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Summary record of the 1257th meeting

Topic:
State responsibility

Extract from the Yearbook of the International Law Commission:-
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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.

being responsible for acts of its federated states.[4] The situations which Mr. Pinto had described confirmed the basic rule, which was applicable in the case of breach of an international obligation, but only in the absence of any special rule. If there was a treaty rule under which the federal State was not answerable for the acts of its federated states, that rule must be observed, no matter how unsatisfactory it might be. Mr. Pinto had also referred to the "primary" and "secondary" rules. In that connexion, he (the Special Rapporteur) wished to stress that those terms had never been used except in a purely technical sense, and in no way implied that the rules of responsibility were of secondary importance compared with other rules of international law; the rules of responsibility were "secondary" only in so far as they pre-supposed the existence of other rules, which must have been broken for the responsibility of the State to be engaged. Lastly, Mr. Pinto had raised the question of responsibility for risk, which the Commission should regard as definitely settled for the purposes of the topic under consideration. The Commission should, however, decide whether it was advisable to undertake a study on the guarantee required from the State for damages arising out of activities not prohibited by international law.

8. Mr. Tammes had expressed doubts about the desirability of reflecting in article 7 the notion of the unity of the State in international law, when the characteristic phenomenon of the present time was decentralization.[5] In his own view, it was precisely because of that phenomenon and of the diversity of State organizations that it was important to state the rule in article 7, so that a State could not evade its international responsibility by excessive decentralization of the activities appertaining to public power. State practice provided many examples of attempts to use that kind of loophole.

9. Like some other members of the Commission, Mr. Tammes had considered that the enumeration appearing in brackets in article 7 was unnecessary; and he had observed that the organs of some territorial entities possessed the status of State organs under internal law, so that article 5 would be applicable to them. That was not his (the Special Rapporteur's) own view, at least with regard to the situations most familiar to him. It was to be feared that a State accused of having violated one of its international obligations, might be able to evade its responsibility, for example, by invoking the fact that the municipality to which the violation was attributable was an organ of an entirely independent entity. So, although a municipality might not be a State organ under the internal legal order, in international law all conduct by a municipality appertaining to the exercise of public power must be capable of being regarded as an act of the State.

10. With regard to public corporations, Mr. Tammes had clearly shown how difficult it was to find a term that covered all the institutions referred to in article 7. The term "*établissement public*", which was borrowed from French administrative law, might go both too far and not far enough. For there were acts and omissions by an *établissement public* which were not acts attributable to the State at the international level, and there were acts and omissions by entities that could not be defined as *établissements publics*, which must nonetheless be regarded as acts attributable to the State at the international level. Further difficulties arose when equivalents had to be found in other languages. In English, the term "public corporation" introduced an idea different from that of an *établissement public*. The Commission would have to break away from the terminology used in the codification drafts, by writers or by governments, and find a term that was as neutral as possible and applied to any institution which, although separate from the State under its internal legal order, shared with the State some part of the prerogatives of public power, in the exercise of which it could violate an international obligation of the State.

11. With further reference to Mr. Tammes' comments, he explained that he had purposely spoken of an "organ" of a public corporation or other autonomous institution or of a territorial public entity. Like a State, an institution could act only through organs. That term was indispensable, and he had used it with the same meaning as had been given to it in the case of organs of the State.

12. The principle stated in article 7 had also been supported by Mr. Kearney, who in his first statement, had confined his remarks to questions of drafting and definition.[6] Article 7 was certainly one of those which would have to be reworded in the light of the new text of article 5. As to the links between articles 7 and 8, they should not be exaggerated. It was true that articles 5 to 9 stated a series of propositions which formed a single whole. Nevertheless, as Mr. Reuter had pointed out, article 7 envisaged a distribution of the exercise of the prerogatives of public power between different entities within the framework of the internal legal order, whereas article 8 dealt with a situation of fact, not of law, which was exceptional: a person or group of persons, who did not possess the character of organs of the State or of a public institution separate from the State, happened to act as if they did possess that character. In his first statement, Mr. Kearney had suggested the use of several terms, which he had defined, but in his second statement[7] he had rather favoured the use of a single term for the various entities covered. He (the Special Rapporteur) agreed that it would be better to use only one term.

13. In addition, Mr. Kearney had shown by examples the importance of the rule stated in article 7 for territorial public entities other than member states of a federal State. There was a trend towards decentralization in States which had formerly been strictly unitary. As to decentralization *ratione materiae*, in his own opinion—so far as article 7 was concerned—it was not linked with questions of ownership. Thus one should not seek to

[4] See 1252nd meeting, paras. 26-29.

[5] See 1253rd meeting, paras. 3-8.

[6] See 1253rd meeting, paras. 9-14.

[7] See previous meeting, paras. 31-35.

ascertain whether a public corporation was more or less owned by the State; the important point was whether its activities involved exercising prerogatives of public power. In that connexion, he referred to the example given by Mr. Tsuruoka:[8] it was most unlikely that the Japanese national railway company could violate an international obligation of Japan; but that company had a police force which was separate from the State police. Consequently, in the event of a bomb alert on one of its trains, if a railway police official searched a diplomat's baggage, the company would clearly be performing a police function which involved the exercise of public power. The Japanese State would then have to accept that that act was attributable to it and could engage its international responsibility. Thus the essential point was not that the company belonged to the State, but that it exercised a part of the prerogatives of public power.

14. Mr. Kearney had shown how the idea of attribution of an internationally wrongful act to the State could be reconciled with that of the immunity of the State from jurisdiction. Subsequently, Mr. Ushakov had reverted to that question,[9] showing that only immunity from jurisdiction, to the exclusion of the immunity of State property, could enter into the matter. The reason why he (the Special Rapporteur) had cited the *Case of Certain Norwegian Loans*[10] had been to show that when a State claimed that a particuler public institution was entitled to immunity from jurisdiction, it could not subsequently claim that an act of that institution was not an act of the State and hence did not engage its international responsibility. However, that was only a piece of evidence that could be used in regard to State responsibility.

15. Mr. Elias had rightly pointed out that the object of article 7 was to prevent a State from being able to disclaim international responsibility by pleading that, under its internal legal order, the organ which had acted was an organ of an institution separate from the State.[11] The drafting amendments he had proposed would help the Drafting Committee in its work. As Mr. Elias had also remarked, it would be better to try to find a satisfactory general expression applicable to all types of public institution, than to give several definitions at the risk of ambiguity. Unlike Mr. Elias, he (the Special Rapporteur) thought it by no means surprising that international law should attribute to the State something which was not attributed to it by internal law; for it was as a subject of international law that the State had attributed to it by international law acts for which, as a subject of internal law, it was not responsible in internal law. Mr. Elias agreed with his (the Special Rapporteur's) conclusion that the unity of the State should be emphasized, by contrast with the multiplicity of institutions at the internal level.

16. Mr. Reuter had drawn attention to the close connexion between the substance and the drafting of article 7 and to the fact that articles 7 and 8 were entirely different.[12] Under article 7, international law made an attribution of responsibility which did not correspond to that made by internal law. Mr. Reuter had then raised the question whether the fact that international law could make that attribution of responsibility should be expressly stated. In his (the Special Rapporteur's) opinion, it was necessary to be explicit on that point. The expression "prerogatives of public power" proposed by Mr. Reuter seemed very felicitous, especially as it introduced the notion of public power.

17. The comments made by Mr. Sette Câmara[13]—who approved of article 7 as to substance—were similar to those of Mr. Yasseen[14] on all points concerning federal States. Mr. Sette Câmara was also in favour of one general definition, rather than several definitions.

18. The distinction between a confederation and a composite State, whose component states were no longer subjects of international law, but true territorial public entities, had been very well described by Mr. Martínez Moreno who had also cited an interesting example of an autonomous public institution: the Tennessee Valley Authority.[15]

19. Mr. Bilge had first discussed the distinction between the State as a subject of international law and the State as a subject of internal law.[16] He had shown that the notion of the State was narrower in internal than in international law, so that international law attributed to the State acts not attributable to it under internal law. Mr. Bilge had also raised the question whether the rule in article 7 was a rule of customary law. In his (the Special Rapporteur's) opinion, all the rules in the draft were now customary rules, except a few which represented progressive development of international law. It was to be hoped that the Commission's codification work would enable some customary rules to acquire the status of conventional rules, thus gaining in precision and authority.

20. Mr. Ushakov had expressed serious reservations regarding article 7 in his first statement, but subsequently he had so far modified them that he seemed no longer to be in disagreement as to the substance.[17] Moreover, he appeared to have dropped the idea of amending the preceding articles, probably because he realized that they dealt with different aspects of one and the same idea, which must be followed through to the end. Whereas Mr. Reuter had proposed the expression "prerogatives of public power", Mr. Ushakov had suggested the expression "State power". He himself feared that the adjective "State" was not the most appropriate, because the purpose of article 7 was to attribute to the State the conduct of an institution which was not expressly characterized as a "State institution" under the internal legal order; the use of that adjective might

[8] See 1255th meeting, para. 1.

[9] *Ibid.*, paras. 23-29.

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

[11] See 1253rd meeting, paras. 16-19.

[12] *Ibid.*, paras. 21-26.

[13] See 1255th meeting, paras. 3-8.

[14] See 1252nd meeting, paras. 21-24.

[15] See 1255th meeting, paras. 10-15.

[16] *Ibid.*, paras. 16-20.

[17] See 1255th meeting, paras. 22-29 and 1256th meeting, paras. 36-39.

encourage a State to claim that it was not responsible for an act by an institution which was not a "State" institution.

21. Mr. Ushakov had further urged that it should not be inquired whether the property of the institution was State property, but only whether the institution exercised part of the State power. He had been thinking of the internal organization of his own country, the Soviet Union, and it would be wrong for him to affirm that a territorial entity was not an organ of the State and that its conduct was not attributable to the State, not only from the standpoint of international law, but even from that of the internal legal order. But that was not the situation in other countries, and it would not always be possible to speak of delegated powers. In a federal State like the United States of America, the federated states did not exercise delegated powers; it was rather they which had delegated powers to the federal State. Thus the reality took many forms, and the Commission must take care not to use expressions that were not applicable to all State systems. For the purposes of article 7, it was sufficient that, under the internal legal order, an entity exercised some part of the prerogatives of public power, whether by delegation or not. Finally, Mr. Ushakov considered that territorial entities should form the subject of a separate article.

22. Mr. Tabibi had expressed the view that the wording of article 7 should be flexible, and be consistent with that of article 5. His statement had come very close to that of Mr. Pinto and to Mr. Ushakov's second statement, and he had cited a number of interesting examples.[18]

23. The question of dependent territories had been raised by Mr. El-Erian, who had approved of the substance of draft article 7.[19] He (the Special Rapporteur) had never considered that dependent territories formed part of the metropolitan State; what he had in mind was not the dependent State itself, but metropolitan bodies which were sometimes independent of the organs of the metropolitan State. For example, the colonial companies of the United Kingdom and Italy had been largely private; and although they had relied on those companies to administer dependent territories, the States concerned had never been able to escape their international responsibility when one of the companies had violated an international obligation. The Commission should not disregard such situations, although they had become very rare. Above all, a metropolitan State should not be able to escape its responsibility by invoking the silence of the draft articles.

24. As Mr. Ramangasoavina had said, article 7 emphasized the unity of the State irrespective of the position of the organ concerned in the internal legal order.[20] Reference had been made, in that connexion, to multinational companies, though in his opinion they were not within the scope of the article under consideration. By their nature, such companies belonged to several States, and those States could incur responsibility if they failed to prevent or punish harmful activities of the companies, which they had an international obligation not to tolerate. The draft should say more on that point.

25. The distinction between responsibility for internationally wrongful acts and objective responsibility, which Mr. Quentin-Baxter had emphasized,[21] should be gone into in detail when the Commission had decided whether to study the question of the international responsibility of States for risk. For the moment, it seemed that the problem of the attribution of acts to a State differed according to whether the State's responsibility was engaged for lawful or for wrongful acts. In his other comments, Mr. Quentin-Baxter had drawn attention to several essential elements of the article under discussion.

26. Commenting on a remark made by Mr. Hambro[22] he said that although the *Case of Certain Norwegian Loans* was not really relevant to internationally wrongful acts, he had mentioned it in his commentary because it had given rise to statements of position in the International Court of Justice, which went beyond the scope of the case itself. With regard to article 7, Mr. Hambro had stressed that a State should not be able to escape its international responsibility by organizing itself in one particular manner rather than another.

27. As to the comments made by Mr. Bedjaoui concerning dependent territories and possible joint responsibility for acts of companies connected with several States,[23] he had already explained his position on those matters in answer to comments by other members of the Commission.

28. He was not opposed in principle to the suggestion made by Sir Francis Vallat that article 7 should be split into two articles, one relating to territorial public entities and the other to autonomous public institutions.[24] There was clearly a fundamental difference between the two classes of entity, but there was also a common element: they reflected two aspects of the same phenomenon of decentralization which, in one case, was *ratione loci* and, in the other, *ratione materiae*. It was because of that common element that he had dealt with both cases in a single article, but he would be prepared to consider the possibility of dealing with them in two separate articles or in two paragraphs of the same article. Like Mr. Calle y Calle and Sir Francis Vallat, he thought that priority could be given to territorial entities, not because they were more important than the other public institutions, but because the probability of their violating an international obligation of the State was much greater; the share of the prerogatives of public power vested in territorial entities was certainly much greater than that vested in the other institutions. So far as the latter were concerned, it had been suggested that reference should be made either to their functions or to State control. In his opinion, the reference should be to

[18] See 1255th meeting, paras. 30-32.

[19] See previous meeting, paras. 5-7.

[20] *Ibid.*, para. 8.

[21] *Ibid.*, paras. 12 and 13.

[22] *Ibid.*, para. 22.

[23] *Ibid.*, paras. 24 and 25.

[24] *Ibid.*, para. 27.

the functions rather than to the control, for even if the institutions in question were not controlled by the State, international responsibility for their acts should nevertheless be attributed to the State.

29. As Mr. Kearney had pointed out,[25] there was no doubt that territorial entities exercised some public power: hence the rule relating to territorial entities would be much easier to formulate than the rule relating to the other institutions. Mr. Kearney had suggested that the latter should be designated by the word "organizations". That, however, was a term already used with a different meaning in international law, so that it might be ambiguous. His own preference was for the term "entities". What he considered most important, however, were the expressions by which that term would be qualified in the text of the article. As Mr. Kearney had also observed, it could happen that internal law and international law coincided. In that case there was no problem: it was when internal and international law differed that the problem arose and article 7 assumed its full importance.

30. Lastly, Mr. Kearney had suggested that it might be advisable to add a subsidiary rule to show that a State could not escape its international responsibility merely by reason of the fact that it had adopted one mode of organization rather than another. He himself did not think it was really essential to state that rule expressly, since it should be the logical consequence of the articles as a whole. In any event, it would be for the Commission to decide, at the appropriate time, whether the rule was necessary or not.

31. He thought Mr. Ushakov had been right in stressing the important distinction between responsibility for a wrongful act and responsibility for risk;[26] he agreed with him that that was a question which should be examined separately. Mr. Ushakov had also rightly pointed out that, even in regard to the problem of attribution to the State, which the Commission was now considering, there could be a very appreciable difference between attribution to the State of a wrongful act and attribution to the State of primary liability for injurious activities. He also agreed with what Mr. Ushakov had said on the question of immunity, stressing that it must be understood in the sense of a personal immunity of the organ which acted, not in the sense of an immunity of property. In his opinion, the question of immunity could be linked with the subject under study in so far as immunity might constitute useful evidence, but it was nevertheless a separate question. Lastly, he thought Mr. Ushakov had been right in saying that the main criterion for the purposes of article 7 was the exercise of a public power. That was, in fact, the distinguishing characteristic of what could and what could not be attributed to the State, and it was on that point that the most satisfactory formula would have to be found. So far as the administration of dependent territories was concerned, Mr. Ushakov, too, had stressed that the metropolitan State must not be allowed to evade its international responsibility, not only *vis-à-vis* the dependent State itself, but also, and above all, *vis-à-vis* third States.

32. To sum up, he believed, like Mr. Ustor, that a certain balance had to be struck between two fundamental requirements:[27] a State must not be allowed to make unfounded charges against another State involving its international responsibility, but at the same time a State must not be allowed to escape its international responsibility when such responsibility was incurred.

33. He had the impression that, despite the many comments made, the members of the Commission agreed, on the whole, with the ideas expressed in draft article 7. The only member who had mentioned the possible deletion of the article had done so only to drop the idea. His own view was that the article was indispensable and that its deletion would leave a serious gap in the codification of the international law of State responsibility and enable States to escape their responsibility. He recognized, however, that the text would have to be amended, not only to bring it into line with the new text of article 5 (A/9010/Rev. 1, chapter II, section B), but also to improve its drafting, so as to produce as concise and precise a text as possible. So far as structure was concerned, he was prepared to consider three possible solutions: a single article, two separate articles, or, as he personally would prefer, two provisions in one article.

34. Another point was that priority should be given to the most important case—that of territorial public entities, which ranged all the way from municipalities and communes to federated states. He reiterated, however, that by the latter term he meant states which existed only from the standpoint of internal law, being subjects of internal law which had no separate international personality. To go beyond the limits of that definition meant going beyond the attribution to the State of acts or omissions of organs of the State or of other public entities, and raising the problem of the responsibility of a member State of a union of States or of the possible indirect responsibility of one subject of international law for the act of another subject of international law. Thus it would be preferable to go no further than the case of a composite State whose member states remained within the framework of internal or constitutional law.

35. The question whether to mention administrations of dependent territories would be settled later, as would the question whether to give any examples. Reference had been made to the case of Cyprus, where the administrations of two communities coexisted, which did not correspond exactly to territorial entities because the two communities overlapped. Should cases of that kind be taken into account? His own view was that for the moment the aim should be to settle general rules, and that special cases could be dealt with later. In any case he would prefer the emphasis to be on the exercise of prerogatives of public power, which seemed to him the most important element in the article.

[25] *Ibid.*, paras. 31-34.

[26] *Ibid.*, paras. 36-39.

[27] *Ibid.*, paras. 41 and 42.

36. He hoped that the Drafting Committee would be able to work out a text that would satisfy the members of the Commission.

37. Mr. USHAKOV said he wished to clear up a misunderstanding about the question of delegation of public power by the State. He had never said that the organs of the State acted by delegation of State power, for that was not a matter of delegation, but of organization of the State power or public power. He had said that the State, as a collective body, could, in principle, act only through its organs. But he had recognized that there could be exceptions to that rule and that a body which was not an organ of the State could be invested by the State with public or State power. For example, the Japanese national railway company, to which Mr. Tsuruoka had referred, was not an organ of the State, but the State could delegate public powers to it and it was through that delegation that the company could exercise public powers. Similarly, a private bank granted the privilege of issuing currency exercised public power in so far as the State had delegated that State privilege to it. The case of municipalities, on the other hand, was quite different: they were not bodies to which the State delegated public power, but organs of the State which exercised the State power within the limits of their autonomy. For he believed that municipalities, like all territorial entities, were organs of the State. Nor was it by delegation that a federated state, such as Virginia or the Ukraine, exercised State power, for historically those states had existed before the federal State.

38. He also wished to reiterate that the State constituted one single entity, whether it was regarded from the internal or the external standpoint. It was the internal legal order, not international law, which governed the organization of the State. Hence it was by internal law alone, and not by international law, that it could be determined whether a body exercised public power. The legal characterization of the conduct of that body could differ according to whether the standpoint adopted was that of internal law or of international law, but the conduct remained the same.

39. Mr. EL-ERIAN said he appreciated the reasons which had prompted the Special Rapporteur to include a reference to dependent territories among the territorial public entities enumerated in article 7, but he thought that to group dependent territories together with such territorial entities as municipalities and provinces might give rise to misunderstandings about the status of dependent territories and the question whether they were considered as an integral part of the metropolitan territory or not. He recalled a case in which a person had been sued on the basis of a court ruling that, under Article 22 of the League of Nations Covenant, a class C mandated territory had to be considered as an integral part of the Union of South Africa and of the British Empire. That was the kind of situation he was anxious to avoid. It would therefore be wise, as had been decided in similar cases in the past, not to refer to situations which were obsolescent, or at least to refer to them in a different context from the present one. The enumeration was in any case not exhaustive as it ended with the words "et cetera". A dependent territory in fact constituted a case of agency, involving a relationship between the territory and a State which had assumed international responsibility, in the sense of competence, for the territory's relationship with other States, but had given the territory internal autonomy.

40. Mr. KEARNEY, speaking of the references made to the governmental structure of the United States, explained that under article 10 of the Bill of Rights, which formed part of the original Constitution of the United States of America, "The powers not delegated to the United States by the Constitution... are reserved to the States respectively, or to the people". Consequently, the powers exercised by the federated states were their own powers and not the powers of the Federal State—the United States of America. However, that merely reflected a particular political philosophy. Mr. Ushakov's argument represented another political philosophy, but the differences between them should not affect the way in which the Commission dealt with the problem of the status of organs for purposes of international responsibility. Everyone agreed that the status of an organ was determined by internal law—which might include the national law and, in federal unions, the law of individual states—but in the light of international law, which regarded the State as a monolithic structure for the purposes of international law.

41. Mr. USHAKOV said that in the USSR the situation was the same as in the United States in that respect. The Republics of the Union, which exercised supreme authority over their own territory, were at the same time organs of the Soviet Union. They were autonomous, but only within their territorial boundaries, though they could conclude treaties at the same time as the Soviet Union itself. That did not mean that organs of the Republics were not organs of the Soviet Union as a whole.

42. The CHAIRMAN suggested that article 7 should be referred to the Drafting Committee for further consideration in the light of the discussion.

It was so agreed.[28]

The meeting rose at 1 p.m.

[28] For resumption of the discussion see 1278th meeting, para. 1.

1258th MEETING

Thursday, 16 May 1974, at 10.10 a.m.

Chairman: Mr. Endre USTOR

Present: Mr. Ago, 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.