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Summary record of the 1212th meeting

Topic:
State responsibility

Extract from the Yearbook of the International Law Commission:-
1973, vol. I

characterized differently in international law and in internal law for the purposes of attribution to the State. For instance, to "attribute" to a State the decision of a court—that was to say the decision of one of its organs—which was lawful under internal law but wrongful in international law, was to confuse attribution with imputation, since the State was charged with responsibility for a wrongful act. The difference between the attribution of an uncharacterized act and the imputation of a wrongful, and hence characterized act, should be clearly understood.

35. Then again, attribution—the objective rather than legal noting that an act had been committed—indicated the identity of the author of the act. The act was attributed to one particular State rather than another. There, too, there was no need to invoke either internal or international law. For example, if soldiers from one State wearing the uniform of the army of another State raided a third State, the attribution of the act would consist of noting that the soldiers belonged to such or such a State. There again, it was simply a question of noting without any legal characterization. That showed how important it was to agree on the meaning of the words "attribution" and "imputation".

36. He would speak again on the text of article 5.

The meeting rose at 1.5 p.m.

1212th MEETING

Wednesday, 23 May 1973, at 10.10 a.m.

Chairman: Mr. Jorge CASTAÑEDA

Present: Mr. Ago, Mr. Bartoš, Mr. Bilge, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

State responsibility

(A/CN.4/217 and Add.1; A/CN.4/233; A/CN.4/246 and Add.1 to 3; A/CN.4/264 and Add.1)

[Item 2 of the agenda]

(continued)

ARTICLE 5 (Attributions to the State, subject of international law, of acts of its organs) *(continued)*

1. The CHAIRMAN invited Mr. Ushakov to conclude the statement he had begun at the previous meeting.

2. Mr. USHAKOV said he agreed with the Special Rapporteur that the conduct of organs of the State must be attributed to the State, though in his opinion there was no need to specify that the attribution was made by virtue of international law, since it consisted merely in establishing, independently of any legal order, that an act had been committed and by whom it had been committed. The question which then arose was under what conditions the State could be assimilated to its organs, and on that point he did not share the Special Rapporteur's opinion.

3. In article 5 and the subsequent articles, the Special Rapporteur referred sometimes to the conduct of organs of the State and sometimes to the conduct of a person or group of persons who possessed the status of organs of the State. In his opinion, no such distinction could be made. To accept such a distinction would be to support the theory of certain writers, including the eminent French jurist Georges Scelle, who in that context did not recognize even the existence of the State or of legal persons in general, but regarded them as fictions and maintained that it was always individuals who acted.

4. In the exercise of public authority, which took place through the machinery of the State, it was certainly organs and not individuals that acted. For instance, the will of a parliament was not the sum of the wills of its members; its decisions were those of a unitary organ. The same applied to a court of law. Even when the organ consisted of a single person, it was as an organ and not as an individual that he acted, except, of course, when he was acting outside the exercise of his functions. Thus it was through the agency of its organs and not through that of the individuals composing them that the State acted. Consequently, he could not accept the distinction made by the Special Rapporteur between the conduct of persons acting as organs and the conduct of persons acting in a private capacity.

5. With regard to the drafting of article 5, there was a lack of concordance between the title, which referred to attribution to the State of acts of its organs, and the text, which referred to the conduct of a person or group of persons.

6. Moreover, the idea covered by the expression "State, subject of international law", which appeared in the title of article 5 and of some of the subsequent articles, but not in the text of those articles, was not clear. If the purpose was to preclude the attribution of an act to States which had no international personality, such as the Swiss cantons or the member states of a federation, he saw no objection; otherwise he did not think the phrase served any useful purpose.

7. Mr. AGO (Special Rapporteur) said that Mr. Ushakov's comments called for explanations on three points: the meaning of the word "attribution"; the distinction between an organ and a person or group of persons possessing the status of an organ; and the use of the expression "State, subject of international law".

8. With regard to the question of attribution, which Mr. Ushakov had already raised at a previous session, it should not be forgotten that words had only the meaning given to them. Even when he had used the word "imputation" in his first reports, he had never given it the sense of imputation in criminal procedure; that was why he had willingly accepted the proposal made by Mr. Ushakov at the twenty-second session, that he use the more neutral term "attribution".[1] But no matter whether the term adopted was "attribution" or "imputa-

[1] See *Yearbook of the International Law Commission, 1970*, vol. I, p. 189, para. 20 *et seq.* and p. 221, paras. 72 and 73.

tion", or even "attachment", the idea it was intended to express was still the same.

9. Moreover, in order to avoid any misunderstanding, he had even endeavoured, in his third and fourth reports, to use as far as possible the phrase "consideration of an act as an act of the State" rather than the word "attribution". The sole purpose of chapter II was to establish the conditions in which there was an act of the State, in other words, in what conditions it must be considered that it was the State which had committed an act or omission. In that chapter he had not once departed from that idea.

10. However, the word "attribution" also covered several ideas. First, it could simply mean that an act was considered as having been committed by the State. Secondly, if it were said that the act was objectively an act of the State, it could just as objectively be considered that that act of the State constituted failure to fulfil an obligation incumbent on it and, since the necessary conditions for the existence of a wrongful act were then satisfied, the word "attribution" was used to say that an "internationally wrongful act" was attributed to the State.

11. He acknowledged that it was necessary to avoid, as far as possible, using the same term to denote two different situations, but the essential point was to say what had to be said clearly. It must be clearly understood that the expression "attribution of an act to the State" included no characterization of that act, whereas the idea that an internationally wrongful act had been committed by the State introduced the legal characterization of "wrongfulness".

12. The nature of the operation which led to saying that it was the State which had acted, required clarification. If an aircraft of a given State flew over the territory of another State without permission, the decision whether to attribute the act to the former State or not, was based on certain external marks on the aircraft, but mainly on the fact that it had been piloted, for example, by a member of the armed forces of the State in question, and thus, according to the internal legal order, by an organ of that State. In that case it was the State, and not merely a private person, which had violated foreign sovereignty. The operation by which that conclusion was reached was a legal operation, which might be based on the internal legal order or on the international legal order. It was, indeed, possible for those two legal orders to be in conflict regarding the attribution of the act. If the aircraft did not belong to the armed forces of the State, but to the police force of a certain town, international law would nevertheless attribute the act to the State, whereas internal law would attribute it to the municipality of the town concerned. Thus it could be seen that the fact of considering an act as an act of the State always included a legal link, though there was no characterization of the act as wrongful.

13. With regard to the difference between such expressions as "organs" and "person or group of persons possessing the status of organs", it was true that the State was a real organism, but it had no physical existence, and it was wrong to consider the relationship between the State and its organs in the same way as the relationship between a natural person and his organs. In the last analysis, the organs of the State were always reduced to persons, taken individually or collectively. It was true that the will of a collective entity was not the sum of the wills of its members, but what was concerned was always the collective will of a group of persons.

14. As Special Rapporteur, he had always maintained that an act or omission of a private person was attributed to the State only in so far as that person was an organ of the State according to its internal legal order and had acted in that capacity. That amounted to saying that the acts of the same persons were not attributed to the State when they acted in a purely personal capacity and not as organs. He had even drawn attention to cases in which organs had acted contrary to rules of internal law and their conduct had nevertheless been considered as an act of the State for purposes of international law. The reason why he had used the synonymous expressions "person or group of persons who possess the status of organs of the State and are acting in that capacity" and "organs of the State" was, precisely, in order to bring out the difference which existed according to whether those persons were acting in a private capacity or as organs.

15. Finally, the use of the expression "State, subject of international law" was justified to mark the distinction between the internal legal order and the international legal order when certain acts were to be considered as acts of the State. For in all contemporary systems there were entities or public institutions other than the State whose conduct would not be considered as an act of the State in internal law, whereas it might be so considered in international law, which did not refer to the concept of the "State, subject of internal law". That was why it was important to specify that an act was attributed to the State as a subject of international law.

16. Mr. ELIAS said that article 5 was the logical development of the ideas which had been considered in the preceding four articles concerning internationally wrongful acts of a State. Article 5 dealt with the question whether a State could be held responsible for conduct, not of the State itself, but of the organs or agents through which it had to act.

17. He was prepared to accept the principles laid down in article 5. Those principles were, first, that the act in question must be carried out by organs or agents of the State who were considered to be acting in that capacity under internal law of which international law took judicial notice; and secondly, that the organs or agents must be acting in an official capacity within the scope of their authority.

18. To ensure a proper understanding of all the aspects of article 5, the Special Rapporteur had rightly warned members against certain pitfalls and against approaches which might confuse the issue the Commission wished to formulate as a rule of law. The Special Rapporteur had referred to three main theories advanced by legal writers, but he himself thought those theories could be reduced to two, namely, the dualist theory and the monist theory.

19. The dualist school could be divided into two sections. First, there were those who argued that the internal

organization of the State, as well as the conduct of those who acted as its organs or agents, should be regulated entirely by municipal law and that international law had to accept whatever attributions had been conferred on the State by its municipal law. In other words, the governing principle was that of the particular arrangement which the State had made in its own internal order.

20. Secondly, there was the opposite section of the dualist school, which maintained that international law was really the only law that could regulate the State's internal organization, decide which were its organs and agents, and determine what kind of conduct could be attributed to them. The obvious objection to that theory was that it was not the business of international law to regulate the internal structure of States. There were also writers, such as Verdross and Kelsen, who spoke of the "vicarious responsibility" of the State, and maintained that the State was not only responsible for the acts of its organs or agents, but could also be liable, in some cases, for the acts of its individual nationals.

21. The monist school, on the other hand, affirmed the primacy of international law over municipal law and maintained that in normal circumstances all acts carried out by organs or agents of the State possessing legal capacity must be considered as being carried out by the State. Only in exceptional cases could international law intervene to determine what organs or agents were capable of conduct attributable to the State under international law.

22. What should be the Commission's task in dealing with all those theories? As the Special Rapporteur had said, its main task was to determine what acts of individuals formed part of the State machinery and, as a general rule, had to be considered acts of the State from the point of view of international law. In chapter II of his third report (A/CN.4/246/Add.1) the Special Rapporteur had cited a number of examples drawn from State practice and judicial decisions, all of which pointed to the principle that would enable the Commission to express that complex of ideas and lay down a basic rule. That rule should not, of course, be considered absolute or exclusive, since there were obviously qualifications and limitations to the essential idea contained in article 5.

23. Two basic principles were involved in that article. First, for the conduct of an organ or agent to be attributable to the State as a subject of international law, the act must come within the apparent or ostensible authority of the organ or agent concerned; if it was outside that authority, it would not entail State responsibility. It should be noted, however, that there could be situations in which excessive exercise of the authority granted to an organ or agent might involve State responsibility.

24. Secondly, if the organs or agents were conceived of as physical persons, as distinct from the State as a living reality, it should be possible to state that principle in international law, whereas municipal law could not characterize a State's conduct as involving its responsibility.

25. In his opinion, although the primacy of international law must be acknowledged, it should be emphasized that international law could not operate in a vacuum and was bound to take account of what a State's municipal law laid down about the extent of the competence of its organs and agents.

26. Article 5, as proposed by the Special Rapporteur, contained all the elements he had mentioned, but he was not sure that it was correctly formulated. To begin with, he did not think that the opening phrase "For the purposes of these articles" was necessary, since all the draft articles dealt with the question of State responsibility. He would suggest that the text of the article be amended to read: "A State is responsible under international law for the acts of a person or group of persons who are agents of that State under its internal law". Alternatively, if the Commission preferred to stress the "act of the State", he would suggest the following text: "The act of a person or group of persons who are the agents of a State under its internal law is attributable to that State under international law".

27. Mr. HAMBRO said that the many profound theoretical arguments put forward during the discussion had confirmed him in the view that the Special Rapporteur had been right in suggesting that theoretical considerations should be disregarded. The Special Rapporteur's excellent analysis of the various schools of thought on the subject had only been intended to clear the way for specific consideration of the questions dealt with in the various articles in chapter II.

28. It would be extremely regrettable if the Commission were to terminate its treatment of the subject of State responsibility with article 5. To submit such a draft to the General Assembly would give a completely wrong impression of the guiding principles the Commission was adopting.

29. The provisions of article 5 could only be understood in connexion with those of the subsequent articles in chapter II. Unless the Commission could deal with those articles as well, it should refrain from sending the draft to the General Assembly. It should also be remembered that later discussion on article 6 and the following articles might well lead the Commission to revise the wording of the earlier articles.

30. He welcomed the Special Rapporteur's conclusion that the acts of the State were not confined to those of its executive, legislature and judiciary. Thus article 8 (A/CN.4/246/Add.3) dealt with the case of acts of persons who did not formally possess the status of State organs, but in fact performed public functions; such acts might even be at variance with the internal law of the State concerned.

31. By contrast with article 8, article 5 dealt with acts which would always be attributed to the State, because the person or group of persons performing them was categorized as a State organ by the internal law of the State concerned.

32. It was often a matter of pure domestic convenience whether an entity was regarded by internal law as an organ of the State or not. An obvious example was that of State banks, which had been mentioned in the *Case of Certain Norwegian Loans*.[2] In that dispute between

[2] *I.C.J. Reports 1957*, p. 9.

France and Norway, relating to the gold clause, it had been argued that the Norwegian banks contracting the loans had a legal personality distinct from that of the State, so that an act or omission on their part did not involve the international responsibility of the Norwegian State.

33. The acts of State monopolies had given rise to similar difficulties in international disputes. In order to settle difficulties of that kind, it had been customary to rely on the distinction between acts performed *de jure imperii* and acts performed *de jure gestionis*. That distinction, however, would not be of assistance when dealing with the problem of a State which, for example, considered all cultural affairs as coming within the public sector. His own view on that point was that, from the standpoint of international law, there could well be some activities which did not deserve to be regarded as activities of State organs.

34. From the point of view of legal theory, he would object to the inclusion in the commentary to article 5 of the passage quoted in the third report (A/CN.4/246/Add.1, para. 117) from the judgement by the Permanent Court of International Justice in the *Case concerning certain German interests in Polish Upper Silesia*, which read: "From the standpoint of International Law... municipal laws are merely facts."[3] Taken out of context, that passage was meaningless. In any case, it came from a decision which was nearly fifty years old and was based on an unfortunate analogy with the judicial system of certain countries. For purposes of appeals to the supreme court, a distinction was drawn in those countries between questions of law, which could be reviewed on such appeals, and questions of fact, which could not. In that context, it had been held that questions of foreign law could not be the subject of such review and could not lead to the quashing of a decision by a lower court as to the interpretation of the provisions of a foreign law.

35. It was significant that in the judgement in question, the Permanent Court had proceeded to state that it was not its duty to interpret Polish law as such. That statement might well have applied to that particular case, but no general rule could be derived from it. It was clear that an international tribunal was often under the necessity of interpreting the municipal law of a State in order to reach a decision. One had only to think of cases involving the problem of the exhaustion of local remedies: without interpreting the municipal law of the country concerned, it would not be possible for an international tribunal to decide whether local remedies had in fact been exhausted. Indeed, several of the articles of the present draft indicated that municipal law would have to be interpreted in order to apply their provisions.

36. He therefore urged the Commission not to lend its authority to a statement which, taken as it stood, could only confuse the issue.

37. Mr. BARTOŠ congratulated the Special Rapporteur on his brilliant introduction to chapter II. He had no comments on article 5, except with regard to the phrase "according to the internal legal order of a State". If the sovereignty of States was to be respected, it was perhaps necessary to refer to the internal legal order of the State in order to determine the status of an organ, but such reference was hardly satisfactory from the standpoint of the international legal order.

38. As the Special Rapporteur had pointed out, there were various conceptions of an organ. In addition, modern jurisprudence and State practice recognized the existence of quasi-independent organs. One instance was the religious communities to which certain States, which accepted the principle of separation of Church and State, had delegated a large part of their powers. Disputes arising out of non-observance or violation of rules of private international law by such religious communities had come before international courts on several occasions. The States which had thus delegated their powers had generally claimed that they could not intervene with those communities and, in view of the principle of separation of Church and State, were not responsible for their acts. Such cases had arisen mainly in connexion with divorce and remarriage. They constituted cases of violation of human rights committed under the auspices of the State, since the delegation of powers had taken place in accordance with its internal law.

39. Under a Yugoslav law of 1934, the Orthodox Church had been granted absolute independence and that had enabled it to change the provisions applicable to its members in family law, on the basis of the rule providing for the equality of all religious communities. Under the Treaty of Versailles, the Moslem communities in Yugoslavia enjoyed certain privileges, including the right to apply their religious law to their members in the sphere of family law and the law of succession. Since the principle of equality of religious communities had been proclaimed, both the Orthodox Church and the Catholic Church had then claimed to apply their own canon law. A number of international disputes had arisen as a consequence, and some countries had held Yugoslavia responsible for the acts of its religious communities. Personally, he thought that if misconduct could be attributed to a State which delegated its powers in that way, it was because that State had neglected to ensure respect for the international order.

40. There was also a delegation of powers in countries where it was impossible to obtain a driving licence without applying to a national automobile club affiliated to the International Touring Alliance. Several States had held that drivers could not be compelled to go through a club of that kind and pay it quite a heavy fee. It had sometimes been claimed that such clubs were no more than private associations, but as a comparative study showed, it was a fact that they were endowed with powers which normally belonged to the State. In deviating from the generally accepted rules, a State was committing a violation.

41. He had cited only those two cases, but there were many others, and it was therefore inadvisable to rely on the internal legal order of States to determine the status of an organ. No doubt there were criteria for determining when a State was responsible for the acts of its organs. For instance, a State which failed to protect the interests of aliens or of other States in its territory and, either through tolerance or as a result of a delega-

[3] *P.C.I.J.* (1926), Series A, No. 7, p. 19.

tion of powers, allowed organizations, private individuals or groups of individuals to commit acts prejudicial to those interests, would at least be guilty of an omission if it was true that there was an international legal order and that States had a duty to respect it.

42. The Commission might perhaps wish to leave that question aside, despite its practical importance, but it should consider recasting article 5.

43. Mr. REUTER said that the Special Rapporteur had presented all the theoretical aspects of the problem in his written reports and had perfectly reflected the state of present international practice in his draft articles; his oral introductions had been clear and precise. All that now remained was to agree on the best way of expressing his ideas.

44. The various articles in chapter II called for one general remark. Article 5 stated a rule which corresponded to the most frequent case. It contained two elements relating, respectively, to the status of an organ and the fact of acting in the capacity of an organ. Article 6 defined the first of those elements and article 10 the second. Between those two provisions there were three articles which supplemented the general hypothesis stated in article 5; the use of the word "also" confirmed their residuary character. The particulars given in articles 11 and 12 were presented in negative form.

45. Without questioning the order of those articles, he observed that it was impossible to grasp the scope of article 5 without knowing the content of articles 6 and 10. He would therefore suggest that articles 6 and 10 be considered after article 5, so that the latter would not be submitted to the Sixth Committee of the General Assembly without the other two which made it easier to understand.

46. Article 5 was also linked with article 8, since one of the conditions for the application of article 5 was that a person or group of persons should possess the status of an organ. But the status of an organ was not defined in article 5. Article 8, on the other hand, suggested that that notion could be interpreted in two ways: there could be an organ established formally, by statute, since article 8 provided that a person or group of persons who did not formally possess the status of organs could have that status "functionally".

47. To take a purely theoretical example, suppose that a State's diplomatic representative abroad, who would possess the status of organ, engaged in drug trafficking. Normally, he would not be acting in his capacity as organ, unless his purpose was to help to finance a secret service of the State of which he was the representative. Where the trafficking offence itself was in question, the diplomat would not be acting as a person formally possessing the status of an organ of the State in accordance with article 5, but as a representative of the State within the meaning of article 8.

48. He therefore suggested that the word "formally" be inserted before the word "possess" in article 5. For that provision covered only the simplest case, that of persons who not only were agents of the State, but who visibly possessed the status of organs of the State. The other cases were dealt with in the subsequent articles.

49. As to what was meant by the words "are acting in that capacity", as used in article 5, that would have to be discussed in connexion with article 10, which showed that article 5 did depend on article 10.

50. Lastly, the English expression "possess the status of organs" was better than French "*ont la qualité d'organes*"; perhaps it would be better to replace the word "*qualité*" by "*statut*" in the French version.

51. Mr. AGO (Special Rapporteur) said that, to enable the Sixth Committee to consider the draft under more favourable conditions it might be advisable to inform it of the articles examined, but to draw its attention to the need to wait until next year for the full picture of all the articles in chapter II.

52. With regard to the links between the different provisions in Chapter II, article 10 was complementary not only to article 5, but also to articles 7, 8 and 9, since the situation dealt with in article 10 could arise in each of the cases contemplated in the three preceding articles. That explained the position of article 10. Perhaps it should somehow be indicated expressly that the rule stated in article 5 was neither absolute nor exclusive.

53. Sir Francis VALLAT said he agreed with the practical and inductive approach adopted by the Special Rapporteur and with his step-by-step method. It was essential to proceed in that way in order to avoid getting involved in a complicated mass of principles and details which would only lead to confusion.

54. That approach did not, of course, necessarily preclude some element of progressive development if the Commission's work showed the need for it. In its productive period, the Commission had never allowed itself to be inhibited from introducing elements of progressive development into its work.

55. At the same time, the Commission should not be discouraged if, at the end of its work on State responsibility, there still remained certain small gaps to be filled by posterity. Experience had shown that the attempt to reach perfection could defeat the basic purpose one was trying to achieve.

56. He shared the view that article 5 and the following articles dealing with attribution needed to be examined as a whole. In the nature of things, however, the Commission could only focus attention on one article at a time even if, at the end, it might have to review each provisionally approved article in the light of later articles.

57. He would accordingly concentrate at that stage on article 5. Acceptance of the article was facilitated by the fact that it was in itself of a very limited character. It dealt only with the fact of conduct and not with the imputation of legal wrong or of legal responsibility for an internationally wrongful act. It could be said to be related to sub-paragraph (*a*) of article 2 rather than to sub-paragraph (*b*) of that article.

58. He found article 5 broadly acceptable as it stood. He was, however, rather concerned at the tendency, during the discussion, to use the terms "organ" and "agent" as though they were more or less interchangeable. To use the term "agent" in the present context could only lead to unnecessary difficulties. That term could be used to refer to a person having the status of an agent of the

State, but it could also be used in its more ordinary sense of a person acting as an agent in a specific case.

59. Article 5, more or less as drafted, was a satisfactory expression of one of the basic rules to be applied. It dealt with the attribution to the State of the conduct of a person or group of persons regarded as an organ of the State. It avoided the problem of persons who did not have the status of organs of the State, although they might be deemed to be its agents—a problem which was dealt with in article 8.

60. The distinction between an organ and an agent could be illustrated by a recent United Kingdom court decision relating to the New Brunswick Development Corporation.[4] The Corporation was in no sense an organ of the Government of the Province of New Brunswick, but it had been involved in the negotiation of certain contracts on behalf of that Government. Upon being sued as a result of acts performed in connexion with those contracts, it had pleaded sovereign immunity. Although the court had not regarded the Corporation as a Government organ, it had held that it had acted as an agent of the Government with regard to certain specific matters and that to the extent that it had so acted as an agent, the Corporation was entitled to the protection of sovereign immunity. That judgement was, of course, a decision under domestic law and related to sovereign immunity rather than to State responsibility, but the case could serve to illustrate the difficulties that could arise if the term "agent" were introduced into the present draft as though it were equivalent to "organ".

61. He would refrain from discussing other drafting points, which would be considered by the Drafting Committee, but he wished to deal with the problem of titles. The title of chapter II, with the words "act of the State" between quotation marks, was somewhat inelegant. He suggested that it should be redrafted so as to refer to the attribution of acts to the State. It should also reflect the thought that the chapter dealt with the attribution of acts to the State by international law.

62. In the title of article 5, he suggested the deletion of the words "subject of international law", which did not reflect any part of the contents of the article itself and contained an element of definition of the term "State"—a definition which the Commission was not attempting in the present draft.

63. He himself was not in favour of titles in an international convention and had been glad to see them dropped by the 1961 Vienna Conference from the Convention on Diplomatic Relations. The 1963 Vienna Convention on Consular Relations, however, did include titles for each of its articles and had set a pattern for a number of other conventions. He believed that a title should be no more than an indication of the contents of the article and should not be used in any way for purposes of legislation.

64. Mr. RAMANGASOAVINA said he hoped the Commission would be able to examine all the draft articles at the present session, not only because of the importance of the subject, but also because it had been on the agenda for a long time.

65. Generally speaking, article 5 was satisfactory. It was the logical sequel to chapter I. Perhaps the expression "For the purposes of these articles" was not essential, but it had the merit of showing that article 5 was a key provision which conditioned those that followed. And that was why those provisions should be examined as a whole.

66. Article 5 laid down the principle that acts committed by organs of a State involved its responsibility. Articles 6 to 10 dealt with a number of possible cases arising out of article 5.

The meeting rose at 1 p.m.

1213th MEETING

Thursday, 24 May 1973, at 10.5 a.m.

Chairman: Mr. Jorge CASTAÑEDA

later: Mr. Mustafa Kamil YASSEEN

Present: Mr. Ago, Mr. Bartoš, Mr. Bilge, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Pinto, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.

Welcome to Mr. Pinto

1. The CHAIRMAN welcomed Mr. Pinto, who had been elected a member of the Commission to fill one of the casual vacancies which had occurred since the last session.

2. Mr. PINTO expressed his gratitude to the members of the Commission for electing him.

State responsibility

(A/CN.4/217 and Add.1; A/CN.4/233; A/CN.4/246 and Add.1 to 3; A/CN.4/264 and Add.1)

[Item 2 of the agenda]

(resumed from the previous meeting)

ARTICLE 5 (Attribution to the State, subject of international law, of acts of its organs) *(continued)*

3. The CHAIRMAN invited the Commission to continue consideration of article 5 in the Special Rapporteur's third report (A/CN.4/246/Add.1).

4. Mr. KEARNEY said he had been glad to find that Sir Francis Vallat supported his suggestion that the titles of the articles should be made shorter. A simpler title should certainly be drafted for article 5.

5. With regard to the substance of the article, it appeared to him to deal with a comparatively simple problem. The State was an abstract entity which could only act through

[4] [1971] 2 All ER 593.