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Comments and observations of Governments on part one of the draft articles on State responsibility for internationally wrongful acts

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[Agenda item 3]

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Comments and observations of Governments on part 1 of the draft articles on State responsibility for internationally wrongful acts

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[*1 March, 6 and 16 April and 6 May 1982*]

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NOTE

The text of part 1 of the draft articles on State responsibility appears in *Yearbook . . . 1980*, vol. II (Part Two), pp. 30 *et seq.*

Introduction

1. The International Law Commission, having completed at its thirty-second session in 1980 the first reading of the whole of part 1 of the draft articles on State responsibility for internationally wrongful acts, decided to renew its 1978 request[1] to Governments to transmit their comments and observations on the provisions of chapters I, II and III of part 1 of the draft articles and to ask them to do so before 1 March 1981. At the same time, the Commission decided, in conformity with articles 16 and 21 of its Statute, to communicate the provisions of chapters IV and V of part 1, through the Secretary-General, to the Governments of Member States and to request them to transmit their comments and observations on those provisions by March 1982. The Commission stated that the comments and observations of Governments on the provisions appearing in the various chapters of part 1 of the draft would, when the time came, enable the Commission to embark on the second reading of that part of the draft without undue delay.[2]

2. The General Assembly, by paragraph 6 of its resolution 35/163 of 15 December 1980, endorsed the Commission's decision. By paragraph 4 (*c*) of the same resolution, the Assembly recommended that the Commission should, at its thirty-third session:

> Continue its work on State responsibility with the aim of beginning the preparation of draft articles concerning part two of the draft on responsibility of States for internationally wrongful acts, bearing in mind the need for a second reading of the draft articles constituting part one of the draft.

A similar recommendation to the Commission was made by the General Assembly in paragraph 3 (*b*) of its resolution 36/114 of 10 December 1981.

3. Pursuant to the Commission's decision, the Secretary-General, by means of a letter sent by the Legal Counsel, dated 8 October 1980, requested Governments of Member States which had not yet done so to

* Incorporating documents A/CN.4/351/Add.2/Corr.1 and A/CN.4/351/Add.3/Corr.1.

[1] The previous request for comments and observations on chapters I, II and III of part 1 of the draft articles was made by decision of the Commission at its thirtieth session in 1978 (*Yearbook . . . 1978*, vol. II (Part Two), pp. 77–78, para. 92). The comments and observations received were published in *Yearbook . . . 1980*, vol. II (Part One), pp. 87 *et seq.*, document A/CN.4/328 and Add.1–4.

[2] *Yearbook . . . 1980*, vol. II (Part Two), pp. 29–30, para. 31.

transmit their comments and observations on the above-mentioned provisions of chapters I, II and III of part 1 of the draft not later than 1 March 1981, and also to transmit their comments and observations on the provisions of chapters IV and V of part 1 of the draft not later than 1 March 1982. The comments and observations received from the Governments of five Member States by the end of the Commission's thirty-third session, on 24 July 1981, have been published.[3] The comments and observations submitted by the Governments of five other Member States between that date and May 1982 are reproduced below.

[3] *Yearbook . . . 1981*, vol. II (Part One), pp. 71 *et seq.*, document A/CN.4/342 and Add.1–4.

A. Comments and observations on chapters I, II and III of part 1 of the draft articles

Spain

[*Original: Spanish*]
[*10 August 1981*]

1. The Spanish Government considers that chapters I, II and III (arts. 1–26) of the draft articles prepared by the International Law Commission on the topic of State responsibility constitute a sound basis for the codification and progressive development of this important, extensive and complex subject-matter. It believes in particular that the Commission has found the right approach to the topic. Firstly, it was wise to confine these draft articles to international responsibility for wrongful acts, since responsibility for acts of States not involving a breach of international law raises very different problems which cannot appropriately be treated jointly with those raised by the first-mentioned type of responsibility. Secondly, it was wise to confine the draft articles exclusively to "secondary" rules, namely those aimed at determining the consequences of failure to comply with the "primary" rules. Codification and progressive development of the primary rules would have posed the difficult problem of setting a reasonable limit to the task, failing which international law would have to be considered almost in its entirety. Finally, the Spanish Government believes that, although responsibility for injuries to the person or property of aliens constitutes a prominent and, so to speak, classical part of the topic, the Commission was wise not to limit its study to that particular area but to consider other aspects of the international responsibility of States for wrongful acts which are also of great importance in this day and age.

Having made the above general remarks, we shall proceed with one observation on terminology, followed by specific comments on some of the draft articles.

2. The observation on terminology relates to the word *hechos*, which is used repeatedly throughout the draft articles to refer to the conduct of a State in relation to international responsibility. The Spanish Government believes that in Spanish the word *actos* is more apt than *hechos* because if, as stipulated in article 3, a necessary element of the wrongful act is that it must be attributable to the State under international law, then the fact of its being so attributable implies an element of self-will, and in Spanish legal parlance the wilful act of a natural or juridical person is termed an *acto*. *Hecho* is the generic term and *acto* is specific. In Spanish, States, like other juridical persons and like natural persons, commit not *hechos* but *actos*.

3. The principle enunciated in draft article 7, paragraph 1, namely that the acts of territorial governmental entities acting in that capacity are attributable to the State under international law, can be considered correct.

However, before such acts can entail the international responsibility of the State, the latter should be given the opportunity to prevent or make good the injury by means of the procedures available under internal law. Such an opportunity is not fully provided for in draft article 22, concerning the rule that local remedies must have been exhausted, since according to that rule such remedies must be sought by the alien private parties who suffered the injury, whereas it may be that action by the State aimed at preventing or making good the injury caused by a territorial governmental entity is not susceptible to private initiative, as in the case of article 155 of the Spanish Constitution of 1978.[1]

> 1. If an Autonomous Community fails to fulfil the obligations incumbent upon it under the Constitution or other laws, or acts in a manner seriously prejudicial to the general interests of Spain, the Government may, after calling upon the President of the Autonomous Community and, in the event of his failure to comply, with the approval of an absolute majority of the Senate, take such measures as are necessary to compel fulfilment of the said obligations or to protect the said general interests.
>
> 2. For the purpose of enforcing the measures provided for in the preceding paragraph, the Government may issue instructions to all authorities of the Autonomous Communities.

If an Autonomous Community of the kind referred to in the Spanish Constitution, which is obviously a territorial governmental entity of the State, were to commit a breach of international law, such conduct might *prima facie* constitute non-fulfilment of the obligations laid down by the Constitution and other laws. It should be noted in this connection that, according to the Autonomy Statutes already approved—with the status of organic laws—the Autonomous Communities are required to execute international treaties in all matters within their competence. Moreover, a breach of international law by an Autonomous Community might even be prejudicial to the general interests of Spain.

Should this be the case, according to article 155 of the Constitution, the Spanish Government could, subject to certain conditions, "take such measures as are necessary to compel fulfilment [by the Autonomous Community] of the said obligations [under the Constitution or other laws] or to protect the said general interests".

Since the Government can take this type of action on its own initiative, which means that it is not covered by draft article 22 on the exhaustion of local remedies, it would seem desirable to include in the draft an article allowing a State the opportunity to prevent or make

[1] Spain, *Boletín Oficial del Estado, Gaceta de Madrid*, No. 311.1 (29 December 1978); English trans. in A. P. Blaustein and G. H. Flanz, eds., *Constitutions of the Countries of the World* (Dobbs Ferry, N.Y., Oceana Publications, 1982).

good the injury when a territorial governmental entity commits a breach of international law. As the draft articles are not yet complete, it would of course be premature to indicate the exact place and substance of the suggested provision.

4. The Spanish Government wishes to stress the exceptional importance of draft article 19 (International crimes and international delicts) and the favourable reaction which the underlying ideas as a whole should evoke, in that they introduce a moral component into the topic of the international responsibility of States. However, at the present stage, when the draft articles do not yet specify the consequences of the commission of the international crimes referred to in article 19, paragraphs 2 and 3—particularly the regime of sanctions and the determination of which entities are empowered to initiate action—the Spanish Government is not in a position to give its definitive views on the distinction between international crimes and international delicts. Only when these two points are known will the Spanish Government be able to express a considered opinion on the question.

However, the Spanish Government does deem it appropriate at the present stage to make the following preliminary general comments on the distinction established in draft article 19:

(*a*) The examples of serious breaches of international law which, according to article 19, paragraph 2, would constitute international crimes require reference to be made to primary rules of international law, which appears inconsistent with the general principle adopted by the Commission of not dealing with that type of rule. In addition, the specific mention of certain cases, although not exhaustive and not in the nature of a *numerus clausus*, may create difficulties with regard to the status and significance of the cases omitted. Moreover, if, as appears to be the case, international responsibility for international crimes is to entail the imposition of sanctions, such crimes should be set forth in a full, well-defined and precise list. The analogies to internal penal law systems, where the principle of legality—*nullum crimen, nulla poena sine lege*—prevails, should be borne in mind.

(*b*) Determining in each specific case whether a State has committed an international crime is a delicate matter which may raise legal problems—whether there exists any international rule defining the crime in question—and factual problems—whether the acts attributable to a State can be subsumed under the rule which specifies the constituent elements of the crime. Since in most cases the State to which the crime in question is imputed is likely to deny its existence, an international dispute will arise between that State and the State, States or entities making the imputation. In order to settle such a dispute, it would be desirable to provide for compulsory recourse to an international jurisdiction, such as the ICJ or some other body. The Spanish Government believes that, in the absence of such compulsory jurisdiction, defining international crimes might give rise to abuse, friction and tension and, instead of serving the causes of peaceful coexistence between States and international justice, would create conditions inimical to those objectives.

(*c*) The Spanish Government also considers the problem of sanctions for international crimes to be a very delicate issue, since it raises the questions of determining what those sanctions will be (political, economic, military) and, in particular, of determining which organ will be competent to impose them. Although the United Nations Security Council might conceivably be used for this purpose, it must be borne very much in mind that the requirement of unanimity of the permanent members under Article 27 of the Charter would mean the establishment of a privileged regime for certain States. This requirement might in fact impede, and in many cases even preclude, the effective and just imposition of sanctions.

(*d*) In short, the Spanish Government considers that, although the concept of international crimes as distinct from international delicts embodied in draft article 19 is of considerable importance for the progressive development of international law, it requires institutional supports which it would be very difficult to establish in the present state of international relations.

B. Comments and observations on chapters IV and V of part 1 of the draft articles

Byelorussian Soviet Socialist Republic

[*Original: Russian*]
[*7 April 1982*]

The Byelorussian SSR considers that chapters IV and V of the draft articles on State responsibility prepared by the International Law Commission can serve as the basis for the preparation of an international legal document on this matter. However, the Byelorussian SSR wishes to make some observations in connection with the provisions of articles 28, 33 and 34.

Article 28

Article 28 speaks of the responsibility of a State for an internationally wrongful act of another State. The provision in paragraph 2 of this article clearly contradicts the principles of individual responsibility of States as set forth in the fundamental articles of the draft, specifically in article 1, which states that: "Every internationally wrongful act of a State entails the international responsibility of that State."

Accordingly, a State to which an internationally wrongful act is attributed cannot be released from responsibility for an act which it commits as a result of coercion exerted by another State.

However, since coercion in itself constitutes a wrongful act, the State which has used coercion against another State must bear international responsibility for its own acts as well, namely for the use of coercion against that other State.

Article 33

There is also a serious defect inherent in draft article 33, paragraph 1 of which precludes the wrongfulness of

an act of a State when that act is "the only means of safeguarding an essential interest of the State" or when the act "did not seriously impair an essential interest" of a State.

The admission of criteria such as the "essentiality" of interests or the "seriousness of impairment" as norms of international law is unjustified. It may give the State cause to interpret these criteria as broadly as possible and to violate its international obligations on this pretext, while avoiding responsibility for such acts.

The provisions of article 33, paragraph 1, contradict the essential meaning of the international responsibility of States and are therefore unacceptable.

Article 34

In order to avoid different interpretations of the term "self-defence", this article should speak of legitimate measures of self-defence and refer specifically to Article 51 of the Charter of the United Nations.

Netherlands

[*Original: English*]
[*28 April 1982*]

1. Before commenting on the draft articles submitted to it, the Netherlands Government feels it should stress that provisions concerning the settlement of disputes are a condition *sine qua non* for any codification of provisions on the subject in question. This view is prompted by a consideration of chapters IV and V as a whole. The Netherlands Government has already pointed out that such rules are necessary in its comments on chapters I, II and III.[1] Among the reasons for this is the use of terms which are not defined and perhaps cannot be defined in the abstract and which would therefore call for interpretation: "aid or assistance" and "rendered for" (art. 27); "coercion" (art. 28); "irresistible force" and "unforeseen external event" (art. 31); "essential interest" and "grave and imminent peril" (art. 33).

2. Certain provisions also refer to a "peremptory norm of international law" which is used to determine whether exceptions are applicable. Obviously it cannot be left solely to the State concerned—or, in the case of *jus cogens*, even to the States directly concerned—to judge on the interpretation and application of these concepts. Precisely on account of the possible effects of *jus cogens*, article 66 (*a*) of the 1969 Vienna Convention on the Law of Treaties[2] lays down the obligation to submit to the ICJ any dispute concerning the application or interpretation of the convention's provisions relating to *jus cogens*. A similar provision should certainly be inserted in the present articles. This question is of great importance since the relevant provisions proposed by the Commission cannot have the desired effect unless a third party is called upon to give an impartial and, ideally, binding opinion on their interpretation and application.

3. It is to be noted that chapter V (Circumstances precluding wrongfulness) departs from the Commission's distinction between "primary" and "secondary" rules, as all the provisions in the chapter (with the possible exception of article 35) are "primary rules". The Netherlands Government can assent to the inclusion of the chapter. However, it should be emphasized that the provisions are not intended to list exhaustively all circumstances precluding wrongfulness, so that an *a contrario* reasoning will not be correct.

Article 27

The Netherlands Government reserves the right to return to this article in the light of further alterations to the draft as a whole. Unlike the Commission,[3] it does not consider it a matter of course that the conduct of a third State should be considered in every case where one State violates its obligations *vis-à-vis* another. In principle it would be more correct and more practical to restrict the rule in question to serious cases such as the crimes referred to in article 19.

Article 28

The Netherlands Government observes that, in the situations referred to in this article, the wrongfulness of the State taking the action must be established on the basis of the other provisions in the draft, i.e., including the exceptions in chapter V.

Article 29

The Netherlands Government agrees with the Commission's comments[4] that the question of whether the injured State's consent has been given correctly in terms of competence must be assessed in accordance with the rules of international law. However, the view stated in paragraph (12) of the Commission's commentary, that the same principles apply in this respect as for establishing the validity of treaties, does not seem to be wholly correct. After all, there is certainly a difference between national rules on competence to enter into treaty obligations (or the extent to which such rules are apparent to third parties) and national rules (if any) on competence to give the consent referred to in this article.

Article 30

The Netherlands Government is of the opinion that the formula "if the act constitutes a measure legitimate under international law" makes insufficient distinction between the admissibility under international law of countermeasures in a concrete situation, on the one hand, and the limits imposed by international law on the modalities of a countermeasure which is in principle admissible, on the other.

Article 31

Although it may be admitted that the two exceptions dealt with here have aspects in common (albeit mainly as compared with the other exceptions), it would be clearer if they were to be dealt with in separate articles. As regards the "fortuitous event" element, the Nether-

[1] *Yearbook . . . 1980*, vol. II (Part One), p. 102, document A/CN.4/328 and Add.1–4.

[2] United Nations, *Juridical Yearbook 1969* (Sales No. E.71.V.4), p. 140.

[3] *Yearbook . . . 1978*, vol. II (Part Two), p. 99, commentary to art. 27.

[4] *Yearbook . . . 1979*, vol. II (Part Two), p. 112, commentary to art. 29, paras. (11) *et seq.*

lands Government observes that paragraph 2 is practically impossible to apply owing to the accumulation of requirements to which the "event" referred to in paragraph 1 must conform. If "unforeseen" were to be deleted, this would solve the problem.

Article 32

The Netherlands Government considers that there are insufficient grounds for retaining this article. There are no examples from practice. In cases relating to action by a State agency, the exceptions referred to in article 31 ought to be sufficient. Where there has been no action by a State agency but the rights of another State have been violated, the Netherlands Government believes it would be going too far to say that in the situation referred to in this article the only recourse open to the injured State would be that provided for in article 35.

Article 33

The Netherlands Government notes that the article leaves some ground uncovered by referring only to the contributions by the State which acts wrongfully to the coming about of a "state of necessity" (para. 2 (*c*)). It would be preferable for the article to take account of the possibility of the injured State itself having contributed towards the coming about of the situation referred to in this article.

Union of Soviet Socialist Republics

[*Original: Russian*]
[*31 March 1982*]

1. Chapters IV and V of the draft articles on State responsibility, prepared by the International Law Commission, serve on the whole as an acceptable basis for an international legal instrument on the subject. However, the following observations may be made concerning certain provisions in those chapters.

2. There appears to be no justification for article 28, paragraph 2, which states that an internationally wrongful act committed by a State as a result of coercion exerted by another State entails the responsibility of that other State. Coercion in itself is wrongful and entails the international responsibility of the State which exerts it. At the same time, coercion cannot be considered a factor which releases the State against which it is exerted from responsibility. That would run counter to fundamental articles of the draft, particularly article 1, according to which: "Every internationally wrongful act of a State entails the international responsibility of that State."

3. Also unacceptable is article 33, paragraph 1, under which the wrongfulness of an act may be precluded if that act was "the only means of safeguarding an essential interest" of the State or did not "seriously impair an essential interest" of a State. Owing to the vagueness and subjectivity of the criteria for assessing how "seriously" an interest is impaired and how "essential" an interest is, this article may be interpreted extremely broadly. The introduction of the above-mentioned concepts in essence totally undermines the basic principles of the international responsibility of States set forth in the draft.

4. Article 34 should make reference to lawful measures of self-defence in conformity with article 51 of the United Nations Charter.

Venezuela

[*Original: Spanish*]
[*22 September 1981*]

The following comments of the Government of Venezuela are by Mr. Leonardo Díaz González, Ambassador of Venezuela to Norway and member of the International Law Commission. They concern the discussion by the Commission, at its thirtieth to thirty-second sessions, of chapters IV and V of the draft articles on State responsibility. Thus they do not relate to the articles in their present form, which the Commission has now adopted. Nevertheless, the Government of Venezuela considers that, since the topic is a very new one and there is little doctrine on it to serve as a basis, the comments made by Mr. Díaz González may be regarded as representing Venezuela's position and their transmittal to the Secretary-General thus constitutes compliance with his request.

CHAPTER IV

Article 27

During the debate on this draft article,[1] certain amendments were made. Mr. Díaz González urged[2] acceptance of the word "complicity", inasmuch as there is complicity when a State, acting of its own free will as a sovereign entity, decides to render assistance to another State in order to enable it to commit an internationally wrongful act. The present version of this article is the result of a compromise between various views expressed in the Commission. In its new version, words such as complicity, accessory or international offence, which might give rise to misunderstanding, have been deleted. The article preserves the essence of what needs to be known about the material element, the internationally wrongful act, but it also takes into account the intention of the State rendering wrongful aid or assistance to another State. The aid or assistance must be rendered for the commission by the other State of an internationally wrongful act, and that intention must be established.

Article 28

It is a well-established principle that all sovereign States are responsible as subjects of international law. However, if this sovereignty is limited *de facto* or *de jure* by another State, whether by one of the traditional means or by one of the new means of control which have emerged in international relations, then that other State may incur responsibility. Furthermore, although all States are equal in principle, in practice some are more equal than others, as can be seen from a reading of the provisions of the Charter of the United Nations relating to the Security Council. Paragraph 1 of the draft article refers to "complete freedom of decision",[3]

[1] Originally draft article 25 (Complicity of a State in the internationally wrongful act of another State), see *Yearbook . . . 1978*, vol. I, p. 223, 1516th meeting, para. 4.

[2] *Ibid.*, p. 235, 1518th meeting, para. 19.

[3] For the original text of draft article 28, see *Yearbook . . . 1979*, vol. I, p. 4, 1532nd meeting, para. 6.

which implies that if that freedom were partial the situation would be different. However, freedom of decision, being bound up with sovereignty, either exists or does not exist. Any State which is subject to total or partial control by another State does not possess that freedom. The decisive factor is therefore *de jure* or *de facto* control. The party exercising *de jure* or *de facto* control must be the responsible party. If the control is exercised *de jure* or *de facto*, there is no difficulty. If it is exercised *de facto*, then the provisions of draft article 28 should apply.

Paragraph 2 is more precise in that it deals with control exercised by means of coercion. The decisive factor in this case is the party which exercises control in order to impose its will. Coercion can only entail the exclusive responsibility of the party exerting coercion. However, it must be made very clear that coercion does not mean only coercion exerted by armed force. Other types of coercion are now recognized. This diversity of means of coercion was discussed when article 52 of the 1969 Vienna Convention on the Law of Treaties[4] was being considered. Accordingly, the provisions of that article must be taken fully into account. The problem arises primarily in *de facto* situations.

CHAPTER V

Article 29

The discussion of chapter V dealt strictly with the question of preclusion of the wrongfulness of the act and not with renunciation of the State committing the wrongful act. What is at issue is the very existence of consent and the validity of its expression. It is therefore desirable to spell out in the actual text of the article that consent must be given validly and expressly.

Article 30

Drafting changes were suggested in this article to simplify the text and eliminate wording that might be controversial or open to misinterpretation, such as the word "sanction", which now seems to be used only to refer to measures agreed upon by the Security Council.[5] The article should be given a broader sense within the framework of international law and of the Charter of the United Nations. The present wording still leaves room for improvement in that direction.

Articles 31, 32 and 33

The concept of *lato sensu* of *force majeure* is accepted in international law with the three classical characteristics required under all national legal codes or legal systems, namely that the event or act should be external, unforeseeable and irresistible. The principle *ad impossibilia nemo tenetur* should be fully accepted with a view to protecting weak States and treating as cases of *force majeure* events which may be of entirely human origin, such as revolution, insurrection or civil war. Even where events are foreseeable, it may happen, as pointed out by Podesta Costa, that they are foreseeable but irresistible.

This protection based on impossibility of conformity, and the fact that non-conformity is consequently devoid of any wrongfulness, should be clearly spelt out.

The articles as currently worded have attempted to take into account and reconcile divergent views on the meaning to be attributed to the expressions *force majeure*, "fortuitous event", "state of necessity" and "extreme distress". It may be possible on the second reading to improve further the wording of the consensus of the views of Member States. For example, in article 33, with reference to norms of *jus cogens*, it may be possible to clarify the distinction between exemption and derogation, in that the former shows the flexibility of the legal rule while derogation merely gives rise to exceptions to its application.

Article 34

Underlying the principle of self-defence is the equally or more important problem of the definition of aggression. This draft article contains two basic elements which make it very difficult for us to accept it as currently worded—two restrictive, limiting elements. The first is the reference to aggression, which limits the concept to armed aggression only. It would be more appropriate to refer to an act of aggression. The second element is the restriction of the concept of self-defence to the scope of Article 51 of the Charter of the United Nations.

CHARTER OF THE UNITED NATIONS

Article 2, paragraph 4, of the Charter

Some guidance can of course be obtained, by interpretation *a contrario*, from this paragraph, which provides that States shall refrain from the threat or use of force against the territorial integrity or political independence of any other State. The converse of this provision is self-defence by the threatened State.

Article 2, paragraph 7, could also provide a basis for the use of self-defence.

Article 51 of the Charter imposes a limitation on the application of the principle by providing that the measures taken by Members in the exercise of the right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Council under the Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Thus it is for the Security Council to determine whether there has been a case of aggression and hence of self-defence, or whether there was no aggression and therefore no occasion for self-defence.

The Venezuelan Government considers that the concept of aggression cannot be limited to armed aggression only. In practice there are other kinds of aggression which may be much more of an actual threat to international peace and security: ideological aggression, armed aggression not by a regular army but by armed bands directly or indirectly supported by another State, and so on. All this has been made clear in the protracted debates at the United Nations attempting to define aggression. It makes it impossible for us to determine categorically when the use of force is or is not wrongful or when aggression provoking and

[4] United Nations, *Juridical Yearbook 1969* (Sales No. E.71.V.4), p. 140.

[5] The original title of draft article 30 was "Legitimate application of a sanction"; see *Yearbook . . . 1979*, vol. I, p. 55, 1544th meeting, para. 8.

justifying self-defence can be considered to have taken place. We have in mind cases of aggression such as economic aggression.

Within the American regional system, the Charter of the Organization of American States (OAS)[6] expressly sets out the principle of self-defence in article 18, which reads as follows:

> The American States bind themselves in their international relations not to have recourse to the use of force, except in the case of self-defense in accordance with existing treaties or in fulfilment thereof.

The other side of the coin appears in article 24 of the OAS Charter, which provides:

> Every act of aggression by a State against the territorial integrity or the inviolability of the territory or against the sovereignty or political independence of an American State shall be considered an act of aggression against the other American States.

and article 25 logically provides that:

> If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an armed attack or by an act of aggression that is not an armed attack, or by an extra-continental conflict, or by a conflict . . . that might endanger the peace of America, the American States, in furtherance of the principles of continental solidarity or collective self-defense, shall apply the measures and procedures established in the special treaties on the subject.

As can be seen, the provisions of the OAS Charter are very broad and comprehensive: (*a*) on what shall be understood to constitute aggression; and (*b*) as a corollary, on the application of the principle of collective self-defence.

Among the special treaties referred to in the above-mentioned article, the most important or basic treaty—after the OAS Charter itself, of course—is the Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro in 1947, which entered into force on 3 December 1948.[7]

Article 3 of the treaty reiterates the provisions of article 24 of the OAS Charter, quoted above, to the effect that every act of aggression against an American State shall be considered an act of aggression against the other American States, which are bound to meet the attack "in the exercise of the inherent right of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations".

The Venezuelan Government agrees with the excellent and well-documented report[8] of the Special Rapporteur, Mr. Ago, on the need to include in the draft articles on State responsibility a rule concerning self-defence, and believes that such a rule should be included. In our view, the article in question should be broadly worded and should not be limited to the scope of Article 51 of the Charter of the United Nations; rather, it should refer to the provisions of the Charter in general and to the principles of international law.

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[6] United Nations, *Treaty Series*, vol. 119, p. 48.

[7] *Ibid.*, vol. 21, p. 93.

[8] *Yearbook . . . 1980*, vol. II (Part One), p. 13, document A/CN.4/318/Add.5–7, especially pp. 51 *et seq.*, paras. 82 *et seq.*