Document:-
A/CN.4/SR.1209

Summary record of the 1209th meeting

Topic:
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Extract from the Yearbook of the International Law Commission:-
1973, vol. I

rather than have to incorporate it in article 1 at the risk of impairing the clarity of that provision.

52. As Mr. Hambro had suggested, it would be simpler to combine articles 3 and 4, although article 4 stated such a classical principle, so hallowed by international jurisprudence and State practice, that any change in the scope of that article would reduce its effectiveness and might give the impression that the Commission had been reluctant to confirm the principle it stated. He was therefore rather opposed to merging articles 3 and 4.

53. Strictly speaking, the concern expressed by Mr. Thiam related only to a later stage of the Commission's work. Admittedly, extenuating circumstances would have to be taken into account when the Commission examined the consequences of an internationally wrongful act, particularly the nature and amount of reparation, but for the time being that aspect need not be considered. It was only necessary to affirm the basic principle that there was no State to which an act characterized as wrongful could not be attributed.

54. Most members agreed with him that it would be better to reaffirm the principle stated in article 3, even though some thought it self-evident. It should first be laid down as a principle that any internationally wrongful act by a State engaged its international responsibility; that had been done in article 1. But a State might try to evade the international responsibility which was the necessary consequence of an internationally wrongful act by claiming that its circumstances were such that it could not commit a wrongful act. It was for the Commission to decide whether it should deal with that situation.

55. The wording proposed by Mr. Kearney tended to give a philosophical basis to the rule in article 3. Personally, he thought it would be better not to do that, so as not to run the risk of restricting the scope of the provision. On the other hand, he saw no immediate objection to the idea put forward by Sir Francis Vallat, of adding a second paragraph to article 1 to replace the present article 3, or, better, reversing the order of articles 2 and 3.

56. The real problem was how to express the idea contained in article 3. At present there was certainly a contradiction between the title and the content of that provision, which was explained by the successive changes that had been made to it. In its present form, the title might give the impression that the Commission considered that States were not the only subjects of international law capable of committing internationally wrongful acts, whereas it had decided to confine itself to the study of State responsibility. Hence the title must be amended.

57. As to the wording of the article, there were several possibilities. Mr. Reuter favoured a positive formula such as "Every State may have an internationally wrongful act attributed to it", whereas the Chairman had stated his preference for a negative formula, which might read: "No State may escape the attribution to itself of an internationally wrongful act if the necessary conditions are satisfied, or escape the resultant responsibility". Such a detailed negative formula would also allay the concern of Mr. Ushakov and Mr. Ustor. Personally, he did not attach very great importance to article 3, though he thought it preferable to restate the principle it contained. It would now be for the Commission or the Drafting Committee to examine the various formulas proposed and adopt one of them.

58. Mr. YASSEEN said that any negative wording which covered both attributability and responsibility might encroach on another sphere, namely, that of justification or perhaps of grounds for exoneration. It did not seem feasible to lay down a hard and fast rule without taking justification or grounds for exoneration into account.

59. Mr. AGO (Special Rapporteur) said he had always considered that the circumstances mentioned by Mr. Yasseen excluded the wrongfulness of the act, not merely the responsibility for it. If it were otherwise, article 1 would not be satisfactory. For if it were accepted that in such circumstances there could be a wrongful act without responsibility, that would give the impression that there was responsibility when a wrongful act was committed, but only provided that certain circumstances were absent.

60. Mr. USHAKOV, supported by Mr. YASSEEN, proposed that, in accordance with the Commission's usual practice, article 3 should be referred to the Drafting Committee.

61. Mr. BILGE said that the Drafting Committee should confine itself to seeking a formula relating to attributability, since there was already a satisfactory provision concerning responsibility.

62. The CHAIRMAN suggested that it would be better to refer article 3 to the Drafting Committee on the usual terms.

It was so agreed.[3]

The meeting rose at 12.35 p.m.

[3] For resumption of the discussion see 1225th meeting, para. 57.

1209th MEETING

Friday, 18 May 1973, at 10 a.m.

Chairman: Mr. Jorge CASTAÑEDA

Present: Mr. Ago, Mr. Bartoš, Mr. Bilge, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

State responsibility

(A/CN.4/217 and Add.1; A/CN.4/233; A/CN.4/246 and Add.1 to 3; A/CN.4/264 and Add.1)

[Item 2 of the agenda]

(continued)

1. The CHAIRMAN invited the Special Rapporteur to introduce article 4 in his third report (A/CN.4/246).

ARTICLE 4

2. *Article 4*

Irrelevance of municipal law to the characterization of an act as internationally wrongful

The municipal law of a State cannot be invoked to prevent an act of that State from being characterized as wrongful in international law.

3. Mr. AGO (Special Rapporteur) said that article 4 was important because it asserted the independence of the international legal order from the internal legal order in regard to the characterization of an act as internationally wrongful. Certain aspects of that independence had already become apparent during the examination of previous articles.

4. For instance, it had been established that the attribution of conduct to a State, irrespective of whether it was wrongful or not, must be made under international law, not under internal law. There were, indeed, acts which were not considered as acts of the State under internal law, but were so considered under international law. In attributing certain conduct to a State, international law was sometimes guided by internal law, but it could depart from internal law if it was considered preferable to follow a different course. It was certain that attribution of conduct to a State as a subject of international law was not the same things as attribution of conduct to a State as a subject of internal law.

5. The same independence of international law came into play when an act was to be characterized as internationally wrongful. In the internal legal order there were acts which were not wrongful and sometimes even resulted from the fulfilment of obligations, but were regarded as wrongful in international law. For example, a judge who applied a law promulgated by a State was doing his duty under the national law, but the judgement he delivered might constitute an internationally wrongful act if the application of the law in question was not in conformity with the requirements of a treaty to which that State was a party.

6. The independence of the internal and international legal orders had two consequences. First, the conduct of an organ of a State might be considered wrongful in internal law, but not in international law, since no rule of international law required the State concerned to abstain from such conduct. International jurisprudence provided many examples of such situations. Mixed commissions had frequently had to reject claims because they were based on branches of internal law which did not constitute failure to fulfil international obligations. In such cases, the commissions had referred the claimants back to the national courts. It should be noted, however, that such situations could involve violation of an international obligation if it could be established that, besides a breach of internal law, there was a denial of justice consisting, for example, in not giving an alien an opportunity to assert his rights before the national courts.

7. Both international jurisprudence, illustrated by the advisory opinion of 4 February 1932 of the Permanent Court of International Justice concerning the *Treatment of Polish Nationals in Danzig*,[1] and the practice of States had established that a violation of an international obligation did not necessarily follow from a mere breach of internal law. The 1930 Codification Conference had also recognized that principle.[2] The preparatory Committee for that Conference had submitted a questionnaire to States, called a request for information, in which that problem had been raised, and the replies from governments had been very valuable in the preparation of the present draft. The principle in question had been widely recognized by States and by private persons and private institutions which had prepared drafts codifying the law of State responsibility.

8. The proposition that a breach of internal law did not necessarily entail a breach of international law had as its counterpart the proposition that the absence of a breach of internal law did not preclude the existence of an internationally wrongful act if an international obligation was violated. The latter principle was, in that connexion, the second and most important consequence of the independence of the international legal order from the internal legal order. It had been one of the cornerstones of the jurisprudence of the Permanent Court of International Justice and of the International Court of Justice. It was useful to refer to the observations by Lord Finlay on the advisory opinion of the Permanent Court, delivered in 1923, on the question of the *Acquisition of Polish Nationality*.[3] Lord Finlay had maintained that just as a State could not rely on a provision of its internal law as an excuse for violating an international obligation, neither could it rely on a deficiency in its internal law. Both arbitral awards and the practice of States had widely recognized the second principle following from the independence of the internal and the international legal orders.

9. The rule which prevented the pleading, in international law, of any exception based on the conformity of the State's conduct with its own internal law had been generally recognized by the 1930 Codification Conference, for which it had been stated as a basis of discussion in the following form: "A State cannot escape its responsibility under international law by invoking the provisions of its municipal law". In 1949, the International Law Commission had drawn up a draft Declaration on rights and duties of States,[4] article 13 of which provided that: "Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty". A similar formulation was to be found in article 1, paragraph 3, of the preliminary draft prepared in 1957 by Mr. García Amador, the Special Rapporteur on the topic of State responsibility: "3. The State may not plead any provision of its municipal law for the purpose of repudiating the responsibility which arises

[1] *P.C.I.J.*, Series A/B, No. 44, pp. 24 and 25.

[2] See League of Nations, *Acts of the Conference for the Codification of International Law* (1930).

[3] *P.C.I.J.*, Series B, No. 7, pp. 22-26.

[4] See *Yearbook of the International Law Commission, 1949*, p. 287.

out of the breach or non-observance of an international obligation".[5] As to the Vienna Convention on the Law of Treaties, article 27 was worded as follows: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46". That principle also found expression in most of the codification drafts on the responsibility of States prepared by private persons or private institutions.

10. He was therefore proposing an article based on numerous precedents, particularly from jurisprudence, and modelled as closely as possible on article 27 of the Vienna Convention on the Law of Treaties. To avoid any lacuna or ambiguity, it was important to avoid the expression "internal legislation". Certain States might, indeed, seek a loophole in the fact that it was not their internal legislation, but administrative acts, judgements or other acts of the judicial authorities which were involved. For that reason, the expression "internal law" was preferable; it covered not only legislative provisions, but also constitutional rules, the supremacy of which over their ordinary laws was recognized by certain States, which might be tempted to invoke them as a means of escape.

11. Mr. RAMANGASOAVINA said the Special Rapporteur was to be congratulated on his excellent drafting and presentation of article 4. The provision was important, because it confirmed a recognized principle of international law which was solidly based on jurisprudence and practice.

12. It was essential that members of the international community should accept certain limits to their sovereignty, though reserving their laws and their constitution, which came within the "reserved domain". Just as in the internal order each State set its constitution above all other legislative provisions, so in the international order the United Nations Charter provided, in Article 103, that in the event of a conflict between obligations under the Charter and obligations under any other international agreement, the former obligations prevailed. A similar principle was stated in article 27 of the Vienna Convention on the Law of Treaties. In addition, most national constitutions contained a provision confirming the precedence of international treaties over internal law.

13. The principle stated in article 4 was therefore entirely necessary. It must be acknowledged, however, that in view of the present state of public international law, its validity was not absolute. Although, under the terms of article 38 of its Statute, the International Court of Justice applied international conventions, international custom, the general principles of law recognized by civilized nations and the teachings of publicists, it was not unusual for States to contest the effect of those foundations of its work.

14. For instance, certain customs that had been established for centuries were sometimes challenged. The *Lotus* case[6] was a famous example. Collisions at sea had long been recognized as coming under the jurisdiction of the flag State. But the penal code of Turkey authorized the Turkish courts to try those responsible for collisions occurring in its territorial waters. The Turkish courts had therefore declared themselves competent to try the officer of the watch of the ship Lotus, when it had called at a Turkish port. France, the flag State, had invoked the custom he had referred to, but the Permanent Court had decided in favour of Turkey, which had invoked its internal law. In that case, it seemed that in the view of the Permanent Court the custom had not been sufficiently well established. It should be noted, however, that it had subsequently been confirmed by the Geneva Conference on the Law of the Sea.[7] At the present time certain States were claiming air space and territorial sea which went beyond the recognized limits.

15. It was also to be feared that States were not always ready and willing to agree to certain of their acts being characterized as internationally wrongful. He wondered what authority would be competent so to characterize an act and to settle disputes. Difficulties could also arise when a State tried to exonerate itself, not by invoking internal law, but on purely political grounds.

16. Lastly, the title of the article was not very satisfactory. It might perhaps be redrafted to read "Non-application (or non-applicability) of internal law for preventing the characterization of an act as internationally wrongful".

17. Mr. TSURUOKA said he had no difficulty in accepting the idea expressed in article 4, which had a firm basis in jurisprudence and State practice. It was necessary to include that principle in the draft, if only to recall it to States, which were sometimes tempted to invoke their internal law. The reminder was less necessary for those few States which, like Japan, recognized in their constitutions the supremacy of international law over internal law.

18. With regard to the wording of the article, he would have preferred something which read less like a rule of procedure and better expressed the substantive rule confirmed by the article. He therefore suggested that the words "be invoked to" and "characterized as" be deleted, so that the provision would read: "The municipal law of a State cannot prevent an act of that State from being wrongful in international law".

19. It was understandable that the Special Rapporteur should have diverged from the wording used in judicial and arbitral decisions, since he was engaged in codification, not in compiling judicial decisions.

20. Mr. YASSEEN said that the subject under study was of an eminently international character. Everything took place within the framework of the international legal order: an internationally wrongful act was linked, by virtue of international law, to a State as a subject of international law. Consequently, no other legal order should be invoked to characterize the act as wrongful.

[5] *Ibid.*, *1957*, vol. II, p. 105.

[6] *P.C.I.J.*, Series A, No. 10.

[7] See article 11 of the Convention on the High Seas, in United Nations, *Treaty Series*, vol. 450, p. 88.

The Special Rapporteur had given a masterly exposition of the problem by going back to all the existing sources.

21. But although the idea on which article 4 rested was uncontested and incontestable, the form of the article perhaps left something to be desired. Its wording would be appropriate for a judicial decision or an arbitral award, but seemed rather limitative as the expression of a codified general rule. Article 4 should not refer solely to cases in which the internal law of a State was invoked to prevent a characterization. The formula proposed for the title covered a greater number of cases than the text of the article.

22. There was another aspect of the rule in question which should not be overlooked: a State could not rely on the internal law of another State to claim that an act by that State constituted an internationally wrongful act. It was therefore necessary to stipulate the irrelevance of internal law both for affirming and for contesting the internationally wrongful character of an act by a State. That was a point the Drafting Committee should consider.

23. He approved the use of the expression "*droit interne*" which could be taken to include both the existing provisions and the deficiencies of the law of a State.

24. Mr. KEARNEY, speaking of the draft articles in general, said that the titles seemed rather too long, particularly the title of article 8 (A/CN.4/246/Add.3, para. 197), and that it might be advisable to shorten them.

25. The principle stated in article 4 was absolutely essential in the modern development of the doctrine of State responsibility. He had some doubts, however, about the use of the word "characterized" in the English version, which seemed rather vague; perhaps the Special Rapporteur had gone too far in his attempt to make the article as universal as possible.

26. As defined in article 2, an "internationally wrongful act" had two aspects: first, attribution to the State of an act or omission, and secondly, failure to comply with an international obligation. When article 4 stated that the municipal law of a State could not be invoked to prevent an act of that State from being characterized as wrongful in international law in any circumstances, that involved the aspect of attribution and might create difficulties in connexion with the subsequent articles, particularly article 10 (Conduct of organs acting outside their competence or contrary to the rules concerning their activity) (A/CN.4/264). Paragraph 2 of article 10 read: "However, such conduct is not considered to be an act of the State if, by its very nature, it was wholly foreign to the specific functions of the organ or if, even from other aspects, the organ's lack of competence was manifest". Yet in order to determine the functions of the organ in question, it would surely be necessary to refer to the internal law of the State, and the possibility of doing so should not be ruled out in article 4.

27. He suggested that the words "municipal law" in article 4 be replaced by "internal law", which was the expression used in the Vienna Convention on the Law of Treaties, and that the text of the article be replaced by the following: "The internal law of a State cannot, except as specifically provided in these articles, be invoked as a defence against the attribution of conduct to that State or against the violation of an international obligation of that State".

28. Mr. SETTE CÂMARA said that the characterization of an act of State as an internationally wrongful act, that was to say the ascertainment of the fact that a State had failed to fulfil an international obligation, was made by reference to international law alone. The classical principle that municipal law could not be invoked as the basis for an exception to the rule of responsibility was beyond dispute. In support of his text, the Special Rapporteur had cited an impressive number of international decisions, mainly of the Permanent Court of International Justice, and a series of categorical statements made by States on different occasions, as well as doctrinal opinions, both of writers and of academic institutions.

29. He agreed with Mr. Kearney that the title of article 4 was too long and suggested that it be replaced by the words "The internationally wrongful act and municipal law". That would offer the advantage of avoiding the use of the word "irrelevance", which seemed to him too weak to express the meaning of the principle. It was more than "irrelevance", since it meant the exclusion of any exception based on provisions of national law.

30. Article 5 (A/CN.4/246/Add.1, para. 135), which dealt with the attribution to the State, as a subject of international law, of acts of its organs, provided an example of a specific reference to the internal order of a State for the purpose of deciding whether an individual or group of individuals possessed the status of organs of that State. There was, therefore, an apparent contradiction between the absolute and categorical rule in article 4, and a case in which provisions of municipal law were obviously pertinent for the characterization of the wrongful act. In other words, a State might invoke municipal law to prevent an act from being characterized as wrongful, if it contended that, according to its own internal legal order, individuals or a group of individuals whose conduct was considered to be internationally wrongful did not possess the status of organs of the State. That situation might be avoided simply by mentioning the hypothesis of article 5 as an exception to article 4.

31. The points he had raised were minor ones which could be dealt with by the Drafting Committee; he had no difficulty in accepting the substance of article 4 as proposed by the Special Rapporteur.

32. Mr. HAMBRO said that, in his opinion, the points made by Mr. Tsuruoka could be dealt with by the Drafting Committee.

33. The apparent contradiction, mentioned by Mr. Sette Câmara, between the categorical rule in article 4 and a case in which the provisions of municipal law were obviously relevant for the characterization of the wrongful act, certainly did raise difficult problems, but he did not think that a State's invocation of municipal law in such a case would necessarily mean that it was giving its own national law precedence over international law. In the present context, it was clear that article 4 referred to the primacy of international law in international

courts and fora, although the cases in question might be decided differently *in foro domestico*.

34. One reason why he was particularly satisfied with the Special Rapporteur's text was that it tended to strengthen the concept of the primacy of international law—something which was often forgotten by national politicians and legislators.

35. Mr. USHAKOV said he did not dispute the existence of the principle it was intended to express in article 4, but he thought that, as far as possible, the articles of the draft should deal directly with responsibility, not with the circumstances from which it derived.

36. Moreover, in the comments on article 4, in the Special Rapporteur's third report, several of the opinions quoted, particularly in paragraphs 98 and 100, related to responsibility, not to the characterization of an international act. They held that a State could not escape its responsibility under international law by invoking its internal law. Some members of the Commission had expressed the view that if internal law could not be invoked to prevent an act from being characterized as wrongful under international law, that was tantamount to saying that it could not be invoked by a State which had committed a wrongful act in order to escape its responsibility.

37. Personally, he thought it would be better to state the principle on the basis of responsibility, since there could be no responsibility without a wrongful act, whereas the converse was not true. As in the case of article 3, the reasoning of article 4 should be reversed. A single provision would be enough to express the idea that a State could not invoke its internal law in order to escape its international responsibility; but if the Commission also wished to express the idea that internal law could not be invoked to prove that an act was not wrongful, a second provision would be required. Generally speaking, States invoked their internal law to justify themselves rather than to establish that an act they had committed was not wrongful.

38. As to the drafting of article 4, he shared the objections of Mr. Ramangasoavina to the use of the words "from being characterized as"; that was more in the nature of a procedural formula. Furthermore, it might be asked who was to characterize the act as wrongful. It would be better to cast the sentence in positive than in negative terms, for on a literal interpretation it might be thought that municipal law could be invoked to prevent an act from being characterized as lawful.

39. Mr. ELIAS said that article 4 was a very necessary provision in the draft. It emphasized the primacy of international law over municipal law in the area of State responsibility. That principle was so axiomatic that it needed no proof.

40. The situation dealt with in article 4 was similar to that covered by article 27 (Internal law and observance of treaties) of the Vienna Convention on the Law of Treaties.[8] The position became still clearer when considered in the light of article 46 (Provisions of internal law regarding competence to conclude treaties) and article 47 (Specific restrictions on authority to express the consent of a State) of the same Convention,[9] which elaborated the principle of the primacy of international law.

41. The Special Rapporteur had cited an impressive body of international judicial decisions and State practice in support of article 4. The present discussion could therefore add little to the arguments justifying the inclusion of that article. The main difficulties which had arisen centred on the problem of finding an acceptable formulation.

42. The wording proposed by the Special Rapporteur was ingenious, but the Commission should try to improve it. It was desirable not only to adopt a positive instead of a negative formulation, but also to avoid some of the other difficulties which had been mentioned. He would suggest that the Drafting Committee consider the possibility of rewording article 4 to read: "A State may not plead its municipal law as an excuse for its internationally wrongful act".

43. Wording of that kind would make it clear that a State could not invoke its municipal law to prevent its act or omission from being characterized as an internationally wrongful act. At the same time, it would avoid the use of the procedural terms "invoke" and "characterization". Those terms could lead to misunderstanding and did not bring out clearly the essentially defensive character of article 4.

44. The Drafting Committee should seek a generally acceptable formulation which would emphasize the fact that the rule embodied in article 4 was intended to be used as a weapon of defence rather than attack.

45. Sir Francis VALLAT said that the learned and enlightening commentary on article 4 submitted by the Special Rapporteur contained a passage which caused him serious misgivings. It was the statement in the first sentence of paragraph 103 of the third report (A/CN.4/246): "There is no exception to the principle that municipal law has no effect on the characterization of an act of the State as internationally wrongful". He could follow the reasoning in the subsequent sentences of that paragraph, but he could not accept as it stood the statement in the first sentence, for there were many instances in which municipal law—the existence or non-existence of municipal law, or the application or non-application of such law—was in fact relevant to the question whether an internationally wrongful act had been committed.

46. For that reason, he would find it very difficult to accept an article 4 which reflected the thought in the first sentence of paragraph 103. His objection on that point was very close to Mr. Kearney's objection to the use of the unsatisfactory term "characterization". It was possible to speak in general terms of the "qualification" of an act. The "characterization" of a particular act, however, would depend on the particular circum-

[8] See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 293.

[9] *Ibid.*, p. 295.

stances of the case. Municipal law might thus well be relevant to determining whether the particular act constituted a breach of an international obligation.

47. As they stood, neither the title nor the text of article 4 were satisfactory. At the same time, he was strongly in favour of retaining that article. The principle it embodied had to be stated firmly and clearly. Indeed, he would venture to say that the adoption of an article on those lines would represent a considerable achievement by the Commission.

48. With regard to the drafting, he agreed with those speakers who had criticized the procedural formulation of the article. That type of formulation was not suitable for the opening articles of the draft, which dealt essentially with principles. It would be well to remember the difficulties that had arisen, during the discussions which had led to the adoption of the Vienna Convention on the Law of Treaties, from the use of the words "may be invoked" in relation to grounds of invalidity, termination and suspension of the operation of treaties, in part V of that Convention. Those difficulties provided one more argument in favour of avoiding, in article 4, any formulation which spoke of "invoking" a particular defence. The use of the verb "to invoke" and the negative formulation adopted for it were perhaps due to the fact that the wording of the article had been derived from judicial pronouncements.

49. He would suggest, for the consideration of the Drafting Committee that, in order to bring municipal law into the right relationship with international law, article 4 be redrafted to read: "An act of a State which is wrongful by international law cannot be rendered internationally lawful by virtue of the internal law of that State". The opening phrase made it clear that any question of municipal law being or not being an ingredient in the internationally wrongful act would already have been taken into account. The second part of the sentence laid down that, where an act was internationally wrongful, with due regard, if need be, to the municipal law ingredient, it could not be made lawful by virtue of the internal law of the State concerned. That wording would, he thought, avoid many of the difficulties which had arisen in connexion with article 4.

50. Lastly, he suggested that a passage be included in the commentary to make it clear that the reference to the "internal law" of a State was intended to embrace all its aspects, including constitutional law, municipal law proper, regulations issued pursuant to that law, and administrative and judicial acts in application of that law.

51. Mr. BARTOŠ said he had no criticism of the principle on which article 4 was based. There was no doubt that international law prevailed over internal law—jurisprudence was categorical on that point as witness, for example, the Nuremberg judgement. That did not mean that the existence of internal law was not taken into account, but that it could not be invoked to derogate from international law.

52. Two points should be stressed, however. The first was that certain rules of international law sometimes referred to internal law, and it then became an integral part of international law, which it supplemented. That was a point which should be mentioned in the commentary. The second point was that the influence of internal law on international law must not be underestimated. International law had its source in rules that were generally accepted by States. In some cases it could be interpreted correctly only by a comparative interpretation of the internal law of States and had to be understood according to the dominant idea emerging from that interpretation. Whether one liked it or not, internal law and international law influenced each other. Thus judges who had to pronounce on a case of omission, for example, would necessarily be influenced by the concepts of the legal system to which they belonged, even if they disregarded its rules.

53. Article 4 should therefore be understood as meaning that the influence of internal law should be resisted to the utmost when it came to characterizing an act as internationally wrongful or lawful.

54. Subject to those reservations, he could accept article 4.

Ninth session of the Seminar on International Law

55. The CHAIRMAN invited Mr. Raton, Senior Legal Officer in charge of the Seminar on International Law, to address the Commission.

56. Mr. RATON (Secretariat) said he wished first to thank those members of the Commission, particularly Mr. Kearney, Mr. Tabibi and Mr. Yasseen, who had stressed the value of the International Law Seminar before the Sixth Committee of the General Assembly.

57. He also wished to thank those members who had agreed to lecture to participants in the ninth session of the Seminar and hoped that other members would also agree to help, since the success of the Seminar depended on the active participation of members of the Commission. The Legal Adviser to the International Labour Office and a Director of the International Committee of the Red Cross would also be speaking at the ninth session, the latter on the subject of humanitarian rules applicable in armed conflicts, with special reference to General Assembly resolution 3032 (XXVII).

58. In 1973, the Seminar would bring together twenty-two participants—among them thirteen citizens of developing countries—thanks to the generosity of the States that were financing fellowship, namely, Denmark, Finland, the Federal Republic of Germany, Israel, the Netherlands, Norway and Sweden. To offset the combined effects of the monetary crisis and the rise in the cost of living, the Federal Republic of Germany, Finland and Israel had increased their contributions, and Denmark had doubled the amount of its grant. Two participants had received UNITAR fellowships.

The meeting rose at 1 p.m.