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**A/CN.4/L.363**

**Draft articles on Sates responsibility (part 2 of the draft articles). Texts adopted by the Drafting Committee: articles 1, 2, 3 and 5 - reproduced in A/CN.4/SR.1805, paras. 30, 33, 37 and 39**

Topic:  
**State responsibility**

Extract from the Yearbook of the International Law Commission:-  
**1983 , vol. I**

*Downloaded from the web site of the International Law Commission  
(<http://www.un.org/law/ilc/index.htm>)*

30. The Drafting Committee proposed the following text for article 1:

*Article 1*

**The international responsibility of a State which, pursuant to the provisions of part 1, arises from an internationally wrongful act committed by that State, entails legal consequences as set out in the present part.**

31. Article 1 corresponded substantially to draft article 1 of the second set. In the opinion of the Drafting Committee, the text approved made it unnecessary to retain articles 1 and 3 of the first set, the contents of which were covered. In article 1 of the second set, the emphasis had been on the internationally wrongful act and the rights and obligations arising therefrom. The Drafting Committee had considered it advisable to replace the reference to rights and obligations, which raised problems of interpretation, by a reference to "legal consequences". Since article 1 was intended to be a link between parts 1 and 2 of the draft, that amendment had been considered justified, since part 2 dealt with the content, forms and degrees of international responsibility, in other words determination of the consequences attached by international law to an internationally wrongful act of the State. Besides, the Drafting Committee had considered that it would be more in keeping with the content of part 1 to refer to the international responsibility of a State which, according to the provisions of that part, arose from an internationally wrongful act committed by that State, than merely to refer to that wrongful act, as in the Special Rapporteur's text. Lastly, for stylistic reasons the phrase "in conformity with the provisions of the present part 2" had been replaced by the words "as set out in the present part".

32. One member of the Drafting Committee had thought that article 1 should give a fuller indication of the contents of part 2 and to that end had proposed a text, which the Committee had not adopted.

33. The Drafting Committee proposed the following text for article 2:

*Article 2*

**Without prejudice to the provisions of articles [4] and 5, the provisions of this part govern the legal consequences of any internationally wrongful act of a State, except where and to the extent that those legal consequences have been determined by other rules of international law relating specifically to the internationally wrongful act in question.**

34. Article 2 gave expression to one of the two elements contained in article 3 of the second set of articles, namely determination of the legal consequences of an internationally wrongful act by rules of international law distinct from those contemplated in part 2. The second element related to customary international law, and the Drafting Committee had decided that it merited a separate provision, which was the present article 3.

35. Article 2 substantially reproduced the provision in article 3 of the second set of articles. As in article 1, the reference to an "obligation", or more specifically to its "breach", had been replaced by a reference to "legal consequences", an expression which had already been used in article 3 of the second set of articles. The order of the words in the introductory phrase had been reversed to give it more force and the words "except where and" had

been inserted before the words "to the extent that", in order to make the sentence more precise. Lastly, the phrase "the rule or rules of international law establishing the obligation or by other applicable rules of international law" had been replaced by the words "other rules of international law relating specifically to the internationally wrongful act in question". It had been considered that the latter wording had the same effect, but was clearer and more precise, and more consistent with the new terminology and the change of emphasis in the article.

36. In order to take into account the hierarchy of legal norms, both article 2 and article 3 began with the necessary saving clause concerning the provisions of a future article 4 on peremptory norms of general international law, and of article 5 on the provisions and procedures of the Charter of the United Nations.

37. The Drafting Committee proposed the following text for article 3:

*Article 3*

**Without prejudice to the provisions of articles [4] and 5, the rules of customary international law shall continue to govern the legal consequences of an internationally wrongful act of a State not set out in the provisions of the present part.**

38. Article 3 gave expression to the second element underlying draft article 3 of the second set of articles, namely the rules of customary international law. The wording of the article closely followed that of similar provisions in the preambles to codification conventions such as the 1969 Vienna Convention on the Law of Treaties and the 1978 Vienna Convention on Succession of States in Respect of Treaties. The adoption of article 3 would make it unnecessary to retain article 2 of the first set of articles.

39. The Drafting Committee proposed the following text for article 5:

*Article 5*

**The legal consequences of an internationally wrongful act of a State set out in the provisions of the present part are subject, as appropriate, to the provisions and procedures of the Charter of the United Nations relating to the maintenance of international peace and security.**

40. Article 5 corresponded essentially to draft article 5 of the second set of articles. As in the previous cases, the former reference to rights and obligations had been replaced by a reference to the "legal consequences of an internationally wrongful act of a State". In addition, it had been considered advisable to specify that the provisions and procedures of the Charter of the United Nations which took precedence were those relating to the maintenance of international peace and security.

CONSIDERATION BY THE COMMISSION

41. The CHAIRMAN invited members of the Commission to adopt the draft articles on State responsibility proposed by the Drafting Committee (A/CN.4/L.363).

42. Mr. MALEK said that, as the texts of those articles had only just been circulated, he had not had time to study