Document:-

A/CN.4/SR.1210

Summary record of the 1210th meeting

Topic:

State responsibility

Extract from the Yearbook of the International Law Commission:-

1973, vol. I

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

Copyright © United Nations

1210th MEETING

Monday, 21 May 1973, at 3.5 p.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. 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]

(resumed from the previous meeting)

ARTICLE 4 (Irrelevance of municipal law to the characterization of an act as internationally wrongful) *(continued)*

1. The CHAIRMAN invited the Commission to continue consideration of article 4 in the Special Rapporteur's third report (A/CN.4/246).

2. Mr. USTOR said that he fully agreed with the Special Rapporteur's conclusions and with the principle embodied in article 4.

3. In his rich supporting commentary the Special Rapporteur had used the inductive method, but his thesis could also be proved by the method of deduction. Article 4 flowed from the very nature of international law—from the fact that international law was a legal system distinct from the legal systems of individual States. That distinctness—a term which he preferred to "primacy"—led to the conclusion that it was the rights and duties of States prescribed by international law whose breach constituted an internationally wrongful act; it was therefore international law which attached responsibility to the effect of the breach and prescribed its consequences.

4. The internal law of a State could have a certain bearing on the question of responsibility. That law, however, could be referred to only if, and to the extent that, such reference was permitted or prescribed by international law. As the Special Rapporteur had pointed out, "international law may take into account certain situations existing in municipal law as a factual premise for the attribution which takes place within the sphere of international law" (A/CN.4/246, para. 87).

5. An illustration could be provided by a claim made by a State that one of its nationals had suffered injury in another State and had exhausted local remedies without avail. If the defendant State could prove that according to its laws the injured person also possessed its own nationality at the time of the injury, the claim would fail. The defendant State could then rely on its own nationality laws only because of the generally recognized rule of international law that a State could not grant diplomatic protection to a person who, at the time of the injury, possessed both its nationality and the nationality of the defendant State. Of course, if the nationality of the defendant State had been conferred upon the injured person only after the occurrence of the injury, that fact would be without effect on the responsibility of the defendant State.

6. Once the facts in the broadest sense were established, however—and that meant including any domestic legal situation that was relevant according to the rules of international law—the State whose responsibility was in question could not invoke provisions of its own internal law to avoid international responsibility. That point had been made clear in the statement by the Preparatory Committee for the 1930 Codification Conference quoted by the Special Rapporteur, that "a State cannot escape its responsibility under international law, if such responsibility exists, by appealing to the provisions of its municipal law" (A/CN.4/246, para. 98).

7. He fully agreed with the rule contained in article 4, but suggested that the Special Rapporteur and the Drafting Committee should amplify the text by drawing on the comments made during the discussion.

8. The CHAIRMAN, speaking as a member of the Commission, said that he was in full agreement both with the reasons given by the Special Rapporteur in support of article 4 and, basically, with the text of the article itself.

9. He shared the views of those members who had stressed the importance and practical usefulness of stating the principle embodied in article 4. With the present recrudescence of nationalism, it was not uncommon for the constitution of a country to provide that only those rules of international law which were compatible with its provisions should be applied.

10. He had been impressed by the fact that nearly all the opinions and decisions quoted by the Special Rapporteur confirmed that a State could not invoke its internal law to escape its international obligations or to exonerate itself from international responsibility.

11. The Special Rapporteur's formulation, however, stated the proposition in rather different terms: it specified that the municipal law of a State "cannot be invoked to prevent an act of that State from being characterized as wrongful in international law". Turning back to article 1, however, which laid down that every internationally wrongful act of a State involved its international responsibility, it was clear that article 4 led to the same results; once it was possible to characterize an act of a State as wrongful in international law, the responsibility of that State would be involved.

12. With regard to the difficult problem of the relationship between international law and internal law, and Mr. Kearney's remarks on article 10 of the draft,[1] it was possible to go even further. In some cases, the international and internal legal aspects were inseparably linked, as was shown by the *Fisheries* case between Norway and the United Kingdom.[2] The internal act, or the performance of an act in accordance with internal

---

[1] See previous meeting, para. 26.

[2] *I.C.J. Reports 1951*, p. 116.

law, was sometimes an integral and inseparable part of a complex situation which was partly internal and partly international. In the *Fisheries* case, which had related to the delimitation of maritime areas, there had been a close link between the internal and the international factors.

13. In such cases, it was difficult to assess the real practical significance of the formula proposed by the Special Rapporteur. That formula would have to be applied in an international society which was extremely fluid in regard to the norms of international law. It was often difficult to determine, in a given situation, whether a rule of international law existed or not. In such situations of uncertainty, the impact and even the final legal effect of a unilateral declaration was inevitably greater.

14. Since the 1958 Geneva Conference on the Law of the Sea, there had been some fifty unilateral declarations on the delimitation of maritime areas. The States making those declarations had based them on the need to fill a gap in international law. They maintained that there was no rule of international law prohibiting the establishment of such sea areas as fisheries zones. Many of those unilateral declarations invoked provisions of internal law.

15. Other branches of international law had also developed in the recent past. The law governing injuries to aliens, for example, was very different from what it had been forty years previously. The principle of the permanent sovereignty of States over their natural resources had greatly influenced that law.

16. While he had no proposal for any change in the text of article 4, he urged that the commentary should take full account of the problems mentioned during the discussion.

17. Mr. TAMMES said he could accept article 4 as it stood, but would suggest that the Drafting Committee consider a rather wider and more positive wording, in view of the obvious importance of the principle involved.

18. A negative formulation had already been used, however, in article 13 of the Commission's 1949 draft Declaration on Rights and Duties of States, which laid down that a State "may not invoke provisions in its constitution or its laws as an excuse for failure to perform" the duty to carry out its international obligations.[3] That article had been widely quoted to prove that the primacy of international law over internal law had become a positive rule of international law.

19. Whatever the legal position, article 4 was irreproachable. It specified that internal law was irrelevant for purposes of establishing whether an act of a State was contrary to international law. It did not deal with the question whether an act constituted an act of the State; that question was covered by article 5 and the following articles and was one for which internal law would be highly relevant. For the characterization of conduct as internationally wrongful, however, international law alone was decisive. Hence he had no difficulty in subscribing to the statement in paragraph 103 of the Special Rapporteur's third report that there was "no exception to the principle that municipal law has no effect on the characterization of an act of the State as internationally wrongful".

20. As he saw it, a provision of internal law only acquired its over-riding legal quality after it had been incorporated into the system of international law. The only possible exception was perhaps that of the body of moral rules which could render an act wrongful quite apart from considerations either of internal law or of international law.

21. He was in favour of referring article 4 to the Drafting Committee for consideration in the light of the discussion.

22. Mr. BILGE said he approved of the principle stated in article 4, which was supported by international jurisprudence, the practice of States and the preparatory work on codification.

23. The provision was linked with article 2, subparagraph (*b*); it developed the idea of failure to comply with an international obligation, by specifying that it was under international law that an act was characterized as wrongful. The Special Rapporteur had stressed that such characterization was independent of internal law. Although a breach of internal law did not constitute an internationally wrongful act when there was no violation of an international obligation, failure to comply with an international obligation could be characterized as an internationally wrongful act when there was no breach of internal law. That independence of international law could not be contested.

24. Nevertheless, the terms in which the principle was stated in international jurisprudence were very varied. Sometimes it had been said that internal law could not be invoked to escape international responsibility, while in other cases the courts had ruled that a State could not invoke its internal law to evade an international obligation. Most frequently, it was a formula of the latter type that had been used, and when the courts had referred to responsibility, they had regarded it rather as the result of failure to fulfil an obligation.

25. Personally, he would prefer article 4 to deal with failure to fulfil an international obligation, rather than with international responsibility. Moreover, in view of the general structure of the draft, there was no need to refer to international responsibility again in article 4. He was thus in full agreement with the principle stated in that article.

26. With regard to the text of the article, which was cast in negative form, it was in conformity with the formulations used in international jurisprudence. Some members of the Commission thought it important to stress the primacy of international law and to state the principle that internal law could not be invoked to escape international responsibility or to prevent an act from being characterized as wrongful. The Special Rapporteur considered it important to emphasize that it was under international law that an act was characterized as wrongful. That positive formula, which departed a little from those used in international jurisprudence, could be amplified by mentioning that internal law could not be invoked in that context.

[3] See *Yearbook of the International Law Commission, 1949*, p. 288.

27. He would prefer the title of the article to reflect more effectively the independence of international law, which the Special Rapporteur was particularly anxious to emphasize.

28. With regard to the expression "municipal law", it would be desirable to specify in the commentary that it referred to pure internal law. Thanks to the machinery of *renvoi*, it was indeed possible for rules of internal law to become rules of international law. On the other hand, it could happen, as in Turkey, that rules of international law embodied in national law became rules of internal law.

29. Mr. REUTER said he found article 4 acceptable, both as to drafting and as to substance.

30. The possibility of a *renvoi* from international law to internal law did not cause him any difficulty. For a State could invoke internal law to establish that it had not committed a wrongful act, when international law referred to internal law. In fact, such cases were frequent; an example was to be found in the article 5 proposed by the Special Rapporteur. International law also referred to internal law for the choice of judicial authorities, questions of nationality, the exhaustion of local remedies and all substantive rules. It remained to be seen whether article 4 should be complicated by mentioning cases of *renvoi*. He would prefer them merely to be mentioned in the commentary.

31. As to the wording of article 4, it was clearly taken from judicial decisions and constituted, as it were, a reply to a plaintiff, whence the expression "cannot be invoked". The draft article did not provide that internal law could not prevent an act from being characterized as wrongful under international law; it stipulated that internal law could not be invoked to prevent such characterization, and that raised the question of justification. In his opinion, that wording implied that the responsibility of the State had already been established in international law and that it was to claim an exception that the State could not invoke its internal law.

32. When the question of justification had been raised in connexion with article 1, the Special Rapporteur had said, first, that it would be examined in due course and, secondly, that responsibility was not involved when there was some justifying circumstance. He was prepared to accept article 4 as it stood, if the Special Rapporteur still considered that the question of justifying circumstances should not be dealt with until later. Otherwise, the wording of the article should be appropriately amended.

33. Mr. AGO (Special Rapporteur), summing up the discussion on article 4, said that with regard to the primacy of international law, he had carefully avoided referring to the theses of the dualist and monist schools, because the Commission had no need to consider them. In any case, the advocates of the two theories were now agreed in recognizing that in practice the consequences were not very different.

34. The two legal orders were independent, but not entirely without contact; they made *renvois* to each other. It was quite certain, however, that international law could not take account of a characterization under internal law which conflicted with it own.

35. It was true, as Mr. Elias had observed, that the opposite situation could be found: the constitution and jurisprudence of certain States proclaimed the primacy of internal law. Moreover, that primacy could exist in the national sphere even without being proclaimed; for instance, when a judge applied an internal law, even though in doing so he was committing an internationally wrongful act, it was internal law which prevailed, unless it had itself established the applicability and primacy of the rules of international law. The Commission, however, was concerned with defining the wrongfulness of an act, not at the national level, but only at the international level. At that level, it was by virtue of international law that an act was characterized as wrongful, even though the characterization would not be the same under internal law.

36. To allay the fears of certain members of the Commission, he pointed out that he was in agreement with them in recognizing that it was not unusual for the existence of a rule of international law to be challenged. In reality, international disputes often originated in a challenge of that kind. For instance, the *Lotus* case,[4] referred to by Mr. Ramangasoavina,[5] really turned on the existence of a rule of international law. The Permanent Court of International Justice had found that Turkey had been right in conforming to its internal law and ignoring an alleged international obligation which, in the opinion of the Court, did not exist.

37. It was important, however, to understand that the question of the existence or non-existence of a rule of international law was quite separate from the question of characterization referred to in article 4, and generally arose at an earlier stage. In that provision the question was assumed to have been answered. The purpose of article 4 was to lay down that if there was a rule of international law imposing an obligation on a State, that State could not invoke its internal law to show that the obligation did not exist.

38. It was always necessary to consider whether such an obligation existed and, if so, what were its content, its effect and its relevance to the case in point. Those questions would arise before the eventuality contemplated in article 4, and the answers they received would in no way be in conflict with that provision as drafted. Nevertheless, the commentary to the article would have to make that point clear. To take an example, the existence of a rule of international law on the breadth of the territorial sea was much contested. If a State extended the breadth of its territorial sea beyond the limit of twelve miles recognized by most States, the question of the existence of a rule of international law prohibiting such an extension would arise. If the rule was established, the State in question could not invoke its internal law to claim that its action was lawful. If, on the other hand, it was recognized that no such rule existed, the lawfulness

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

[5] See previous meeting, para. 14.

of the action would derive from international law, not from internal law.

39. Some members had considered that the wording of article 4 was too absolute, whereas others desired a more rigorous text. Among the former, Mr. Kearney, speaking of the relationship between article 4 and article 10, had asked whether article 4 referred solely to the element of the wrongful act consisting in failure to comply with an international obligation, or also to the element of attribution of certain conduct to a State. There seemed to be no denying that article 4 referred to the objective element, as Mr. Tammes and Mr. Bilge had shown, in particular, by pointing out the link with article 2, sub-paragraph (*b*).

40. As to the cases of *renvoi* from international law to internal law, and acceptance of principles of internal law by international law, they were in no way at variance with article 10. A rule of internal law which found its way into international law became a rule of international law and imposed international obligations. For the purposes of the draft, it therefore mattered little what was the origin of the rule of international law; there was no need to consider that aspect of the relations between the two legal orders.

41. Article 10 (A/CN.4/264) referred to an entirely special case, but he did not think there was any justification for mentioning it as an exception to the principle stated in article 4. Article 4 was intended to prevent a State from invoking its internal law when that law would characterize an act of that State differently from international law. A State must not be able to transfer to the sphere of its internal law, where it was lawful, a situation which international law regarded as wrongful.

42. With regard to attribution of an act to the State, it took place under international law, although chapter II clearly indicated how internal law came into play. Mr. Sette Câmara had pointed out that, according to article 5, the internal legal order had to be taken into consideration;[6] nevertheless, it was not by virtue of internal law that certain conduct was attributed to a State. The special situation dealt with in article 10 was not different; there, it was international law which accepted the reference to internal law, without there being any kind of conflict between the two legal orders. Article 4, on the other hand, referred to the case of conflict between the characterizations given by the two systems. Those explanations should be included in the commentary, but no exception should be introduced into article 4, since that might weaken that important provision.

43. Some members had criticised article 4 for being drafted in the form of a procedural rule. The wording he had proposed, however, was based on article 27 of the Vienna Convention on the Law of Treaties,[7] and that had not been drafted by an international court. Mr. Tsuruoka and Sir Francis Vallat had suggested excellent formulations,[8] but they would confer a theoretical character on the principle stated in article 4, whereas the present wording, and in particular the verb "invoke", well reflected the contentious element contained in the situation covered by the article, even if it was not submitted to a court. It would be for the Drafting Committee to find an adequate formula, but it was important to express clearly the idea that a State could not find a loophole in its internal law.

44. It might be asked, as Mr. Ushakov and Mr. Bilge had asked, whether article 4 should deal with the situation from the point of view of responsibility or of wrongfulness. In fact, the two ideas were inseparable, as appeared from article 1. To reinforce the effect of article 4, it might be provided that a State could not invoke internal law to oppose the characterization of an act as wrongful in international law and thus to escape the resultant international responsibility. The same formula could also be adapted to article 3. Indeed, the four articles in chapter I stated general principles which were valid for the whole of the draft, and it should be clear that they referred to both wrongfulness and responsibility.

45. With regard to the terminology, the French word "*qualification*" did not involve any assessment on the part of a judge. He acknowledged that it might perhaps have no exact equivalent in English, but he would regret having to drop it.

46. The title of the article, although considered too long by some members, had been found excellent by others. He was therefore open to any suggestion, but there was a danger in adopting titles that were too short and lacked clarity.

47. He agreed with Sir Francis Vallat that the commentary should explain how the expression "municipal law"—or "internal law"—should be understood.

48. Mr. Yasseen had asked whether it was not necessary to consider the case in which a State invoked the internal law of another State which it could not accuse of having violated an international obligation. He thought that case might be mentioned in the commentary, but it was perhaps not essential to deal with it in the article under consideration.

49. If the Drafting Committee thought fit to recast article 4, it should be guided by the wording adopted for the previous article. To meet the main comments made during the discussion, he would propose the following text: "The internal law of a State cannot be invoked to prevent an act of that State from being wrongful in international law and to enable that State to escape the resultant responsibility".

50. The CHAIRMAN suggested that article 4 be referred to the Drafting Committee.

It was so agreed.[9]

CHAPTER II: THE "ACT OF THE STATE" ACCORDING TO INTERNATIONAL LAW

51. The CHAIRMAN invited the Special Rapporteur to introduce chapter II of his draft (A/CN.4/246/Add.1-3; A/CN.4/264).

[6] See previous meeting, para. 30.

[7] 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.

[8] See previous meeting, paras. 18 and 49.

[9] For resumption of the discussion see 1226th meeting, para. 1.

52. Mr. AGO (Special Rapporteur), introducing chapter II, said that in chapter I, on general principles, after affirming that every internationally wrongful act involved international responsibility, he had tried to establish that conduct constituting failure to fulfil an international obligation must be attributed to the State. That was what was called the subjective element of the wrongful act. It had been recognized that the State had to act through human beings or groups of human beings whose conduct, which had to be attributed to the State, might consist of an act or an omission; that such attribution was necessarily a legal link and not a link of natural causality; and that the wrongful act was attributed to the State in its capacity as a subject of law or, more precisely, of international law. What now had to be determined, in chapter II, was when, in what circumstances and under what conditions such an attribution could be made.

53. The problems to be solved had a common denominator: what forms of conduct could be regarded as acts of the State? In theory, there was no reason why every act committed on its territory should not be attributed to the State. But that was not the case in practice, and he suggested that the Commission should adopt an essentially inductive method and examine the practice to see what theoretical principles could be derived from it.

54. In practice, it was mainly acts by persons—organs or agents—who participated in the "organization" of the State, that were regarded as acts of the State; in other words, acts by those who were organs of the State according to the internal legal order. The Commission would have to decide whether that statement went too far or not far enough—too far, because the acts of certain organs of the State might not be considered as acts of the State as a subject of international law; not far enough, because acts committed by persons who were not, strictly speaking, organs of the State, such as organs of public institutions other than the State, might none the less be regarded as acts of the State in international law.

55. The Commission would then have to consider whether, in international law, the act of an individual who, although not an organ or agent of the State, was in fact acting in the exercise of certain public functions, should not also be attributed to the State. It would also have to see whether international law attributed to the State the acts of organs placed at its disposal by another State or by an international organization. Next, the Commission would have to consider whether the conduct of an organ exceeding its competence, or acting contrary to the rules of internal law concerning the exercise of its functions, should be attributed to the State. It would further have to consider whether the acts or omissions of private persons could sometimes be attributed to the State and, if not, whether it was not necessary none the less to take into consideration as a possible source of responsibility the conduct—act or omission—of State organs in relation to the acts of those private persons. Lastly, the Commission would have to examine a whole series of highly complex situations arising out of action by insurgent groups against the State, and decide whether they should be treated in the same way, depending on whether or not the personality and structure of the State were affected by such action.

56. Before the Commission examined State practice and, by the proposed inductive method, established what was the existing position in international law, which could be modified if it thought fit, it should free itself from the influence of certain theories which might be a source of errors because they failed to differentiate between the attribution of an act to the State as a subject of international law and as a subject of internal law, and because they laid down as a principle that the fact of attributing conduct to a State automatically made the author of that conduct an organ of the State. The attribution to the State of an act which could be the source of international responsibility of the State was made under international law; but it was internal law alone which determined the organization of the State. It was wrong, starting from the principle that only the State could determine its organization according to its internal law, to say that when conduct was not an act of the State according to its internal law it could not be so in international law, just as it was absurd to say that it was international law which determined the organization of the State, or that international law delegated to the State the faculty of creating its own organization.

57. It must therefore be borne in mind that determination of the organization of the State and attribution of an act to the State were two entirely different things. Nor should it be forgotten that the doctrine of the act of the State applied not only to wrongful acts but also to lawful acts, even though the rules governing the attribution of a wrongful act to the State were much broader.

58. Two general conclusions followed from what he had said. The first was that the term "organization" of the State must be understood to mean the machinery of the State, in other words the complex of individual and collective entities through which it manifested its existence and performed its actions. The State set up its own machinery independently, on the basis of its internal law, and the existence of that machinery was presupposed in fact by international law. The second conclusion was that, so far as the international order was concerned, the internal organization of the State was merely a known fact to which international law referred in order to attribute an act to the State, while remaining free also to attribute to it acts not performed by members of that organization. In that connexion, one should not be misled by the use of the term "*renvoi*", which was sometimes used to describe that phenomenon.

59. Finally, the Commission should not allow itself to be held up by the various theories on the subject. The inescapable conclusions were those dictated by practice, which reflected the realities of international life and the rules governing it.

Membership of the Drafting Committee

60. The CHAIRMAN said it had been agreed that the Drafting Committee should include one of the two newly elected Latin American members of the Com-

mission.[10] He suggested that tha member should be Mr. Martínez Moreno.

It was so agreed.

The meeting rose at 5.55 p.m.

[10] See 1207th meeting, para. 3.

1211th MEETING

Tuesday, 22 May 1973, at 11.30 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. 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]

(resumed from the previous meeting)

ARTICLE 5

1. *Article 5*

Attribution to the State, subject of international law, of acts of its organs

For the purposes of these articles, the conduct of a person or group of persons who, according to the internal legal order of a State, possess the status of organs of that State and are acting in that capacity in the case in question, is considered as an act of the State from the standpoint of international law.

2. The CHAIRMAN invited the Special Rapporteur to introduce article 5 in his third report (A/CN.4/246/Add.1).

3. Mr. AGO (Special Rapporteur) said that, in introducing chapter II at the previous meeting, he had pointed out that an examination of the facts of international life led to the initial conclusion that, normally, the acts of persons or groups of persons regarded as organs of the State under its internal law were considered as acts of the State generating international responsibility. Of course, that principle must be accepted as following from an examination of the realities of international relations and not as a corollary of other principles. In particular, it must not be regarded either as absolute or as exclusive.

4. It was also according to international realities that it would be possible to determine whether all the acts of persons or groups of persons constituting organs of the State were to be attributed to the State, and what other conduct capable of involving the responsibility of the State could be attributed to it. Thus the basic principle stated in article 5 did not by any means make it unnecessary to consider whether other conduct was also capable of taking the form of an act of the State.

5. First of all, therefore, the Commission should make sure that the general rule in article 5 followed from the facts of international life. Although that rule had not often been expressly proclaimed by international courts, it had nevertheless often been applied or implicitly acknowledged. Sometimes it had been explicitly stated, however, and he referred members to the cases cited in paragraph 124 of his third report.

6. With regard to the practice of States, he drew attention to the positive replies by Governments to the three points in the request for information sent to them by the Preparatory Committee for the Hague Codification Conference of 1930.[1] Those three points had related respectively to the acts of legislative, judicial and executive organs—a distinction regarding which he urged caution, since States must not be able to find a loophole in induly narrow wording by claiming that some of their organs did not fit into any of those three categories. The Commission might later consider drafting a separate article to deal with just that eventuality.

7. The various formulations given to the principle by the Codification Conference, by public institutions, by learned societies and by individual research workers were to be found in paragraphs 125 and 126 of his third report. As for the literature, writers were unanimous in accepting attribution to the State of the acts of its organs for the purpose of determining its international responsibility; but their unanimity disappeared when it came to finding a theoretical justification for the principle—though that was an aspect of the matter to which the Commission need not devote much attention.

8. There could be no doubt that the rule in article 5 was part of existing international law. The only question that arose was how it should be formulated. It must be quite clear that article 5 stated an initial rule which was to be supplemented by the subsequent articles. It must also be emphasized that the rule related only to attribution to the State of an act which could engage its international responsibility. The rule must express the idea that the acts or omissions of persons or groups of persons having the status of organs of the State under its legal system could be regarded as acts of the State capable of being characterized as internationally wrongful, with the consequences following from such characterization.

9. Some writers had gone so far as to assert that the persons or groups of persons forming the organization of the State were wholly integrated into its personality. That was not the case: every person retained a sphere of private activity, his acts or omissions in which could not be attributed to the State. That seemed obvious, but in some specific cases doubts might arise as to the capacity in which a person had acted. An examination of the jurisprudence, the practice of States and the literature showed that it was not possible to attribute to the State the acts or omissions of private persons acting in their

[1] League of Nations, *Conference for the Codification of International Law*, 1929, vol. III, pp. 16 *et seq.*