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Draft articles on State responsibility: Titles and texts of articles adopted by the Drafting Committee: Part 2 - reproduced in document A/CN.4/SR.2288, para. 5

Topic:
State responsibility

Extract from the Yearbook of the International Law Commission:-
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order to enable the Sixth Committee to take cognizance of them.

5. The general structure of the draft articles which had been adopted by the Commission in 1975 was in three parts: part 1, on the origin of international responsibility; part 2, on the content, forms and degrees of international responsibility; and a possible part 3, which the Commission might decide to include and which concerned the question of settlement of disputes and the implementation (*mise en œuvre*) of international responsibility.³ At its thirty-second session, in 1980, the Commission had provisionally adopted on first reading part 1 of the draft, consisting of 35 articles.⁴ At the conclusion of its thirty-seventh session, in 1985, it had provisionally adopted articles 1 to 5 of part 2.⁵ At the present session, the Drafting Committee had dealt with the subsequent articles of part 2 and had adopted articles 6 to 10 *bis* as well as a new paragraph 2 for article 1, the titles and texts of which read:

Article 1

1. ...

2. The legal consequences referred to in paragraph 1 are without prejudice to the continued duty of the State which has committed the internationally wrongful act to perform the obligation it has breached.

Article 6. Cessation of wrongful conduct

A State whose conduct constitutes an internationally wrongful act having a continuing character is under the obligation to cease that conduct, without prejudice to the responsibility it has already incurred.

Article 6 bis. Reparation

1. The injured State is entitled to obtain from the State which has committed an internationally wrongful act full reparation in the form of restitution in kind, compensation, satisfaction and assurances and guarantees of non-repetition, as provided in articles 7, 8, 10 and 10 *bis*, either singly or in combination.

2. In the determination of reparation, account shall be taken of the negligence or the wilful act or omission of:

(a) the injured State; or

(b) a national of that State on whose behalf the claim is brought which contributed to the damage.

3. The State which has committed the internationally wrongful act may not invoke the provisions of its internal law as justification for the failure to provide full reparation.

Article 7. Restitution in kind

The injured State is entitled to obtain from the State which has committed an internationally wrongful act restitution in kind, that is, the re-establishment of the situation that existed before the wrongful act was committed, provided and to the extent that restitution in kind:

(a) is not materially impossible;

(b) would not involve a breach of an obligation arising from a peremptory norm of general international law;

(c) would not involve a burden out of all proportion to the benefit which the injured State would gain from obtaining restitution in kind instead of compensation; or

(d) would not seriously jeopardize the political independence or economic stability of the State which has committed the internationally wrongful act, whereas the injured State would not be similarly affected if it did not obtain restitution in kind.

Article 8. Compensation

1. The injured State is entitled to obtain from the State which has committed an internationally wrongful act compensation for the damage caused by that act, if and to the extent that the damage is not made good by restitution in kind.

2. For the purposes of the present article, compensation covers any economically assessable damage sustained by the injured State, and may include interest and, where appropriate, loss of profits.

Article 10.* Satisfaction

1. The injured State is entitled to obtain from the State which has committed an internationally wrongful act satisfaction for the damage, in particular moral damage, caused by that act, if and to the extent necessary to provide full reparation.

2. Satisfaction may take the form of one or more of the following:

(a) an apology;

(b) nominal damages;

(c) in cases of gross infringement of the rights of the injured State, damages reflecting the gravity of the infringement;

(d) in cases where the internationally wrongful act arose from the serious misconduct of officials or from criminal conduct, disciplinary action against, or punishment of, those responsible.

3. The right of the injured State to obtain satisfaction does not justify demands which would impair the dignity of the State which has committed the internationally wrongful act.

Article 10 bis.* Assurances and guarantees of non-repetition

The injured State is entitled, where appropriate, to obtain from the State which has committed an internationally wrongful act assurances or guarantees of non-repetition of the wrongful act.

* The substance of article 9 (Interest) as proposed by the Special Rapporteur was incorporated in paragraph 2 of article 8. Hence the gap in the sequence of articles.

He wished to thank the Special Rapporteur, Mr. Arangio-Ruiz, for his scholarly cooperation with the Drafting Committee, as well as all the members of the Committee for their contribution to the intense and sometimes heated debate on very complex issues conducted in a spirit of understanding and mutual respect. He was also grateful to Miss Dauchy, Ms. Arsanjani and other members of the secretariat for their valuable assistance to the Committee.

6. The Drafting Committee had a number of remarks to make, article by article, on the texts it had provisionally adopted.

³ *Yearbook*... 1975, vol. II, pp. 55-59, document A/10010/Rev.1, paras. 38-51.

⁴ For texts, see *Yearbook*... 1980, vol. II (Part Two), pp. 26 *et seq.*

⁵ For text, see *Yearbook*... 1989, vol. II (Part Two), pp. 81-82.