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A/CN.4/L.289/Rev.1

**Draft articles on State responsibility: text of article 28 proposed by Mr. Tsuruoka - reproduced
in A/CN.4/SR.1536, para.2**

Topic:
State responsibility

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1536th MEETING

Tuesday, 22 May 1979, at 10.5 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

Also present: Mr. Ago.

State responsibility (*continued*) (A/CN.4/318 and Add.1-3, A/CN.4/L.289/Rev.1, A/CN.4/L.290)

[Item 2 of the agenda]

DRAFT ARTICLES SUBMITTED BY MR. AGO (*continued*)

ARTICLE 28 (Indirect responsibility of a State for an internationally wrongful act of another State)¹ (*continued*)

1. Mr. TSURUOKA said that, in the light of comments made by some members of the Commission, he wished to announce two changes in the text of article 28 which he had proposed on 17 May 1979 (A/CN.4/L.289). The first was the omission of the word "exclusively" in paragraph 2, the object being to introduce the idea of a dual responsibility on the part of the State which exerted coercion and on the part of the State which had committed the internationally wrongful act. The other change was the addition of a paragraph 3.

2. The revised text (A/CN.4/L.289/Rev.1) read as follows:

"1. Directions given by one State to another State or control exercised by one State over another State in a field of activity shall, if it is established that the directions are given or the control is exercised for the purpose of the commission of an internationally wrongful act carried out by the latter, constitute an internationally wrongful act, even if those directions or that control, taken alone, would not constitute the breach of an international obligation.

"2. Coercion exerted by one State against another State by means of the threat or the use of force in violation of the principles of international law embodied in the Charter of the United Nations shall, if it is established that the coercion was exerted for the purpose of the commission of an internationally wrongful act carried out by the latter, entail the international responsibility of the State which exerted the coercion.

"3. Paragraphs 1 and 2 are without prejudice to the application of other provisions of the present

draft articles, such as article 1, concerning international responsibility to a State which commits an internationally wrongful act as a result of directions given, control exercised, or coercion exerted by another State."

3. Mr. AGO said he thought he could detect a certain softening of the extreme position taken by Mr. Ushakov in his earlier statements. Yet he had difficulty in accepting Mr. Ushakov's proposition that, while the general concept of indirect responsibility existed, it existed in the science of law rather than in positive law, for the science of law had created the concept of indirect responsibility to describe and explain certain situations for which provision was made in positive law.

4. Commenting on the cases mentioned by Mr. Ushakov as occurring in internal law, he noted that, as far as responsibility for the act of another was concerned, Soviet law did not differ greatly from the law of the common law countries or of the Roman law countries. Where the owner of a vehicle was liable in the event of an accident caused by a person whom he had permitted to use his vehicle (the case mentioned by Mr. Ushakov at the previous meeting), the liability of the owner of the vehicle arose not because he had given his permission, which was a lawful act, but because of the accident caused by the driver, which was precisely an unlawful act committed by another party. In that situation, the permission given had set up between the owner and the user of the vehicle a certain relationship in consequence of which the former was answerable for the act of the latter. Similarly, where the master was liable for damage caused by his apprentice, the master was responsible not for the fact of having employed the apprentice, which was a lawful act, but for the errors committed by the apprentice, such liability being founded on the relationship between master and apprentice. The fact of having engaged the apprentice had simply set up that relationship. Hence in both situations, as also in the case of the liability of parents for their children's actions, the responsibility was for the act of another and not for the actor's own conduct. Under article 1384 of the French Civil Code a person was answerable not only for damage he caused himself but also for damage caused by persons for whom he was responsible.

5. In international law the problem of indirect responsibility could arise in three types of situation: in relations of dependence, like protectorates; in relations between a federal and a federated State that had kept a separate international personality; and in cases of military occupation. As far as dependent relationships were concerned, he pointed out that in some cases the protectorate had in fact applied to States and not to dependent territories, as Mr. Ushakov had contended. For example, in the case of Morocco, the protectorate established by the Treaty of Fez, although created in the context of colonial policy, had applied to a State, not to a colony; the Moroccan State had remained a State with its own international personality, and the Sherifian authorities had sometimes been entirely free to act in certain internal areas. Although, as Mr. Usha-

¹ For text, see 1532nd meeting, para. 6.