1945)

*Declaration of Mexico*<sup>163</sup>

The States of America, through their Plenipotentiary Delegates meeting at the Inter-American Conference on Problems of War and Peace,

*Declare:*

The American community maintains the following essential principles as governing the relations among the States composing it:

1. International law is the rule of conduct for all States.
2. States are juridically equal.
3. Each State is free and sovereign, and no State may intervene in the internal or external affairs of another.
4. The territory of the American States is inviolable and also immutable, except when changes are made by peaceful agreement.
5. The American States do not recognize the validity of territorial conquests.
6. The mission of the American States is the preservation of peace and the maintenance of the best possible relations with all States.
7. Conflicts between States are to be settled exclusively by peaceful means.
8. War of aggression in any of its forms is outlawed.
9. An aggression against an American State constitutes an aggression against all American States.
10. The American States are united in their aspirations and common interests.
11. The American States reiterate their fervent adherence to democratic principles, which they consider essential for the peace of America.
12. The purpose of the State is the happiness of man in society. The interests of the community should be harmonized with the rights of the individual. The American man cannot conceive of living without justice, just as he cannot conceive of living without liberty.
13. Among the rights of man, the first is equality of opportunity to enjoy all the spiritual and material blessings offered by civilization, through the legitimate exercise of his activity, his industry, and his ingenuity.
14. Education and material well-being are indispensable to the development of democracy.
15. Economic co-operation is essential to the common prosperity of the American nations. Want among any of their peoples, whether in the form of poverty, malnutrition, or ill health, affects each one of them and consequently all of them jointly.
16. The American States consider as necessary the equitable co-ordination of all interests to create an economy of abundance in which natural resources and human labour will be utilized to raise the standard of living of all the peoples of the Continent.
17. The inter-American community is dedicated to the ideals of universal co-operation.

<sup>163</sup>This declaration reaffirms, in a more elaborated extent, the Declaration of American Principles of the Lima Conference. Text from Final Act of the Inter-American Conference on Problems of War and Peace, Mexico City, February-March, 1945 (Washington, 1945), No. XI.

## PAN AMERICAN UNION, GOVERNING BOARD (1946)

*Draft Declaration of the Rights and Duties of American States*<sup>164</sup>

I. States are juridically equal among themselves. They have the same rights and the same obligations. This equality derives from the existence of the State as a person of international law and not from the power which the State may possess to defend or maintain it nor from the territorial size or degree of progress of each State.

II. The rights which each State enjoys in accordance with international law must be respected and protected by all other States, since right and duty are correlative and each State has the duty to respect the rights of all the other States.

III. The American States reiterate their adherence to the republican and democratic principles, which they consider essential for the peace of America.

IV. The conservation of peace based on justice and law is the fundamental criterion of conduct in the relations among the American States. Every State has the right to a peaceful and secure existence.

V. Good faith, as an elementary requirement of law and equity, should guide the relations of States among themselves and govern the interpretation of their duties and the fulfilment of their obligations. Mutual confidence in the pledged word is indispensable for peaceful co-operation among States.

VI. Treaties must be in the nature of open covenants and must be faithfully observed.

VII. The political existence of a new State is independent of its recognition by other States. Recognition—which is unconditional and irrevocable—signifies that the States which recognize the new State accept its personality with all the rights and duties which international law prescribes.

VIII. Intervention by any one or more States, directly or indirectly, and for whatever reasons in the internal or external affairs of another State is inadmissible.

IX. The territory of a State is inviolable and may not be the object of military occupation or of other measures of force taken by another State directly or indirectly for whatever motive, even temporarily. No territorial acquisitions or special advantages obtained by force or other means of coercion shall be recognized.

X. The use of armed force is repudiated and outlawed.

XI. The measures taken by the Inter-American System or by the United Nations for the maintenance of peace and security in accordance with international agreements, and the measures which any State may take in the exercise of the inherent right of self-defence against armed attack, do not constitute a

<sup>164</sup> This draft declaration was prepared by the Governing Board of the Pan American Union in pursuance of Resolution IX of the Inter-American Conference on Problems of War and Peace (1945). Text from Pan American Union, Governing Board, Committee on the Organization of the Inter-American System, *Draft Declaration of the Rights and Duties of American States. Formulated in accordance with Resolution IX of the Inter-American Conference on Problems of War and Peace, and submitted to the Governments of the American Republics by the Governing Board of the Pan American Union* (Washington, 1946).

violation of principles set forth in articles VIII, IX and X of the present Declaration.

XII. All disputes that may arise between two or more American States, whatever their nature or origin, must be settled exclusively by peaceful procedure.

XIII. The jurisdiction of States within the limits of national territory applies to all the inhabitants. Nationals and aliens are under the same protection of and owe the same obedience to the law and the national authorities.

XIV. The purpose of the State is the complete development of man within society. The interests of the community should be harmonized with those of the individual. The American man cannot conceive of living without justice. Neither can he conceive of living without liberty.

XV. It is the duty and the obligation of each State to respect and promote the rights and freedoms set forth in the Declaration of the International Rights and Duties of Man, without distinction as to race, sex, language or religion.

XVI. In order to ensure the development of democracy and for the purpose of achieving economic, social, and cultural progress, every State should advance public health, endeavour to raise the standard of living, combat unemployment, and promote widespread education.

XVII. Economic co-operation is essential to the common prosperity of the American peoples. Want among any of them in the form of poverty, malnutrition or ill health affects each of them and consequently all of them jointly.

XVIII. The American States proclaim the principle of equality of access to the trade and raw materials of the world and to the producers' goods which are needed for their industrial and commercial development. In order to realize these aims, the American States recognize the duty to co-operate for the prevention or elimination of unjust discriminations; to reduce barriers injurious to international trade; to avoid practices which obstruct international trade and to eliminate the excesses which may result from economic nationalism.

XIX. The American States, aware of the evident efficacy of the friendly interchange of views, especially through the procedure of consultation, may bring for the consideration of the American Governments any proposal or situation in the examination or solution of which the said States have a common interest.

XX. The American States reiterate their adherence to the policy of the "Good Neighbour", which expresses an aspiration that is common to all the American nations; and consider that this policy is a standard which should govern their common relations.

XXI. The American States, fully cognizant of the geographic and historical factors to which the Pan American movement owes its origin, reaffirm their faith in the principle of continental solidarity and proclaim their unswerving loyalty to the Inter-American System; and, in consequence, they will fulfil in good faith all their obligations as members of that System.

XXII. The American States, in renewing their intention to strengthen continental solidarity, also proclaim their determination to conduct themselves as members of the world community; and, in consequence, they will fulfil in good faith all their obligations as members of the world organization.

## 3. DRAFT DECLARATIONS PROPOSED BY GOVERNMENTS

## No. 9

## ITALY. DELEGATION TO THE PEACE CONFERENCE (1919)

*Draft Scheme for the Constitution of the Society of Nations*<sup>165</sup>

1. Every State is equal before the law. Inequalities of power cannot be invoked in justification of any act of commission or omission, or of any claim or pretention incompatible with the respect due to the rights of others and with the fulfilment of international duties.

The more progressive States are under the obligation of lending their assistance, under the supervision of the Society of Nations, towards the proper government of countries which have not yet reached a stage of ordered civilization, with the object of promoting the progress of such countries.

2. Every action or attempted action constituting a curtailment of, or menace to, the political independence or territorial integrity of a State contradicts the principles by which international solidarity can alone be assured.

3. Every State has the right to participate in international commerce and traffic in conditions of legal equality. This freedom or equality shall, however, not be affected by any restrictions, such as customs and sanitary regulations, which a State in its own interest may require to impose.

4. Navigation of the sea is free to merchant ships of every flag. Sovereign rights over territorial waters and ports cannot be exercised in such a way as to prejudice substantially such freedom of navigation.

5. The international distribution of the foodstuffs and raw materials required to sustain healthy conditions of life and industry, must be controlled in such a way as to secure to every country whatever is indispensable to it in this respect.

6. All laws and regulations intended to protect the rights and interests of workpeople shall be applied in every country without distinction of nationality. This principle, however, is not to be considered as interfering with the right of a State to limit the following by foreigners of particular professions and the employment of foreign labour in certain kinds of work.

7. No State can release itself from the obligations assumed, by entering into any international treaty outside the scope hereof, except by the consent of all the parties concerned or by recourse to bodies competent to solve disputes arising from such independent action.

8. Secret international treaties are prohibited.

## No. 10

BRAZIL. DELEGATION TO THE INTER-AMERICAN CONFERENCE  
ON PROBLEMS OF WAR AND PEACE (1945)*Declaration of Principles of States*<sup>166</sup>*Whereas:*

The American peoples possessed of a deep love of justice, remain sincerely attached to the postulates of international law;

<sup>165</sup> The text reproduced herein is the Preamble of the Draft Scheme presented at the Paris Peace Conference by the Italian delegation. Cf. D. H. Miller, *The Drafting of the Covenant*, New York, 1928, vol. 2, pp. 246-247.

<sup>166</sup> The English text of this draft declaration is reproduced in the *Report of the United States Delegation*, Department of State, publication 2497, p. 178.



They wish that these postulates, notwithstanding the difficult present conditions, prevail even with greater force in future international relations;

The inter-American conferences more than once have proclaimed certain fundamental principles, but these must be reaffirmed or remembered when it is necessary to rebuild the juridical bases of the community of nations;

The new world situation makes more urgent every day the union and solidarity of the American peoples for the defence of their rights and the maintenance of international peace;

The Governments of the American Republics declare and reaffirm that:

I. All Sovereign States are legally equal to one another;

II. Every State has a right to have its personality and independence respected by all other members of the international community;

III. Once again, the American States condemn wars of aggression and repudiate the use of force in international relations, except in the exercise of legitimate defence, duly proven, or by virtue of collective action determined by the competent organ of the international community;

IV. All international controversies, whatever their cause or nature, must be resolved by pacific means;

V. The American States are firmly resolved to keep themselves united as a bloc against any extra-continental aggression, and they still consider as a wrong committed against themselves any aggression against any one of them; they are therefore determined to participate in the defence of the sister nation attacked, in the way and under the conditions that may be agreed upon among them all;

VI. However, if the aggression against an American State should come from another American State, the other States should, through procedures of consultation, reach an immediate agreement in order to examine the circumstances of the case and lend proper help to the victim of the aggression.

#### No. 11

#### CUBA. DELEGATION TO THE UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION (1945)

#### *Draft Declaration of Duties and Rights of States*<sup>167</sup>

##### *Whereas:*

1. The essential identity of the democratic forms of government and the common ideals of peace and justice of the nations, manifested in the war and in the different treaties and declarations subscribed to, have come to constitute an international system favouring the maintenance of peace, the prescription of war, the harmonious development of their economy and their aspirations in all fields of political, social, scientific, and cultural activities;

2. The existence of human interests above the individual interests of each State requires the maintenance of solidarity in principles as a foundation of interrelated living of each and all the nations;

3. For the maintenance of world peace it is indispensable that there should be a moral union of all democratic nations of the world, in the defence of their common interests, on the basis of perfect equality and reciprocal respect for their rights to self-government, independence, and free development, calling for proclamation of basic principles of international law;

<sup>167</sup> Text from documents of the United Nations Conference on International Organization, San Francisco, 1945, vol. 3, pp. 495-499.

4. The drafting and development of international law, as initiated by the international conferences, which shall continue steadily in the course of generations, must have as their basis the recognition of the fundamental duties and rights of the States which constitute the world community of nations;

5. The declaration of these duties and rights and the great principles from which they are derived will serve as a guide in the maintenance of international peace and security and a basis for all the agreements that may be concluded in accordance with international practice and the enforcement and codification of international law.

The General Assembly of the International Organization therefore agrees to adopt the following:

*Declaration of the Rights and Duties of the Nations*

I. Every State has the right to exist, to protect and maintain its existence. This right does not imply the right, or justify any action by a State, to protect or maintain its existence by committing illegal acts against innocent States or States which are not aggressors.

The political existence of a State is independent of its recognition by the other States. A State has the right, even before recognition, to defend its integrity and independence, to provide for its maintenance and prosperity, to organize itself as it sees fit, to legislate on its interests, to administer its services, and to determine the jurisdiction and qualification of its courts.

The exercise of these rights has no other limits than respect for the rights of other States, in conformity with international law.

II. Every State has the right to independence, to secure its well-being and its free development without interference by other States, provided that in the pursuit of those objectives it does not violate or infringe upon the rights of other States.

Therefore direct or indirect intervention by a State in the internal or external affairs of another State for any reason whatever is inadmissible.

III. All States are equal before the law, and each one has the same rights as any other which is a member of the international community. In the same way, all States have the right to claim and to assume, among the Powers of the world, the equal and independent position to which they are entitled by natural and divine laws.

IV. Every State has the right to the territory included within defined frontiers and the right to exercise exclusive jurisdiction over that territory and over all persons thereon, whether native or aliens.

This right (after adequate measures with respect to aggressor nations have been adopted, to prevent the recurrence of aggression, and after the peace treaties have been concluded that result from World War II) involves the duty of not recognizing the validity and the juridical effects of the acquisitions of territories, adjustments of frontiers, or special advantages obtained by conquest or by force, whether through recourse to arms, threatening diplomatic representations, or any other means of effective coercion. The territory of the States is inviolable and cannot be the object of military occupation or any other measures of force imposed by another State, directly or indirectly, for any reason whatever, not even temporarily.

V. No State has the right to intervene before another State in favour of its nationals, except through diplomatic channels, in a considered and courteous manner. In the event of a claim that the administrative authorities of the

State in which an alien is residing have prevented him materially from exercising his rights before the courts of justice, or if it is proved that these courts have denied him justice, the procedure for peaceful settlement of international conflicts must be followed.

VI. All States have the right to access, on equal terms, to the trade, the markets, and the raw materials of the world needed for their economic prosperity.

The economic independence of the nations requires the elimination from their activities in this regard of all artificial measures leading to discrimination against the natural or spontaneous products of the soil of another State, to control of the means of transportation, to restriction of reciprocal trade, or to contraction of commercial credit or of the foreign exchange of another country.

The principle of economic reciprocity is the foundation of and the guide to world solidarity.

VII. A State to which a right has been granted by international law may demand that this right be supported and protected by all other States. The right and the duty are correlative, and upon all there rests the obligation to respect the right of each and perform the duties devolving upon them.

The rights of each State are not dependent upon the power available to the State to enable it to exercise its rights, but depend on the mere existence of such rights as provided for by international law. The fundamental rights of the States cannot be affected in any way.

VIII. The nations belonging to the Organization condemn war as an instrument of international action.

Any differences or disputes between the nations, whatever their nature and whatever their origin, shall obligatorily be settled by conciliation, arbitration, or international justice.

IX. The nations belonging to the Organization proclaim the need for accepting the decisions of the latter through the acceptance of the agreements of the majority, the unqualified respect for the individual national sovereignties, and the solidarity among all peoples of the world, and affirm their decision to maintain and defend these principles against any foreign intervention or activity which might endanger them.

X. Every State has the duty to employ all the spiritual and material means at its disposal in order to maintain and strengthen peace, harmony, and trade among all the nations of the world, as indispensable requisites for the effective discharge of the duty which rests upon them in the universal historic process of civilization and culture.

#### No. 12

#### ECUADOR. DELEGATION TO THE GENERAL ASSEMBLY OF THE UNITED NATIONS (1947)

#### *Draft Charter of the Duties and Rights of States*<sup>168</sup>

*Article I.* States are juridically equal between themselves; they have the same rights and the same obligations.

*Article II.* The rights enjoyed by each State, in accordance with international law must be respected and protected by all the others; for rights and

<sup>168</sup> Text from United Nations document A/340, 21 August 1947.

duties are interdependent, and each State has the obligation to respect the rights of all the others.

*Article III.* The States consider that republican and democratic principles are essential for the maintenance of world peace.

*Article IV.* The maintenance of peace, based on justice and on law, is a fundamental rule of conduct in relations between States and these have the right to peaceful and secure development.

*Article V.* Good faith, a fundamental principle of international law, must govern relations between States. Mutual trust in the pledged word is essential for peaceful co-operation between them. Treaties freely and voluntarily concluded must be faithfully observed, without its being lawful for parties to raise questions which may change their substance or obstruct their legal execution; accordingly, Member States do not recognize as treaties those which have been concluded in violation of the foregoing principles. Nevertheless, those treaties shall be examined and revised which, by virtue of new circumstances, admit of changes tending to improve or perfect relations between the High Contracting Parties. There shall be no secret treaties, agreements or understandings between Member States.

*Article VI.* It is the duty of States to guarantee the political existence of each and all of them and to withhold recognition of new States which attempt to constitute themselves on the basis of the dismemberment of existing States.

*Article VII.* The Government of each State is the representative organ of States in international relations. Consequently, the coming into existence of a *de facto* Government in any of the States shall not affect the normality nor the continuity of pre-existing diplomatic relations between the State in which the change of regime has taken place and other States, except when it has been instituted in flagrant violation of democratic principles or when it endangers peace.

*Article VIII.* No State has the right to intervene in matters which appertain solely to the domestic jurisdiction of another.

*Article IX.* It is illicit and unlawful to employ force between States, and no State may take justice into its own hands, nor impose its demands by violence. War is prohibited as an instrument of national policy. Accordingly, conquests, occupations or territorial transfers effected by force or other means of effective compulsion are not valid nor shall they be recognized as lawful in any degree. Similarly, agreements or treaties concluded under duress or other forms of coercion shall not be considered as binding between the parties nor in relation to third parties.

*Article X.* The measures prescribed herein, or in the Charter of the United Nations, for the maintenance of peace and security, in accordance with international conventions, and those which any State may adopt in the exercise of the inherent right of legitimate defence in case of armed attack, do not constitute a violation of the principles enumerated in this Charter.

*Article XI.* Any controversy which may arise between two or more States, whatever its nature or origin shall be settled exclusively by peaceful means in order that neither peace nor justice nor international security may be endangered.

*Article XII.* Jurisdiction of States within the limits of their national territory applies to all inhabitants. Nationals and aliens are under the same protection and must obey the national laws and the national authorities.

*Article XIII.* It is the duty of States to guarantee the essential rights of men, without distinction of race, sex or religion and to forbid anything which tends to menace, suspend or violate them.

*Article XIV.* Each State must watch over public health, strive to raise the standard of living, combat unemployment and disseminate popular education, so as to ensure the development of democracy and to bring about economic, social and cultural progress.

*Article XV.* Economic co-operation is the duty of each State with the object of promoting the common prosperity of all peoples and of avoiding distress, poverty, malnutrition or ill-health, which, in affecting one of them, affects them all.

*Article XVI.* States shall have equal access to trade and the raw materials of the world, and to the factors of production necessary for their industrialization and economic development. Consequently they recognize the duty to co-operate in order to prevent and eliminate unjust discriminations; to lower barriers harmful to international trade; to avoid practices which obstruct such trade and eliminate the excesses which may result from economic nationalism.

*Article XVII.* Each State has the right to use the method of consultation to bring to the attention of Governments any proposal or situation in whose study or solution the said States have a common interest.

*Article XVIII.* The States pledge themselves to observe the Good-Neighbour Policy in their mutual relations.

*Article XIX.* It is the duty of States to fulfil with good faith the obligations imposed upon them as Members of the Regional Community, of the United Nations and of the World Community.

*Article XX.* It is the duty of States to respect and to enforce respect for the personality, sovereignty and independence of each of their number.

*Article XXI.* Any infringement by one or more States of the territorial integrity or inviolability or of the political sovereignty of a State, constitutes an act of aggression against the others.

*Article XXII.* It is the duty of States to protect their inhabitants against the use of scientific discoveries which may cause unrest, alarm the people and destroy the civilian population.

*Article XXIII.* States have the duty to encourage the development of the arts and sciences and to promote their mutual development by means of cultural conventions.

#### 4. DECLARATIONS BY NON-GOVERNMENTAL ORGANIZATIONS AND SCIENTIFIC INSTITUTIONS

##### No. 13

SEVENTH UNIVERSAL PEACE CONGRESS (1896)

##### *Principles of International Law*<sup>169</sup>

*Article 1.* The principles of morality and of law in regard of nations are of like character with those applicable to individuals.

<sup>169</sup> This Declaration of Principles of International Law was issued by the Universal Peace Congress at its Seventh Congress, held at Budapest in 1896. Text from *Bulletin Officiel du VIIe Congrès Universel de la Paix tenu à Budapest du 17 au 22 septembre 1896*. Rédigé et publié par les soins du Bureau International de la Paix à Berne (Berne, 1896), pp. 139-140.

*Article 2.* No one has the right to be judge in his own cause.

*Article 3.* No State can of right declare war against another State.

*Article 4.* Every dispute between nations should be settled by a juridical method.

*Article 5.* The autonomy of every nation is inviolable.

*Article 6.* No right of conquest exists.

*Article 7.* Every nation has the right of legitimate self-defence.

*Article 8.* Every nation possesses the inalienable and imprescriptible right of entire freedom in disposing of itself.

*Article 9.* Solidarity exists between all nations.

#### *Chapter I. Definition of international personalities*

*Article 10.* Nations are the only international personalities.

*Article 11.* A nation is a group of individuals, permanently occupying a fixed territory and taking part in the formation of a common Government charged with the administration of justice and the maintenance of order.

*Article 12.* The existence of each new nation shall be brought to the knowledge of the other nations by a notification to be made of its constitution, the limits of its territory and the composition of its Government.

*Article 13.* Every annexation of one nation to another shall be notified to the other nations by each of the nations interested.

#### *Chapter II. Nature of international personalities*

*Article 14.* Nations are sovereign and equal.

*Article 15.* No nation can adopt a name, a flag, a seal or any other visible sign which can create confusion between itself and another nation, unless it has obtained in advance the assent of that nation.

*Article 16.* The nations may protest against acts contrary to morality and law, committed by one of them and eventually refuse to continue ordinary relations with such nations.

*Article 17.* The nations have the right of accrediting to any State which prejudices others by the waste of its resources or which organizes or permits the massacre of a portion of its subjects, a council of administration, the powers and immunities of which shall be determined by an international treaty.

*Article 18.* The population of a colony, formed of individuals belonging to a civilized nation, has the right of demanding its autonomy and of constituting itself an independent nation.

*Article 19.* Colonies established on territories occupied by uncivilized or barbarous races are presumed to have been constituted with the assent of the nations. It shall be lawful for the nations to present their observations on the manner in which these colonies are administered and to form themselves into a conference for the purpose of arriving at a common agreement on measures to be taken in any case where the nation interested takes no notice of these observations.

## AMERICAN INSTITUTE OF INTERNATIONAL LAW (1916)

*Declaration of the Rights and Duties of Nations*<sup>170</sup>

*Whereas* the municipal law of civilized nations recognizes and protects the right to life, the right to liberty, the right to the pursuit of happiness, as added by the Declaration of Independence of the United States of America, the right to legal equality, the right to property, and the right to the enjoyment of the aforesaid rights; and

*Whereas* these fundamental rights, thus universally recognized, create a duty on the part of the peoples of all nations to observe them; and

*Whereas*, according to the political philosophy of the Declaration of Independence of the United States, and the universal practice of the American Republics, nations or Governments are regarded as created by the people, deriving their just powers from the consent of the governed, and are instituted among men to promote their safety and happiness and to secure to the people the enjoyment of their fundamental rights; and

*Whereas* the nation is a moral or juristic person, the creature of law, and subordinated to law as is the natural person in political society; and

*Whereas* we deem that these fundamental rights can be stated in terms of international law and applied to the relations of the members of the society of nations, one with another, just as they have been applied in the relations of the citizens or subjects of the States forming the Society of Nations; and

*Whereas* these fundamental rights of national jurisprudence, namely, the right to life, the right to liberty, the right to the pursuit of happiness, the right to equality before the law, the right to property, and the right to the observance thereof are, when stated in terms of international law, the right of the nation to exist and to protect and to conserve its existence; the right of independence and the freedom to develop itself without interference or control from other nations; the right of equality in law and before law; the right to territory within defined boundaries and to exclusive jurisdiction therein; and the right to the observance of these fundamental rights; and

*Whereas* the rights and the duties of nations are, by virtue of membership in the society thereof, to be exercised and performed in accordance with the exigencies of their mutual interdependence expressed in the preamble to the Convention for the Pacific Settlement of International Disputes of the First and Second Hague Peace Conferences, recognizing the solidarity which unites the members of the society of civilized nations;

*Therefore*, The American Institute of International Law, at its first session, held in the City of Washington, in the United States of America, on the sixth day of January, 1916, adopts the following six articles, together with the commentary thereon, to be known as its

*Declaration of the Rights and Duties of Nations*

I. Every nation has the right to exist, and to protect and to conserve its

<sup>170</sup> The American Institute of International Law, founded in 1916, is a non-governmental organization; in a sense it is the association of all the national societies of international law of the American Republics. The present declaration was the first scientific enactment of the Institute. Text from J. B. Scott, *The American Law Institute: Its Declaration of the Rights and Duties of Nations*, Washington, 1916, pp. 87-88.

existence; but this right neither implies the right nor justifies the act of the State to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending States.

II. Every nation has the right to independence in the sense that, it has a right to the pursuit of happiness and is free to develop itself without interference or control from other States, provided that in so doing it does not interfere with or violate the rights of other States.

III. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, "to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them".

IV. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons whether native or foreign found therein.

V. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe.

VI. International law is at one and the same time both national and international: national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among the members of the society of nations involving its principles.

#### No. 15

#### INTERNATIONAL JURIDICAL UNION (1919)

#### *Draft of a Declaration of Rights and Duties of Nations*<sup>171</sup>

##### *The International Juridical Union,*

Conscious of the need for a declaration of the fundamental Rights and Duties of States in international relations;

Considering that this proclamation will help to assure the development of international law and to facilitate the work of the League of Nations;

##### *Adopts the following Declaration:*

*Article I.* The State has the right to conserve and perpetuate its existence.

*Article II.* The State is independent. The independence of the State is to be understood in the sense that it may freely develop without interference on the part of any other State, acting on its own authority, in the exercise, either internal or external, of its activity.

*Article III.* States are equal before the law.

Equality in law implies equal co-operation in the regulation of the interests of the international community, without necessarily conferring the right of equal participation in the constitution and functioning of the organs established for the administration of these interests.

<sup>171</sup> The Union (*Union Juridique Internationale*) was established in 1919, being primarily composed of European jurists. Its draft declaration was adopted as an outcome of the discussion by its members of the declaration of the American Institute reproduced as No. 19 of this appendix. French text in *Séances et Travaux de l'Union Juridique Internationale*, 1920, vol. 2.



Every State is limited in its rights by its obligation to respect the rights of other States.

*Article IV.* The rights of each State are limited by the rights of other States. States have duties toward one another.

All States likewise have duties toward the international community.

*Article V.* States must, in particular:

- (a) Openly maintain international relations founded upon justice and equity;
- (b) Rigorously observe the rules of international law;
- (c) Scrupulously respect treaties;
- (d) Execute in good faith the judgements rendered by Tribunals of Arbitration;
- (e) Not have recourse to arms without having exhausted all peaceful means for the settlement of disputes;
- (f) Unite their efforts to anticipate, prevent, and eventually put an end to wars;
- (g) Participate in the creation, functioning, and development of all international services.

*Article VI.* In the accomplishment of their duties, as in the exercise of their rights, States must be inspired by the thought that their mission is the joint pursuit of human welfare through the progress of civilization.

#### No. 16

#### AMERICAN INSTITUTE OF INTERNATIONAL LAW (1925)

#### *Project No. 5, Nations*<sup>172</sup>

The American Republics . . . desirous of stating the elements which enter into the international conception of the nation, have decided to adopt the following convention:

*Article 1.* A nation as a person of international law should possess these elements:

1. Population.
2. Territory. Nomadic tribes or peoples are thus excluded from this category.
3. A Government which represents the sovereign will.
4. The power of entering into relations with other nations.
5. A degree of civilization such as to enable it to observe the principles of international law.

In this conception all the American Republics are nations.

*Article 2.* Nations are legally equal. The rights of each do not depend upon the power at its command to ensure their exercise. Nations enjoy equal rights and equal capacity to exercise them.

<sup>172</sup> The Governing Board of the Pan American Union requested on 2 January 1924 the American Institute of International Law to prepare a series of projects of international law for the next meeting of the International Commission of American Jurists. Project No. 5 was one of these projects. Text from the *American Journal of International Law*, 1926, Special Supplement, p. 309.

## AMERICAN INSTITUTE OF INTERNATIONAL LAW (1925)

*Project No. 8, Fundamental Rights of American Nations*<sup>173</sup>*Whereas:*

1. Since their independence the American Republics have proclaimed and maintained certain principles destined to secure their independence, liberty, and unrestricted development;

2. Beginning with the nineteenth century the said Republics have amplified and developed those principles by their express or tacit consent;

3. It is necessary to state clearly those fundamental principles and at the same time extend them to their reciprocal relations;

The American Republics have concluded the following project of Fundamental Rights of the Republics of the American Continent:

*Article 1.* The following principles are declared to constitute American public law and shall be applied and respected in America by all nations:

1. The American Republics, equal before international law, have the rights inherent in complete independence, liberty, and sovereignty. Such rights can in no way be restricted to the profit of another nation, even with the consent of the interested American Republics.

2. No American Republic can cede any part whatever of its territory to a non-American nation, even if it consents to do so.

3. No nation shall hereafter, for any reason whatsoever, directly or indirectly, occupy even temporarily any portion of the territory of an American Republic in order to exercise sovereignty therein, even with the consent of the said Republic.

4. No nation has a right to interfere in the internal or foreign affairs of an American Republic against the will of that Republic. The sole lawful intervention is friendly and conciliatory action without any character of coercion.

*Article 2.* In case of violation of the provisions of the preceding articles by one or more nations; or, in general, in case of menace, offence, or acts of violence, individual or collective, committed by those nations with respect to an American Republic, the continental solidarity will be affected thereby, and any American Republic may address the Pan American Union with the object of bringing about an exchange of views on the subject.

## INTER-PARLIAMENTARY UNION (1928)

*Declaration of the Rights and Duties of States*<sup>174</sup>

1. Relations between States are governed by the same general principles of law and morality as relations between individuals.

<sup>173</sup> Cf. footnote to document No. 16 of this appendix. Text from *op. cit.*, p. 313.

<sup>174</sup> The Union is an unofficial organization, though it is composed of members of national parliaments. In its twenty-fifth meeting, held at Berlin in 1928, the Union issued the present declaration. Text from Union Interparlementaire. *Compte Rendu de la XXVème Conférence tenue à Berlin du 23 au 28 août 1928*. Publié par le Bureau Interparlementaire (Lausanne etc. 1928), pp. 525-527.

2. All States are solidary and form a *de facto* and *de jure* community.

3. The members of the community of States are equal before the law. Each of them possesses within that community only those rights conferred on it by the law of nations.

4. Treaties have the force of law between States. It is their strict duty to respect them.

A treaty may only be annulled or modified with the consent of the States concerned or in accordance with international law.

5. Every dispute between States which cannot be settled amicably must be settled by jurisdictional means, whether conciliatory, arbitral or contentious. All States must carry out in good faith the judgement given.

6. No State has the right to be judge in its own case. All armed aggression is a crime. The culprits shall be prosecuted in conformity with the law of nations.

7. A State victim of an armed aggression has the right of legitimate defence and the community of States is obliged to lend it its support. A State is also entitled to that support in the case of disregard or violation of an acknowledged right.

8. The independence of each State is inviolable. There is no right of conquest.

9. The peoples have the inalienable and imprescriptible right of free auto-disposition.

Territorial modifications may only take place in conformity with international law.

10. States must not exploit for their own profit populations of different civilization which are placed under their guardianship. It is their duty to cooperate in the improvement of their material, moral and intellectual conditions in order to allow of their admission as early as possible into the community of States.

The territories inhabited by those populations must, from a commercial and industrial point of view, be open to the nationals of every country.

11. It is the duty of States to collaborate in every branch of human activity and especially in those whose aim is to further the general welfare of mankind.

The community of States must guarantee for each of them the economic conditions which are absolutely necessary for its existence and for its development.

12. In every State there should be granted to all citizens, without distinction of religion, race or nationality, the exercise of rights which will ensure the free development of their own culture.

13. States must, on their respective territories, guarantee to all human beings, without distinction of race, nationality, age or sex, and whatever may be their religious, philosophical and social convictions, the full exercise of the rights granted to their own nationals (political rights totally or partially excepted).

14. The members of the community of States must guarantee to all workers, whether manual or intellectual, respect of their dignity, their right to work, to rest and leisure, and a fair remuneration for their labours.

## INTERNATIONAL LAW OF THE FUTURE (1944)

*Postulates, Principles and Proposals*<sup>175</sup>

*Principle 1.* Each State has a legal duty to carry out in full good faith its obligations under international law, and it may not invoke limitations contained in its own constitution or laws as an excuse for a failure to perform this duty.

*Principle 2.* Each State has a legal 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.

*Principle 3.* Each State has a legal duty to refrain from intervention in the internal affairs of any other State.

*Principle 4.* Each State has a legal duty to prevent the organization within its territory of activities calculated to foment civil strife in the territory of any other State.

*Principle 5.* Each State has a legal duty to co-operate with other States in establishing and maintaining agencies of the community of States for dealing with matters of concern to the community, and to collaborate in the work of such agencies.

*Principle 6.* Each State has a legal duty to employ pacific means and none but pacific means in seeking to settle its disputes with other States, and failing settlement by other pacific means to accept the settlement of its disputes by the competent agency of the community of States.

*Principle 7.* Each State has a legal duty to refrain from any use of force and from any threat to use force in its relations with another State, except as authorized by the competent agency of the community of States; but subject to immediate reference to and approval by the competent agency of the community of States, a State may oppose by force an unauthorized use of force made against it by another State.

*Principle 8.* Each State has a legal duty to take, in co-operation with other States, such measures as may be prescribed by the competent agency of the community of States for preventing or suppressing a use of force by any State in its relations with another State.

*Principle 9.* Each State has a legal duty to conform to the limitations prescribed by the competent agency of the community of States and to submit to the supervision and control of such an agency, with respect to the size and type of its armaments.

*Principle 10.* Each State has a legal duty to refrain from entering into any agreement with another State, the performance of which would be inconsistent with the discharge of its duties under general international law.

<sup>175</sup> The "Postulates, Principles and Proposals of the International Law of the Future" were drafted by a group composed of some two hundred Americans and Canadians, generally known as the "Hudson Committee". The "Principles" reproduced here constitute a general statement of the rights and duties of States. Text from Carnegie Endowment for International Peace, *The International Law of the Future: Postulates, Principles and Proposals*, Washington, 1944, pp. 7-8.

## B. TEXTS OF COMMENTS AND OBSERVATIONS SUBMITTED BY GOVERNMENTS WITH RESPECT TO THE DRAFT DECLARATION

### 1. COMMUNICATIONS RECEIVED FROM CANADA

*First communication*<sup>176</sup>

Department of External Affairs, Canada  
Ottawa, 12 May 1947

Sir:

I have the honour to refer to your letter 904-3-2/YLL of 11 February 1947, concerning the draft Declaration on the Rights and Duties of States and to my letter of 20 February 1947, in which I advised you that the Canadian Government would make every effort to forward to you before 1 June 1947, its comments and those of the national bodies of this country concerned with international law.

The Canadian Bar Association, which is preparing a joint study on the matter with the American Bar Association, will not be in a position to make a statement on the whole subject of the Rights and Duties of States much before the middle of July of this year.

It is therefore with regret that the Canadian Government feels it will be unable to forward its comments and those of the national bodies of this country concerned with international law much before the end of July, 1947.

Accept, Sir, the renewed assurances of my highest consideration.

(Signed) E. R. HOPKINS  
For Secretary of State  
for External Affairs

*Second communication*<sup>177</sup>

Ottawa, 19 July 1947

I have the honour to refer to your letter No. 904-3-2/OS of 2 July in connexion with the draft Declaration on the Rights and Duties of States presented by Panama and to my note No. 15 of 12 May.

A further examination has revealed that the Canadian Government and the Canadian Bar Association (which is preparing a joint study on the matter with the American Bar Association) will not be in a position to make a statement on the whole subject of Rights and Duties of States for some time to come. Indeed, I regret to say that the Canadian Government will not be in a position to submit its observations before the next regular session of the General Assembly.

I have the honour to inform you, however, that the Canadian Government agrees with the recommendation of the Committee on the Progressive Development of International Law and its Codification that the General Assembly entrust further study concerning the draft Declaration to the International Law Commission which the Committee has proposed be established by the General Assembly.

(Signed) L. B. PEARSON  
Under-Secretary of State  
for External Affairs

<sup>176</sup> Originally issued in A/AC.10/39, p. 2.

<sup>177</sup> Originally issued in A/400, p. 3.

Ottawa, 7 April 1948

The Secretary of State for External Affairs of Canada presents his compliments to the Secretary-General of the United Nations and has the honour to refer to the Secretary-General's Note No. C.N.9.1948. Legal of 13 February 1948 regarding the draft Declaration on the Rights and Duties of States presented by the Government of Panama.

In Note No. 18 of the Secretary of State for External Affairs, dated 19 July 1947, the Secretary-General was informed that the Canadian Government would not be in a position to make a statement on the whole subject of Rights and Duties of States for some time to come. A further examination of this matter in consultation with the Canadian Bar Association now reveals that the situation has not changed. The Secretary of State for External Affairs therefore regrets that the Canadian Government is not yet in a position to submit its comments and observations concerning the draft Declaration on Rights and Duties of States.

## 2. COMMUNICATION RECEIVED FROM CZECHOSLOVAKIA<sup>178</sup>

Office of the Czechoslovak Delegate  
to the United Nations  
New York, 11 August 1947

Referring to your letter No. 904-3-2/YLL, dated 11 February 1947, concerning the draft Declaration on the Rights and Duties of States presented by Panama, I have the honour to submit the following observations of my Government:

The Panama proposal is, without doubt, a very interesting and meritorious effort to bring forth the question of codification of the rights and duties of States for discussion in the United Nations. The main point of the proposal, while following the aims, with which it is to be agreed, from the standpoint of legal and political organization of international association of States, lies basically in the problem to what extent and in what form its principles should be realized and made obligatory for Member States of the United Nations.

According to the report and accompanying explanatory remarks, concerning the proposal, its task should be to supplement and concretely broaden the principles contained in the Charter of the United Nations. Undoubtedly, everything contained in the Panama proposal may be brought into connexion with the provisions of the Charter, either directly or indirectly. Therefore, it deals essentially with the interpretation of the Charter, i.e., with the question from the constitutional standpoint of the United Nations which is both inherent and difficult. If the authors of the Charter were content with more general formulations, legally less binding, the reason for it lay in existing possibilities as they were manifested at the San Francisco Conference, whose final outcome was the result of an attainable compromise. It is hardly to be expected, therefore, that a proposal, which actually would mean an interpretation of the Charter in a broadening and supplementary sense, could be immediately successful.

Out of this situation arises the preliminary fundamental question of the Declaration of Rights and Duties of States towards the Charter of the United Nations. It is a matter for consideration whether the adoption of an inter-

<sup>178</sup> Originally issued in A/400, p. 3.

national convention dealing with the solution of the same problems as the Charter itself, would not considerably reduce the strength and persuasive power as well as the moral, political and judicial prestige of the Charter. Discussions conducted in this respect during the second part of the first General Assembly in New York plainly revealed the difficulties of this problem.

These preliminary notes lead to the conclusion that this question, which was the subject of studies of the doctrines of international law and found expression in international declarations, requires further investigation, not only with respect to substance and form, but also with respect to the methods of carrying out the aims which are here pursued. The Czechoslovak Government therefore welcomed the resolution of the General Assembly, according to which a committee, entrusted with the study of methods of codification of international law, will deal with this problem.

(Signed) JÁN PAPANEK

### 3. COMMUNICATION RECEIVED FROM DENMARK<sup>170</sup>

Permanent Delegation of  
Denmark to the United Nations  
New York, 22 September 1947

Referring to your letter 904-3-2/YLL of 11 February 1947, addressed to the Foreign Minister concerning the draft Declaration on the Rights and Duties of States, I have the honour to transmit the attached comments submitted by the Foreign Office in consultation with the Ministry of Justice.

(Signed) William BORBERG

#### DANISH COMMENTS ON THE DRAFT DECLARATION ON RIGHTS AND DUTIES OF STATES PRESENTED BY PANAMA

*Re 1.* This item seems to be superfluous and the wording too abstract and tautological. The very question is, what is to be understood by "unjust acts". It is proposed to give the provision a more concrete wording, e.g., in accordance with Article 10 of the League of Nations Covenant; *cf.* also item [article] 16:

"Every State is entitled to recognition of its territorial integrity and existing political independence. Changes herein can only be made with its own voluntary consent."

*Re 7.* Denmark has a limited consular jurisdiction in Egypt.

*Re 10.* This provision seems to be superfluous and so ought to be deleted. A limit to the rights of the State is set not alone by the rights of other States, but also by the rights of its own nationals; *cf.* also item [article] 21.

*Re 14.* Denmark accepts in principle this opinion. Danish courts of law and other public authorities are obliged to apply the principles and rules of international law generally acknowledged when their application is at issue. But, on the other hand, according to the Danish conception of law, Danish authorities cannot apply more specific rules of international law warranted by international treaties or other agreements till they have been publicly announced in Denmark, by way of acts of law or in other official ways, as legally binding.

<sup>170</sup> Originally issued in A/400, p. 4.

*Re 16.* It is proposed to delete the words: "as an instrument of national or international policy," as these words seem to be superfluous and apt to efface the rule.

*Re 17.* According to Danish opinion a statement of the limitations of the right of self-defence and its distinction from the traditional unlimited defensive war is needed. The following addition is proposed:

"The exercise of the right of self-defence presupposes that an attack by some other State is imminent or has already been commenced, and it must not be used to any further extent than necessary to repel such an attack. To protect any rights which one State may have in the territory of another State, the right of self-defence must not be exercised to any greater extent than is generally permitted by the national law of the latter State."

#### 4. COMMUNICATION RECEIVED FROM THE DOMINICAN REPUBLIC<sup>180</sup>

[*Original: Spanish*]

Secretariat of State  
for Foreign Affairs  
Ciudad Trujillo, 4 June 1947

I have the honour to refer to your communication No. 904-3-2/YLL, dated 11 February 1947, and to the communication from this Chancellery No. 4595, dated 22 February 1947, relating to the preliminary draft Declaration of the Rights and Duties of States, formulated by the delegation of Panama.

I enclose a memorandum which contains provisional comments and observations of the Dominican Chancellery on the above-mentioned draft, thus fulfilling the resolution adopted by the General Assembly of the United Nations on 11 December 1946 on this matter.

It should be noted that the comments, observations and amendments contained in the above-mentioned memorandum are provisional and might, consequently, be amplified, restricted or modified later.

(*Signed*) Arturo DESPRADEL

#### COMMENTS AND OBSERVATIONS OF THE DOMINICAN CHANCELLERY ON THE DRAFT DECLARATION OF THE RIGHTS AND DUTIES OF STATES, FORMULATED BY THE GOVERNMENT OF PANAMA

Ciudad Trujillo, 30 May 1947

An examination of the Panama draft shows that the fundamental questions a document of this nature should contain have been included. The Chancellery feels that the text might, in principle, satisfy the aim of the Member Governments of the United Nations to adopt a conventional Declaration of Rights and Duties of States, which might serve to determine the basic rules of international law.

It should be observed, nevertheless, that the Panama draft does not always follow a methodical order, and that on occasion it separates or isolates rights and duties which, because of their interrelation, might be placed together, for their better comprehension and unity, and to avoid diffuseness in the draft.

<sup>180</sup>Originally issued in A/400, p. 6.



Thus, for example, the texts of the first and third rights of States might be combined, one dealing with the *right to national existence*, and the other with the *right to existence, independent of recognition*.

In the same way, articles 10 and 13, whose provisions are connected, and which deal respectively with the *limitation of the rights of the State* and with the *authority of international law*; and articles 19 and 20 which refer to *co-operation among States* and have the same objective, might be combined in one text.

Further, the Dominican Chancellery suggests that articles 5 and 23 might be changed in such a way that the fundamental questions with which they deal, namely, the principle of non-intervention and equal treatment in international commercial relations, should be better defined.

Thus article 5 might say:

*"The right of non-intervention. No State has the right to interfere in the internal or external affairs of another State, individually or in conjunction with others."*

In this manner, it would be made clear that States are bound not only to individual non-intervention but also to collective non-intervention—which an attempt has been made to introduce on some occasions—except in cases where international peace might be menaced and in accordance with the specific rules of the Charter of the United Nations.

An additional clause might be added at the end of the second paragraph of article 23 as follows:

*"Equality of treatment and the adoption of just and equitable procedures in commercial exchange are recognized as fundamental principles of the law of nations."*

In this form, the Declaration would guarantee the even development of international trade and would tend to promote mutually advantageous relations among all nations.

Lastly, the Dominican Chancellery notes that the comments, observations and amendments contained in the present memorandum are in no way final, and might consequently be amplified, restricted or modified later.

## 5. COMMUNICATION RECEIVED FROM ECUADOR<sup>181</sup>

Delegation of Ecuador  
to the United Nations

New York, 17 September 1947

The Chairman of the delegation of Ecuador to the General Assembly of the United Nations presents his compliments to His Excellency the Secretary-General of the United Nations and has the honour to request that the draft Charter of the Duties and Rights of States submitted by the Government of Ecuador (document A/340) be considered as the expression of its points of view on the matter according to resolution 38 (I) of the General Assembly, adopted 11 December 1946.

<sup>181</sup>Originally issued as A/390, reproduced in full on pp. 152-154 above. See also A/400, p. 9.

6. COMMUNICATION RECEIVED FROM EL SALVADOR<sup>182</sup>

[Original: Spanish]

San Salvador, 28 April 1947

Dear Sir:

I have received the Secretariat's note dated 11 February 1947 transmitting the text of the draft Declaration on the Rights and Duties of States submitted by Panama, and asking, at the same time, for the comments and observations of this Government upon it.

In reply, I have pleasure in stating that this Ministry is of the opinion that the draft Declaration submitted by the Foreign Ministry of Panama is a clearly expressed text, concise, but at the same time comprehensive in its terms, which covers the whole question of the rights and duties of States, as the Foreign Minister Dr. Alfaro so ably points out in his explanatory note attached to the draft Declaration.

For the above reasons, my Government expresses its full approval of the Declaration of the Foreign Ministry of Panama, which it considers an admirable piece of work.

(Signed) ERNESTO A. NUÑEZ

7. COMMUNICATION RECEIVED FROM GREECE<sup>183</sup>

[Original: French]

Permanent Greek Delegation  
to the United Nations  
New York, 4 September 1947

In your letter of 11 February 1947, reference 904-3-2/YL, you were kind enough to invite the Royal Greek Government to communicate to you its comments and observations on the draft Declaration of the Rights and Duties of States submitted to the United Nations General Assembly by the delegation of Panama. On the instructions of my Government I informed you in my letter of 24 June 1947, No. 2082, that Greece has always been guided in her international relations by the principles laid down in the draft Declaration in question.

In reply to your letter of 2 July 1947, reference 904-3-3/OS, I have the honour to send you herewith the provisional observations of the Greek Government. I should like to add that my Government reserves the right to give its final views on the subject after it has studied the observations of other Governments.

(Signed) ALEXIS KYROU  
Permanent Representative of Greece  
to the United Nations

## OBSERVATIONS OF THE GREEK GOVERNMENT ON THE DRAFT DECLARATION OF THE RIGHTS AND DUTIES OF STATES

*General observations*

The Greek Government believes that the Declaration of the Rights and Duties of States should merely enumerate a limited number of principles and

<sup>182</sup> Originally issued in A/AC.10/39, p. 3.<sup>183</sup> Originally issued in A/400, p. 9.

postulates accepted by all the members of the international community in their relations with one another.

The Greek Government accordingly considers that secondary rules, explaining the principles laid down (e.g., article 3 of the draft) or concerning their practical application (e.g., article 8 of the draft), should be omitted from the Declaration.

The reason for this is, firstly, because it is contrary to the nature of a declaration of principles that it should simultaneously lay down secondary or technical rules and, secondly, because differences of opinion might arise as to whether these rules were consistent with existing rules of law.

The Greek Government also thinks it inadvisable to include in the Declaration principles which are laid down solely by private international law (see articles 19 and 20 of the draft), but are not recognized by general international law. In its opinion, a proclamation of such general scope as the Declaration in question should be confined to principles which can be based on general international law or on generally accepted postulates.

With these ideas in mind, the Greek Government makes the following observations:

*Observations on separate articles*

*Article 1.* Substitute the following wording: "Every State has the right to exist." We think it sufficient to proclaim the right to existence. The right to maintain existence is covered by the right of legitimate defence laid down in article 17 of the draft. The right to exist implies the right to maintain existence. The sentence: "this right does not, however, imply that a State is entitled to commit, or is justified in committing, unjust acts towards other States in order to protect and preserve its existence", is too vague, particularly because of the use of the term "unjust", and should be deleted.

*Article 2.* This article should be shortened to read as follows: "Every State is entitled to have its existence recognized." The rest of the wording concerning the detailed application of the right to recognition of existence should be deleted.

*Article 3.* This article should be confined to the simple statement that the political existence of the State is independent of its recognition by other States.

*Article 4.* This article should be replaced by the following text: "Every State shall be bound to respect the independence and territorial integrity of other States and to prevent the organization on its territory of activities directed against another State or designed to foment civil war on the territory of another State."

*Article 6.* This article should merely state the principle that States are juridically equal, the rest of the wording being a natural consequence of the adoption of that principle. Article 6 should follow article 3 and should simply say: "Every State is, in law, equal to all the others which make up the community of States."

*Article 7.* As there are exceptions to the rule laid down in this article, it should be drafted as follows: "Every State is, in principle, entitled to exercise exclusive jurisdiction over its territory."

The second paragraph of article 7 should be deleted as it does not correspond to existing international law.

*Article 8.* If it is in principle agreed to insert this article in the Declaration, it should be limited to a statement of the principle that "Every State is en-

titled to intervene with another State for the protection of its nationals". The rest of the text of this article merely lays down rules for the application of the general principle and should be deleted. This article should come after article 5.

*Article 9.* This article should be deleted as being out of place in a Declaration of the Rights and Duties of States.

*Article 10.* This article should be replaced by the following text: "When a State exercises the rights conferred on it by international law it should refrain from the abusive exercise of such rights."

*Articles 11 and 12.* The texts of articles 11 and 12, which partly repeat each other, should be combined to form a single article drafted as follows: "States shall be bound to discharge their international obligations in good faith, and not to plead their national legislation as an excuse for failure to honour their international obligations."

*Article 13.* This text does not seem essential in a general proclamation such as the Declaration of the Rights and Duties of States.

*Article 14.* This article does not correspond with the practice of several States and would be unlikely to be adopted. Moreover, it seems inadvisable to include a text such as this among the principles of a Declaration of the Rights and Duties of States.

*Article 16.* This article should be replaced by the following text: "States shall be bound to refrain from the use of force in their relations with other States." This drafting seems simpler and at the same time covers all the cases mentioned in article 16 of the draft.

*Article 17.* It should be sufficient to proclaim the right of legitimate defence without further explanations or details of its implementation.

*Articles 19 and 20.* These two articles ought not to appear in the proposed Declaration, since the obligations in question are established by particular international law (Charter of the United Nations) and not by general international law (on this point, see under "General Observations" above).

*Article 22.* See the drafting of article 4 as proposed above.

*Article 23.* Though the principles it expresses are important, this article seems out of place in the present Declaration.

*Article 24.* Same observations for this article. While the first part of the text appears to require no comment, the second part pertains to particular international law (Charter of the United Nations).

## 8. COMMUNICATIONS RECEIVED FROM INDIA<sup>184</sup>

*First communication*

New Delhi, 26 September 1947

Sir,

I have the honour to refer to your letter No. 904-3-2/OS dated 2 July 1947, and to state that it is regretted that it has not been possible for the Government of India to scrutinize in detail the draft Declaration on the Rights and Duties of States presented by Panama and to furnish their comments and observations on it before the opening of the second regular session of the General Assembly. The Government of India, however, agree with the recommendation of the Committee on the Progressive Development of International

<sup>184</sup> Originally issued as A/400/Add.2.

Law and its Codification that further study concerning the draft Declaration be entrusted to the International Law Commission proposed to be established by the General Assembly.

(Signed) R. R. SAKSENA  
*Joint Secretary to the Government of India*

New Delhi, 11 June 1948

*Second communication*

The Minister for External Affairs and Commonwealth Relations presents his compliments to the Secretary-General and, with reference to his Note No. C.N.9:1948 Legal, dated 13 February 1948, has the honour to forward herewith the comments of the Government of India on the draft Declaration submitted by the delegation of Panama regarding the Rights and Duties of States.

2. The views of the Government of India are provisional and tentative, and they reserve the right to modify or alter them when the subject comes up for discussion before the appropriate body of the United Nations.

RIGHTS AND DUTIES OF STATES, DRAFT DECLARATION SUBMITTED  
 BY THE DELEGATION OF PANAMA

*Preliminary*

The Declaration enumerates various rights and duties of States without defining what a "State" is. If it were not to lose much of its value a definition of State should be included in it. The Government of India suggest in this connexion that a standard definition of the State, e.g., that given in Oppenheim's *International Law* be adopted. The State should have the following essentials:

- (1) It should consist of people of both sexes of all communities, etc.;
- (2) Country or territory;
- (3) Orderly Government; and
- (4) Sovereignty.

With regard to the last of these essentials it would be enough to say that a State should have, in the main, independence internally and externally.

2. On certain articles of the Declaration on which no comments are offered it may be assumed that the Government of India are in general agreement with them.

*Preamble*

The Government of India consider that the expression "a decisive factor" in clause 3 is an obvious exaggeration and suggest that it be replaced with "an important factor".

*Article 1*

The Government of India suggest the following redraft:

"Every State has the right to exist, and subject as hereinafter provided,

(1) The right to protect itself against an impending injury of a grave character which is immediately threatened from the territory of another State in circumstances where an appeal to the latter would be of no avail;

(2) The right to protect itself against an impending injury of a grave character which is threatened from the high seas by a vessel flying a foreign flag;

(3) The right to exercise a jurisdiction over vessels reasonably suspected of piracy, to the extent of ascertaining their true character;

(4) The right in time of war to protect itself against acts done by neutrals likely to prejudice the conduct of its military or naval operations;

(5) The right to vindicate any infraction of its territorial laws by immediate pursuit and arrest;

(6) The right to intervene for the protection of the person, property and interests of its nationals outside the limits of its own territory."

In the alternative the Government of India suggest that the second part of this article should read as follows:

"This right does not, however, imply that a State is entitled to commit or justified in committing acts towards other States which are not in accordance with the principle of international law or the United Nations Charter."

#### *Article 2*

With a view to allowing a State the discretion to recognize or not a particular State and removing the unconditionality and irrevocability of recognition, the Government of India suggest either the omission of this article or its replacement by an article in the following terms:

"Every State has the right to recognize another State. The recognition of the existence of a State signifies that a State recognizing it accepts the person of the State recognized together with all the rights and duties which arise out of international law."

#### *Article 5*

The proviso "except in so far as permitted by the provisions of the United Nations Charter or of the principle of international law" might be added to the article as it stands.

#### *Article 6*

The words "and has the right to claim and assume, as among the Powers of the world, that position of equality to which natural law entitles it" may be deleted.

#### *Article 7*

The second sentence dealing with rights is out of place in the article on jurisdiction. It may be omitted.

#### *Article 8*

This may be replaced with the following:

"Every State is entitled to intervention with another State in favour of its own nationals acting through diplomatic channels and in reasonable and courteous manner."

#### *Article 9*

The words "and protected" may be omitted, as it would be neither possible nor desirable to throw the responsibility of protecting any other State in the world on the rest of the States.

#### *Article 14*

The Government of India cannot subscribe to the view that international law is also national. They agree however that national law should be in conformity with international law.

#### *Article 15*

To make this article definite and precise it may be redrafted as follows:

"It is the duty of every State to settle its international disputes by peaceful means."

*Article 18*

The Government of India agree to the principle underlying this article but desire to point out the practical difficulties, e.g., a territory may be acquired by a State and be under its administration for a very long time. In such a case it would not be possible or practical to refuse recognition.

*Article 21*

The following words may be added to this article: "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".

*Article 23*

The Government of India feel that this article is out of place in the draft Declaration and point out that its consideration properly belongs to the International Trade Organization.

9. COMMUNICATION RECEIVED FROM MEXICO<sup>186</sup>

[Original: Spanish]

7 June 1947

In the first place the Government of Mexico would like to express its sincere pleasure at the motion submitted to the General Assembly of the United Nations by the delegation of Panama calling upon the United Nations to adopt a "Declaration on the Rights and Duties of States" for the purpose of defining and laying down in concrete and precise form and for universal observance, the basic principles on which the structure of international law is founded.

When submitting her comments and observations on the Dumbarton Oaks Proposals for the establishment of a general international organization, Mexico fully realized that an instrument of this kind had to be prepared for adoption and observance by all the nations. On a previous occasion, when submitting her draft constitution of a permanent union of nations on 5 September 1944, Mexico gave a prominent place in those suggestions to the recognition of international law as the basic rule of conduct for Governments. At that time she proposed that, simultaneously with a Declaration of the International Rights and Duties of Man, a committee of experts of the United Nations should prepare a Declaration on the Rights and Duties of States, both to be reproduced as annexes to the covenant or charter of the new world association of nations. At the San Francisco Conference, the Mexican delegation, as is recalled in the explanatory note accompanying the Panama draft, was one of those proposing the addition of such a document to the Charter which was then under consideration.

Against such a background, not to mention other circumstances less immediately relevant, the Government of Mexico cannot but welcome with sincere pleasure the happy initiative taken by the distinguished chairman of the delegation of Panama, the eminent internationalist Dr. Ricardo Alfaro, and has great pleasure in offering its cordial support for this noble effort.

In the presence of a purpose of the nature here pursued, which is likely to offer technical rather than doctrinal difficulties in its accomplishment, the Government of Mexico has not departed from the view expressed at San Francisco that this task should be performed in its preparatory stage by a committee.

<sup>186</sup> Originally issued as A/AC.10/39/Add.2/Corr.1.

The General Assembly clearly held the same view when it referred this question to the consideration of the Committee established by it for the Progressive Development of International Law and its Codification, with instructions to analyse the subject and, after study and preliminary debate, to report back to the Assembly itself.

In these circumstances, the Government of Mexico expresses the sincere wish that this Committee may be successful in its work, and hopes to be informed of the results so as to be in a position to state its views on the text of the draft declaration.

The General Assembly, however, by its resolution of 11 December 1946, invited all Members of the United Nations to submit their comments and observations to the Committee on the Progressive Development of International Law and its Codification. Accordingly the Government of Mexico wishes for the moment to state the following points:

(a) It reiterates its conviction that a United Nations Declaration on the Rights and Duties of States for universal observance should be adopted, and that such Declaration should have binding contractual force in as precise terms as possible.

(b) It considers that the draft submitted by the delegation of Panama is a valuable basis of discussion, and should be analysed with a view to the preparation of as full a document as the necessary consensus of opinion may permit.

(c) It considers it premature to make comments on style or drafting points, especially since it has not the Spanish text before it; but it naturally reserves the right to make such comments as soon as it has had an opportunity of considering the work which is being done by the Committee on the Progressive Development of International Law and its Codification.

(d) For the time being, it has no comments on the substance of clauses 1, 2, 3, 4 and 5 of the draft which comprise the following rights and duties: right to national existence, recognition of the existence of the State, right to existence independent of recognition, right to independence, duty of non-intervention.

(e) It feels that for the purpose of substantiating and strengthening the very sound principle of the legal equality of States laid down by clause 6 it would be preferable to omit any allusion to philosophical ideas and hence not to refer to natural law as the basis of such equality, which is established in various international instruments.

(f) It interprets clause 7 (which concerns the exclusive jurisdiction of the State over its territory and over all nationals or foreigners within that territory) to mean that the State is under no obligation to grant to aliens all the rights enjoyed by nationals, for such a procedure would, at least so far as political rights are concerned, be improper.

(g) It considers that clause 8 should provide that the right to intercession or diplomatic representations (words which seem preferable to "intervention" as used in the draft) should be subject to the condition that all legal processes (and not only appeals to the same) should have been exhausted, and that such right should be limited by the duty of an alien not to invoke his Government's protection, and of the Government not to grant it, whenever such alien has freely and unreservedly undertaken to submit himself exclusively to the decision of the local courts. Hence it is recommended that the draft declaration should contain a provision expressly stating that diplomatic intervention is out of place in cases where the persons concerned have previously waived it.



It should also be mentioned expressly that recourse to diplomatic representations should be subject to the condition that legal processes have been exhausted.

(h) For the time being, it does not offer any comments on the substance of clauses 9 and 10.

(i) Clause 11 refers to the duty of every State to fulfil in good faith the obligations arising from treaties and to respect the sanctity of the pledged word. In this case, it would seem advisable to make provision for the possibility of an unforeseen change in the circumstances determining an international obligation, when such change occurs through no fault of the party bound but prevents such party from carrying out the agreement. In such a case it should be provided that good faith must be shown not only by the party bound but also by the party benefiting under the agreement.

(j) It is of the opinion that so long as the codification of the international law is not an accomplished fact, the application of the noble principles enunciated in clauses 12, 13 and 14 of the Panama draft (the value of which the Government of Mexico fully recognizes) may give rise to serious difficulties owing to the variety of opinions on institutions or principles of international law which are not universally recognized. The Government of Mexico would like the United Nations to endeavour to define the areas of international jurisdiction and of exclusively domestic jurisdiction. Pending an acceptable solution of this problem, the Government of Mexico suggests that, to avoid sacrificing the noble ideas of clauses 12, 13 and 14, the relevant part of the draft declaration should confine itself to stating explicitly that the sovereignty of States shall be subject to such provisions of international law as are embodied in the Declaration on Rights and Duties of States.

(k) For the moment there are no comments on clause 15.

(l) It is suggested that in addition to the reference to international order (which is inviolable), clause 16 should contain a reference to the concepts of international justice or law.

(m) For the moment there are no comments on clause 17.

(n) It proposes adding the principle that territorial acquisitions effected by means incompatible with international law or justice shall also not be recognized.

(o) For the time being there are no comments on clauses 19 and 20.

(p) It proposes with reference to clause 21 that it should be established that the fulfilment of such an obligation should not be subject to the unilateral pressure of another State or States, since any such action would violate the principle of non-intervention and might offer a pretext for undue political coercion, as happened during the Nazi regime in the case of German minorities living in various countries of Europe before the war.

(q) For the time being there are no observations on clause 22.

(r) It considers that the principle stated in clause 23 of the draft calls for specially careful consideration. Due recognition should be given to the reasons which might prompt industrially less-developed countries with low standards of living to adopt specified measures of protection with a view to stimulating yield and legitimate development, for the purpose not of attaining self-sufficiency, but of being able truly and actively to co-operate in the various economic forms of international solidarity. It should also be clearly stated what legal or economic means are to be considered as artificial and whether in

the economic development of a country there should be preferential treatment for nations.

(s) For the time being there are no comments on clause 24.

Mexico, D.F., May 1947

#### 10. COMMUNICATION RECEIVED FROM THE NETHERLANDS<sup>186</sup>

Netherlands Delegation  
to the United Nations  
New York, 23 June 1947

With reference to your circular letter dated 11 February 1947, No. 904-3-2/YLL containing a request for comments and observations on the text of the draft Declaration on the Rights and Duties of States presented by Panama, I have the honour to inform you, under instructions from the Netherlands Government, that my Government is in agreement with the observations presented by the Swedish Government on 30 May 1947 regarding this matter.<sup>186a</sup>

The Netherlands Government considers it advisable in particular to postpone further study of the Declaration on the Rights and Duties of States until the procedure for the general codification of international law has been agreed upon.

(Signed) Maria Z. N. WITTEVEEN  
Acting Netherlands Representative  
to the United Nations

#### 11. COMMUNICATIONS RECEIVED FROM NEW ZEALAND

*First communication*<sup>187</sup>

Wellington, 25 July 1947

I have the honour to acknowledge receipt of your letter, reference 904-3-2/OS, of 2 July addressed to the Minister of External Affairs, on the subject of the Panamanian draft Declaration on the Rights and Duties of States.

The views of the New Zealand Government on this draft have not yet been finally formulated, but I am now able, in satisfaction of the second of your requests, to forward a copy of a paper on this subject written by Professor R. O. McGehan, Professor of Jurisprudence and Constitutional Law at Victoria University College, Wellington, and who is a leading authority in New Zealand on international law.

(Signed) A. D. McINTOSH  
Secretary of External Affairs

*Second communication*

Wellington, 9 April 1948

The Minister of External Affairs presents his compliments to the Secretary-General of the United Nations, and has the honour to acknowledge receipt of the Secretary-General's note (C.N.9.1948.Legal) of 13 February, concerning the draft Declaration on the Rights and Duties of States presented by the Government of Panama.

<sup>186</sup> Originally issued in A/400, p. 13

<sup>186a</sup> See p. 182 below.

The Minister notes from the resolution of the General Assembly under reference in the Secretary-General's note that this Declaration is to be considered by the International Law Commission. The Minister trusts that the commentary on the Panamanian draft prepared by Professor R. McGehan and forwarded to the Secretary-General under cover of letter No. 88 of 25 July 1947 from the Secretary of External Affairs may be of some assistance to the Commission in its consideration of this matter.

The Minister has, however, the honour to inform the Secretary-General that the New Zealand Government do not desire to submit official views on the Declaration in advance of its consideration by the International Law Commission.

(Signed) J. V. WILSON

PANAMANIAN DRAFT DECLARATION ON THE RIGHTS AND DUTIES OF STATES<sup>187a</sup>

*Paper written by Professor R. O. McGehan*

Much of the difficulty I had with this draft has arisen from the legal terminology used. Quite often a "right" has been asserted which, if literal meaning be given the words used, is wide-ranging indeed. But many such rights on analysis turn out to be a group of somewhat narrower duties. Yet the rights of one State are no more and no less than the duties others owe to it. Before any State agrees to a statement of the rights of another, it should be satisfied as to exactly what are to be its duties to that other. In my comment, therefore, I have sought to avoid support for rights expressed in wide terms when all that other States would, I feel sure, be prepared to undertake would be a somewhat narrower duty. I have done this in the conviction that international law gains from the undertaking of duties one is prepared to carry out, more than it can from assertion of more wide-ranging rights one would like to feel one possessed. Not much is gained by expressing your right widely and having heated and endless dispute over its alleged infringement; better to exact a precisely formulated duty.

Another difficulty has arisen from the use of the word "right" where no correlative duty is involved, when all that is meant is that one is free to act in a certain way. I take it that in law one is always free to act in a given way if one is not under a duty not to do so and that these freedoms are numerous and need no statement in treaty form. Particularly is it necessary to avoid statement of one's "right", for it suggests another's correlative duty when no such duty exists.

Neither do we need to put into treaty form statements of legal principles which are really no more than corollaries of the existence of a legal system. This is developed under 6, following.

1. *The right to national existence*

"Every State has a right to exist."

I regard such a declaration as altogether too wide. Read with paragraph 2 "State" would seem to include a State as yet unrecognized by the community of nations. "State" needs precise definition. Again, does "State" include semi-sovereign as well as sovereign States? It would be unwise to commit ourselves to support the right to exist of semi-sovereign States.

<sup>187a</sup> Originally issued in A/40G, pp. 14-19.

Apart altogether from the ambiguity of "State" I think that the word "right" carries obligation too far. The right of the State to existence would involve the duty of other States to keep it in existence. But States might fail to exist for a variety of reasons, and it might often be better to let them fail. All that would be involved in a positive duty to maintain the existence of States cannot be envisaged. Much less is intended, and only the duties intended should be set out.

"Right to protect and preserve its existence."

We should not recognize so wide a right. A right of self-defence is as far as we should, in my opinion, go. Particularly is this so in view of persistent distinction in international law writers between "self-preservation" and "self-defence" (Oppenheim, fifth edition, vol. 1, p. 244; Hyde, second edition, 237).

The term "unjust acts" in the proviso raises further uncertainty. What is "just" and what is "unjust" would involve endless controversy. Apparently the proviso would commit us to refrain from doing by way of self-defence what is legal but not "just". I don't see why we should do so.

## 2. *Recognition of the existence of the State*

The present law does not include a duty to recognize new States; hence there is no right of such States to recognition. (Oppenheim, *ibid.*, 120). It is much safer to insist that we are under no legal duty to recognize, for by doing so we avoid controversy between parent States and States claiming to have established independence.

The objection is to the first, not to the last two sentences; the latter seem to me to state the present law accurately.

## 3. *The right to existence, independent of recognition*

As the circumstances of unrecognized States must vary considerably, it would seem unwise to state explicitly in advance what are the duties of other States towards them.

It should be noted that the last section of article 3 of the Convention of Montevideo, cited as a precedent, has been omitted in this draft. The omission might affect the construction of 3, with what result it is difficult to say.

## 4. *The right to independence*

The difficulty here is to define what a right of independence involves. Hall refers to it as "liberty of action within the law" (Hall, eighth edition, p. 55). A State's "independence" consists in what it can do without breach of the law on its part. As such, I have explained above, it needs no affirmation in treaty form. The word "legitimate" should be omitted in any case—"legal" perhaps.

Apparently the clause does not deal with any duties on the part of other States—but, as I have explained above, the word "right" involves "duties", and is for that reason a dangerous one to use.

## 5. *The duty of non-intervention*

The statement of this rule without exception goes beyond existing international law. The exceptions are set out in Oppenheim (*ibid.*, 251-253). It is not obvious that the exceptions are either obsolete or replaced by the United Nations Organization.

See, too, comment by Mr. Hughes set out in full in Hyde, 251-2.

## 6. *Legal equality*

Equality before international law is already a well-recognized principle and gains nothing by inclusion in a formal convention. It means that each State

shall get its legal due. But the existence of any system of law means that each gets its legal due—the system can only continue to exist on that axiom.

I see some danger, too, in extending the principle to unrecognized States which may be included within "State" (see comment on 1). Unrecognized States are not equal to recognized States before the law.

All the words after "community of States" are surplusage, and references in particular to "natural law" and what it entitles one to may be used to support all manner of strange arguments.

#### 7. *Exclusive jurisdiction*

This clause, particularly the second paragraph, is again one which goes beyond existing international law. Treatment accorded foreigners may well be that accorded to nationals and yet fall below international standards for this purpose.

(Freeman, *International Responsibility of States for the Denial of Natural Justice*, p. 539 and citations).

#### 8. *Diplomatic intervention*

No comment.

#### 9. *Respect of the right of the State by other States*

There is no harm (so far as I can see) in this clause in the abstract. But its explicit recognition that a right has its correlative does give a content to some of the "rights" dealt with in earlier clauses. Some of these "rights" are mere "freedoms" or "privileges," i.e., actions which a State may take if it can, but carrying no correlative duties to protect the so-called right on the part of others (see clauses 1, 3, 4 *supra*).

#### 10. *Limitation of the rights of the State*

This is mere statement of jurisprudential principle. All that it means is that every State can do what it is under a duty not to do. It is quite unnecessary.

Moreover it is not a very satisfactory statement. "Rights" is used in the paragraph in two different cases. "Exercise of the rights of a State" uses right as meaning freedom. But it goes on to speak of a duty not to interfere with the exercise of the rights of other States—where right must be strictly used.

#### 11. *Observance of treaties and sanctity of the pledged word*

The real difficulty here lies not in the general principle, which is all that is put forward, but with the limits to that principle coming within the principle *rebus sic stantibus*. See Hall, 407-417.

#### 12. *Discharge of international obligations*

No comment.

#### 13. *Authority of international law*

No comment.

#### 14. *National and international scope of the law of nations*

A clause which says that international law is the "law of the country" presumably means that it is part of the municipal law of that country. This has its difficulties for us. It is part of the theory of our municipal law that customary international law is part of the law of the land, but we have never extended this theory to treaty law. That extension has been made by the United States of America and at least some South American States. With us, therefore, most

treaties only become the law of the land by Act of Parliament. It is more in keeping with our parliamentary practice that this should be so.

There is little point in formally making international law part of municipal law. It is sufficient that, whatever the divergence between international and municipal law, the State should be liable at international law for any infraction by it of international law.

#### 15. *Peaceful settlement of disputes*

Covered by United Nations Charter (Article 2, paragraph 3).

What of course is wanted is not vague clauses like this one, but compulsory jurisdiction of the International Court in legal disputes, and development of United Nations organs with legislative functions to settle non-legal disputes. In other words, it is developed peace-making institutions, not general principles of peaceful settlement, that we need.

#### 16. *Condemnation of war as an instrument of national and international policy and of the threat of use of force*

All but the inclusion of the Drago Doctrine is covered by the Kellogg Pact (resuscitated by the Nürnberg trials) and the United Nations Charter.

#### 17. *Right of legitimate defence*

This is, it would seem, best left as it stands in the Charter, Article 51. Why multiply such clauses in treaty after treaty?

#### 18. *Non-recognition of territorial acquisitions obtained by force*

No such duty exists as yet at international law (though as in League of Nations resolution of 11/3/1932 it was put as high as duty). What does exist at present is freedom in each State to determine whether it will recognize these changes or not.

While (a) legislative international organs capable of making necessary changes are weak, and (b) States are not prepared wholeheartedly to resist any and every such territorial acquisition, a positive duty not to recognize may merely perpetuate a *de jure* position at odds with the facts. Discrepancies which persist between the position *de jure* and *de facto* only weaken international law and international organization.

Pending firmer obligations of all States in all circumstances to prevent such acquisition in the first place an obligation of this type is, I think, mischievous.

The citations do not support any unequivocal duty of non-recognition.

#### 19. *Co-operation in the prevention of acts of force*

This merely reproduces the United Nations Charter, Article 2, paragraph 5, and is superfluous.

#### 20. *Co-operation in the pursuit of the aims of the community of States*

This would seem to be harmless but superfluous except for the last five words. Those words certainly need definition if we are to be sure that they do not take us beyond obligations already incurred, or which it may be desirable to undertake.

#### 21. *Maintenance of conditions calculated to ensure international peace and order*

As a clause in an international treaty this appears to me to be valueless.

If this clause were merely a preparatory acceptance of principle which was then to be worked out in detail, it might be supported. In its present form, the

form of a final statement of a State's legal duty, it could only lead to a lot of useless and no doubt acrimonious controversy.

My own view is that the cause of international peace and order is better served by leaving States to bring to the attention of international organs conditions in other countries which notoriously threaten international peace. Over the years this may build international habits which will do much to achieve the purpose this clause seeks to serve.

22. *Duty not to foment civil disturbances in other States*

There can be no doubt that a State is liable for the acts of its agents in fomenting civil strife within the territory of another, though the precise limits of the obligations would need careful definition. But liability for the acts of private citizens which foment civil disturbances abroad can scarcely be undertaken in anything like the broad terms of this clause if the democratic right to criticize other forms of government and the conduct of other States is to continue. We have never admitted any such duty and it seems to me against our best interests to do so. (See Oppenheim, *ibid.*, 238-241).

23. *Equality of opportunity and interdependence in the economic sphere*

Where this principle has been accepted it is difficult to discern any change in the economic policies of States. Obviously, the "right to access, on equal terms" may mean anything, very little, or nothing at all, depending on agreement on what is meant by "access" and "equal terms". A vague clause like this has no value; economic co-operation, it seems to me, will have to be worked out in its details, from detail upwards, not from general principles downwards.

24. *Prohibition of pacts incompatible with the discharge of international obligations*

Some such rule of international law exists. It is phrased here as a duty not to make an inconsistent treaty, which leaves a State competent to make such a treaty. It would be better if the law were developed to make States legally incapable of concluding such agreements.

12. COMMUNICATIONS RECEIVED FROM THE PHILIPPINES

Office of the Permanent Representative of  
the Philippines to the United Nations  
New York, 19 December 1947

*First communication*

Sir:

I have the honour to transmit herewith copy of an opinion of the Secretary of Justice of the Philippines concerning the draft Declaration on the Rights and Duties of States presented by Panama, as requested in letter dated 2 July 1947 (Ref: 904-3-2/08), of the Assistant Secretary-General in charge of the Legal Department of the United Nations.

Very truly yours,

For Ambassador Romulo:

(Signed) José D. INGLES  
Legal Adviser and  
Administrative Officer

## COPY OF AN OPINION OF THE SECRETARY OF JUSTICE OF THE PHILIPPINES

9 September 1947

Respectfully returned to the Honourable the Secretary of Foreign Affairs, Manila.

The Assistant Secretary General in charge of the Legal Department, United Nations, requests comments and observations on the draft Declaration of Rights and Duties of States submitted by the delegation of Panama.

Article 13 of the draft subjects the sovereignty of States to the limitations of international law and makes it the duty of every State to adjust its conduct to international law in its relations with other States and with the community of States. Article 12 precludes limitations arising out of the constitution or laws of a State from being pleaded as an excuse for failure of that State to discharge its obligations under international law. It is obvious that these articles contravene the absolutely sovereign character of independent States, for they ordain submission on the part of the community of the States to the supreme mandates of international rules and principles to the extent of curtailment of their national sovereignties.

Article 23 gives each State the right of access, on equal terms, to the trade, commodities and raw materials of the world which are necessary to its economic prosperity. Again, in its practical application, this article would undermine the nationalistic policy, adopted by the Philippine Constitution. By giving each State the right of access, on equal terms, to the commodities and raw materials of the world, article 23 announces a rule opposed to the nationalistic provisions of the Philippine Constitution.

Notwithstanding these observations, the undersigned believes that the proposed Rules of International Law, if acceptable to other nations, should also be accepted by the Philippines in the interest of world peace and common prosperity. To achieve this ideal to which humanity aspires, petty nationalism has to give way gradually to internationalism, and every nation must subordinate its sovereignty to that of the One-World Organization of which it forms an integral part.

(Signed) Roman OZAETA  
Secretary of Justice

*Second communication*

Philippine Mission to the United Nations  
New York, 27 May 1948

Excellency:

With reference to your despatch (Ref. C.N.9.1948. Legal) dated 13 February 1948, I have the honour to transmit herewith a note dated 20 April 1948, from the Secretary of Foreign Affairs of the Philippines, containing comments and observations on the draft Declaration on Rights and Duties of States presented by Panama.

Accept, Excellency, the renewed assurance of my highest consideration.

(Signed) Salvador P. LOPEZ  
Chargé d'affaires ad interim



Manila, 20 April 1948

The Secretary of Foreign Affairs of the Republic of the Philippines presents his compliments to His Excellency the Secretary-General of the United Nations and with reference to the Secretariat's note (Ref. C.N.9.1948.Legal) dated 13 February 1948 regarding the draft Declaration on Rights and Duties of States presented by the Government of Panama, has the honour to submit hereunder the comments and observations as requested:

This Government is in conformity with the provisions thereof with the exception of article 23, which reads as follows:

"Every State has the right of access, on equal terms, to the trade, commodities and raw materials of the world which are necessary to its economic prosperity."

The Republic of the Philippines cannot conform to this article in view of the Executive Agreement concluded between the United States of America and the Republic of the Philippines on 4 July 1946, providing for reciprocal trade preferences between the two countries. This agreement is calculated to operate for a period of 28 years. The Republic of the Philippines found it necessary to enter into a special trade arrangement with the United States in view of its economic, material, and financial needs arising from the establishment of its sovereign existence which coincided with the terrific devastation wrought upon our economy by the last war.

It is likewise the impression of this Government that the first paragraph of the said article appears too vague to be acceptable. The statement that every State has the right of access to the raw materials of the world which are necessary to its economic prosperity may give rise to claims by industrial States that they are entitled as a matter of right to the exploitation of the natural resources and raw materials. Such claims might impair the sovereign right of the small countries to the unhampered determination of their national policies affecting the utilization of their natural resources and the raw materials extracted therefrom.

In general, it is the view of this Government that it will give its conformity to the draft provided article 23 thereof be eliminated.

### 13. COMMUNICATIONS RECEIVED FROM SWEDEN

*First communication*<sup>188</sup>

Stockholm, 30 May 1947

Sir,

With reference to your letter of 11 February 1947, regarding the draft Declaration on the Rights and Duties of States presented by Panama, I have the honour to inform you that in the view of the Swedish Government it will be necessary to make this question the subject of very careful study before a final and conclusive report can be prepared and submitted to the General Assembly. It should be remembered that the proposed declaration aims at the codification of fundamental principles and rules of international law. This is such an important and complex matter that it should be given no less attention and consideration than other plans for codification of international law. The Swedish

<sup>188</sup> Originally issued as A/AC.10/39/Add.1.

Government, therefore, hold the view that a further study of the declaration should be postponed until the procedure for the general codification of international law has been agreed upon. That procedure having been established, the aforesaid declaration should be considered in the same manner as other proposals, dealing with the codification of international law.

The Swedish Government, however, already at this point wish to draw the attention to certain important problems connected with the proposed declaration which should be borne in mind when dealing with this question. The proposal submitted by Panama implies in reality that the task of codification should be begun by the codifying of the general rules and principles of international law. It is open to considerable doubt whether satisfactory results can be achieved this way. It would rather seem more logical and practical to commence with the codification of special, important parts of international law in order to create a firm foundation for the general principles to be laid down for the intercourse of nations. In the opinion of the Swedish Government it also appears questionable whether those principles should be given the form of a "Declaration on the Rights and Duties of States". Rights and duties proclaimed in that way would easily give the impression of having a permanent and unchangeable character while, as a matter of fact, they are all the time subjected to the unavoidable changes of international law as such. It would for that reason, and also for other ones, seem more adequate to codify them in a convention on the fundamental rules of international law, as it stands today. Finally, the Swedish Government having noted that some articles of the draft declaration do, with certain divergences, correspond to rules laid down in the Charter of the United Nations, also wish to express their serious doubt as to the wisdom of thus establishing a double series of partly overlapping rules. Such a procedure is apt to lead to doubts and difficulties of interpretation in the future.

As Sweden is represented in the Committee for the codification of international law, the Swedish Government will have the opportunity to present in greater detail their views on the proposed declaration in connexion with the deliberations of that committee.

For the Minister:

(Signed) R. BAGGE

*Chief ad interim of the Political Department*

*Second communication*

New York, 26 April 1948

Sir,

Referring to the Secretary-General's note to the Swedish Foreign Minister of 13 February 1948 (C.N.9.1948,Legal), regarding the draft Declaration on the Rights and Duties of States I beg to remind you of a letter of 30 May 1947, from the Swedish Foreign Office to the Secretary-General answering your letter to the Swedish Foreign Minister of 11 February 1947 (904-3-2/YLL). In that letter it was pointed out that the Swedish Government hold the view that a further study of the Declaration should be postponed until the procedure for the general codification of international law had been agreed upon. As in my Government's opinion the situation in this aspect has not changed the Swedish Government is not ready at the present moment to present further views on the matter.

Yours very truly,

(Signed) Gunnar HAGGLOF

14. COMMUNICATION RECEIVED FROM TURKEY<sup>189</sup>

Turkish Permanent Delegation  
to the United Nations  
New York, 14 August 1947

With reference to your letters addressed to His Excellency Mr. Hasan Saka, Turkish Minister for Foreign Affairs, dated 1 February 1947, ref. 904-3-2/YLL, and 2 July 1947, ref. 903-3-2/OS, regarding the draft Declaration on the Rights and Duties of States, presented by Panama (document A/285), I am enclosing herewith a memorandum containing the views and certain remarks of my Government on the above-mentioned draft Declaration.

(Signed) Selim SARPER

## MEMORANDUM

The draft Declaration on the Rights and Duties of States, presented by Panama (document A/285), has been considered by the Turkish Government in the light of reports drawn up by the Turkish national organizations interested in international law, to which the said draft Declaration had been communicated.

As a general remark, it may be pointed out that the legal nature which the draft Declaration would assume if and when it is accepted and signed by a number of States is not very clear, and that it would be desirable to clarify further its terms of reference. On the other hand, it may be asserted henceforth that the principles put forward in the draft Declaration follow, in general, the main lines of the theory and practice of modern international law.

However, in the opinion of the Turkish Government, it is advisable to give further consideration to article 16 of the draft Declaration. This article, after having stated, in general terms, that "it is the duty of every State to refrain from resorting to the threat or use of force against the territorial integrity and political independence of another State", adds "or for the recovery of public debts from another State". By this last phrase, the draft Declaration acknowledges without reserve the Drago Doctrine, as is set forth in the explanatory note by His Excellency Dr. Ricardo J. Alfaro (document A/285, pages 22 and 23). But according to generally accepted principles of international law, and particularly according to article 1, paragraph 2, of the Convention II signed at The Hague in 1907, the Drago Doctrine "is not applicable when the debtor State refuses or neglects to reply to an offer of arbitration, or after accepting the offer, prevents any compromise from being agreed upon, or, after arbitration, fails to submit to the award".

On the other hand, article 19 of the draft Declaration provides expressly for coercive action by the community of States against another State. It seems that one of the cases when this collective coercive action should be taken is precisely the case of a debtor State refusing to pay its public debts in the circumstances envisaged in article 1, paragraph 2, of the Convention II signed at The Hague.

It is therefore desirable that the types and conditions of the coercive action to be taken against a refractory debtor State, in the above-mentioned circumstances, be defined more clearly and in a more detailed manner in the Declaration.

<sup>189</sup> Originally issued in A/400, p. 20.

15. COMMUNICATIONS RECEIVED FROM  
THE UNITED KINGDOM

*First communication*<sup>180</sup>

United Kingdom Delegation  
to the United Nations  
New York, 1 May 1947

Sir,

I refer to Dr. Kern's letter 904-3-2/YLL of 11 February, in which he requested the comments and observations of His Majesty's Government in the United Kingdom on the Resolution adopted by the General Assembly at its 55th Plenary Meeting on 11 December 1946, regarding the draft Declaration on the Rights and Duties of States.

2. I am instructed to inform you that the general view of His Majesty's Government is that this draft Declaration should be considered as a proposal for codification, rather than a proposal for new legislation, and that it should therefore be dealt with in whatever manner is decided upon as appropriate for codification generally.

I am, Sir,  
Your obedient Servant,  
(Signed) for Sir A. CADOGAN

*Second communication*

United Kingdom Delegation  
to the United Nations  
New York  
24 August 1948

The Permanent United Kingdom Representative to the United Nations presents his compliments to the Secretary-General of the United Nations and has the honour to transmit to him, with reference to his letter C.N.9.1948. Legal of 13 February 1948, to the Secretary of State for Foreign Affairs in the United Kingdom, two copies of the observations of His Majesty's Government in the United Kingdom on the Draft Declaration on the Rights and Duties of States presented by the Government of Panama.

OBSERVATIONS OF HIS MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ON THE DRAFT DECLARATION WITH REGARD TO THE RIGHTS AND DUTIES OF STATES, SUBMITTED BY THE DELEGATION OF PANAMA (A/285)

The major part of the whole of international law relates to the rights and duties of States. A statement of these rights and duties would, in effect, be an attempt at the formulation in a codified form of the greater part of international law. However, this is clearly not the intention of the draft under consideration, and His Majesty's Government in the United Kingdom assume that the proposed declaration is to form, so to speak, the first chapter, containing certain fundamental general principles, of what might eventually be a codification of a great part of international law. Regarding the matter from this point of view, a major question arises as to what principles should

<sup>180</sup> Originally issued in A/AC.10/39, p. 4.

be enshrined in this first chapter and what should be left for later chapters. Further reference will be made to this point subsequently.

2. The expression of the most general and elementary principles of international law in a statement in legislative form is a task of great difficulty. In fact, there are two horns of a dilemma, which have to be avoided. On the one hand, though a general principle may be generally accepted and perfectly understood, its expression in legislative form means that every word has to be considered with the utmost care from the drafting point of view to ensure that, when viewed as a legislative enactment, it is not possible to put upon it, by a literal construction, wrong meanings. On the other hand, the exercise of care to avoid the first horn of the dilemma must not produce the result that the propositions stated are mere platitudes or else propositions which are completely circular.

3. *The Preamble.* Perhaps the third paragraph is too confident or optimistic in stating as a fact that this declaration *will be a decisive factor*, etc. It might be better to say that it should be or that it is hoped it will be. His Majesty's Government consider that the fourth paragraph of the preamble should be reserved. They consider that it would be best to reserve until a late stage of the work of the International Law Commission the question whether this declaration should be presented to the General Assembly as a Declaration to be signed as a convention (article 23 (c) of the Statute of the Commission) or whether it should consist of a report (article 22).

4. His Majesty's Government consider that a declaration on the rights and duties of States should begin with a definition of the word "State". This seems to be essential for the interpretation of the whole declaration.

5. They consider that the second point to be dealt with is the question of recognition of States, which appears in articles 2 and 3 of the present draft. They suggest that it should consist of two propositions; (a) that where an entity fulfils the conditions of statehood as laid down in the definition, there is a duty on all other States to recognize it; (b) that there is also a duty on all States not to recognize as a State any entity, which does not fulfil these conditions. Though neither point is free from controversy in current doctrine, His Majesty's Government agree with the draft declaration in considering that (i) the recognition and non-recognition of States is a matter of legal duty and not of policy. Inevitably there is bound to be considerable scope for political judgment in deciding whether an entity fulfils the conditions for recognition as a State. They consider, nevertheless, that the interests of international law require that the sphere, necessarily left to a purely political judgment, should be reduced to as narrow limits as possible and that international relations will benefit by the question of recognition and non-recognition being regarded, as far as possible, as a matter of legal duty and removed to the utmost practical extent from the political sphere; (ii) the existence of a State should not be regarded as depending upon its recognition but on whether in fact it fulfils the conditions, which create a duty for recognition. It should be made clear that recognition of an entity as a State in no way requires the entry into diplomatic, or any other particular relations with, the entity so recognized. Whether a State enters into diplomatic or other relations with another State is, and must remain, a matter for purely political decision. On the other hand, the entry into diplomatic or other relations with an entity does necessarily imply that that entity is recognized as something. Whether it

implies recognition *de jure* or *de facto* as a State, or as a belligerent community, or as an insurgent Government, will depend upon the particular facts with regard to the relations so entered upon. It is thought that the above suggestions cover the ground which is at present covered by articles 2 and 3 of the existing draft.

6. There is some reason to think that the whole subject of recognition of States, Governments (*de jure* and *de facto*), belligerency and insurgency is one which might well form the subject of a special study by the International Law Commission. There is an abundance of material on the subject, and it is thought that a full consideration of this matter by a body such as the International Law Commission, leading to the formulation of a certain number of rules or principles, might very greatly conduce to the development of international law, whether or not this formulation was, in the ultimate result, accepted by States in the binding form of an international convention.

7. His Majesty's Government consider that the "right of a State to existence" should be dealt with next (article 1 of present draft). The analogy between a State and a natural person cannot be carried to the length that it should be held that a State cannot of its own free will put an end to its own existence as a State, for instance by amalgamating with another State or entering into a federation. The real question, however, which arises in this connexion (with which the existing draft does not deal) is whether in any circumstances, and if so in what, an end can be put to the existence of a State otherwise than by the free will of that State. It would appear that this is a question which must be answered one way or the other, if the draft is to contain any provision on the right of existence, and it is hoped that the International Law Commission will consider it.

8. The draft then might proceed to the matters dealt with in articles 4 and 5. These two articles seem to His Majesty's Government to go together. They are two aspects of the same matter. Independence in one sense will have found its place in the definition of a State. Article 4 deals with the exercise of independence, or, as it may sometimes be put, the exercise of sovereignty, or the exercise of jurisdiction. It would seem that the general principle is that, provided that a State keeps within the limits prescribed by international law and treaties, its freedom to act as it pleases must be recognized and respected by all other States. But the question arises as to whether there are or not exceptions to this principle. The instances of a State acting with the utmost barbarity and inhumanity to its own nationals, or making preparations which appear to foreshadow a policy of aggression, or again of pursuing a course which leads to the economic strangulation of another State, occur to the mind in this connexion. These points are touched on to some extent in articles 21 and 23 of the draft. The question, whether these limitations are regarded as exceptions to the general principle of freedom of action within the limits of international law and treaties, depends upon whether these limitations are regarded as part of international law itself. The important doctrine of "abuse of rights" may fall for consideration in this connexion. As stated above, it is thought that draft articles 4 and 5 are two facets of the same principle and that they should be expressed as such. Article 22 falls for consideration in close connexion with article 5. His Majesty's Government fully recognize the principle which article 22 sets out to express. This principle is, it is thought, a particular and important aspect of the more general principle

set forth in article 5. It is a question whether in the same context something should not be said as to the general right of each State to have such form of constitution and such forms of national institutions as it may decide for itself.

9. Article 6 is an example of the difficulty of expressing in a legislative form a generally accepted principle. The essence, as His Majesty's Government understand it, is that all States enjoy an *equality* of rights but this does not mean that they have the *same* rights. The rights and duties of a State, which has a sea coast, are necessarily different from those of a State which is land locked. The rights of a State, which is a member of an international organization, such as the United Nations, are different in some respects from those of States, which are not members of such an organization. Every State to some extent circumscribes, or increases, its rights and duties by the treaty commitments into which it has entered. His Majesty's Government doubt whether the words "assume a position of equality" in article 6 of the draft are quite appropriate in a legal statement.

10. Article 7. His Majesty's Government cannot entirely agree with the formulation of either of the two sentences in article 7. It is, they consider, not correct that a State's jurisdiction over foreigners within its territory is completely exclusive. International law recognizes both territorial jurisdiction over all persons and things within the territory, and a personal jurisdiction over nationals wherever they may be. In general, in case of conflict, the personal jurisdiction cedes to the territorial jurisdiction. If the International Law Commission could produce a formulation of the relationship of the State's territorial and personal jurisdictions, they would perform a great service.

11. The second sentence of this article is not in accord with existing international law, as His Majesty's Government apprehend it. There is much international authority for the existence of a minimum international standard, with which States are obliged to comply in their treatment of foreigners, whether or not they do so in the treatment of their nationals. If, and in so far as international law develops so as to limit the domestic jurisdiction of States in the treatment of their nationals to such an extent that every treatment of a national, which falls below the international standard, is a breach of international law (and therefore a matter on which other States may intervene), then the existing principle of international law with regard to the "international standard" will apply to both nationals and foreigners. Unless and until that position is reached, His Majesty's Government consider that the doctrine of the minimum international standard, with regard to the treatment of foreigners, remains part of international law and that agreement to abolish that doctrine will not be attained. In fact, this point was one, on which the Hague Conference of 1930 with regard to the responsibility of States, broke down. His Majesty's Government are very willing that the International Law Commission should devote most careful study to this question.

12. Article 8. The second proposition of this article no doubt refers to the international rule with regard to the exhaustion of municipal remedies. The International Law Commission might well make a full formulation of this rule the subject of a special study. It is again a matter on which there is abundant material. Perhaps this rule received the fullest consideration and exploration from all its aspects in the Finnish ships arbitration between the United Kingdom and Finland, and in this connexion both the written pleadings of the parties as well as the award of the arbitrator might be studied.

Whether or not this detailed formulation of the municipal remedies rule should form part of this particular chapter of the elementary rights and duties of States is a matter on which His Majesty's Government wish to express no view at present. They do, however, consider that, if such a formulation does not form part of the present declaration, it would be preferable to replace the existing second proposition in article 8 by something on the following lines: "This right is subject to the international rule with regard to the exhaustion of municipal remedies."

13. The third proposition in article 8 is fully accepted by His Majesty's Government but it is incompletely stated since there are two aspects of the matter. It is just as much the duty of the State, against whom the complaint is made, to agree to some satisfactory method of deciding the dispute as it is the duty of the State making the complaint only to resort to such peaceful methods. These two duties go side by side and it is the more important that both sides should be expressed because most of the difficulties, which have arisen, have arisen precisely because of the refusal of the defendant State to agree to any peaceful method by which a decision on the dispute can be arrived at. These States, of course, who have accepted the Optional Clause of the Statute of the International Court of Justice without any relevant reservation have fully complied with this duty by making recourse possible to the court in such cases.

14. Article 9. Omitting the words "and protected" the statement in this article is virtually platitudinous. The words "and protected" raise the question as to what precisely is meant thereby.

15. The idea expressed in article 10 seems to fall for consideration with article 4 (see paragraph 8 above) and should it be thought form part of the formulation of that proposition. The same remark applies to article 13.

16. Article 11 might deal with both obligations under treaties and obligations under international law together. It is questionable whether the adjective "public" in front of "treaties" is necessary or even desirable. The authors of the draft may have, however, some reference to article 102 of the Charter with regard to the registration of treaties in their minds.

17. The second part of article 12, relating to limitations arising under its law or constitution, is a correct proposition, but it is thought that it applies to obligations under treaties as well as to obligations under international law. The sense of article 14 might be combined with the latter part of article 12.

18. Articles 15, 16, 17, 19 and 20 deal with matters which, for members of the United Nations, are regulated by the Charter. It will be for the International Law Commission to consider whether, and to what extent, propositions of this kind can be laid down as part of general international law applicable to non-member States.

19. Article 18. In this connexion His Majesty's Government consider that the primary question here is that of the duty of the international community to prevent acquisitions by illegal force, or restore any so obtained. To the extent that the community of nations do not fulfil this function, it is more than questionable whether any purpose is served by a barren duty of non-recognition. In the past, in the absence of any common action by the community to prevent or restore such acquisitions, international law has proceeded on the basis of recognizing established situations even though brought about by illegal force, and acquisitive and extinctive prescription forms, it is thought, part of existing international law. Mere non-recognition, when the community of States does not



fulfil the function of preventing or restoring acquisitions by illegal force, has not appeared to serve any useful purpose but has, instead tended to create innumerable legal frictions, under which at times States have acted in a manner really inconsistent with any other basis than that of recognition of the acquisition, whereas at the same time they purport not to have done so.

20. Reference has already been made above in connexion with article 4 to draft articles 21 and 23. As there stated, these two articles must be considered in close connexion with article 4. In regard to article 23 in particular, His Majesty's Government will await with much interest the results of the efforts of the International Law Commission to state the idea which is contained in the present draft in a form which could be accepted as a legislative proposition. Article 22 has been commented on above in connexion with article 5.

21. His Majesty's Government have no comments to make on article 24.

22. There remains the question whether other propositions in addition to those at present included in the draft declaration should be included in this first or elementary chapter of the rights and duties of States.

## 16. COMMUNICATIONS RECEIVED FROM THE UNITED STATES<sup>191</sup>

### FIRST COMMUNICATION<sup>191</sup>

United States Representative  
to the United Nations  
New York, 29 May 1947

The United States Representative at the Seat of the United Nations presents his compliments to the Secretary-General of the United Nations and has the honour to refer to his note, UN-727A, dated 27 May 1947, transmitting a letter from the Director of the Office of Special Political Affairs of the United States Department of State to the Assistant Secretary-General of the United Nations in charge of the Legal Department, with regard to the draft Resolution on the Rights and Duties of States presented by Panama. There is enclosed herewith a communication from the Secretary of State of the United States, dated 28 May 1947, informing the Secretary-General of the United Nations that the United States Government is of the view that inasmuch as the Committee on the Progressive Development of International Law and its Codification, now meeting in New York, is concerned with the procedures to be established in connexion with the development and codification of international law, and inasmuch as it would be impracticable to give adequate consideration to the subject in the limited time at the Committee's command, it should leave the consideration of the substantive provisions of the draft Declaration on the Rights and Duties of States to the appropriate agency, which may be established by the United Nations, for the progressive development and codification of international law.

The Secretary of State of the United States of America presents his compliments to the Secretary-General of the United Nations and refers to the communication of 11 February 1947 (904-3-2/YLL) received from the Executive

<sup>191</sup> Originally issued in A/AC.10/39, p. 5.

Office of the Secretary-General, and to the reply of the Department of State thereto, dated 25 March 1947, concerning the draft Declaration on the Rights and Duties of States presented by Panama.

The draft has been carefully considered and the conclusion has been reached that in view of the nature and importance of the subject it would be impracticable for the Committee on the Progressive Development of International Law and its Codification, a Committee established to consider procedures, to give adequate consideration to the matter in the limited time at its command, and that consideration of the substantive provisions of the draft should be referred to the appropriate agency, which may be established by the United Nations for the codification and development of international law. The Representative of the United States in the Committee has been instructed in this sense.

Department of State, Washington

SECOND COMMUNICATION<sup>191a</sup>

Department of State  
Washington, D. C.  
11 March 1949

The Secretary of State presents his compliments to the Secretary-General of the United Nations and, with reference to his communication CN 9.1948 Legal of 13 February 1948, has the honour to enclose "Comments on the Draft Declaration on the Rights and Duties of States Presented to the United Nations by Panama".

COMMENTS ON THE DRAFT DECLARATION ON RIGHTS AND DUTIES OF STATES  
PRESENTED TO THE UNITED NATIONS BY PANAMA  
(*Doc. A/285: ibid., Corr. 1*)

*Article 1*

*"The Right to National Existence"*

"Every State has the right to exist and the right to protect and preserve its existence; this right does not however imply that a State is entitled to commit, or justified in committing, unjust acts towards other States in order to protect and preserve its existence."

The precedent cited by Panama (A/285, p. 1) is:

"I. Every nation has the right to exist, and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the State to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending States." (American Institute of International Law, 6 January 1916.)

The article limits the exercise of the right to protect and preserve existence by providing that such exercise would not justify "unjust acts towards other

<sup>191a</sup> This communication was received by the Secretariat after Part IV of this study had gone to press, and therefore could not be included in the Annotations to the Draft Declaration, *supra* pp. 49-131.

States". The prevailing doctrine is that the exercise of the right of self-defence by a state is justified though it may impair the rights of other states. If it is intended by this clause to deal with the right of self-defence, the provision is inadequate. It fails to take into consideration the comparative importance of the right of self-defence when it conflicts with other rights under international law. Thus, Hall's *International Law* states that "In the last resort almost the whole of the duties are subordinated to the right of self-preservation." Hall's *International Law* (8th ed. by Higgins, 322).

#### Article 2

##### "Recognition of the Existence of the State"

"Every State is entitled to have its existence recognized. The recognition of the existence of a State merely signifies that the State recognizing it accepts the person of the State recognized, together with all the rights and duties which arise out of international law. Recognition is unconditional and irrevocable."

The precedent cited by Panama (A/285, p. 2) is:

"Article 6. The recognition of a State merely signifies that the State which recognizes it accepts the personality of the other with all the rights and duties determined by international law. Recognition is unconditional and irrevocable." (Convention on Rights and Duties of States, Montevideo, 1933.)

The first sentence of the proposed article provides that "Every State is entitled to have its existence recognized".

In connexion with a discussion of "recognition", the following statement is made by Judge Hackworth in his *Digest of International Law*.

"Whether and when recognition will be accorded is a matter within the discretion of the recognizing State." (I, *op. cit.* (1940), 161.)

That a State may determine for itself whether it will accord recognition is also shown by the following statement in I, Hyde, *International Law* (2nd ed., 1945), 148-149:

"Recognition has been defined as the 'assurance given to a new State that it will be permitted to hold its place and rank, in the character of an independent political organism, in the society of nations'. 'The rights and attributes of sovereignty' are said to 'belong to it independently of all recognition', although 'it is only after it has been recognized that it is assured of exercising them'.

"When a country has by any process attained the likeness of a State and proceeds to exercise the functions of one, it is justified in demanding recognition. There may be no reason or disposition on the part of States generally to withhold recognition provided the fact be established that the requisite elements of statehood are present and give promise of remaining. The method by which the new State comes into being may, however, cause delay in the according of recognition. Thus when an outside State proceeds to set up a new State within territory which prior to such action constituted part of the domain of an existing State, and in opposition to its will, the procedure may cause other States to be reluctant to acknowledge the validity of the achievement, and to withhold recognition of the new State whose birth took place under such conditions. The coming into being of Manchoukuo is illustrative."

A provision very similar to the second sentence of the article was contained in article 6 of the Project on States which the International Commission of Jurists submitted to the Sixth International Conference of American States. That provision read:

"The recognition of a State signifies that the State recognized accepts the personality of the other State, with all the rights and obligations established by international law".

Article 9 of the Charter of the Organization of American States, signed at Bogotá, 30 April 1948, reads:

"The political existence of the State is independent of recognition by other States. Even before being recognized, the State has the right to defend its integrity and independence, to provide for its preservation and prosperity, and, consequently, to organize itself as it sees fit, to legislate concerning its interests, to administer its services, and to determine the jurisdiction and competence of its courts."

Article 10 of the Charter of the Organization of the American States, further provides:

"Recognition implies that the State granting it accepts the personality of the new State, with all the rights and duties that international law prescribes for the two States."

The statement in the third sentence of the article that "recognition is unconditional and irrevocable" is not in accordance with international law. States are free to accord or withhold recognition; and if they are free to withhold it, they have the right to accord it conditionally.

John Bassett Moore states in I, *International Law Digest* (1906), 73-74, that:

"Recognition is, as a general rule, absolute and irrevocable. Nevertheless, it may happen, by way of exception, that the recognition is conditional or is given *sub modo*. Such is the case when certain charges or restrictions are imposed on a new State at the time when its independent existence is recognized, such as an obligatory neutrality, commercial liberty, or religious liberty. If the restriction constitutes a condition, the Powers which have subjected their recognition to it have the right to insist upon the new State's conforming itself to the condition imposed, and if it fails, to consider their recognition as not given. If the recognition was given *sub modo* it will not be withdrawn, but other measures may be taken, such as the suspension of or rupture of diplomatic relations or reprisals. The distinction between a condition and a *modus* (mode) may be less precise in international law than in private law, but it is not useless. If, in case of a dispute as to the character of the clause, the matter should be submitted to arbitration, the arbitrator would, in default of clear indications, pronounce for the recognition *sub modo* rather than for the conditional recognition, seeing that the rule is irrevocability and that acts are not presumed to be done under conditions. And as independence, the essential and fundamental right of States, forms the rule, it is necessary, from the moment that a new State has been recognized, that the restriction imposed by the *modus* should be construed strictly.

"Examples of restrictions imposed on the independence of a new State are the permanent neutrality of Belgium; the restrictions safeguarding religious

liberty, imposed not only on Bulgaria, a semi-sovereign State, by article V of the treaty of Berlin, but also on Montenegro by article XXVII of the same treaty, on Serbia by article XXXV, and on Roumania by article XLIV; the restrictions imposed on the independent State of the Congo in favor of commercial freedom, by the general act of the Congress of Berlin of 26 February 1885."

A more recent instance of conditional recognition is given by Judge Hackworth, as follows:

"The text of the note which the Diplomatic Agent and Consul General at Cairo was instructed on 25 April 1922 to communicate to the Egyptian Minister of Foreign Affairs extending recognition to Egypt, contained the proviso that this recognition was 'subject to the maintenance of the rights of the United States of America as they have hitherto existed'. The Department of State stated that this was intended 'to leave no room for doubt of the maintenance of capitulatory and commercial rights and most-favored nation treatment of the United States.'" (I, Hackworth, *Digest of International Law* (1940), 192-193.)

For these reasons, it is believed that only the second sentence of the proposed article 2 would be acceptable to the United States.

### Article 3

#### *"The Right to Existence, Independent of Recognition"*

"The political existence of the State is independent of its recognition by other States. Even before it has been recognized, the State has the right to defend its integrity and independence, to provide for its preservation and prosperity and, consequently, to organize itself as it sees fit, to legislate in regard to its interests, to administer its services and to determine the jurisdiction and competence of its court of justice."

Article 3 of the Convention on Rights and Duties of States, signed at Montevideo in December 1933, is, in large part, similarly worded. It reads:

"Art. 3. The political existence of the State is independent of recognition by the other States. Even before recognition the State has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts."

It is believed that the first sentence of the article is intended to cover States which have not yet been accepted as constituting members of the "family of nations". The principle that a State may exist without recognition by other States is established. Judge Hackworth states in his *Digest of International Law*:

"The existence in fact of a new State or a new government is not dependent upon its recognition by other States." (Vol. I, p. 161.)

Professor James Grafton Wilson states in his treatise on *International Law*, page 18:

"A *de facto* State, possessing all necessary characteristics required by con-

stitutional law for full statehood, may exist, and yet such a State may not have full status in international law. This status is acquired at the present time on admission to the number of States now regarded as constituting the 'family of nations'.

"The entrance of the State into international statehood, however, depends entirely upon the recognition by those States already within this circle."

If a State exists, and the first sentence shows that a State may exist regardless of its recognition, it has, of course, the rights referred to in the second sentence.

#### *Article 4*

##### *"The Right to Independence"*

"Every State has the right to its own independence in the sense that it is free to provide for its own well-being and to develop materially and spiritually without being subjected to the domination of other States, provided always that in so doing, it shall not impair or violate the legitimate rights of other States."

The precedents cited by Panama (A/285, p. 2) are:

"II. Every nation has the right to independence in the sense that it has a right to the pursuit of happiness and is free to develop itself without interference or control from other States, provided that in so doing it does not interfere with or violate the rights of other States." (American Institute of International Law, 6 January 1916 and Project of Convention, 2 March 1925.)

"3. They respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them." (Atlantic Charter, 14 August 1941.)

"The American States have been incorporating in their international law, since 1890, . . . the following principles:

"g) The recognition that respect for the personality, sovereignty and independence of each American State constitutes the essence of international order sustained by continental solidarity, which historically has been expressed and sustained by declarations and treaties in force (Eighth International Conference of American States, 1938)." (Act of Chapultepec, Mexico City, 6 March 1945.)

The provision that "every State has the right to its own independence" presupposes that the State has the attributes of an independent State. States, as soon as they acquire the attributes of independence, have the right to maintain their independence.

Article 10 of the Draft contains a general provision to the effect that the rights of States are limited by the exercise of the rights of other States in accordance with international law. The obligation not to violate the rights of other States relates not only to the right of independence, as is specifically stated in this proposed article, but also to other rights, and it would therefore be preferable to deal with this matter in a general article relating to all rights.

## Article 5

*"The Duty of Non-Intervention"*

"No State has the right to interfere in the internal or external affairs of another State."

The precedents cited by Panama (A/285, p. 3) are:

"Article 8. No State has the right to intervene in the internal or external affairs of another." (Convention on Rights and Duties of States, Montevideo, 1933.)

"Article 1. The High Contracting Parties declare inadmissible the intervention of any one of them, directly or indirectly, and for whatever reason, in the internal or external affairs of any other of the Parties." (Additional Protocol Relative to Non-Intervention, Buenos Aires, 1936.)

"Article 1. The intervention of any State in the internal or external affairs of another is inadmissible." (Declaration of American Principles, Lima, 1938.)

"The American States have been incorporating in their international law since 1890 . . . the following principles:

"Par. b) The condemnation of intervention by one State in the internal or external affairs of another (Seventh International Conference of American States, 1933, and Inter-American Conference for the Maintenance of Peace, 1936)." (Act of Chapultepec, Mexico City, 1945.)

"The American community maintains the following essential principles as governing the relations among the States composing it:

"Article 3. Each State is free and sovereign, and no State may intervene in the internal or external affairs of another." (Declaration of Mexico, 1945.)

The Charter of the Organization of American States, signed at Bogotá, 30 April 1948, recites:

"Article 15. No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements."

On 3 March 1947, President Truman, in response to the greeting of the President of Mexico, stated:

"The Good Neighbor Policy specifically includes the doctrine of non-intervention. This assures each nation freedom for its own development. My country, in common with all the American Republics, pledged itself at the Conference of Montevideo in 1933 and the Conference of Buenos Aires in 1936 to observe the doctrine of non-intervention. What it means is that a strong nation does not have the right to impose its will, by reason of its strength, on a weaker nation. The whole-hearted acceptance of this doctrine by all of us is the keystone of the inter-American system. Without it, we could not exist as a community of good neighbors. It is a part of the basic international law recognized by all American republics. My own country will be faithful to the letter and to the spirit of that law.

"Non-intervention does not and cannot mean indifference to what goes on beyond our own borders. Events in one country may have a profound effect

in other countries. The community of nations feels concern at the violation of accepted principles of national behavior by any one of its members. The lawlessness of one nation may threaten the very existence of the law upon which all nations depend."

#### Article 6

##### "Legal Equality

"Every State is, in law and before the law, equal to all the others which make up the community of States, and has the right to claim and assume, as among the Powers of the world, that position of equality to which natural law entitles it."

The precedents cited by Panama (A/285, p. 3) are:

"Article 3. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, 'to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them.'" (American Institute of International Law, 6 January 1916 and Project of Convention, 2 March 1925.)

"Article 4. States are juridically equal, enjoy the same rights and have equal capacity in their exercise. The rights of each one do not depend upon the power which it possesses to assure its exercise, but upon the simple fact of its existence as a person under international law." (Convention of Montevideo, 1933.)

"The American community maintains the following essential principles as governing the relations among the States composing it:

"Article 2. States are juridically equal." (Declaration of Mexico, 1945.)

"Article 2, par. 1. The Organization is based on the principle of the sovereign equality of all its Members." (Charter of the United Nations, 1945.)

Article 6 of the Charter of the Organization of the American States, signed at Bogotá, 30 April 1948, provides:

"States are juridically equal, enjoy equal rights and equal capacity to exercise these rights, and have equal duties. The rights of each State depend not upon its power to ensure the exercise thereof, but upon the mere fact of its existence as a person under international law."

"... the equality of sovereign States is merely their independence under a different name". (I, Westlake, *International Law* (2 ed., 1910), 321.)

In adopting the formula of Article 2 (1) of the Charter of the United Nations that "The Organization is based on the principle of the sovereign equality of all its Members", Committee I/1 of the San Francisco Conference recorded an analysis of its significance. This analysis was approved by Commission I and by the Conference at its Ninth Plenary Session, 25 June 1945. It is as follows:

"The Subcommittee voted to keep the terminology 'sovereign equality' on the assumption and understanding that it conveys the following:

- (1) that States are juridically equal;
- (2) that they enjoy the rights inherent in their full sovereignty;



(3) that the personality of the State is respected, as well as its territorial integrity and political independence;

(4) that the State should, under international order, comply faithfully with its international duties and obligations.

"The votes to keep the paragraph as it is, and consequently to reject amendments, were made on the aforesaid clear understandings."

### Article 7

#### *"Exclusive Jurisdiction"*

"Every State is entitled to exercise exclusive jurisdiction over its territory and over all nationals or foreigners within that territory.

"Foreigners may not claim rights different from, or more extensive than, those enjoyed by nationals."

The precedents cited by Panama (A/285, p. 3) are:

"Article 4. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons whether native or foreign found therein." (American Institute of International Law, 1916, and Project of Convention, 1925.)

"Article 9. The jurisdiction of States within the limits of national territory applies to all the inhabitants.

"Nationals and foreigners are under the same protection of the law and the national authorities and the foreigners may not claim rights other or more extensive than those of the nationals." (Convention on Rights and Duties of States, Montevideo, 1933.)

"The Calvo doctrine is based largely on two propositions: (1) that sovereign States, being free and independent, enjoy the right on a basis of equality to freedom from 'interference of any sort' (*ingérence d'aucune sorte*) by other States; (2) that aliens are not entitled to rights and privileges not accorded to nationals, and that therefore they may seek redress for grievances only before the local authorities." (V, Hackworth, *Digest of International Law* (1943), 635.)

Article 12 of the Charter of the Organization of American States signed at Bogotá, 30 April 1948, provides:

"The jurisdiction of States within the limits of their national territory is exercised equally over all the inhabitants, whether nationals or aliens."

The Working Committee originally voted to include the following provision, based on the 1933 Montevideo Convention:

"The jurisdiction of States within the limits of national territory applies to all inhabitants. Nationals and aliens are under the same protection and owe the same obedience to the laws and the authorities of the country."

The delegation of the United States objected to the second sentence. It explained that this Government has, of course, accepted the proposition as sound international law that nationals and aliens are subject to the jurisdiction of the State in which they reside, but that it has consistently not accepted as correct the proposition that both are necessarily under the *same* protection. It pointed out that nationals and aliens are not necessarily under the same protection; that if the treatment accorded the alien falls below generally

recognized standards, the government of the State of which the alien is a national may properly bring the matter to the attention of the authorities of the other State. The matter referred to would contravene this right and the United States position in this regard was consistent with its reservation to the 1933 Convention. In an effort to reach a conclusion on this controversial issue in which all the delegations could concur, the Committee decided to reconsider its previous decision and agreed to drop the second sentence and to add the words "whether nationals or aliens" to the first sentence. This decision was reached with only three contrary votes and with the statement for the record made by the delegations of Mexico and Ecuador to the effect that the approval of article 12 does not modify or reduce the scope of article 9 of the Convention of Montevideo on the Rights and Duties of States, with respect to those countries that have signed and ratified that Convention without reservation.

Instead of the second sentence of the proposed article, which should be deleted, it is suggested that there be added the following sentence after the first sentence: "In exercising such jurisdiction, the State must conform to the principles of international law."

### *Article 8*

#### *"Diplomatic Intervention*

"Every State is entitled to intervene with another State in favour of its own nationals, acting through diplomatic channels and in a reasonable and courteous manner; it is its duty to refrain from alleging any denial of justice so long as its nationals have not claimed the right which they allege to possess from the Courts of Justice of the State to which such diplomatic representations are being made; if, however, this State should deny the foundation of fact or law of the intervention, and the intervening State does not accept this denial, it may only resort to the procedure of peaceful settlement for the solution of the dispute."

The precedents cited by Panama (in A/285, p. 4) are the Calvo doctrine and article 5 of a draft prepared by Gustavo Gutiérrez Sánchez, of Cuba.

The proposed article, because of lack of precision in the language employed, leaves the meaning somewhat obscure. It is suggested that the word "intercede" be substituted for the word "intervene" throughout the article.

The second clause would appear to make the exhaustion of local remedies a prerequisite to the presentation of an international claim based on denial of justice.

While the Government of the United States recognizes the rule of international law that ordinarily local remedies, if any existing, must be exhausted by the alien before resort to the diplomatic channel, it has not admitted that American nationals may contract away the right of their Government to intervene in appropriate cases for their protection.

The Government of the United States is of the further view that obligations under international law cannot be avoided by invoking municipal law.

Instead of Article 8 as drafted, this Government would prefer a statement that a State has the right to intercede with another State through the diplomatic channel to enforce its rights, and the rights of its nationals, under international law.

The last two clauses of the proposed article are particularly vague. If they are intended to enumerate the circumstances under which a State has a right to present a claim, they are entirely unacceptable. These provisions are not satisfactory either as a definition of denial of justice or as a description of the great variety of circumstances under which a State's responsibility may be involved.

#### *Article 9*

##### *"Respect of the Right of the State by Other States"*

"Any State which has a right under international law, is entitled to have this right respected and protected by all the other States, since rights and duties are correlative, and the right of one creates for the others the duty to respect it."

The precedent cited by Panama (A/285, p. 4) reads:

"Article 5. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe." (American Institute of International Law, 1916, and Project of Convention, 1925.)

"Article 5. The fundamental rights of States are not susceptible of being affected in any manner whatsoever." (Convention on Rights and Duties of States, Montevideo, 1933.)

Proper regard for the rights of other States underlies the whole field of international law.

However, the article provides not only that the rights of other States shall be respected but that they shall also be "protected by all the other States". This would appear to create a duty of collective guarantee on the part of all the States of the rights of each one of them. Such a guarantee would mean that if a State violates any right of another State, whether a Member of the United Nations or not, all the other States must take action to "protect" the right of the latter. Such a provision would have far reaching results. It would impose on States much greater collective responsibilities than is envisaged under the Charter of the United Nations. The United States is not prepared to undertake such a responsibility.

#### *Article 10*

##### *"Limitation of the Rights of the State"*

"No other limit is set to the exercise of the rights of a State than the exercise of the rights of other States, in accordance with international law. It is the duty of every State not to overstep this limit."

The precedent cited by Panama (A/285, p. 4) is:

"Article 3, paragraph 2. The exercise of these rights has no other limitation than the exercise of the rights of other States according to international law." (Convention on Rights and Duties of States, Montevideo, 1933.)

The last sentence provides in effect that a State should respect the rights of other States. This is a repetition of article 9, above.

*Article 11**"Observance of Treaties and Sanctity of the Pledged Word"*

"It is the duty of every State to fulfil, in good faith, the obligations arising from public treaties, and to respect the sanctity of the pledged word."

The precedents cited by Panama (A/285, p. 4) are:

"Article 5. Respect for and the faithful observance of treaties constitute the indispensable rule for the development of peaceful relations between States, and treaties can only be revised by agreements of the contracting parties." (Declaration of American Principles, Lima, 1938.)

"We believe in respect by all nations for the rights of others and performance by all nations of established obligations." (Fundamental Principles of International Policy, circular statement by Secretary of State Hull, 16 July 1937 [Department of State Pub. 1079].)

"The American States have been incorporating in their international law, since 1890, . . . the following principles: "(h) The affirmation that respect for and the faithful observance of treaties constitute the indispensable rule for the development of peaceful relations between States, and that treaties can only be revised by agreement of the contracting parties (Declaration of American Principles, Eighth International Conference of American States, 1938)." (Act of Chapultepec, Mexico City, 1945.)

"We the people of the United Nations determined . . . to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained." (Charter of the United Nations, Preamble, par. 3.)

"The High Contracting Parties, in order to promote international co-operation and to achieve international peace and security by . . . a scrupulous respect for all treaty obligations in the dealings of the organized peoples with one another, agree to this Covenant of the League of Nations." (League of Nations Covenant, 28 June 1919.)

The duty of a State to fulfil treaty obligations is well-established in international law. The word "public" before "treaties" should be deleted. The expression "pledged word" in the final clause is rather vague. This expression was considered at the San Francisco Conference by the drafters of the Charter and was omitted.

*Article 12**"Discharge of International Obligations"*

"It is the duty of every State to discharge, in good faith, its obligations under international law, and it may not plead limitations arising out of its own Constitution or its laws as an excuse for failure to discharge this duty."

The precedent cited by Panama (A/285, p. 5) reads:

"Principle 1. Each State has a legal duty to carry out in full good faith its obligations under international law, and it may not invoke limitations contained in its own constitution or laws as an excuse for a failure to perform this duty." (The International Law of the Future, 1944.)

The proposition stated is sound.

*Article 13**"Authority of International Law"*

"The sovereignty of the State is subject to the limitations of international law, and it is the duty of every State to adjust its conduct to international law in its relations with other States and with the community of States."

The precedents cited by Panama (A/285, p. 5) are:

"4. Relations between States should be governed by the precepts of international law." (Declaration of American Principles, Lima, 1938.)

"Postulate 3. The conduct of each State in its relations with other States and with the Community of States is subject to international law, and the sovereignty of a State is subject to the limitations of international law." (The International Law of the Future, 1944.)

"The American Community maintains the following essential principles as governing the relations among the States composing it: 'International law is the rule of conduct for all States.' (Declaration of Mexico, 1945.)

"The High Contracting Parties, in order to promote international co-operation and to achieve international peace and security by . . . the firm establishment of the understandings of international law as the actual rule of conduct among governments . . . agree to this covenant of the League of Nations." (League of Nations Covenant, 28 June 1919.)

The proposed article employs the language of The International Law of the Future but its provisions are placed in inverse order. The wording of that precedent is preferable.

*Article 14**"National and International Scope of the Law of Nations"*

"International law is at once national and international. It is national in the sense that it is the law of the country and that it is the duty of the State to apply it as such in solving questions concerned with its principles; it is international in the sense that it is the law of the community of States and that it is the duty of each State to apply it to all questions which arise among the members of that community and which are concerned with its principles."

The precedents cited by Panama (A/285, p. 5) are:

"Article 6. International law is at one and the same time both national and international; national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among the members of the society of nations involving its principles." (American Institute of International Law, 1916, and Project of Convention, 1925.)

"Postulate 2. The law of the Community of States is international law. The development of an adequate system of international law depends upon continuous collaboration by States to promote the common welfare of all peoples and to maintain just and peaceful relations between all States." (The International Law of the Future, 1944.)

As a statement of a proposition of international law, the first sentence of postulate 2, just quoted, is preferred.

*Article 15**"Peaceful Settlement of Disputes"*

"It is the duty of every State to settle its international disputes by peaceful means and in such a manner that neither peace and security nor justice are imperilled."

Some of the numerous precedents cited by Panama (A/285, p. 6) are:

"Article 2, par. 3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." (Charter of the United Nations, 1945.)

"Article 10. The primary interest of States is the conservation of peace. Differences of any nature which arise between them should be settled by recognized pacific methods." (Convention on Rights and Duties of States, Montevideo, 1933.)

"Article IV. The High Contracting Parties obligate themselves to submit to the conciliation procedure established by this treaty, the disputes specially mentioned and any others that may arise in their reciprocal relations, without further limitations than those enumerated in the following article, in all controversies which it has not been possible to settle by diplomatic means within a reasonable period of time." (Anti-war treaty of non-aggression, and conciliation, 1933.)

"2. All differences of an international character should be settled by peaceful means." (Declaration of American Principles, Lima, 1938.)

"Principle 6. Each State has a legal duty to employ pacific means and none but pacific means in seeking to settle its disputes with other States, and failing settlement by other pacific means to accept the settlement of its disputes by the competent agency of the Community of States." (The International Law of the Future, 1944.)

"The American States have been incorporating in their international law, since 1890, . . . the following principles:

"f) The adoption of conciliation, unrestricted arbitration, or the application of international justice, in the solution of any difference or dispute between American nations, whatever its nature or origin (Inter-American Conference for the Maintenance of Peace, 1936)." (Act of Chapultepec, Mexico City, 1945.)

"The American community maintains the following essential principles as governing the relations among the States comprising it:

"7. Conflicts between States are to be settled exclusively by peaceful means." (Declaration of Mexico, 1945.)

"Article 13, 1. The Members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration or judicial settlement, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject matter to arbitration or judicial settlement.

"2. Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration or judicial settlement.

"3. For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.

"4. The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto." (League of Nations Covenant, 28 June 1919.)

The wording of the Charter of the United Nations, quoted above, is preferred.

#### *Article 16*

##### *"Condemnation of War as an Instrument of National and International Policy and of the Threat or Use of Force"*

"It is the duty of every State to refrain from the use of war of aggression as an instrument of national or international policy, and from resorting to the threat or use of force against the territorial integrity and political independence of another State, or for the recovery of public debts from another State, or in any other form which is inconsistent with international order."

The precedents cited by Panama (A/285, p. 6) are:

"Article I. The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another." (Treaty for the Renunciation of War (Briand-Kellogg Pact), 1928.)

"Article I. The High Contracting Parties solemnly declare that they condemn wars of aggression in their mutual relations or in those with other States, and that the settlement of disputes or controversies of any kind that may arise among them shall be effected only by the pacific means which have the sanction of international law." (Anti-War Treaty of Non-Aggression and Conciliation, Rio de Janeiro, 1933.)

"Article 3. The use of force as an instrument of national or international policy is proscribed." (Declaration of American Principles, Lima, 1938.)

"Eighth. They believe that all of the nations of the world, for realistic as well as spiritual reasons must come to the abandonment of the use of force. Since no future peace can be maintained if land, sea or air armaments continue to be employed by nations which threaten, or may threaten, aggression outside of their frontiers, they believe, pending the establishment of a wider and permanent system of general security, that the disarmament of such nations is essential. They will likewise aid and encourage all other practical measures which will lighten for peace-loving peoples the crushing burden of armaments." (Atlantic Charter, 14 August 1941.)

"The American Community maintains the following essential principles as governing the relations among the States composing it: "8. War of aggression in any of its forms is outlawed." (Declaration of Mexico, 1945.)

"Article 2, par. 4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations." (Charter of the United Nations, 1945.)

"The acknowledgment of the debt, the payment of it in its entirety, can and must be made by the nation without diminution of its inherent rights as a sovereign entity, but the summary and immediate collection at a given moment, by means of force, would occasion nothing less than the ruin of the weakest nations and the absorption of their governments, together with all the functions inherent in them, by the mighty of the earth." (Luis M. Drago, Argentine Minister for Foreign Affairs, 29 December 1902.)

The United States, a party to the international agreements quoted above, condemns wars of aggression, and resort to the threat or use of force against the territorial integrity and political independence of other States.

The proposed text prohibits also the use of force for the recovery of public debts from another State. This principle is known as the Drago Doctrine. It is doubtful that any State would at this date resort to force for that purpose and for this reason the reiteration of the Doctrine might well be omitted, although there is no objection in principle to its inclusion.

### *Article 17*

#### *"Right of Legitimate Defence"*

"Every State has the inherent right of individual or collective legitimate defence, and in the exercise of this right, it may use force to counter the unauthorized use of force by another State, provided that it shall immediately advise the competent organ of the community of States."

The precedents cited by Panama (A/285, p. 6) are:

"Principle 7. Each State has a legal duty to refrain from any use of force and from any threat to use force in its relations with another State, except as authorized by the competent agency of the Community of States; but subject to immediate reference to and approval by the competent agency of the Community of States, a State may oppose by force an unauthorized use of force made against it by another State." (The International Law of the Future, 1944.)

"Article 51. Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security." (Charter of the United Nations, 1945.)

While the right of self-defence should be safeguarded, the article as drafted is unsatisfactory, particularly because of its ambiguities.

The insertion of the word "legitimate" before "defence" does not appear to clarify the concept. In view of the Spanish text of Article 51 of the United Nations Charter which has the expression "legitimate defence" for the words "self-defence" in the English text of that article, query whether in Article 17 the words "legitimate defence" are not intended to translate the concept of self-defence.



Under the article, a State would be under obligation to advise immediately the competent organ of the "Community of States". It is not clear what is meant by the words just quoted. The article appears to presuppose the existence of an organization of the entire community of States.

In an address before the American Society of International Law on 28 April 1928, Secretary of State Kellogg stated:

"(1) Self-defense. There is nothing in the American draft of an anti-war treaty which restricts or impairs in any way the right of self-defense. That right is inherent in every sovereign state and is implicit in every treaty. Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion and it alone is competent to decide whether circumstances require recourse to war in self-defense. If it has a good case, the world will applaud and not condemn its action. Express recognition by treaty of this inalienable right, however, gives rise to the same difficulty encountered in any effort to define aggression. It is the identical question approached from the other side. Inasmuch as no treaty provision can add to the natural right of self-defense, it is not in the interest of peace that a treaty should stipulate a juristic conception of self-defense since it is far too easy for the unscrupulous to mold events to accord with an agreed definition."

In connexion with the proposed article, for example, query as to the meaning of "unauthorized use of force".

The Charter of the United Nations assumes that the right of self-defence is recognized and understood.

#### Article 18

##### *"Non-Recognition of Territorial Acquisitions Obtained by Force"*

"It is the duty of every State to refrain from recognizing territorial acquisitions obtained through force or the threat of force."

The precedents cited by Panama (A/285, p. 7) are:

"First. That the principle of conquest shall not, during the continuance of the treaty of arbitration, be recognized as admissible under American public law.

"Second. That all cessions of territory made during the continuance of the treaty of arbitration shall be void if made under threats of war or in the presence of armed force." (Recommendation, First International Conference of American States, 1890; the treaty of arbitration referred to was not consummated.)

"The American nations further declare that they will not recognize any territorial arrangement of this [Bolivian-Paraguayan] controversy which has not been obtained by peaceful means nor the validity of territorial acquisitions which may be obtained through occupation or conquest by force of arms." (Inter-American Declaration of 3 August 1932.)

"II. They declare that as between the High Contracting Parties territorial questions must not be settled by violence, and that they will not recognize any territorial arrangement which is not obtained by pacific means, nor the validity of the occupation or acquisition of territories that may be brought about by force of arms." (Anti-war Treaty of Non-aggression and Conciliation, Rio de Janeiro, 1933.)

"Article 11. The contracting States definitely establish as the rule of their conduct the precise obligation not to recognize territorial acquisitions or special

advantages which have been obtained by force whether this consists in the employment of arms, in threatening diplomatic representations, or in any other effective coercive measure. The territory of a State is inviolable and may not be the object of military occupation nor of other measures of force imposed by another State directly or indirectly or for any motive whatever even temporarily." (Convention on Rights and Duties of States, Montevideo, 1933.)

"2. They desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned." (Atlantic Charter, 14 August 1941.)

"The American States have been incorporating in their international law, since 1890," the following principles:

"a) The proscription of territorial conquest and the non-recognition of all acquisitions made by force (First International Conference of American States, 1890)." (Act of Chapultepec, Mexico City, 1945.)

"The American community maintains the following essential principles as governing the relations among the States composing it:

"5. The American States do not recognize the validity of territorial conquests." (Declaration of Mexico, 1945.)

With respect to article 11 of the Convention of Montevideo, quoted above, the delegates of Brazil and Peru recorded the following private vote:

"That they accept the doctrine in principle but that they do not consider it codifiable because there are some countries which have not yet signed the Anti-War Pact of Rio de Janeiro of which this doctrine is a part and therefore it does not yet constitute positive international law suitable for codification." (4 Treaties, Conventions, etc." Trenwith (1938) 4811.)

The article reflects the so-called Stimson-Hoover doctrine contained in the United States note to the Japanese and Chinese Governments of 7 January 1932. In the note the Secretary of State announced:

"In view of the present situation and of its own rights and obligations therein, the American Government deems it to be its duty to notify both the Government of the Chinese Republic and the Imperial Japanese Government that it cannot admit the legality of any situation *de facto* nor does it intend to recognize any treaty or agreement entered into between these Governments, or agents thereof, which may impair the treaty rights of the United States or its citizens in China, including those which relate to the sovereignty, the independence or the territorial and administrative integrity of the Republic of China, or to the international policy relative to China, commonly known as the Open Door Policy; and that it does not intend to recognize any situation, treaty, or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris of August 27, 1928, to which treaty both China and Japan, as well as the United States, are parties."

### Article 19

#### *"Co-operation in the Prevention of Acts of Force"*

"It is the duty of every State to afford the community of States every kind of assistance in whatever action that community undertakes, and it should abstain from rendering assistance to any State against which the community is conducting preventive or coercive action."

The precedents cited by Panama (A/285, p. 7) are:

"Principle 8. Each State has a legal duty to take, in cooperation with other States, such measures as may be prescribed by the competent agency of the Community of States for preventing or suppressing a use of force by any State in its relations with another State." (The International Law of the Future, 1944.)

"Article 2, par. 5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action." (Charter of the United Nations, 1945.)

"Article 10. The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled." (League of Nations Covenant, 28 June 1919.)

The Charter of the United Nations creates an obligation on the part of Member States to assist when action is taken in accordance with its provisions. Member States have agreed to take action consistent with the Charter. The proposed article is much broader. The obligation to assist would exist with respect to "whatever action" the "community of States" undertakes. An organization of the entire community of States is presupposed. States may not be willing to agree to "every kind of assistance in whatever action" the unorganized "community of States" may take or to assist in whatever action certain regional organizations, now organized or organized in the future, might take.

#### Article 20

##### *Co-operation in the Pursuit of the Aims of the Community of States*

"It is the duty of every State to take, in co-operation with other States, the measures prescribed by the competent organs of the community of States in order to prevent or put down the use of force by a State in its relations with another State, or in the general interest."

The precedents cited by Panama (A/285, p. 7) are:

"Article 6. Peaceful collaboration between representatives of the various States and the development of intellectual interchange among their peoples are conducive to an understanding by each of the problems of the other as well as of the problems common to all, and makes more readily possible the peaceful adjustment of international controversies.

"Article 8. International cooperation is a necessary condition to the maintenance of the aforementioned principles." (Declaration of American Principles, Lima, 1938.)

"Principle 8. Each State has a legal duty to take, in cooperation with other States, such measures as may be prescribed by the competent agency of the Community of States for preventing or suppressing a use of force by any State in its relations with another State." (The International Law of the Future, 1944.)

"Article 5. A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended

from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council." (Charter of the United Nations, 1945.)

The proposed article as worded goes beyond the accepted principles of international law.

So far as co-operation with other States "in order to prevent or put down the use of force by a State" is concerned, the article seems to add little to article 19 above which is headed "Co-operation in the Prevention of Acts of Force".

The article refers to co-operation with respect to "measures prescribed by the competent organs of the community of States". Under the article, a State would be under obligation to take, in co-operation with other States, the measures prescribed by the competent organs of the "community of States" in the "general interest." As stated above, it is not clear what is meant by the words "community of States". The article appears to presuppose the existence of an organization of the entire community of States, and is idealistic in character.

#### *Article 21*

##### *"Maintenance of Conditions Calculated to Ensure International Peace and Order*

"It is the duty of every State to ensure that the conditions prevailing within its territory do not threaten international peace and order, and, to that end, it must treat its own population in a manner which does not violate the dictates of humanity and justice, or offend the conscience of mankind."

The precedent cited by Panama (A/285, p. 8) is:

"Principle 2. Each State has a legal 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." (The International Law of the Future, 1944.)

Generally speaking, international law has not dealt with the treatment to be accorded by a State to its own nationals. However, developments in the Second World War and particularly the Charter and Judgment of the Nürnberg Tribunal have laid a foundation for such a provision. In considering this article, as in several other articles of the draft commented upon, the International Law Commission will need to determine whether and, if so, the extent to which they are codifying international law as it exists or as it should exist, i.e., the nature of the document in which the Commission's text shall be cast. If it is not limited to existing international law and if it is intended to state legally-binding principles, the instrument will, in the view of the Government of the United States, need to be cast in treaty form.

#### *Article 22*

##### *"Duty not to Foment Civil Disturbances in Other States*

"It is the duty of every State to ensure that, within its own territory, no activities are organized for the purpose of fomenting civil strife within the territory of another State."

The precedent cited by Panama (A/285, p. 8) is:

"Principle 4. Each State has a legal duty to prevent the organization within its territory of activities calculated to foment civil strife in the territory of any other State." (The International Law of the Future, 1944.)

Article 1 of the Convention relating to Duties and Rights of States in the Event of Civil Strife between the American Republics, signed at Habana, 20 February 1928 (46 Stat. 2749; 4 Treaties, Conventions, etc., Trenwith (1938), 4725), provides:

"The Contracting States bind themselves to observe the following rules with regard to civil strife in another one of them:

"1. To use all means at their disposal to prevent the inhabitants of their territory, nationals or aliens, from participating in, gathering elements, crossing the boundary or sailing from their territory for the purpose of starting or promoting civil strife.

"2. To disarm and intern every rebel force crossing their boundaries, the expenses of internment to be borne by the State where public order may have been disturbed. The arms found in the hands of the rebels may be seized and withdrawn by the Government of the country granting asylum, to be returned, once the struggle has ended, to the State in civil strife.

"3. To forbid the traffic in arms and war material, except when intended for the Government, while the belligerency of the rebels has not been recognized, in which latter case the rules of neutrality shall be applied.

"4. To prevent that within their jurisdiction there be equipped, armed or adapted for warlike purposes any vessel intended to operate in favor of the rebellion."

The United States is a party to this Convention.

### Article 23

#### *"Equality of Opportunity and Interdependence in the Economic Sphere"*

"Every State has the right of access, on equal terms to the trade, commodities and raw materials of the world which are necessary to its economic prosperity.

"It is the duty of every State to eliminate from its economic activities every artificial means tending to establish differences in the acquisition of the natural products of the soil of another State, and to refrain from exercising control over means of transport, restricting trade, or bringing about restrictions in commercial credits and currency of another State."

The precedents cited by Panama (A/285, p. 8) are:

"Article 7. Economic reconstruction contributes to national and international well-being, as well as to peace among nations." (Declaration of American Principles, Lima, 1938.)

"4. They will endeavor, with due respect for their existing obligations, to further the enjoyment by all States, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity." (Atlantic Charter, 14 August 1941.)

"The American community maintains the following essential principles as governing the relations among the States composing it:

"15. Economic cooperation is essential to the common prosperity of the

American Nations. Want among any of their peoples whether in the form of poverty, malnutrition, or ill health, affects each one of them and consequently all of them jointly.'” (Declaration of Mexico, 1945.)

“2. To cooperate with other nations to bring about through the elimination of existing forms of discrimination and the prevention of new forms, the enjoyment by all nations of access on equal terms to the trade and raw materials of the world, in accordance with the principles of the Atlantic Charter, and likewise to declare and accept a reciprocal principle of equal access to the producers' goods which are needed for their industrial and economic development.” (Economic Charter of the Americas, Declaration of Principles, Mexico City, 1945.)

The article goes much further than established principles of international law. It raises complex questions of an economic character which should, if dealt with by the International Law Commission, be treated of in a convention devoted to the subject of economics. The United States could not subscribe to the article in its present form.

#### *Article 24*

##### *“Prohibition of Pacts Incompatible with the Discharge of International Obligations*

“It is the duty of every State to refrain from concluding with other States agreements, the observance of which is inconsistent with the discharge of its obligations under international law or under the constituent pact of the community of States.”

The precedents cited by Panama (A/285, p. 8) are:

“Principle 10. Each State has a legal duty to refrain from entering into any agreement with another State, the performance of which would be inconsistent with the discharge of its duties under general international law.” (The International Law of the Future, 1944.)

“Article 103. In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present charter shall prevail.” (Charter of the United Nations, 1945.)

The article does not set forth a principle of international law.

International law is developed in part by international agreements in derogation of rights otherwise enjoyed by a State. Each time a right otherwise enjoyed under international law is waived by conventional agreement, as between the parties to such agreement, the reciprocal duty is also changed. To prohibit the waiver of rights and duties arising under international law would prevent the conclusion of numerous international instruments. By the Charter of the United Nations, for example, the Members altered certain rights and duties otherwise enjoyed by or incumbent upon them under international law.

It is to be borne in mind that international law is universal and not merely the law existing between Members of the United Nations. A certain artificiality appears in the draft commented upon wherever it is assumed, as is done in the above article, that there exists a “constituent pact of the community of States” which is universal in character.

17. COMMUNICATION RECEIVED FROM VENEZUELA<sup>192</sup>

[Original: Spanish]

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.

I have the honour, etc.

(Signed) Gonzalo BARRIOS  
In Charge of Ministry

Caracas, 7 July 1947

## 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.

<sup>192</sup> Originally issued as A/400/Add. 1.

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 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 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.

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.

## C. TEXTS OF COMMENTS AND OBSERVATIONS RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

### 1. AMERICAN BAR ASSOCIATION<sup>193</sup>

SPECIAL COMMITTEE FOR PEACE AND LAW THROUGH UNITED NATIONS

17 April 1947

Dear Sir:

The Association, through the votes of its House of Delegates, has pledged to the General Assembly and the Secretary-General of the United Nations whatever assistance the Association can render through the above Committee, for the fulfilment of the General Assembly's resolution as to the development and codification of international law. Jointly with the Canadian Bar Association, we started in March a series of thirty Regional Group Conferences throughout the United States and six in Canada, to enlist the interest and elicit the views of our representative jurists and lawyers in all parts of the two countries as to the principles which should be embodied in formulations as to the duties and rights of States under international law.

All this is well under way, with marked interest and success in the Regional Conferences thus far held, under the direction of the above Committee. Our Regional Meetings of the general membership of the Association are each devoting a session to international law. Our overall programme as planned will take about three years, we think; but we shall be subject to your suggestions and wishes as to some aspects of our timing.

Most cordially yours,  
(Signed) William L. RANSOM  
*Chairman of the Committee  
for Peace and Law Through  
United Nations*

### 2. AMERICAN SOCIETY OF INTERNATIONAL LAW<sup>194</sup>

12 May 1947

Sir:

You are kind enough to transmit the text of a draft Declaration on the Rights and Duties of States presented by Panama, with a request made in conformity with the General Assembly's resolution of 11 December 1946, that comments and observations be sent to you. You request that these comments and observations be forwarded to you before 1 June 1947.

The Committee on Codification is anxious to co-operate with the United Nations in this field, but would be unable to make any constructive suggestions within the brief time you suggest. Doubtless the process of codification will be a long one, and the Committee of the Society hopes that at a later time it will be able to make suggestions which will be of use.

With assurance of my high esteem, I am, Sir,

Very truly yours,  
(Signed) Manley O. HUDSON  
*Chairman, Committee on Codification,  
American Society of International Law*

<sup>193</sup> Originally issued in A/AC.10/39, p. 7.

<sup>194</sup> Originally issued in A/AC.10/39, p. 8.

3. INTERNATIONAL LAW ASSOCIATION<sup>195</sup>

3, Paper Buildings  
The Temple  
London, E.C.4

15 May 1947

Sir,

With further reference to your letter of 14 February regarding the draft Declaration on the Rights and Duties of States submitted by the Government of Panama, I now, as requested, beg to inform you of the comments and observations of my Executive Council.

1. The Council desires to express its appreciation of the high service rendered to the cause of international law by the authors of the draft Declaration, and recognizes that it may be of great value as a means of developing public opinion throughout the world.

2. The proposal, being one for codification of a branch of public international law, should be dealt with in whatever manner is decided by the Committee appointed by the General Assembly to be the method applicable to codification generally in pursuance of Article 13 1 a of the Charter.

3. The Report of a Committee, under the chairmanship of Judge Sir Arnold McNair, adopted by my Executive Council on 3 May for presentation to our Prague Conference, to be held from 31 August to 6 September 1947, makes recommendations as to this method.

4. This Report, which will be discussed at Prague, is now in the printers' hands and will be available shortly in its present form for the use of the United Nations Committee and other bodies and persons interested.

5. The Executive Council wishes to emphasize its desire to render any further service in this matter which the United Nations may consider appropriate.

I have the honour to be, Sir, your obedient Servant,

(Signed) Arthur JAFFE  
Hon. Secretary General

4. COMMUNICATION RECEIVED FROM THE UNITED KINGDOM  
CONCERNING COMMENT AND OBSERVATIONS  
BY ITS NATIONAL BODIES<sup>196</sup>

United Kingdom Delegation  
to the United Nations

New York, 11 September 1947

With reference to your Excellency's communication No. 905-3-2/OS of 2 July about the draft Declaration presented by Panama on the Rights and Duties of States, I have the honour to bring to your notice the following statement of action taken in response to your request for comments and observations on the Panamanian proposal by national bodies in the United Kingdom.

(a) The International Law Association sent its observations direct to Dr. Kerno on 15 May.<sup>197</sup>

<sup>195</sup> Originally issued in A/AC.10/39, p. 9.

<sup>196</sup> Originally issued in A/400, p. 22.

<sup>197</sup> Document A/AC.10/39, p. 9. See *supra*, p. 195.

(b) The Grotius Society sent the report of its Sub-Committee to the United Kingdom delegation on 24 June, in connexion with the works of the Committee on the Progressive Development of International Law and its Codification. A copy of the Grotius Society's report is enclosed herewith.

(c) The Society of Comparative Legislation, which was approached by His Majesty's Government, had no comment of substance, but said that it regarded the Declaration as appropriate for consideration by any Commission which might be set up to deal scientifically with the codification of international law.

(Signed) A. CADOGAN

THE GROTIUS SOCIETY

President: Sir Cecil Hurst, G.C.M.G., K.C.B., K.C.

Vice-President: The Rt. Hon. Lord du Parc.

Hon. Secretary: C. John Colombos, LL.D.

2 King's Bench Walk  
The Temple  
London, E.C.4.

*Sub-Committee on the "Rights and Duties of States", approved by the Executive Committee of the Society held on 11 June 1947*

Your Sub-Committee has considered the draft Declaration of the Rights and Duties of States prepared by the delegation of Panama, which, in its view, represents a careful and thorough study of this important problem. In its opinion, however, this draft Declaration should not be treated in any way separately from codification in general, but should be considered as a proposal for codification and be subjected to whatever procedure is recommended for codification in general.

Your Sub-Committee understands that the General Assembly of the United Nations, at its fifty-fifth plenary meeting on 11 December 1946, adopted a resolution concerning the progressive development of international law and its codification as envisaged by Article 13 of the Charter of the United Nations. Your Sub-Committee accordingly recommends that the "Draft Declaration on the Rights and Duties of States" should be considered as a potential contribution to such progressive development and codification and be studied by whatever method it will be decided to adopt for the accomplishment of that purpose.

Your Sub-Committee expresses its willingness to give any further assistance in its power which the United Nations may consider appropriate.

(Signed) C. JOHN COLOMBOS  
Convener

## D. LIST OF UNITED NATIONS DOCUMENTS

### 1. LIST OF DOCUMENTS ON RIGHTS AND DUTIES OF STATES

A/3	Supplementary list of items for inclusion in the agenda of the first part of the first session of the <b>General Assembly</b> (Memorandum by the Executive Secretary) (Also issued as A/BUR/1, 11 January 1946).....	5 January 1946
A/BUR/6	General Committee: Report to the General Assembly on the supplementary list of items to be included in the agenda of the first part of the first session .....	14 January 1946
A/19	Delegation of <i>Panama</i> : Draft Declaration on the Rights and Duties of States .....	29 January 1946
A/101	Draft Declaration on Fundamental Human Rights and Freedoms and on Rights and Duties of States (cable from Mr. R. J. Alfaro, Minister for Foreign Affairs of <i>Panama</i> ) .....	10 October 1946
A/118	Provisional agenda for the second part of the first session of the General Assembly (Supplementary list of items) .....	16 October 1946
A/BUR/33	Allocation of agenda items to committees (Memorandum by the Secretary-General) .....	24 October 1945
A/BUR/40	General Committee Report on consultation between the Secretary-General and the Chairmen of the First and Third Committees concerning item 6 on the supplementary list. Draft Declaration on Fundamental Human Rights and Freedoms and on the Rights and Duties of States (Item proposed by <i>Panama</i> ) .....	28 October 1946
A/163 Page 2	Allocation of agenda items to committees, Report of the General Committee to the General Assembly (Item 7 agenda First Committee) .....	29 October 1946
A/170	Rights and Duties of States, Draft Declaration submitted by the delegation of <i>Panama</i> .....	4 November 1946
A/19/Corr.1	Delegation of <i>Panama</i> : Draft Declaration on the Rights and Duties of States .....	1 December 1946
A/C.1/120	Delegation of the <i>United States, Panama, El Salvador and Poland</i> : Proposal concerning the draft Declaration submitted by the delegation of <i>Panama</i> on the Rights and Duties of States .....	5 December 1946

A/228	Draft Declaration on the Rights and Duties of States. Report of the First Committee.....	8 December 1946
A/285	Rights and Duties of States. Draft Declaration submitted by the delegation of <i>Panama</i> .....	15 January 1947
A/285/Corr.1	Rights and Duties of States. Corrigendum to the draft Declaration submitted by the delegation of <i>Panama</i> .....	31 January 1947
A/64/Add.1 Pages 62-63	Resolutions adopted by the General Assembly during the second part of its first session from 23 October to 15 December 1946 (Resolution 38 (I) 11 December 1946).....	31 January 1947
A/AC.10/4	The Committee on the Progressive Development of International Law and its Codification. Draft Declaration on the Rights and Duties of States.....	30 April 1947
A/AC.10/1	Committee on the Progressive Development of International Law and its Codification. Provisional Agenda ....	5 May 1947
A/AC.10/8 Pages 6, 10, 12, 15, 16.	The Codification of International Law in the Inter-American System with special reference to the Methods of Codification.....	6 May 1947
A/AC.10/8/Corr.1	Corrigendum to above.....	12 May 1947
A/AC.10/39	Committee on the Progressive Development of International Law and its Codification. Draft Declaration on the Rights and Duties of States (Comments and observations received by the Secretary-General as of 1 June 1947) ..	5 June 1947
A/AC.10/45	Committee on the Progressive Development of International Law and its Codification. Suggestions by the delegation of <i>Argentina</i> on item 5 of the provisional agenda (Document A/AC.10/1, 5 May 1947).....	7 June 1947
A/AC.10/39/Add.1	Committee on the Progressive Development of International Law and its Codification. Draft Declaration on the Rights and Duties of States. Addendum to the comments and observations submitted by Member States of the United Nations.....	10 June 1947
A/AC.10/39/Add.2	Delegation of <i>Mexico</i> to the United Nations. Recommendations concerning the draft Declaration on the Rights and Duties of States.....	10 June 1947

A/AC.10/49	Report of the Rapporteur on item 5 of the provisional agenda (draft Declaration on the Rights and Duties of States presented by <i>Panama</i> ) . . . . .	14 June 1947
A/AC.10/49/Corr.1	Report of the Committee on item 5 of the provisional agenda (draft Declaration on the Rights and Duties of States presented by <i>Panama</i> ) . . . . .	16 June 1947
A/AC.10/53	Report of the Committee on the draft Declaration on the Rights and Duties of States presented by <i>Panama</i> . . . . .	16 June 1947
A/AC.10/56	Letter from the Chairman of the Committee to the Secretary-General on the draft Declaration on the Rights and Duties of States . . . . .	18 June 1947
A/329	Provisional agenda for the second regular session of the General Assembly	18 July 1947
A/333	Draft Declaration on the Rights and Duties of States presented by <i>Panama</i> . Report of the Committee on the Progressive Development of International Law and its Codification . . . . .	19 July 1947
A/AC.10/39/ Add.2/Corr.1	Letter from the delegation of <i>Mexico</i> to the United Nations . . . . .	28 July 1947
A/340	Draft Charter of the Duties and Rights of States. Submitted by <i>Ecuador</i> . . . . .	21 August 1947
A/369	Supplementary list of items for the agenda of the second regular session . . . . .	28 August 1947
A/BUR/82	Proposed allocation of agenda items to the committees (Note by the Secretary-General) . . . . .	12 September 1947
A/390	Draft Charter of the Duties and Rights of States. Note from <i>Ecuador</i> . . . . .	12 September 1947
A/392	Report of the General Committee: Provisional agenda for the second regular session . . . . .	22 September 1947
A/C.6/134	Allocation of items on the agenda of the second regular session . . . . .	24 September 1947
A/C.6/136	Proposed Plan of Work and Organization of the Sixth Committee (Memorandum submitted by the Secretariat) . . . . .	24 September 1947
A/C.6/137	Progressive Development of International Law and its Codification. Resolution on the Establishment of an International Law Commission proposed by the delegation of the <i>United States</i> . . . . .	24 September 1947

- A/C.6/139 Sixth Committee. Progressive Development of International Law and its Codification, Resolution on the establishment of an International Law Commission proposed by the delegation of *France* 25 September 1947
- A/C.6/141 Draft Resolution proposed by the Representative of the Union of Soviet Socialist Republics.....26 September 1947
- A/C.6/144 Sixth Committee. Progressive Development of International Law and its Codification. Amendment submitted by the delegation of *Egypt* to the draft resolution proposed by the delegation of the United States (A/C.6/137).....26 September 1947
- A/400 Draft Declaration on the Rights and Duties of States presented by *Panama* (Item 35 of the agenda for the second regular session). Communications received by the Secretary-General up to 22 September 1947.....29 September 1947
- A/400/Add.1 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*.....30 September 1947
- A/400/Corr.1 Draft Declaration on the Rights and Duties of States presented by *Panama* (Item 35 of the agenda for the second regular session). Corrigendum to Communications received by the Secretary-General up to 22 September 1947.... 1 October 1947
- A/C.6/158 Draft Resolution on the Establishment of an Interim Body to function until such time as the Members of the International Law Commission are elected. Proposed by the delegation of *China* ..... 3 October 1947
- A/C.6/SC.5/W.15 Amendment submitted by the delegation of *Colombia* to the draft Resolution proposed by the delegation of *China* ..... 13 October 1947
- A/C.6/SC.5/W.22 Draft Declaration on the Rights and Duties of States presented by *Panama*. Report of the Committee on the Progressive Development of International Law and its Codification. Draft Report submitted by the Rapporteur..... 4 November 1947



- A/C./181 Sixth Committee. Draft Declaration on the Rights and Duties of States presented by *Panama*. Report of the Committee on the Progressive Development of International Law and its Codification ..... 8 November 1947
- A/400/Add.2 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 *India*..... 13 November 1947
- A/C.6/181/Rev.1 Sixth Committee. Draft Declaration on the Rights and Duties of States presented by *Panama*. Report of the Committee on the Progressive Development of International Law and its Codification. Report and draft Resolution adopted by Sub-Committee 2..... 18 November 1947
- A/C.6/194 Sixth Committee. Interim Organ on the Progressive Development of International Law and its Codification. Report and draft Resolution adopted by Sub-Committee 2..... 18 November 1947
- A/C.6/196 Draft Resolution submitted by the delegation of *France*..... 18 November 1947
- A/C.6/197 Sixth Committee. Draft Declaration on the Rights and Duties of States submitted by *Panama*. Report and draft Resolution for adoption by Sub-Committee 2 (document A/C.6/181/Rev.1). Draft Resolution submitted by the delegation of *Egypt*..... 18 November 1947
- A/506 Preparation by the Secretariat of the work of the International Law Commission. Report of the Sixth Committee.. 20 November 1947
- A/508 Draft Declaration on the Rights and Duties of States presented by *Panama*. Report of the Committee on the Progressive Development of International Law and its Codification. Report of the Sixth Committee ..... 20 November 1947
- A/519 Resolutions adopted on Reports of the Sixth Committee. Resolutions 175 (II) and 178 (II) ..... 21 November 1947  
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**E. TEXTS OF RESOLUTIONS OF THE GENERAL ASSEMBLY****38 (I). DRAFT DECLARATION ON THE RIGHTS AND DUTIES  
OF STATES**

*The General Assembly resolves:*

1. To request the Secretary-General to transmit immediately to all Member States of the United Nations and to national and international bodies concerned with international law, the text of the draft Declaration on the Rights and Duties of States presented by Panama, with the request that they submit their comments and observations to the Secretary-General before 1 June 1947;
2. To refer the said Declaration to the Committee established by the General Assembly during the present session to study the methods of codification of international law, and to request the Secretary-General to transmit to this Committee the comments and observations as they are received from the Governments and institutions referred to in the preceding paragraph;
3. To request this Committee to report thereon to the second regular session of the General Assembly;
4. To include this matter in the agenda of the second regular session of the General Assembly.

*Fifty-fifth plenary meeting  
11 December 1946*

175 (II). PREPARATION BY THE SECRETARIAT OF THE WORK  
OF THE INTERNATIONAL LAW COMMISSION

*The General Assembly,*

*Considering* that, in accordance with Article 98 of the Charter, the Secretary-General performs all such functions as are entrusted to him by the organs of the United Nations;

*Considering* that, in the interval between the first and the second sessions of the General Assembly, the Secretariat of the United Nations contributed to the study of problems concerning the progressive development of international law and its codification,

*Instructs* the Secretary-General to do the necessary preparatory work for the beginning of the activity of the International Law Commission, particularly with regard to the questions referred to it by the second session of the General Assembly, such as the draft Declaration on the Rights and Duties of States.

*Hundred and twenty-third plenary meeting  
21 November 1947*

178 (II). DRAFT DECLARATION ON THE RIGHTS AND DUTIES  
OF STATES

*The General Assembly,*

*Noting* that very few comments and observations on the Draft Declaration on the Rights and Duties of States presented by Panama have been received from the States Members of the United Nations,

*Requests* the Secretary-General to draw the attention of States to the desirability of submitting their comments and observations without delay;

*Requests* the Secretary-General to undertake the necessary preparatory work on the draft Declaration on the Rights and Duties of States according to the terms of resolution 175(II);

*Resolves* to entrust further study of this problem to the International Law Commission, the members of which in accordance with the terms of resolution 174(II) will be elected at the next session of the General Assembly,

*And accordingly*

*Instructs* the International Law Commission to prepare a draft Declaration on the Rights and Duties of States, taking as a basis of discussion the draft Declaration on the Rights and Duties of States presented by Panama, and taking into consideration the other documents and drafts on this subject.

*Hundred and twenty-third plenary meeting  
21 November 1947*