

Document:-
A/CN.4/W.8

Draft Declaration on the Rights and Duties of States - Summary of action taken by the Commission after third reading of the draft - incorporated in document A/CN.4/SR.23, footnote 1

Topic:
Fundamental rights and duties of States

Extract from the Yearbook of the International Law Commission:-
1949, vol. I

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

do so for the exclusive purpose of polishing the text, the substance of which must remain unchanged.

91. Contrary to Mr. Koretsky, Mr. Scelle considered that the draft should be presented to the fourth session of the General Assembly. He was therefore in favour of finishing the work on the draft Declaration and then proceeding to another subject.

92. The CHAIRMAN thought that the Sub-Committee might also be instructed to check the versions of the Declaration in the other working languages.

93. Mr. ALFARO agreed with Mr. Scelle that it was the Commission's duty to finish the Declaration at its current session. The Commission would appear ridiculous in the eyes of the world if, after all its lengthy deliberations, it decided to reconsider the text at its following session. He therefore supported the Chairman's proposal.

94. In reply to a question by Mr. CORDOVA, the CHAIRMAN stated that the Sub-Committee's terms of reference would be to polish the text of the draft Declaration and to check the versions of it in the other working languages, for the Commission's consideration at the third reading. The Sub-Committee would be free to seek the assistance of other members of the Commission.

95. Mr. SPIROPOULOS reserved the right to speak on the Declaration as a whole at the third reading.

96. The CHAIRMAN put to the vote the question of referring the draft to the Sub-Committee.

The Commission decided by 11 votes to 1 to refer the draft to the Sub-Committee.

97. After a brief discussion of procedure, Mr. CORDOVA proposed that the Commission should finish its work on the Declaration before proceeding to other items on its agenda.

Mr. Cordova's proposal was adopted by 8 votes to 2.

98. Mr. HSU, referring to Mr. Koretsky's criticism of the draft Declaration, suggested that the latter submit a number of concrete proposals on the text for the Commission's consideration.

99. Mr. ALFARO asked for clarification of the meaning of the words "modern developments of international law". The word "modern" was a concept of time, and it was not clear when that modern development had begun, nor which instruments of international law belonged to the period of modern development.

The meeting rose at 6 p.m.

23rd MEETING

Thursday, 19 May 1949, at 3 p.m.

CONTENTS

	<i>Page</i>
Draft Declaration on the Rights and Duties of States (<i>continued</i>)	
Third reading	163
Preamble	164
Article 1	166
Article 2	166
Article 3	166
Article 4	166
Article 5	167
Article 6	167
Article 7	167
Article 8	170
Article 9	170
Article 10	170
Article 11	170

Chairman: Mr. Manley O. HUDSON.

Rapporteur: Mr. Gilberto AMADO.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. James L. BRIERLY, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Vladimir M. KORETSKY, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

Secretariat: Mr. LIANG, Director, Division for the Development and Codification of International Law; Secretary to the Commission.

Draft Declaration on the Rights and Duties of States (*continued*)

THIRD READING

1. The CHAIRMAN opened the third reading of the draft Declaration on Rights and Duties of States, based on the revised text submitted by the Sub-Committee.¹ That document contained

¹ "Whereas the States of the world form a community governed by international law;

"Whereas the progressive development of international law requires effective organization of the community of States;

"Whereas a great majority of the States of the world have accordingly established a new international order under the Charter of the United Nations, and most of the other States of the world have declared their [willingness to accept] *desire to live within this order;*

"Whereas a primary purpose of the United Nations is to maintain international peace and security, and the reign of law and justice is essential to the realization of this purpose; *and*

"Whereas it is *therefore* desirable to formulate

various minor changes suggested by the Sub-Committee, upon which the Commission would be required to decide.

certain basic rights and duties of States in the light of [modern] *new* developments of international law and in harmony with the Charter of the United Nations:

THE GENERAL ASSEMBLY of the United Nations adopts and proclaims this DECLARATION OF RIGHTS AND DUTIES OF STATES

“ Article 1

“ Every State has the right to preserve its existence.

“ Article 2

“ Every State has the right to have its existence recognized by other States.

“ Article 3

“ Every State has the right to independence and hence to exercise freely, without [being subject to] dictation by any other State, all its legal powers, including the choice of its own form of government.

“ Article 4 [6]

“ Every State has the right to exercise jurisdiction over its territory and over all persons and things therein, subject to the [privileges and] immunities recognized by international law.

“ Article 5 [4]

“ Every State has the duty to refrain from intervention in the internal or external affairs of any other State.

“ Article 6 [5]

“ Every State has the right to equality in law with every other State.

“ Article 7 [14]

“ Every State has the duty to treat [all] *the* persons under its jurisdiction with respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

“ Article 8 [13]

“ Every State has the duty to ensure that conditions prevailing [within] *in* its territory do not menace international peace and order.

“ Article 9 [15]

“ Every State has the duty to refrain from fomenting civil strife in the territory of another State, and to prevent the organization within its territory of activities calculated to foment such civil strife.

“ Article 10 [7]

“ Every State has the duty to settle its disputes with other States by peaceful means in such a manner that international peace and security, and justice, are not endangered.

“ Article 11 [8]

“ Every State has the duty to refrain from [waging] *resorting to* war as an instrument of national policy, and to refrain from [resorting to any] *the* threat or

2. Mr. SPIROPOULOS stated that the revised text still contained a number of points with which he could not agree and to which he had objected during previous discussions. He would not repeat his objections, but would indicate that he could not support the revised draft by abstaining from voting on the parts of the preamble and the articles in question.

Preamble

3. The CHAIRMAN read the preamble, and opened discussion on the first paragraph.

There being no objection, the first paragraph was adopted by 10 votes to none, with 1 abstention.

4. The CHAIRMAN asked for comments on the second paragraph.

5. Mr. HSU suggested that the word “requires” was too strong, and might be replaced by the expression “calls for.”

6. Mr. YEPES asked whether the word “an” should not be inserted before “effective organization”.

7. The CHAIRMAN explained that the change suggested by Mr. HSU would affect the meaning only very slightly, and expressed the personal view that the stronger word was preferable. In reply to Mr. Yepes, he said that the English text would not be improved by the addition of the indefinite article.

The second paragraph was adopted, without amendment, by 9 votes to 1, with 1 abstention.

use of force, [either] against the territorial integrity or political independence of another State, or in any other manner inconsistent with international law and order.

“ Article 12 [9]

“ Every State has the duty to refrain from giving assistance to any State which is acting in violation of article 8, or against which the United Nations is taking preventive or enforcement action.

“ Article 13 [10]

“ Every State has the duty to refrain from recognizing any territorial acquisition [made] by another State acting in violation of Article 8.

“ Article 14 [11]

“ Every State has the right of individual or collective self-defence against armed attack.

“ Article 15 [12]

“ Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke limitations contained in its own constitution or its laws as an excuse for failure to perform this duty.

“ Article 16

“ Every State has the duty to conduct its relations with other States in accordance with international law and with the principle that the sovereignty of each State is subject to the supremacy of international law.