Document:-
A/CN.4/L.501

Draft articles on State responsibility. Titles and texts adopted by the Drafting Committee at the forty-fifth and forty-sixth sessions of the Commission - reproduced in document A/CN.4/SR.2366, para.1

Topic:
State responsibility

Extract from the Yearbook of the International Law Commission:-
1994, vol. I
Article 14. Prohibited countermeasures

An injured State shall not resort, by way of countermeasure, to:

(a) the threat or use of force as prohibited by the Charter of the United Nations;

(b) extreme economic or political coercion designed to endanger the territorial integrity or political independence of the State which has committed an internationally wrongful act;

(c) any conduct which infringes the inviolability of diplomatic or consular agents, premises, archives and documents;

(d) any conduct which derogates from basic human rights; or

(e) any other conduct in contravention of a peremptory norm of general international law.

2. Mr. BOWETT (Chairman of the Drafting Committee) reminded members that, at the Commission's forty-fifth session, the Drafting Committee had adopted for articles 11 to 14 texts that had been introduced by the then Chairman of the Drafting Committee, Mr. Mikulka, but had not been acted on in plenary pending the submission of the relevant commentaries. In his sixth report (A/CN.4/461 and Add.1-3), the Special Rapporteur had proposed rewording articles 11 and 12 and the Commission had agreed to refer his proposals to the Drafting Committee. The document before the Commission (A/CN.4/L.501) therefore contained article 11 as it had emerged from the discussion in the Drafting Committee at the present session and articles 12, 13 and 14 as adopted by the Drafting Committee at the forty-fifth session in 1993. Since articles 13 and 14 had not been referred back to the Drafting Committee at the present session they required no comment on his part and he would simply refer the Commission to the presentation made by the Chairman of the Drafting Committee at the forty-fifth session of the Commission.

3. The Drafting Committee had re-examined the text of article 11 as adopted at the forty-fifth session in the light of the Special Rapporteur's contention that the concept of adequate response must have a place in the article if a proper balance was to be struck between the position of the injured State and that of the wrongdoing State. The Special Rapporteur took the view that the effect of the omission of the notion of adequate response would be to allow the injured State too much scope to use countermeasures in order to compel both cessation and reparation. In the case of cessation, the injured State would be allowed to apply countermeasures without the wrongdoing State being given any opportunity to explain, for example, that there was no wrongful act or that the wrongful act was not attributable to it. In the case of reparation, the injured State might continue to be the target of countermeasures even after it had admitted its responsibility and even though it was in the process of providing reparation and/or satisfaction.

4. The Drafting Committee had noted that, because the text it adopted at the previous session made the right of the injured State to resort to countermeasures subject to the conditions and restrictions set forth in subsequent articles, it provided a safeguard against abuse, and that the requirement of proportionality went some way to meeting the Special Rapporteur's concerns. It had...