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

Topic:
State responsibility

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STATE RESPONSIBILITY

[Agenda item 1]

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

[Original: English]
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Introduction

1. The International Law Commission, having completed at its thirty-second session, in 1980, the first reading of part 1 of the draft articles on State responsibility for internationally wrongful acts as a whole, decided to renew the request it had made to Governments in 1978¹ to transmit their comments and observations on the provisions of chapters I, II and III of part 1 of the draft articles, asking 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, requesting 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 of the various chapters of part 1 of the draft would enable it, when the time came, to embark on the second reading of that part of the draft without undue delay.²

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

¹ At its thirtieth session, in 1978, the Commission decided to request Governments to transmit their comments and observations on chapters I, II and III of part 1 of the draft (*Yearbook ... 1978*, vol. II (Part Two), p. 78, para. 92). The comments and observations received pursuant to that request are reproduced in *Yearbook ... 1980*, vol. II (Part One), p. 87, document A/CN.4/328 and Add.1-4.

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

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

Continue its work on State responsibility with the aim of beginning the preparation of draft articles concerning part 2 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 1 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. In paragraph 3 of its resolution 37/111 of 16 December 1982, the General Assembly recommended that, taking into account the comments of Governments, whether in writing or expressed orally in debates in the General Assembly, the Commission should continue its work aimed at the preparation of drafts on all the topics in its current programme.

3. Pursuant to the decision of the Commission, the Secretary-General, by means of a letter dated 8 October 1980 from the Legal Counsel, requested Governments of Member States which had not already done so to 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 requested them to transmit their comments and observa-

tions on the provisions of chapters IV and V of part I of the draft not later than 1 March 1982. The comments and observations of five Member States in reply to the Legal Counsel's letter received by the end of the Commission's thirty-third session, on 24 July 1981, and those received between that date and May 1982 from the

Governments of five other Member States, have been published.³ Comments and observations received subsequently are reproduced below.

³ *Yearbook ... 1981*, vol. II (Part One), p. 71, document A/CN.4/342 and Add.1-4, and *Yearbook ... 1982*, vol. II (Part One), p. 14, document A/CN.4/351 and Add.1-3, respectively.

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

Czechoslovakia

[Original: English]
[21 July 1982]

The draft articles contained in chapters IV and V of part 1 of the draft adopted by the Commission and submitted for comment to States Members of the United Nations represent, on the whole, a contribution to the progressive development and codification of international law and a good starting-point for further codification work.

In view of the continued codification work, Czechoslovakia's comments on the draft articles of chapters IV and V are to be considered preliminary.

1. While taking into account the fact that the final objective of the present codification work is to strengthen international peace and security, chapters IV and V may on the whole be considered acceptable, provided that some provisions are somewhat amended for the sake of precision, in order to avoid different interpretations that might occur in practice.

2. Among the provisions of chapter IV, it is necessary, in view of the wording of article 28, to emphasize the principle of the sovereign equality of States as well as the principle contained in draft article 1, which provides that "every internationally wrongful act of a State entails the international responsibility of that State". Although paragraph 3 of that article states that the provisions on the international responsibility of States which have committed internationally wrongful acts remain unaffected, there is no justification for considering coercion, which in itself is wrongful and entails international responsibility, as a factor which releases a State from international responsibility.

3. As for the provisions of chapter V, it must be noted that article 29, which provides that consent is one of the factors precluding wrongfulness, requires a more precise wording to eliminate doubts that might arise

with regard to the giving of consent, including the fact that consent must be given in advance and not subsequently, that it must be specific, free, given expressly, and given by the competent authority of the State in question. In that connection, however, doubts may arise in a certain light as to consent being a factor precluding wrongfulness. The consent of State A that State B should not fulfil an obligation that it has in respect of State A constitutes an agreement (whether oral or written), which cancels the original obligation of State B in respect of State A. In this light, however, one can hardly speak of wrongfulness or, consequently, of State responsibility.

4. In the case of article 33, relating to a "state of necessity", it must be kept in mind that, proceeding from the requirement of maintaining international peace and security, its practical application will be connected with difficulties. The inclusion of this article raises serious doubts, since, with reference to safeguarding an "essential interest", it actually enables States to violate their international obligations. If chapter V is drafted as a summary of exceptions to the four first chapters of the draft, its articles must be formulated precisely to eliminate the possibility of any misuse. But article 33 contains unclear formulations, such as "essential interest" and "grave and imminent peril", and it even extends the concept of the state of necessity to cases where there is no immediate threat to the existence of a State as a sovereign and independent entity. The wording of article 33 is also disputable with regard to the principle of sovereign equality, which prohibits a State to decide unilaterally which interests it can consider to be an "essential interest" of another State.

5. With regard to article 34, it must be pointed out that self-defence is the natural right of every State; consequently, the wording relating to the behaviour of States which is not in conformity with international law should be deleted.