

*United Nations*

*Nations Unies*

UNRESTRICTED

**GENERAL  
ASSEMBLY**

**ASSEMBLEE  
GENERALE**

A/19/Corr.1  
1 December 1946  
ENGLISH  
ORIGINAL: SPANISH

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DELEGATION OF PANAMA: DRAFT DECLARATION OF THE  
RIGHTS AND DUTIES OF STATES

SECRETARIAT NOTE

The enclosed Corrigendum (A/19/Corr.1) should  
replace pages 10 - 27 of Document A/19.

EXPLANATORY NOTE

by

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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 the 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 Bogota 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, Doctor Manley O. Hudson, and published under the title of "Postulates, principles and proposals" concerning the international law of the future. This draft, in which I had the honour of collaborating, states the chief principles in the form of duties of the States as follows:

Principle I

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 II

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 immunity and justice or shock the conscience of mankind.

Principle III

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

Principle IV

Each State has a legal duty to prevent the organization within its territories of activities calculated to foment civil strife in the territory of any other State.

Principle V

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 VI

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 the settlement of its disputes by the competent agency of the Community of States.

Principle VII

Each State has a legal duty to refrain for any use of force and for 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 VIII

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 other State in its relations with another State.

Principle IX

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 X

Each State has a legal duty to refrain from entering into any agreements with another State, the performance of which would be inconsistent with the discharge of its duties under general international law.

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 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 textbook 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 wellbeing 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, Doctor 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 and 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 conventions 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 Mr. 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 the sixth of January 1916;

The Covenant of the League of Nations (1919).

The articles of the proposed statement have been grouped according to their inter-relation 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 inter-related.

The first, Article 23, establishes the principle of equality of opportunity and of inter-dependence 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 connection 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 inter-dependence and co-operation in the use of electromagnetic 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 prescription 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 connection 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 action 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 into 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 Maurtua 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 Mauritua, 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 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:

Article	Matter	Contents
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	Facts 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.