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Summary record of the 1256th meeting

Topic:
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Extract from the Yearbook of the International Law Commission:-
1974, vol. I

1256th MEETING

Tuesday, 14 May 1974, at 10.10 a.m.

Chairman: Mr. Endre USTOR

Present: Mr. Ago, Mr. Bedjaoui, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Yasseen.

Organization of work

1. The CHAIRMAN announced that, in accordance with the Commission's instructions, the enlarged Bureau had met the previous day to consider the recommendation contained in paragraph 4 of General Assembly resolution 3071 (XXVIII) and had decided to recommend that the first step in the work on the law of non-navigational uses of international watercourses should be to appoint a five-member sub-committee, consisting of Mr. Kearney, as Chairman, Mr. Elias, Mr. Šahović, Mr. Sette Câmara and Mr. Tabibi. The sub-committee would consider the matter and report to the Commission.

It was so agreed.

2. Mr. KEARNEY said he thought the Sub-Committee should not be exclusive and that any other members of the Commission interested in the subject should be entitled to attend its meetings.

3. Mr. BEDJAOUI noted with satisfaction that, on the proposal of Mr. Yasseen, the Commission had decided to institutionalize the office of Chairman of the Drafting Committee and to elect Mr. Hambro to that office.

4. As he was speaking for the first time during the session, he could not omit to evoke the memory of Mr. Bartoš and to recall his great qualities of heart and mind and his devotion to the cause of international law. Mr. Bartoš, who had been one of the founders of the Commission, had had wide experience, acquired in long practice in international bodies, and had left behind him as a monument his work on special missions. It would be difficult to replace him in the Commission, but Mr. Milan Šahović could certainly do so better than anyone else. Referring to the role played by Mr. Šahović in the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, he welcomed his election to the Commission.

State responsibility

(A/CN.4/246 and Add. 1-3; A/CN.4/264 and Add. 1; A/9010/Rev.1)

[Item 3 of the agenda]

(resumed from the previous meeting)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 7 (Attribution to the State, as a subject of international law, of acts of organs of public institutions separate from the State) (*continued*)

5. Mr. EL-ERIAN noted with satisfaction the favourable reaction of the Sixth Committee of the General Assembly to the Special Rapporteur's conclusions, the criteria and methods he had adopted and the texts of articles 1 to 6. The Committee had accepted the distinction between "primary" and "secondary" rules, and had endorsed the Commission's decision to concentrate on the secondary rules and also to consider the question of responsibility for risk.[1]

6. In article 7, the inclusion of dependent territories in the list of territorial entities seemed unwise, for the same reason as had prompted the Commission to omit such a reference from texts it had adopted in the past, especially its draft on the law of treaties: protectorates and dependent territories would soon be a thing of the past and, since the Commission was legislating for the future, explicit provision for such cases was unnecessary. Moreover, a dependent territory was not an integral part of the metropolitan State, which merely assumed responsibility for the territory's international relations. The article should therefore be harmonized, in that respect, with other texts drafted by the Commission. The commentary to the article could include a paragraph explaining that point.

7. The reference to federal States might also raise a problem, because the federations formed in recent years, for example in the Middle East and Africa, were not federations in the traditional sense of the term as understood in international law, since their constituent elements retained their international personality. The classical federal State, for example the United States of America, was a composite State with a single personality in international law. He had no solution to offer, but hoped that the Special Rapporteur would find a way of overcoming that drafting problem.

8. Mr. RAMANGASOAVINA said he thought that article 7 definitely belonged among the articles relating to attribution to the State of the acts of various persons or groups of persons. The Special Rapporteur had submitted a draft article which was perfectly clear in scope and intention and had provided it with an excellent commentary, abundantly illustrated by examples drawn from international practice and the decisions of arbitral commissions and international courts. The article once again stressed the unity of the State for purposes of international responsibility, whatever the nature of the organ in question according to the internal legal order, and whatever the degree of attachment of the entity, political or administrative sub-division or autonomous public institution to the central power. The article did, however, call for some comments, some of which had already been made by other members of the Commission.

[1] See document A/9334, chapter III, section B.

9. First of all, the fact that characterization as an organ of the State was based on the internal law of the State could cause some difficulties, for as other members of the Commission had already pointed out, there were multinational and mixed corporations. In such cases, what criteria could be used to measure the extent of State control over such legal persons? Only internal law could answer that question, but internal law was not always very clear with regard to the constitution of certain corporations. The problem did not arise in the case of very large corporations, such as the *régie Renault*, which could assume their responsibilities, including international responsibilities, if necessary. But it might be asked what would happen if a corporation which was incapable of assuming its responsibilities incurred international responsibility by reason of an act or omission. That question might arise in a case of bankruptcy or, as some members of the Commission had said, with regard to press agencies, airlines or shipping companies. The answer was clear in the case of certain countries—socialist States or new States—where trade was controlled by the State in varying degrees and the State was more or less directly in charge of foreign trade. But in some cases it was a question not of State control pure and simple, but of general guidance or, more precisely, a general framework, as in the case of marketing boards. Commercial transactions were then the acts of private companies. There was also the case of research institutes which worked in foreign countries and did not always have a well-defined status under the internal law of their home State; it was obvious that such institutes were not placed at the disposal of the States in which they were established so that their responsibilities could be imputed to those States.

10. Thus, while accepting the principle and the rule in draft article 7, he thought it would be necessary to seek a better formulation, which would be both broader and more concise. The order of the terms given in brackets did not seem very logical, because the largest territorial entities, such as federated States, came after municipalities, which were only small administrative divisions. It might perhaps be preferable to use only a general designation, such as "political or administrative sub-division", for there was a danger that some entities might be omitted from a list intended to be exhaustive.

11. Like other members of the Commission, in particular Mr. Pinto and Mr. Martínez Moreno, he thought it might be useful to state more specifically that the articles under consideration related only to acts which were wrongful under international conventions or rules. He was aware that the Special Rapporteur had taken care to make that point clear in his oral introduction, but he thought it should be made clearer from the outest in the draft articles, having regard to the progressive development of international law.

12. Mr. QUENTIN-BAXTER, said that, while welcoming the strong support expressed in the Sixth Committee for the proposed study on responsibility for risk, he shared the uneasiness of some of its members about the separation of that subject from the study on State responsibility already in progress. It was perhaps merely a matter of emphasis, but there seemed to be some danger in such a dichotomy, which involved certain assumptions. It was not yet known how responsibility for risk should be categorized. In some State practice, the notion of abuse of rights had been used as the equivalent of a wrongful act. Since the concept of a wrongful act was separate from that of fault, it might be found convenient, for purposes of terminology or even of substance, to consider the words "wrong" and "breach" as applicable to the whole field of responsibility. Even if they were not, some of the material already prepared, especially the rules relating to attribution, was just as relevant to a study of responsibility for risk as to the study now in progress.

13. He shared the general feeling that it was time to begin that new, far-reaching study, not only because it was considered desirable by the international community and was intrinsically important, but also because the boundaries between State responsibility and responsibility for risk had not yet been clearly delineated. The light shed by the first stages of the proposed study might help the Commission to order its present work on State responsibility. The present study should be viewed in terms of primary and secondary rules of responsibility—the Commission was for the time being concerned only with the consequences of responsibility, not with the heads, causes and boundaries of responsibility.

14. He had no uneasiness about the use of the undefined term "State", which followed the wise precedent of the Law of Treaties. Admittedly, in the present more homogeneous international community there might not be many cases of semi-sovereignty, and those would be governed more by functions than by form. For example, there were small associated States whose legislatures were not subject to any other legislature, but which for limited purposes consorted with other sovereign States and might at some stage act at the level of international personality. The articles under discussion, if appropriately drafted, would then apply to them. He saw no solution to the problem posed by organizations of States acting jointly at some supranational level, but thought it would be wise to retain in the present draft the simple, well-understood concept of a State as an actor at the international level with territorial responsibility, in other words as a territorial authority and not as an organization.

15. In the title of article 7 it would be preferable to speak of institutions "distinct" rather than "separate" from the State, as the degree of separation might be minimal or notional. An institution with a separate legal personality under internal law might not be so treated in international law. A fundamental principle of international law was that it should not surrender to internal law the duty of characterizing the situations with which international law was concerned. The United Nations doctrine concerning colonialism and dependent territories was based on that principle, the statement of which was the first and essential purpose of article 7. The second purpose was the bold assertion that all subdivisions within a State carried the same kind of responsibility as the State itself.

16. He did not dissent from the reservations expressed about the kind of enumeration given in brackets in

article 7, but recognized that its purpose was to indicate which entities did not operate at the international level, not to establish a distinction between sub-divisions considered as organs of the State and those considered separate from the State. That was a step towards uniformity and away from the arbitrariness found in previous State practice. All development of law was a matter of moving away from rigidity, from situations in which procedure or formality determined the result, to situations in which a case could be settled on its merits.

17. As Mr. Reuter had rightly pointed out, from the common law point of view, the term "public corporation" probably did not have the meaning intended in article 7. A more general term without strong associations in internal law might have to be found. He agreed with Mr. Calle y Calle that the emphasis should be mainly on territorial entities, and only secondarily on the other entities.

18. Another question implicit in the comments on article 7 was whether the article should be made more specific, in an attempt to give guidance in the difficult cases which arose in practice. He did not think so. There was a strong tendency in law, and in the international community, to move away from the kind of situation in which it became materially important to decide, for example, whether an airline fitted into the definition of a public corporation because it happened to be State-owned, or whether it was a private company in which the State owned all or some of the shares. No airline could operate internationally without the good offices of its Government, which arranged with other governments for it to operate air routes and laid down technical and safety standards. There would be few cases in which responsibility in international law would depend on the degree of State ownership or control of an airline or railway. The fact of ownership should not greatly affect the procedure to be followed in claiming damages. If the claimant was an alien, it must be assumed that he could find remedies in domestic courts and that the rules under discussion would come into play only at the point where internal law proved deficient. If the State organ concerned was not liable under domestic law and there was a procedural bar to actions against the State, more direct representation would have to be made at the international level. However, it would be wise to state the general principle and assume that there was a desire for progressive development of the law in that direction, rather than for detailed codification of State practice.

19. That did not mean that State practice should be disregarded. Mr. Kearney had rightly referred to the vast amount of practice acquired in domestic courts relating to sovereign immunity, which, although on a different subject not necessarily commensurate with State responsibility, would contribute greatly to a study of public and private responsibility and functions. The compilation of a repertoire of State practice and the work of institutions relating to sovereign immunity would be most useful for the study of State responsibility, and was also relevant to the succession of States in matters other than treaties. Those remarks perhaps applied more to article 8 than article 7.

20. In general, article 7 would be acceptable with some minor drafting changes.

21. Mr. HAMBO said he had found the articles prepared by the Special Rapporteur admirable, on the whole, but was rather puzzled by article 7 and the Special Rapporteur's comments on it. His doubts had been strengthened by the discussion. Article 7 should be considered, not in isolation, but in conjunction with articles 6 and 8. Everyone agreed with the principle of the indivisibility of the State for the purposes of international law, as enunciated in article 6, though it did not go far enough, and additional provisions along the lines of article 7 were needed, since many public activities were not covered by the provisions of article 6.

22. The treatment of public corporations and autonomous public institutions as organs of the State, in the first part of article 7, was supported by a wealth of argument and examples, but he was not convinced. For example, he did not entirely agree with the statement in the commentary on the *Case of Certain Norwegian Loans*, cited in the Special Rapporteur's third report,[2] that some judges of the International Court of Justice had stressed the validity of the French argument. One of the judges mentioned had pointed out that the Norwegian Government, having claimed immunity for one of the banks concerned as an organ of the State in a previous case before a French court, could not subsequently disclaim responsibility in international law on the grounds that the bank had a personality distinct from that of the State. Thus it had in no way been decided whether the banks in question engaged the responsibility of the State. As Mr. Quentin-Baxter had said, claimants for damages against railway companies or airlines normally applied to domestic courts first, and then, if those institutions could not be sued, applied to a Supreme Court or directly to the State concerned. The settlement of such cases should not depend on whether or not the institution was characterized under internal law as a public corporation or an autonomous public institution, or on the manner in which it was organized or operated. However, it would be difficult to imagine that such institutions could, to any appreciable extent, commit illegal acts outside their contractual functions that would entail the kind of State responsibility covered by article 6.

23. The list of territorial entities in article 7 seemed to go too far for the purposes of the article. The reference to municipalities, for example, was unnecessary. The State would clearly not be responsible for any loans contracted by a municipality, but it could not disclaim responsibility for the protection of diplomats, for example, on the grounds that it did not control the municipal police. The State must never be allowed to evade responsibility for wrongful acts by organizing its activities outside its sphere of attribution. The former distinction between State activities *de jure negotii* and *de jure imperii* might perhaps be relevant, but it might not lead to much progress. No matter how a State's activities were organized, international law, not internal law, must

[2] *Yearbook ... 1971*, vol. II, Part One, p. 255, para. 167.

decide whether or not they should be characterized as State activities for purposes of international responsibility. The primacy of international law must be explicitly recognized and accepted. That was the substance of article 7, but its formulation was perhaps too general. A more strongly worded text might be worked out for article 6 after articles 7 and 8 had been fully discussed.

24. Mr. BEDJAOUI said that the idea expressed in article 7 seemed to be acceptable, though he could not help feeling some uneasiness about the drafting. For while it seemed perfectly legitimate to attribute to the State the conduct of some of its public bodies, he found it difficult to accept exclusive reliance on the internal legal order of the State concerned for determining the character of a dependent territory. For example, in contemporary international law it was not the internal legal order of the State which decided what constituted an autonomous administration of a dependent territory. Beyond the domestic jurisdiction reserved under Article 2, paragraph 7 of the Charter, there was now an international legal order which governed the question of dependent territories. It was therefore necessary to take account of the development of contemporary international law and recognize—as did the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations[3]—that a non-self-governing territory had "a status separate and distinct from the territory of the State administering it" until it had exercised its "right of self-determination in accordance with the Charter". That principle had been repeatedly affirmed by the United Nations. The most recent Advisory Opinion of the International Court of Justice had placed Namibia under the responsibility of the United Nations in the light of the decisions of the Security Council.[4] Consequently, by reason of the continued presence of South Africa in Namibia, the occurrence of a wrongful act in Namibia engaged the responsibility of the Republic of South Africa as a *de facto* authority. In any event, he found it difficult to rely solely on the internal legal order of the State where the autonomous administration of dependent territories was concerned. In that respect, article 7 raised a drafting problem which involved a question of principle.

25. That being so, he understood the difficulties encountered by the Special Rapporteur in defining public corporations and other autonomous public institutions; he himself had met with similar difficulties in his work on succession of States in respect of matters other than treaties. The fact that the Special Rapporteur had found it necessary to give examples in parentheses clearly showed that he was aware of those difficulties and was not fully satisfied with the terminology he had used. In dealing with the case of mixed corporations linked with two or more States, the problem of the joint responsibility of several States should be mentioned.

26. Sir Francis VALLAT said he wished to associate himself with the tributes paid to Mr. Bartoš at the 1250th meeting and with the decision then taken to hold a special meeting to honour his memory.

27. Draft article 7 was particulary important in the structure of the draft on State responsibility and he supported the general principles underlying it. The text, however, raised considerable problems, and since it dealt with two distinct matters—that of territorial entities and that of the bodies described as "public corporations or other autonomous public institutions"—he suggested that it should be divided into two separate articles, or at least two separate paragraphs.

28. With regard to territorial entities, in connexion with which he would prefer not to use the unsuitable term "public", he urged that the list of entities given in brackets be deleted; it should be replaced by some satisfactory formula. In the commentary, however, an enumeration of that kind would be very valuable.

29. With regard to the other category of entities, he found the English terminology unsatisfactory. The term "public corporation" was much too wide and could be construed as covering a trading firm organized as a public company—which was obviously not what the Special Rapporteur intended. Similarly, the English term "autonomous public institution" could cover Church institutions or even certain clubs and there was clearly no intention to refer to organizations of that kind.

30. He assumed that the form of article 7 would ultimately be brought into line with that of articles 5 and 6 as adopted by the Commission at its previous session (A/9010/Rev. 1, chapter II, section B).[5]

31. Mr. KEARNEY said he supported the suggestion that article 7 should be divided into two articles. Territorial entities within a State or subject to its jurisdiction were in a different legal category from that of public corporations and similar institutions: they always exercised governmental power in greater or less degree, whereas public corporations or institutions did not. The separation would also make it easier to deal with with the problems raised by the diversity of State structures.

32. A drafting difficulty arose from fact that the terms "corporation" and "institution" could well have quite different technical meanings under the internal law of States. He would therefore prefer a much more general term, possibly "organization". As for the term "public", it was far too vague in English to serve as a basis for the allocation of State responsibility. He suggested that it be replaced by the term "governmental" which, although not perfect, was closer to the intended meaning.

33. With regard to the substance of the matter, his own conclusion was that the internal law which established an organization determined its status. That status could be governmental, non-governmental or "mixed". International law determined whether the status of the organization was such that the State was responsible for all or part of its acts and, if for only part of them, what those acts were.

[3] General Assembly resolution 2625 (XXV), annex.

[4] *I.C.J. Reports 1971*, p. 16.

[5] Reproduced in *Yearbook ... 1973*, vol. II.

34. Once internal law had specifically established the status of an organization as a governmental organ, that decision was final and international law should not look behind it. When an organization was not specifically established as a governmental organ by internal law, however, it was for international law to determine whether the State was responsible for a particular act or acts. The principal criterion would be whether the act or acts were performed by the organization in the exercise of either a general delegation of governmental authority or a limited grant of that authority.

35. It remained to determine whether there was a need for a subsidiary rule whereby attribution to the State would take place only if the separate organ failed to meet its obligations arising out of an internationally wrongful act.

36. Mr. USHAKOV emphasized the importance, not only for the draft articles as a whole, but also for article 7 in particular, of the distinction between the responsibility of States for internationally wrongful acts and their objective liability. A State incurred objective liability both for the conduct of its organs and national bodies and for the conduct of its nationals and private bodies. For instance, a State was internationally liable for any damage which a ship flying its flag might cause on the high seas by spilling radioactive substances. Responsibility for an internationally wrongful act, on the other hand, was only generated by the conduct of the State itself, whether it was acting through its organs or through certain institutions exercising State powers by delegation.

37. With regard to immunities, he pointed out that they could sometimes be invoked as indirect evidence that the State itself had acted. That was not always the case, since there were several categories of immunity. Some immunities came under diplomatic law and applied to organs of the State and the persons composing them: for example, diplomatic missions and special missions. Others attached to State property, which was also exempt from the jurisdiction of another State. That category of immunities had no connexion with State responsibility. Thus a State-owned ship in a foreign port, being State property, was not subject to the jurisdiction of the foreign country concerned, but that immunity did not apply to the conduct of its crew. Hence immunities should be considered only as indirect evidence.

38. As to territorial public entities, he considered that their organs were organs of the State and that their conduct engaged the international responsibility of the State. Although that was self-evident, it might be advisable to make it clear in the article under consideration. The principle was subject to exceptions, however. The municipality of Moscow, which was an organ of the Soviet Union and exercised State powers in that capacity, engaged the responsibility of the Soviet Union by its conduct. Nevertheless, when it contracted a foreign loan, it was not exercising any State power—legislative, executive or judicial. It was acting as a legal person in civil law and did not engage the responsibility of the Soviet Union in any way; its contractual relations were subject to Soviet law or, depending on the rules of private international law, to some foreign law. It was essential that the distinction between the exercise and the non-exercise of State powers should be mentioned in the draft articles.

39. With regard to autonomous administration of dependent territories, Mr. Bedjaoui had said that under contemporary international law it was not the internal legal order of the State that determined what constituted an autonomous administration of a dependent territory. That question came under international law; it was even possible that the metropolitan State might engage its responsibility with respect to the dependent territory. That eventuality must be taken into consideration, bearing in mind that, where succession of States was concerned, the metropolitan State incurred responsibility for the international relations of a territory placed under its administration when it acted on behalf of that territory.

40. The CHAIRMAN, speaking as a member of the Commission, said that he had recently re-read an old article on the work of the Commision, in which the author suggested that it was perhaps fortunate that the Commission's list of topics looked "not unlike the chapter headings of a somewhat old-fashioned textbook", since it was "the basic material of the classical law" that needed working on first. For example, the study of the difficult problems of international economic law could only be undertaken in the light of a clear formulation of the basic principles of State responsibility, which the author described as "that most traditional and yet most elusive, unsettled and intractable problem which lies at the very core of any notion of an international law".[6]

41. Much had already been said about article 7 and he would not go into details. In a general way, he thought that a legal adviser to a ministry of foreign affairs would examine the draft articles with regard to two questions: first, whether they were couched in language such that his Government could be made responsible for acts or omissions of individuals or legal entities under its jurisdiction which—under the internal legal order of his State—did not engage its responsibility; secondly, whether the articles contained the necessary safeguards to prevent other States from escaping responsibility for acts or omissions committed by them against the interests of his country, or for acts or omissions of their organs or of individuals or legal entities for which—under international law—those other States were responsible.

42. Of course, the members of the Commission represented the interests of the whole international community and not those of their own countries, but in the present instance the two viewpoints were perhaps not too far apart; a proper balance had to be struck between what might be called the passive and the active interests of States members of the international community.

[6] R.Y. Jennings, "Recent developments in the International Law Commission: its relation to the sources of international law" in *The International and Comparative Law Quarterly*, Vol. 13 (1964), p. 385.

43. As far as article 7 was concerned, most of the differences of opinion which had arisen during discussion concerned matters of drafting rather than substance. Furthermore, the drafting difficulties had arisen not so much in regard to the responsibility of the State for acts of its territorial components, as in regard to its responsibility for acts of what had been called "public corporations or other autonomous public institutions". Some members had suggested that a formula should be devised to explain what made a corporation or an institution "public" in character. Others had suggested that any such corporation was public if authorized to exercise one of the main functions of the State—legislative, executive or judicial. If that approach were adopted, the reference to corporations and public institutions could be dropped, because those entrusted with legislative, executive or judicial functions would be covered by the notion of State organs and therefore governed by article 5.

44. In conclusion, he thought the time had come to refer article 7 to the Drafting Committee for consideration in the light of the discussion. He hoped that Committee would find a community-oriented compromise. The study of State responsibility must lead to something more than a set of vague principles: real law-making was required. The task was not an easy one, but the Commission should be able to surmount the difficulties involved, however great.

The meeting rose at 1 p.m.

1257th MEETING

Wednesday, 15 May 1974, at 10.10 a.m.

Chairman: Mr. Endre USTOR

Present: Mr. Ago, Mr. Bedjaoui, Mr. Bilge, Mr. Calle y Calle, Mr. Castañeda, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Yasseen.

State responsibility

(A/CN.4/246 and Add.1-3; A/CN.4/264 and Add.1; A/9010/Rev.1)

[Item 3 of the agenda]
(continued)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 7 (Attribution to the State, as a subject of international law, of acts of organs of public institutions separate from the State) (*continued*).

1. The CHAIRMAN invited the Special Rapporteur to reply to the comments made by the members of the Commission on draft article 7.

2. Mr. AGO (Special Rapporteur) said that the constructive criticisms to which his draft article had given rise were very useful.

3. Mr. Calle y Calle had said that he agreed with the principle stated in article 7, but thought it would be preferable to mention first the territorial public entities, which were of a permanent character and were better known in public law than the other institutions referred to in the provision.[1] He (the Special Rapporteur) agreed with that view and also with Mr. Calle y Calle's remarks concerning the need for clarity and concision.

4. Mr. Yasseen too had approved of the substance of article 7, and had stressed that it should apply even when a State did not exercise control over the activities of some of its subdivisions.[2] He fully shared that view; it was, indeed in such cases especially that the principle stated in article 7 took on its full value. For instance, in federal States, labour legislation often fell within the competence of the member states and the federal State could take no action with regard to the way in which they regulated labour. But that did not mean that the federal State could escape its international responsibility when a federated state acted in a manner incompatible with an International Labour Convention to which the federal State was a party.

5. Mr. Yasseen had also asked whether it was not necessary to reserve the case in which a federated state retained its international personality and could itself incur international responsibility. It was true that unions of States could take many different forms, but he had used the expression "territorial public entity" to designate cases in which the member state no longer had any international personality, not cases in which it still possessed a separate international personality. In that context, it was necessary to distinguish between unions of States, which Mr. Yasseen had had in mind, and composite States, whose member states were no longer subjects of international law. In a union of States like the European Economic Community or any other union of that kind which might be established, each State acted independently and incurred its own responsibility for internationally wrongful acts. But article 7 referred to composite States, and in that case one could speak of "territorial public entities", an expression which applied both to municipalities and to the member states of a federal State.

6. Lastly, Mr. Yasseen had proposed that the examples of territorial public entities given in brackets in the text of the draft article should be deleted. Such an enumeration, which was to be found in the bases of discussion drafted by the Preparatory Committee for the 1930 Codification Conference,[3] would, of course, be unnecessary if the article under consideration could be drafted sufficiently clearly. As a general rule; moreover, it was preferable to avoid enumerations of that kind, which could always give the impression of being exhaustive, when in fact they were only illustrative.

7. Mr. Pinto had raised the question of the federal clauses which were often included in multilateral agreements and were designed to save the federal State from

[1] See 1252nd meeting, paras. 15-20.

[2] *Ibid.*, paras. 21-24.

[3] See *Yearbook ... 1956*, vol. II, p. 223.