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State Responsibility - Summary of the discussions in various United Nations organs and resulting decisions - Working paper prepared by the Secretariat

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STATE RESPONSIBILITY

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Summary of the discussions in various United Nations organs and the resulting decisions : Working paper prepared by the Secretariat

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Introduction

1. This working paper has been prepared in response to a wish expressed at the 686th meeting of the International Law Commission.[1] It consists of a summary of the discussions in various organs of the United Nations and the decisions taken by those organs between 1946 and 1963, concerning the question of State responsibility.

2. It must be pointed out, however, that it does not contain a summary of the discussions which took place in the International Law Commission or the Sixth Committee on the scope of the topic of State responsibility and the best way to deal with it, because the report of the Sub-Committee on State Responsibility, which was unanimously adopted by the Commission at its fifteenth session, has already dealt with these questions.[2]

3. A list of the resolutions cited in this document is given in an annex.

[1] See *Yearbook of the International Law Commission, 1963*, vol. I, summary record of the 686th meeting, paras. 54, 72 and 75.

[2] See "Report of the International Law Commission on the work of its fifteenth session", *Official Records of the General Assembly, Eighteenth Session*, Supplement No. 9 (A/5509), para. 55 and Annex 1 ; see also *Yearbook of the International Law Commission, 1963*, vol. II, p. 224 and pp. 227-259. For the previous discussions in the Commission and the Sixth Committee, see *Yearbook of the International Law Commission, 1959*, vol. I, 515th meeting, and *1961*, vol. I, 614th to 616th meetings ; *Official Records of the General Assembly, Fifteenth Session, Sixth Committee*, 649th to 672nd meetings ; *ibid., Seventeenth Session, Sixth Committee*, 734th to 752nd meetings.

Summary of the discussions and decisions of various United Nations organs on the question of State responsibility

I. Convention on the Prevention and Punishment of the Crime of Genocide

4. Certain aspects of the topic of State responsibility were considered when the draft Convention on the Prevention and Punishment of the Crime of Genocide was discussed in the Sixth Committee at the third session of the General Assembly. Opinions on the criminal responsibility of States were put forward during the discussion of the amendments to articles V, VII and X of that draft, in particular as regards the responsibility of States for acts of genocide committed or tolerated by them.[3]

5. Article V provided that those responsible for punishable acts should be punished "whether they are

[3] *Official Records of the General Assembly, Third Session, Part I, Sixth Committee*, 92nd, 93rd to 100th, and 103rd to 105th meetings.

constitutionally responsible rulers, public officials or private individuals".[4] The United Kingdom proposed a new version of the article reading as follows:

> "Criminal responsibility for any act of genocide as specified in articles II and IV shall extend not only to all private persons or associations, but also to States, governments, or organs or authorities of the State or government, by whom such acts are committed. Such acts committed by or on behalf of States or governments constitute a breach of the present Convention." [5]

The sponsor later withdrew that part of the amendment referring to criminal responsibility but maintained the second part of the sentence for incorporation in article V of the draft.[6]

6. The majority of the representatives taking part in the debate expressed objections to this amendment even after the sponsor had withdrawn the part relating to criminal responsibility. To some the idea that States or Governments could be the authors of an act of genocide was unacceptable because such acts can be committed only by individuals acting on behalf of the State. Some others found the amendment ambiguous and inadequate, as its adoption would mean the inclusion in a document of criminal law of a provision establishing the civil responsibility of a State guilty of the crime of genocide. Representatives in favour of the amendment pointed out that because of the complex structure of the modern State acts could often not be imputed to an individual but only to a whole system and that while criminal sanctions could not be applied to States there were other sanctions which could be applied, such as "the dissolution of a criminal police or the seizure of material goods or financial resources belonging to the responsible Government".[7] The amendment was eventually rejected (by 24 votes to 22).[8]

7. Article VII of the draft provided for the punishment of genocide by national tribunals or by an international tribunal. An amendment submitted by the United Kingdom proposed the deletion of the article and its replacement by the following text:

> "Where the act of genocide as specified by articles II and IV is, or is alleged to be the act of the State or government itself or of any organ or authority of the State or government, the matter shall, at the request of any other party to the present Convention, be referred to the International Court of Justice, whose decision shall be final and binding. Any acts or measures found by the Court to constitute acts of genocide shall be immediately discontinued or rescinded and if already suspended shall not be resumed or reimposed." [9]

8. It was pointed out during the discussion of this article that the amendment in question had already been implicitly rejected by the rejection of the amendment to article V. It was thereupon decided that bodies corporate such as States and Governments should not be considered responsible for acts of genocide. Some representatives, however, expressed the view that responsibility for genocide lay with both States and individuals and that the proposed Convention should deal separately with the criminal responsibility of individuals and the international responsibility of States. The representative of Poland established a further difference with regard to the responsibility of States, namely, that it would be direct when they committed genocide, or indirect when they aided and abetted or tolerated the commission of the crime.[10]

9. The United Kingdom amendment was withdrawn, and its sponsor proposed that further consideration of the question should be deferred until the amendment to article X of the draft was discussed.[11]

10. Article X dealt with the jurisdiction of the International Court of Justice in disputes relating to the interpretation or application of the Convention. An amendment submitted jointly by Belgium and the United Kingdom was designed to extend the jurisdiction of the Court through the addition of the words "including disputes relating to the responsibility of a State for any of the acts enumerated in articles II and IV" [12] (article II of the draft containing the definition of genocide, and article IV enumerating all the punishable acts relating to it).

11. The United Kingdom representative, who had introduced the amendment, explained that it referred to civil responsibility.[13] Some representatives opposed the amendment, on the ground (among others) that the notion of State responsibility was vague, particularly in so far as genocide was concerned. Even if civil responsibility alone was taken into account, a number of problems would arise, and in particular that of the beneficiary of the compensation payable in cases where genocide was committed on the territory and against the citizens of the State concerned. In the opinion of most members of the Committee, however, article X was the proper place for establishing the responsibility of States in respect of crimes of genocide and for determining the international authority competent to try them. The amendment was eventually adopted with some slight modifications.[14] Article X became article IX of the final text of the draft adopted by the General Assembly on 9 December 1948 (resolution 260 A (III)), which reads as follows:

> "Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of the State for genocide or any of the other acts enumerated in article III, shall be

[4] For the full text of the draft, see: *Official Records of the Economic and Social Council, Third Year, Seventh Session, Supplement No. 6*, pp. 18 and 19.

[5] *Official Records of the General Assembly, Third Session, Part I, Sixth Committee, Annexes*, document A/C.6/236 and Corr.1.

[6] *Ibid., Sixth Committee*, 95th meeting, p. 346.

[7] *Ibid.*, 96th meeting, p. 350.

[8] *Ibid.*, p. 355.

[9] *Ibid., Annexes*, document A/C.6/236 and Corr.1.

[10] *Ibid., Sixth Committee*, 98th meeting, p. 376.

[11] *Ibid.*, 100th meeting, p. 394.

[12] *Ibid., Annexes*, document A/C.6/258.

[13] *Ibid., Sixth Committee*, 103rd meeting, p. 440.

[14] *Ibid.*, 104th meeting, p. 447.

submitted to the International Court of Justice at the request of any of the parties to the dispute."

II. Reparation for injuries incurred in the service of the United Nations

12. Some problems connected with State responsibility were raised during the consideration by the Sixth Committee of the "Memorandum of the Secretary-General relating to reparation for injuries incurred in the service of the United Nations" (A/674).[15] In the memorandum, the Secretary-General presented the following questions for consideration by the General Assembly:

"1. Whether, in the view of the General Assembly, a State may have a responsibility as against the United Nations for injury to or death of an agent of the United Nations;

"2. What should be the general policy with respect to the reparations or measure of damages which should be claimed;

"3. What should be the procedure for the presentation and settlement of claims." [16]

13. Although the discussion was devoted mainly to the question of the legal personality of the Organization and problems of procedure, some opinions concerning the international responsibility of States were expressed. For instance the question was raised whether a State could be held responsible in relation to the United Nations for the death or injury of a member of the United Nations staff. It was stated that there were no rules of customary or conventional law providing for such responsibility. Reference was made to the principle of international law according to which the right of one State to take action against another State to obtain compensation for injury caused to one of its nationals was based on the ties of nationality existing between the former State and the victim. As the tie between the United Nations and its staff was not one of nationality, there was no basis in international law for the Organization to make a claim for injury caused to a member of its staff.

14. Some representatives pointed out, however, that the reason why such rules did not exist was that there had not previously been any need for them. In any case, because of the need to ensure protection for international civil servants in the performance of their duties, the United Nations could not be presumed to have no right of recourse against the guilty State.

15. Some speakers who were opposed to admitting that the United Nations had the right to claim damages for injury incurred by a member of its staff referred to the possibility of double liability towards the Organization and towards the State of which the victim was a national. Reference was also made to the somewhat peculiar situation that would arise if the staff member sustaining the injury was a national of the State responsible. In response to the first objection, it was pointed out that a distinction must be drawn between the different elements of the injury, namely: the harm suffered by the victim and the persons entitled through him; the loss to the Organization of a member of its staff; the moral damage sustained by the Organization; and the financial loss to the Organization, which would have to pay compensation to the victim or to the persons entitled through him. In the latter three cases, according to that view, the right to claim damages would vest solely in the Organization.

16. Moreover, all representatives were of the opinion that compensation should be payable only for injury actually incurred, "exemplary" or "punitive" damages thus being barred.

17. The General Assembly adopted resolution 258 (III) on 3 December 1948, operative paragraph 1 of which reads as follows:

"*Decides* to submit the following legal questions to the International Court of Justice for an advisory opinion:

"'I. In the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State, has the United Nations, as an Organization, the capacity to bring an international claim against the responsible *de jure* or *de facto* Government with a view to obtaining the reparation due in respect of the damage caused (a) to the United Nations, (b) to the victim or to persons entitled through him?

"'II. In the event of an affirmative reply on point I (b), how is action by the United Nations to be reconciled with such rights as may be possessed by the State of which the victim is a national?'

"*Instructs* the Secretary-General, after the Court has given its opinion, to prepare proposals in the light of that opinion, and to submit them to the General Assembly at its next regular session."

18. The International Court of Justice rendered its advisory opinion on 11 April 1949,[17] giving an affirmative reply to the first question and establishing a general criterion to reconcile any conflict between the action of the Organization and such rights as the victim's national State might possess. At its fourth session, the General Assembly adopted resolution 365 (IV) of 1 December 1949, the operative part of which reads:

"1. *Authorizes* the Secretary-General, in accordance with his proposals, to bring an international claim against the Government of a State, Member or non-member of the United Nations, alleged to be responsible, with a view to obtaining the reparation due in respect of the damage caused to the United Nations and in respect of the damage caused to the victim or to persons entitled through him and, if necessary, to submit to arbitration, under appropriate procedures, such claims as cannot be settled by negotiation;

[15] *Official Records of the General Assembly, Third Session, Part I, Sixth Committee*, 112th to 124th meetings.

[16] *Ibid., Annexes*, document A/674.

[17] *Official Records of the General Assembly, Fourth Session, Sixth Committee, Annexes*, document A/955. *I.C.J. Reports*, 1949, pp. 187-188. Unanimous decision with regard to question I (a); decision taken by 11 votes to 4 on question I (b). See the dissenting opinions of Judges Badawi Pasha, Hackworth, Krylov and Winiarski, pp. 189 and 196-219.

"2. *Authorizes* the Secretary-General to take the steps and to negotiate in each particular case the agreements necessary to reconcile action by the United Nations with such rights as may be possessed by the State of which the victim is a national;

"3. *Requests* the Secretary-General to submit an annual report to subsequent sessions of the General Assembly on the status of claims for injuries incurred in the service of the United Nations, and proceedings in connexion with them."

III. Draft code of offences against the peace and security of mankind

19. The International Law Commission dealt briefly with the question of State responsibility when, pursuant to General Assembly resolution 95 (I) of 11 December 1946, it considered at its second session the draft Code of offences against the peace and security of mankind.[18] Mr. J. Spiropoulos, the Special Rapporteur on the subject, pointed out in his report to the Commission [19] that although the criminal responsibility of States was much discussed in theory, there had been no precedent concerning it in international practice. He reached the following conclusion:

"Following international practice up to this time, and particularly in view of the pronouncements of the Nürnberg Tribunal, the establishment of the criminal responsibility of States — at least for the time being — does not seem advisable.[a]

[a] It might be remembered that the limitation of criminal responsibility to individuals in no way affects the traditional responsibility of States, under international law, for reparation, a topic which is independent of the question of criminal responsibility."

After a brief exchange of views, the members of the Commission decided to deal only with the responsibility of individuals in the draft Code, it being understood, however, that the Commission was free to resume the consideration of State responsibility at a later time.

IV. Formulation of the Nürnberg principles

20. At the fifth session of the General Assembly the Sixth Committee raised the issue of the criminal responsibility of States in its consideration of the report of the International Law Commission on the work of its second session.[20] Part III of that report was devoted to the formulation of the Nürnberg principles. The Commission had formulated principle I as follows: "Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment." In its comments on that principle, the Commission had quoted the following sentence from the judgement of the Nürnberg Tribunal: "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provision of international law be enforced." [21]

21. The discussion of this principle in the Sixth Committee dealt chiefly with the possibility of regarding the individual as a subject of international law. Although the members of the Sixth Committee expressed differing opinions on this point, they agreed in rejecting the concept of the criminal responsibility of the State, since a State can be regarded as responsible only from the civil and administrative points of view.[22] The obligation of the State is to punish those who commit crimes or to permit other States or an international tribunal to punish them.

V. Peaceful uses of outer space

22. By virtue of resolution 1472 (XIV) of 12 December 1959, the General Assembly established a Committee on the Peaceful Uses of Outer Space and requested it to study, *inter alia*, "the nature of legal problems which may arise from the exploration of outer space".

23. In its resolution 1721 A (XVI) of 20 December 1961, the General Assembly repeated its request in the following terms:

"The General Assembly,

". . .

"*Invites* the Committee on the Peaceful Uses of Outer Space to study and report on the legal problems which may arise from the exploration and use of outer space."

24. At its ninth meeting, the Committee decided to establish two sub-committees of the whole, one of which was entrusted with the study of legal questions.

25. Among the topics considered by the Legal Sub-Committee at its first session, held in 1962, was a United States draft proposal on liability for space-vehicle accidents.[23] At the first meeting the United States representative said that the problem of legal and financial liability for damage caused by space-vehicle accidents should be solved at the earliest possible date. He suggested two principles to govern such liability: "First, the liability of a launching State or organization should be absolute; to require proof of negligence would generally be tantamount to denying the possibility of compensation. Second, liability should attach whether injury or damage occurred on land, on the sea or in the air." [24] He also suggested that a treaty would be the most appropriate form for handling the subject.

26. Although the majority of the members of the Sub-Committee recognized the importance of the problem of liability for damage caused by space exploration operations to third parties, some representatives maintained that before taking up specific questions such

[18] *Yearbook of the International Law Commission, 1950*, vol. I, summary record of the 54th meeting.

[19] *Yearbook of the International Law Commission, 1950*, vol. II, p. 261, para. 53.

[20] *Ibid.*, p. 364.

[21] *Ibid.*, paras. 98-99.

[22] *Official Records of the General Assembly, Fifth Session, Sixth Committee*, 231st to 236th meetings.

[23] *Official Records of the General Assembly, Seventeenth Session, Annexes*, agenda item 27, document A/5181, annex III D.

[24] A/AC.105/C.2/SR.1, p. 9.

as those of liability or of assistance to space vehicles, Governments should first acknowledge the basic principles of international law which governed relations between States in the exploration and use of outer space and which would serve as a guide for later agreements on more specific matters. Those representatives therefore recommended that priority should be given to the consideration of a draft declaration which had been submitted to the Sub-Committee concerning the basic principles which should govern the activities of States in the exploration and use of outer space.

27. In the course of the discussion various representatives laid stress on particular aspects of the question of liability which, in their view, should be included in the proposed study. These included: the fixing of liability in the case of space vehicles orbited by several States acting jointly or by an international organization, or in a case in which the builder and owner of a space vehicle was a State other than the launching State; liability for pollution of the atmosphere; identification of the vehicle and its parts; the case of space experiments which might prevent or hinder the scientific activities of other countries; the nature of the damage; the principles on which liability should be based; the body competent to rule on compensation for damage, and so on.[25]

28. The Sub-Committee submitted a report on the work of its first session to the Committee without having come to any agreement.[26] The proposals submitted to the Sub-Committee, including the above-mentioned United States proposal, were transmitted to the Committee and reproduced in its report.[27]

29. After considering the report of the Committee on the Peaceful Uses of Outer Space, the General Assembly, in resolution 1802 (XVII) of 14 December 1962, stressed "the necessity of the progressive development of international law pertaining to the further elaboration of basic legal principles governing the activities of States in the exploration and use of outer space and to the liability for space-vehicle accidents and to assistance to and return of astronauts and space vehicles and to other legal problems". In addition, it requested the Committee "to continue urgently its work on the further elaboration of basic legal principles governing the activities of States in the exploration and use of outer space and on liability for space-vehicle accidents and on assistance to and return of astronauts and space vehicles and on other legal problems".

30. The Legal Sub-Committee again took up the question of State responsibility at its second session, in 1963.[28] In the course of that session the representatives agreed on the advisability of adopting a declaration of basic principles governing the activities of States in the exploration and use of outer space. Reference was also made to a number of those principles, including that of the liability of States for damage caused by space activities to a foreign State or to natural or juridical persons in that State.

31. Among the documents considered by the Sub-Committee were a working paper submitted by the Belgian delegation (A/AC.105/C.2/L.7)[29] on the unification of certain rules governing liability for damage caused by space devices; the draft proposal on liability for space-vehicle accidents submitted at the preceding session (A/5181, annex III D); and a draft declaration of basic principles governing the activities of States in the exploration and use of outer space, which included the principle of State responsibility (A/5181, annex III A).

32. The problems relating to State responsibility which had been raised at the first session were taken up again and considered more carefully at the second session. A further report was submitted by the Sub-Committee to the Committee, part III of which (Summary of results) reads in part as follows:

> "II. As to two specific issues, namely:
>
> (*a*) rescue of astronauts and space vehicles making emergency landings, and
>
> (*b*) liability for space vehicles and accidents,
>
> a certain rapprochement and clarification of ideas were recorded and agreement was reached that the relevant instruments should take the shape of international agreements.
>
> "III. With a view to the desirability of reaching full agreement on the issues on the agenda of the Sub-Committee, the delegations taking part in its work recommend that contacts and exchanges of views should continue, on which further action by the Committee and Sub-Committee will depend. It would be desirable that these consultations should take place prior to the next session of the Committee on the Peaceful Uses of Outer Space."[30]

33. The Committee on the Peaceful Uses of Outer Space submitted to the General Assembly at its eighteenth session a report reproducing item II above.[31] Subsequently, the Committee held its fifth session in November 1963[32] in order to consider a new working paper drawn up as a result of the latest consultations and exchanges of views between the representatives. This document contained a "draft declaration of legal principles governing the activities of States in the exploration and use of outer space", Principles 5 and 8 of which read as follows:

> "5. States bear international responsibility for national activities in outer space, whether carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried on in conformity with the principles set forth in this Declaration. The activities of non-governmental entities in outer space shall require authorization and continuing supervision by the State

[25] A/AC.105/C.2/SR.1-15.

[26] A/AC.105/C.2/3 and A/AC.105/6.

[27] *Official Records of the General Assembly, Seventeenth Session, Annexes*, agenda item 27, document A/5181, annex III.

[28] A/AC.105/C.2/SR.16-28.

[29] Also A/5549, annex III H.

[30] A/AC.105/12.

[31] A/5549, para. 19.

[32] Twenty-fourth meeting of the Committee, A/5549/Add.1, annex.

concerned. When activities are carried on in outer space by an international organization, responsibility for compliance with the principles set forth in this Declaration shall be borne by the international organization and by the States participating in it."

. . . . .

"8. Each State which launches or procures the launching of an object into outer space, and each State from whose territory or facility an object is launched, is internationally liable for damage done to a foreign State or to its natural or juridical persons by such object or its component parts on the earth, in air space or in outer space." [33]

34. During the consideration of the draft declaration, several representatives (United States, Australia, France, United Kingdom) pointed out the absence of any reference to international organizations in Principle 8. They concluded, however, that that paragraph should be interpreted in the light of the last sentence of Principle 5, which establishes the responsibility of international organizations and the States participating in them and which applies not only to that paragraph but also to all the principles enunciated in the draft declaration.

35. The Australian representative observed that Principle 8 did not establish any difference, as regards liability, between the State launching an object into space and the State from whose territory or facility the object was launched. In his view, the "lending" State should not be held liable for subsequent damage. Although some liability might properly rest with that State, the primary responsibility should rest with the launching State. It was also pointed out that the draft made no express reference to joint liability in the case of activities carried out jointly by two or more States.

36. At the twenty-fourth meeting the Committee unanimously decided to submit to the General Assembly an additional report containing the text of the proposed draft declaration.[34] The General Assembly approved the draft declaration by resolution 1962 (XVIII) of 13 December 1963. In resolution 1963 (XVIII), adopted on the same date, the General Assembly:

"1. *Recommends* that consideration should be given to incorporating in international agreement form, in the future as appropriate, legal principles governing the activities of States in the exploration and use of outer space;

"2. *Requests* the Committee on the Peaceful Uses of Outer Space to continue to study and report on legal problems which may arise in the exploration and use of outer space, and in particular to arrange for the prompt preparation of draft international agreements on liability for damage caused by objects launched into outer space and on assistance to and return of astronauts and space vehicles;

"3. *Further requests* the Committee on the Peaceful Uses of Outer Space to report to the General Assembly at its nineteenth session on the results achieved in preparing these two agreements;"

[33] A/5549/Add.1, para. 6.

[34] A/5549/Add.1.

VI. The effects of atomic radiation

37. The question of the effects of atomic radiation was included in the agenda of the First Committee at the tenth, twelfth and thirteenth sessions of the General Assembly and in the agenda of the Special Political Committee beginning with the fifteenth session. The discussion was concerned chiefly with the technical and political aspects of the problem.

38. However, at the sixteenth session, when the report of the United Nations Scientific Committee on the Effects of Atomic Radiation was being considered in the Special Political Committee, some legal considerations affecting State responsibility were touched on.[35] A twenty-four-Power draft resolution (A/SPC/L.69 and Add.1) referred in its operative paragraph 1 to the responsibility of States concerning actions which might have harmful consequences for mankind, by increasing the levels of radioactive fall-out.

39. While a majority of the Committee agreed with the draft resolution, some representatives expressed disagreement, particularly with regard to operative paragraph 1. In their view, the provision contained in that paragraph had unwarranted political overtones that were out of place in a resolution on the technical activities of a group of scientists. The representative of Ceylon remarked that the provision was based on "principles of international law which were not yet settled, such as that of the illegality of nuclear and thermo-nuclear tests, which was open to question, or that of the responsibility of States". He also said that the International Law Commission had not given priority to the topic of State responsibility, as the General Assembly had asked it to do in resolution 799 (VIII), and he recalled that in the case, which had been cited in the debate, of the Japanese fishermen who had suffered from the effects of one thermo-nuclear explosion, the payment of compensation had been made *ex gratia* and had not been based on State responsibility.[36]

40. The draft resolution (A/SPC/L.69 and Add.1) was eventually approved by the Special Political Committee and was adopted by the General Assembly at its 1043rd plenary meeting. Operative paragraph 1 of the resolution reads as follows:

"*The General Assembly,*

" . . .

" 1. *Declares* that both concern for the future of mankind and the fundamental principles of international law impose a responsibility on all States concerning action which might have harmful biological consequences for the existing and future generations of peoples of other States, by increasing the levels of radioactive fall-out;" [37]

41. General Assembly resolutions 1764 (XVII) of 20 November 1962 and 1896 (XVIII) of 11 November 1963, dealing with the same matter, make no reference to the question of responsibility.

[35] *Official Records of the General Assembly, Sixteenth Session, Special Political Committee*, 262nd to 266th meetings.

[36] *Ibid.*, 265th meeting, para. 23.

[37] Resolution 1629 (XVI) of 27 October 1961.

VII. State responsibility for nuclear hazards

42. The International Atomic Energy Agency has also concerned itself with the problem of State responsibility. In its report to the General Assembly covering the period from 1 July 1958 to 30 June 1959, it stated that the Director General had selected a panel of legal experts " to advise him on any action that might seem desirable in the field of civil liability and State responsibility for non-military nuclear hazards ".[38]

43. On the basis of the work accomplished by this panel, a draft international convention setting up minimum international rules on civil liability for nuclear damage was prepared. The Agency convened an international conference, which on 19 May 1963 adopted the Vienna Convention on Civil Liability for Nuclear Damage.[39] Also under the auspices of the Agency, the Diplomatic Conference on Maritime Law held an *ad hoc* session at Brussels in May 1962, during which it completed and adopted the text of a Convention on the Liability of Operators of Nuclear Ships.[40]

VIII. Permanent sovereignty over natural resources

44. A particular aspect of the question of State responsibility — that of the responsibility of States for damage suffered by aliens in cases of expropriation — was discussed at length during the debates on " permanent sovereignty over natural resources " held in the Second Committee, the Economic and Social Council and the United Nations Commission on Permanent Sovereignty over Natural Resources.[41]

45. The Commission prepared a draft declaration designed to strengthen the right of peoples and nations to permanent sovereignty over their natural wealth and resources and decided to recommend it to the General Assembly for adoption. Opinion in the three above-mentioned bodies was divided on paragraph 4 of the draft declaration, dealing with the right of nationalization, expropriation or requisitioning and the conditions to which that right should be subject.[42]

46. On the one hand, it was asserted that the nationalization or expropriation of foreign property is generally subject to a rule which requires the State taking such action to compensate the owner. Compensation should be paid in accordance with the rules in force in the State nationalizing or expropriating the property in the exercise of its sovereignty and in accordance with international law. Moreover, expropriation, nationalization or requisitioning should not be the result of arbitrary measures but should be based on valid reasons of public utility, security or the national interest. Under these conditions the sovereign rights of States over their natural resources are affirmed, and at the same time international economic co-operation is ensured by adequate protection for foreign interests in accordance with the rules of international law. The representative of the United Arab Republic in the United Nations Commission on Permanent Sovereignty over Natural Resources also pointed out [43] that the right of any State to expropriate for reasons of public utility against payment of equitable compensation had been confirmed in the draft codification of the principles of international law governing State responsibility, which the International Law Commission was in process of preparing.[44]

47. The contrary opinion held that to require payment of compensation to the nationalized or expropriated enterprise restricted the principle of State sovereignty, since such a requirement would often make nationalization impossible. The objections of a number of delegations were directed primarily against the automatic character of such compensation. Since, in their view, there can be no other legal basis for nationalization procedures than national law, the State alone can judge whether or not the payment of compensation is justified. The supporters of this view also held that to require nationalization or expropriation to be justified by reasons of public utility, security or the national interest is to restrict the exercise of State sovereignty.

48. The General Assembly, in resolution 1803 (XVII) of 14 December 1962, adopted the draft declaration proposed by the Commission on Permanent Sovereignty over Natural Resources, with the amendments introduced by the Second Committee.

49. The final text of paragraph 4 of the declaration reads as follows :

> " Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, the national jurisdiction of the State taking such measures shall be exhausted. However, upon agreement by sovereign States and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication."

[38] International Atomic Energy Agency, *Report to the General Assembly of the United Nations covering the period from 1 July 1958 to 30 June 1959*, INFCIRC/10, para. 208.

[39] International Atomic Energy Agency, *Annual Report of the Board of Governors to the General Conference*, 1 July 1962-30 June 1963, GC (VII) 228, para. 97. Text of the Convention in *Documents of the Conference on Civil Responsibility for Nuclear Damage*, CN-12/46.

[40] *Ibid.*, 1 July 1961 - 30 June 1962, GC (VI) 195, para. 91. See English text in *A.J.I.L.*, vol. 57, pp. 268-278, and French text in *Revue générale de droit international public*, 1962, No. 4, pp. 894-904.

[41] *Official Records of the General Assembly, Seventeenth Session, Second Committee*, 834th, 835th to 843rd, 845th, 846th, 850th to 861st, 864th, 872nd and 876th meetings; *Official Records of the Economic and Social Council, Thirty-Second Session*, 1177th to 1179th and 1181st meetings; United Nations Commission on Permanent Sovereignty over Natural Resources, Third Session, A/AC.97/SR.19-33. See also the *Report of the Commission on Permanent Sovereignty over Natural Resources*. United Nations publication, Sales No. 62. V.6, part II.

[42] *Ibid.*, Annex.

[43] A/AC.97/SR.20.

[44] *Yearbook of the International Law Commission, 1958*, vol. II, document, p. 72, article 9.

50. In the course of the discussion in the Second Committee, attention was drawn on several occasions to the connexion between the subject under discussion and the work on the codification of the topic of State responsibility in the Sixth Committee. In part II of the abovementioned resolution, the General Assembly:

" . . .

" *Welcomes* the decision of the International Law Commission to speed up its work on the codification of the topic of responsibility of States for the consideration of the General Assembly."

51. In addition, the Secretariat prepared a study on " The Status of the Question of Permanent Sovereignty over Natural Wealth and Resources " (A/AC.97/5/Rev.2),[45] chapter III of which contains a summary of international adjudication and studies of draft codification relating to the responsibility of States in regard to the property and contracts of aliens.

52. This study was followed by another report by the Secretary-General (E/3840) prepared in accordance with the terms of part III of General Assembly resolution 1803 (XVII), in which the Secretary-General was requested " to continue the study of the various aspects of permanent sovereignty over natural resources ... and to report to the Economic and Social Council... ".

53. This report includes a part III (B) (paras. 221-239) dealing with State responsibility for property rights of aliens in cases of State succession. In this part of the report, consideration is given to State responsibility for State contracts, and specifically to the questions of subrogation of the successor State in respect of rights and duties under the concession contract, respect for private acquired rights, observance in good faith of agreements, requirement for compensation in the event of a taking, and standards of compensation.

54. Moreover, in part III (C) (paras. 240-244) of the report, reference is made to the studies of the International Law Commission, and in particular to the reports of the Sub-Committee on State Responsibility and of the Sub-Committee on the Succession of States and Governments.

[45] United Nations publication, Sales No. 62.V.6, part I.

Annex

List of General Assembly resolutions cited

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Digest of the decisions of international tribunals relating to State responsibility, prepared by the Secretariat

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