

Document:-
A/CN.4/L.295

**Draft articles on State responsibility: text of article 30 proposed by Mr. Yankov - reproduced in
A/CN.4/SR.1545, para. 24**

Topic:
State responsibility

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20. Secondly, he had some doubts about the advisability of limiting the draft article to the consequences "of an internationally wrongful act committed by that other State". In his view, provision should be made at some point, and preferably within the context of the draft article, for the preventive measures that might be taken by or under the authority of the Security Council and that would necessarily precede the illegal act in question. In that connexion, he recalled that the measures required by the Security Council in the case of Rhodesia had been based on the provisions of Articles 39 *et seq.* of the Charter, pertaining to prevention of a breach of the peace, and that resolution 217 (1965) had in fact stated that the situation in Rhodesia involved a threat to peace. Article 40 of the Charter, moreover, provided that, before making the recommendations or deciding upon the measures provided for in Article 39, the Security Council could call upon the parties concerned to comply with provisional measures. Such provisional measures could involve, for example, a breach of a treaty requiring the supply of arms. Article 41 then vested in the Security Council the power to decide what measures not involving the use of armed force were to be employed to give effect to its decisions. In the light of those provisions, it seemed quite clear that it was the Security Council's practice to take decisions before a breach of the peace actually occurred. Possibly Mr. Ago could consider that point and offer some solution.

21. Mr. VEROSTA said that draft article 30 should be retained, but not necessarily in its present place in chapter V. Again, if the word "sanction" was to be retained, it would be preferable to speak in the French version of legitimate "application" rather than "exercise" of a sanction. He thought that Mr. Ushakov's proposal (1544th meeting, para. 28) was very interesting, but he was not in favour of referring to part II of the draft in the actual text of the article.

22. In his opinion, Mr. Jagota's proposal (para. 18 above) had the great merit of covering the two instances in which application of a sanction was legitimate: the case in which the State acted on its own initiative and the case in which it acted pursuant to a decision of a competent international organization.

23. Lastly, he thought that the word "decision", in the text proposed by Mr. Jagota, could be replaced by a more neutral term, for, as Sir Francis Vallat had pointed out, Article 40 of the Charter specified that: "In order to prevent an aggravation of the situation, the Security Council, may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable."

24. Mr. YANKOV, referring to his statement at the previous meeting regarding the distinction to be made between legitimate responsive measures undertaken by the State and sanctions imposed by a decision of an international organization, proposed the following new wording for the title and the text of draft article 30 (A/CN.4/L.295):

"Legitimate responsive measures or application of a sanction"

"The international wrongfulness of an act not in conformity with what would otherwise be required of a State by virtue of an international obligation towards another State is precluded if the act was committed as a legitimate responsive measure under international law or in application of a sanction imposed by a decision of a competent organ of an international organization against that other State, in consequence of an internationally wrongful act committed by that other State."

25. Noting that there appeared to be general agreement in principle, he proposed that the Drafting Committee should be requested to find a suitable wording in the light of the views expressed within the Commission.

26. Mr. SCHWEBEL welcomed the formulations proposed by Mr. Jagota and Mr. Yankov, which merited careful consideration by the Drafting Committee.

27. As to the question of the decisions of a competent international organization, he wondered whether the formulations were belied to some extent by Article 40 of the Charter, concerning the measures that the Security Council might deem necessary or advisable. Admittedly, that Article referred to both recommendations and decisions by the Security Council, and the Security Council could make recommendations in lieu of taking decisions. It had done so even in cases of the application of a sanction involving the use of armed force, as when it had recommended that Members should assist the Republic of Korea (resolution 83 (1950)). No decision had been taken by the Council requiring them to do so. There were certain areas in which the General Assembly might take decisions relating to sanctions, for example, in application of Articles 5, 6 and 19 of the Charter, but generally speaking it could do no more than issue recommendations. It should be noted that Article 40 provided that the provisional measures which the Security Council might deem necessary or desirable should be "without prejudice to the rights, claims or position of the parties concerned". The situation that the Commission was considering was precisely one where the rights of the parties concerned would in fact be prejudiced, which was why the Commission was seeking to provide that a State might in certain circumstances act in a manner that would otherwise be in violation of the rights of another State, provided that it did so in pursuance of a measure undertaken by an appropriate international organ or on its own appropriate initiative. Accordingly, it might well be that Article 40 of the Charter was precluded by its own terms from the ambit of the Commission's discussion.

28. Mr. AGO noted that the principle underlying article 30 seemed to have met with general approval and that the members of the Commission had commented essentially on drafting matters or points of detail. He emphasized that it was not the task of the