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Summary record of the 1261st meeting

Topic:
State responsibility

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

wrongful act could or could not prove that there had been instructions from the State to which the organ had been lent.

43. Mr. TABIBI said he supported the underlying principle of article 9, because the kind of case it applied to was quite common, especially in newly established States, which were often assisted by experts from international organizations or from other States, who might commit acts that were wrongful under international law. There was no machinery for the settlement of disputes arising out of such acts, and it might be difficult to persuade a government to accept responsibility for them. Admittedly, the cases article 9 was intended to cover were not quite the same as those he had in mind, but they might still be difficult to settle without appropriate machinery, as had been demonstrated in the Nissan case, cited by the Special Rapporteur.

44. The circumstances of each wrongful act committed by a person or organ placed at the disposal of a State by another State or by an international organization might be different. For example, United Nations operational, executive and administrative personnel (OPEX) were in a different position from other United Nations experts, because they were generally employed by the recipient States as high-ranking civil servants and were often placed in charge of banks, municipalities or postal services. They were in positions of responsibility and their promotion and salaries were determined by the recipient government, but they were nevertheless answerable only to the United Nations. If they committed a wrongful act, no direct proceedings could be instituted against them and any charges had to be referred to the Secretary-General of the United Nations. It would be useful if article 9 could be made to cover such cases.

45. Sir Francis VALLAT said he supported the proposed text of article 9, subject to one or two points of drafting and his agreement with Mr. Reuter's remarks.

Commemoration of the twenty-fifth anniversary of the opening of the first session

[Item 2 of the agenda]

46. The CHAIRMAN suggested that the Commission's twenty-fifth anniversary commemorative meeting should be held on Monday 27 May, and that statements should be made by Mr. Suy, the Legal Counsel, by the President of the International Court of Justice, or, if he was unable to be present, by a former member of the Commission who was now a judge of the Court, and by the former Chairmen of the Commission who were present.

It was so agreed.

Question of treaties concluded between States and international organizations or between two or more international organizations.

[Item 7 of the agenda]

47. Mr. REUTER (Special Rapporteur) said he understood that the Commission intended to devote two or three meetings during the week of 10-14 June to consideration of his report. In order to save time, and as he thought the report was of secondary importance, he asked members of the Commission to consider departing from the method of work traditionally followed in examining the main reports and to submit their first comments to him in writing during the next three weeks.

The meeting rose at 6.5 p.m.

1261st MEETING

Tuesday, 21 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. Šahović, 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]

(resumed from the previous meeting)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 9 (Attribution to the State, as a subject of international law, of the acts of organs placed at its disposal by another State or by an international organization) (*continued*).

1. Mr. ELIAS said that the generally recognized principle underlying article 9, embodied three ideas: that an organ and its services might be transferred or lent to a State by another State or an international organization; that such a transfer or loan carried with it the power to control the organ, bringing it within the authority of the recipient State; and that, to be attributable to the recipient State, an act or omission by such an organ must be within the scope of that State's ostensible authority. The essential considerations were the purpose of the transfer, the degree of authority to be exercised by the recipient State, and whether the organ concerned had carried out its assignment rightly or wrongly under international law. The present formulation of the rule seemed appropriate, subject to the alignment mentioned by the Special Rapporteur and some drafting amendments to make it clear that the recipient State could be held responsible only for acts which fell within its ostensible authority.

2. Mr. YASSEEN said he approved of the rule stated in article 9. Owing to the closer links of co-operation between States, and between States and international organizations, the cases contemplated in article 9 would

probably acquire increasing importance in the future. It should be noted, however, that the organs placed at a State's disposal generally remained partly under the authority of the entity sending them; that was particularly true where they were seconded by an international organization, for example, under a technical assistance programme. They had to observe certain principles governing the performance of their duties, so that they were subject to a mixed authority, which might result in a joint international responsibility of the State or international organization seconding them and the recipient State.

3. The proviso at the end of article 9 should probably be made less categorical. In his opinion, it was essential that the organs in question should be "actually under the authority of the State at whose disposal they have been placed", but it was not necessary that they should in all cases have acted "in accordance with its instructions". In that respect the wording of the article might be slightly amended.

4. Mr. KEARNEY said that he, too, agreed with the substance of the article, though he shared the concern expressed by some speakers about its formulation. The point made by Mr. Yasseen warranted special consideration as it raised the question of the relationship between articles 5 and 9—whether both articles could continue to apply when a State placed an organ at the disposal of another State. In the case of an internationally wrongful act by such an organ, would one State be responsible for all the consequences, or could there be a principle of liability whereby both States would be "jointly and severally" liable? If the act of the organ was not in accordance with its instructions and was therefore outside the scope of the recipients State's ostensible authority, would the State to which the organ belonged be automatically responsible? Those questions were, to some extent, connected with the theory of damages, but they also had a bearing on the problem of attribution, and it might be necessary to add a paragraph to article 9 or draft a separate article to cover such situations.

5. Mr. USHAKOV said that to his great regret he was unable to accept either the draft of article 9 or the accompanying explanations; at the very most, he could agree to one of the applications of the principle laid down in that provision.

6. He did not agree with the statement made by the Special Rapporteur in paragraph 200 of his third report[1] that it was "easy to envisage possible instances of organs being 'lent' by one State to another State or by an international organization to a State". With regard to organs lent by an international organization to a State, article 9 provided that "The conduct of a person or group of persons having, under the legal order... of an international organization, the character of organs" was considered to be an act of the State in international law. What was meant by "the legal order of an international organization"? International organizations were generally composed not of persons or of groups of persons, but of States. Their organs were, in principle, representatives of States, although they had some organs which consisted either of a number of persons, such as a secretariat, or of a single person, such as the Secretary-General of the United Nations. In his opinion, an international organization could not lend to a State those of its organs which were composed of States. As to the organs consisting of persons, it was obvious that an international organization could not lend its secretariat, whether it consisted of a single person or an entire staff. Armed forces could be regarded as an organ of an international organization and be lent as such to a State, but the fact was that no international organization possessed its own armed forces; hence no such loan was possible. At the most, an international organization could send to the territory of a State some of its secretariat officials, who would not then have the status of organs at all. Moreover, the English term "transferred servants" clearly showed that it was not organs, but officials that were seconded. He thought the third report was somewhat confused on that point. Furthermore, none of the examples cited by the Special Rapporteur concerned an organ lent as such by an international organization to a State.

7. In considering organs lent by one State to another, it was necessary to distinguish between the organs of the legislative, executive, judicial and constituent powers. Obviously, none of those organs, and certainly no parliament, head of State or court could be placed at a State's disposal by another State. If the Special Rapporteur's explanations in paragraph 200 of his third report were to be accepted, not only officials, but technical experts, health, hospital and other services, could be regarded as organs of the State.

8. With regard to persons placed at one State's disposal by another State, rather than organs lent as such, he referred to the *Chevreau Case*, cited in the third report.[2] In that case, the British Consul, who had been in charge of the administrative affairs of the French Consul, had not acted as an organ, but as a private person placed at the disposal of one State by another. The same applied to other examples cited by the Special Rapporteur.

9. In short, only the armed forces of a State could be regarded as an organ capable of being placed at the disposal of another State. That case might be dealt with in an article of the draft, though it raised some delicate questions. For instance, in time of war it might happen that troops were placed under the command of the State at whose disposal they had been placed, but were not subject to its State authority; that happened when the two countries concerned were fighting a common enemy. At the most, he could accept that police forces, as an organ, could be placed at a State's disposal by another State, but he thought that the usual practice was to second police officers individually.

10. Mr. AGO (Special Rapporteur) said that the questions raised by Mr. Ushakov were so fundamental that they called for an immediate reply. In the first place, the

[1] *Yearbook ... 1971*, vol. II, Part One, p. 267.

[2] *Ibid.*, p. 269, para. 203.

notion of an international organization's internal or own legal order was widely accepted and had even been discussed in courses at the Hague Academy of International Law.[3] Every international organization operated according to rules, which constituted its own legal order.

11. The principal difficulty encountered by Mr. Ushakov seemed to derive from a misunderstanding regarding the term "organ", which had persisted since the previous year. It had certainly not been his (the Special Rapporteur's) intention to deal, in the article under consideration, with the loan by an international organization of organs consisting of States, or the loan by a State of organs such as a parliament or a head of State; nor was there anything in his third report or in his oral introduction to article 9 to suggest that intention.

12. He and the other members of the Commission understood the notion of an "organ" differently from Mr. Ushakov. In their view, the term should not be reserved for the highest institutions of the State or for entities like armed forces; it could be applied to any person who was a member of the administration of a State and even to a member of its armed forces. That was why he had treated as organs all kinds of individuals and groups participating in the public administration of a State, who could be placed at the disposal of another State. In the *Chevreau Case*, for example, the British Consul had been placed at the disposal of France, as an organ, to assume the duties of the French Consul in his absence.

13. It was for the Commission, not the Drafting Committee, to define the meaning to be ascribed to the term "organ". If the Commission were to move towards a conception of an "organ" different from that adopted in the draft articles, he would be unable to deal with the question of the attribution of internationally wrongful acts to the State or to continue his work as Special Rapporteur for the topic of State responsibility.

14. Mr. USHAKOV maintained that a parliament was an organ of the State and could only engage the State's responsibility if it acted collectively. If officials were sent abroad, they could not possess the status of organs outside their country, since they did not possess that status in the internal order of the State that had sent them. That was the position, for example, of experts seconded under technical assistance programmes. It was different where armed forces were concerned. A member of the armed forces might be sent abroad to carry out a mission in that capacity and might, by his conduct, engage the responsibility of the sending State.

15. Mr. YASSEEN observed that the whole discussion was revolving round the definition of the term "organ". Words had, after all, only the meaning attributed to them, particularly in legal terminology. He was not perturbed by anything in the text of article 9, for he understood the term "organ" in the same way as the Special Rapporteur. Mr. Ushakov, on the other hand, understood it differently. The term had been used many times during the consideration of the draft articles, and most of the members of the Commission had understood it in the same sense as the Special Rapporteur. Like many others, the notion of an "organ" would have to be defined by the Commission at the appropriate time, in order to prevent any misunderstanding.

16. Mr. TSURUOKA agreed that it would be sufficient to define the meaning attached to the term "organ" in the draft. The exchange of views between the Special Rapporteur and Mr. Ushakov had been interesting, but the Commission should leave theory aside and come to an agreement on the meaning to be ascribed to that term.

17. Mr. REUTER said that he, too, had found the discussion very interesting and considered that Mr. Ushakov's view, although subtle, was correct. The cases Mr. Ushakov had in mind were rare, but they could occur. For example, the President of the French Republic was also co-Prince of The Valleys of Andorra. He was co-Prince not as a natural person, but as an organ, which could give rise to delicate problems of French law. When the President signed a legal instrument in his capacity as co-Prince, must French law be applied in addition to the rules of the Principality of Andorra? A similar case was that of personal unions. Sometimes a single person performed the same functions in both entities, sometimes separate organs were responsible for those functions. In 1945 General Koenig, commanding the French troops in Germany, had been a member of the Control Council, which had represented not only the Allied States, but also the German State. It was not as a natural person that he had been "co-prince" of the German State, but as commander-in-chief. Some of the acts performed by General Koenig as commander-in-chief had been attributable to the French State, whereas others had been attributable to the German State.

18. Similar situations could arise in the contemporary world, in particular, in connexion with the execution of technical assistance programmes, when it could be doubtful whether internationally wrongful acts were attributable to the home State, to the international organization or to the beneficiary State. For example, France seconded officials, including teaching staff, which it placed at the disposal of certain countries, under agreements. The persons concerned were agents of the State to which they were seconded, although they maintained links with their home State.

19. Whereas Mr. Ushakov accepted only the case of armed forces and possibly police, he himself thought there were other situations in which it was not the natural person, but the organ as such that was incorporated into the administrative structure of another State. The Commission must determine the situations to which article 9 was to apply.

20. Mr. TABIBI said he thought the problem could be dealt with by a definition. The concern expressed by Mr. Ushakov was reasonable, since confusion might arise in certain cases, but the Commission had to consider the possibility of an act by a natural person constituting an act by an organ of a State. In some countries individual members of an organ could act in the name of that organ. Mr. Ushakov had said that the decision of an

[3] See *Recueil des Cours*, 1961-II, vol. 103, pp. 526-530.

organ such as parliament was collective and not the decision of one or more of its members; but in the United States of America, for example, a single judge could act as a judicial organ in some cases.

21. The CHAIRMAN said he thought the problem was perhaps mainly a matter of drafting and it might be possible to work out a generally acceptable definition.

22. Mr. ELIAS said that Mr. Ushakov's notion of an organ, which differed from that of most of the other members of the Commission, was interesting and should be considered; but he doubted whether it could be regarded as invalidating the work done on the preceding articles. He agreed with Mr. Yasseen that the issue should, if possible, be confined to semantics and should not be considered in terms of ideological differences. It was rather confusing at that stage to be told that only a branch of government, or a decentralized section of the government could be regarded as an organ. On the other hand, the notion of an organ should not be considered entirely in terms of the persons composing it, but also in terms of what it represented. The important factor was the nature of the link between the lending State and the recipient State. Mr. Ushakov seemed to doubt that members of the judiciary could be lent to another State, but the Chief Justices of Uganda and Botswana, and the President of the Court of Appeal of the Gambia were all Nigerians lent by the Nigerian Government. Nigeria had also lent senior civil servants to Kenya, Sierra Leone and other countries, one of whom had at one time been head of the recipient State's civil service. Such assignments were sometimes for five years. Were such persons not to be considered organs of a State?

23. Article 9 seemed to be drafted convincingly, in accordance with the normal use of terms in legal practice.

24. Mr. TAMMES said that a provision embodying the idea in article 9 was desirable, in order to prevent any misunderstanding arising in the particular case where the person who had acted happened to be an organ of another State or of an international organization. As the Special Rapporteur himself had pointed out in paragraph 201 of his third report,[4] it was possible to regard the foreign personnel in question either as a *de facto* organ under article 8 or as a fully integrated organ under article 7, and he understood that Mr. Ushakov might be satisfied with that approach. An analysis of the practice showed, however, that it was useful to have a specific article on the acts of persons of mixed affinity. Otherwise, the draft on State responsibility would be incomplete, at a time when the scope of bilateral and multilateral assistance was constantly widening.

25. That being said, he wished to state his view that article 9, as proposed, could give the impression that the State lending the organ was exonerated from any wrongdoing as soon as the transferred organ had entered the service of the recipient State. That might be true in most situations, but one could imagine less innocent cases in which the international responsibility of the lending State would continue to be engaged despite the transfer. An illustration was provided by the text of the definition of aggression adopted by consensus by the Special Committee on the Question of Defining Aggression,[5] which would probably be submitted to the forthcoming session of the General Assembly. Article 3 (*f*) of that definition stated that "any of the following acts ... shall qualify as an act of aggression: ... (*f*) the action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State". Article 5 of the definition stated that "aggression gives rise to international responsibility". Clearly, in the situation contemplated, if the territory of a State B was placed at the disposal of a State A in such a manner that the armed forces of State B were integrated into those of State A, the international responsibility of both States was engaged, despite the transfer of the forces in question. The fact that the lending State's forces acted under complete control of the recipient State would not relieve the lending State of its concurrent responsibility for actions contrary to the principles of the United Nations Charter.

26. In order to prevent any misunderstanding or apprehension on the part of governments, which would certainly be expressed in their comments, he suggested the insertion in article 9 of a saving clause on the following lines:

> The present article is without prejudice to any State responsibility arising from a transfer of organs from one State to another inconsistent with international law and, in particular, the principles of international law embodied in the Charter of the United Nations.

That saving clause followed the pattern of the one in article 6 of the Commission's draft articles on succession of States in respect of treaties, adopted at its twenty-fourth session.[6]

27. Mr. HAMBRO said that on the whole he approved of article 9 as drafted; he thought its provisions were necessary. He had some difficulty, however, with some of the expressions used in the article. The reference to "instructions" was not as clear in the English version as it was in the original French. With regard to the term "organ", he suggested that an explanation should be introduced into the commentary to prevent any misunderstanding that might result from the special meaning in which that term was used in the United Nations Charter. There was also the question of the possible difference between "agents" and "organs", and it was significant that the International Court of Justice in its advisory opinion on the question of *Reparation for Injuries Suffered in the Service of the United Nations*[7] had used the expression "agents of the United Nations".

28. Mr. TSURUOKA said he approved of the principle stated in article 9. That article seemed all the more necessary because the cases it dealt with were becoming

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[4] *Yearbook ... 1971*, vol. II, Part One, pp. 267-268.

[5] See draft report in documents A/AC.134/L.46 and L.47.

[6] See document A/8710/Rev.1, chapter II, section C, in *Yearbook ... 1972*, vol. II.

[7] *I.C.J. Reports, 1949*, p. 174.

increasingly frequent as a result of the development of international cultural, technical and financial co-operation.

29. Like Mr. Yasseen he wondered, however, whether the rule stated was not rather too rigid. To remedy that defect, he proposed that the words "unless otherwise agreed between those States or between the State and the international organization concerned" should be added at the end of the article. In the case of technical assistance experts loaned to a State by a United Nations body, there was in fact always a prior agreement between the international organization and the beneficiary State.

30. He also shared Mr. Reuter's concern and proposed that the present wording at the end of the article should be amended to read "at whose disposal they are placed and act normally in accordance with its instructions".

31. Mr. BEDJAOUI noted that the development of co-operation between States, and between States and international organizations, had given rise to situations which came under article 9. He therefore welcomed that article very warmly. The Special Rapporteur had stated in it a certain and acceptable rule derived from practice, and had thus made a contribution to co-operation between States and between States and international organizations. The article did not deal with co-operation by substitution, in other words, with a State which replaced another through the intermediary of organs "lent". In the past, it had often happened that, on the pretext of co-operation, one State had actually taken the place of another in the exercise of certain public responsibilities. He was therefore grateful to the Special Rapporteur for having laid down the two cumulative conditions for attribution to the recipient State of responsibility for a wrongful act committed by the organ lent. In that respect, article 9 merely applied the general rule that a State could not be held responsible for the acts of an organ over which it had no authority. For the responsibility of the recipient State to be engaged, the transferred organs must act like organs of the recipient State itself. That meant that two conditions must be satisfied: the organ must serve the recipient State and must serve it within the exact limits set by that State. Otherwise, the recipient State could not assume responsibility for the acts of the organ.

32. By reason of the very fact that the organ was lent, the consent of the recipient State was necessary—not only its passive consent or acquiescence, but an active request. That ruled out the case of former protectorates based on a legal-political fiction. It also ruled out the case of "unequal treaties", which placed a country or part of the territory of a country under the administration of a foreign State. Above all, it ruled out the case of military occupation. For he considered that the case of military occupation did not come under article 9, since it was quite obvious that the high command of armed occupation forces, could not be called an organ lent with the consent of the State in whose territory it exercised its authority. Even when the organ in question, for example, a supervisory or control commission, performed purely administrative functions for the benefit of the occupied State, he believed that the case did not come under article 9, because the organ was not lent with the consent of the recipient State.

33. Furthermore, the organ must not only be wanted by the recipient State, but must really be placed at its disposal. That ruled out the case of armed intervention, even when its object was to help a friendly State under a bilateral agreement on mutual military assistance. But in the case referred to by Mr. Tammes, in which a State placed at the disposal of another State an army it kept under its own command, knowing very well that the army was to be used to commit aggression on behalf of the recipient State, the responsibility of the lending State was engaged; it was engaged even if the lending State had placed the army under the command of the recipient State. He therefore considered that the amendment proposed by Mr. Tammes was entirely pertinent.

34. Consequently, for the responsibility of the recipient State to be engaged the organ lent must be effectively under the authority of that State, which exercised control over it and gave it instructions. Those two basic conditions were cumulative. For the degree of allegiance of the organ to the recipient State and to the lending State varied according to circumstances—for example, according to co-operation agreements. Thus responsibility for remuneration of the organ lent was often assumed by the State or international organization lending it, and whoever paid might wish to exercise control. The two conditions were therefore necessary for the responsibility of the recipient State to be clearly engaged. But there were also some borderline cases, to which Mr. Reuter had referred, in which the responsibility of both the lending State and the recipient State were engaged. In his opinion, the second condition laid down in the article did not mean that the recipient State must give instructions amounting to a breach of an international obligation; it meant that it must be within the framework of those instructions or pursuant to them—or even when they were being carried out—that a wrongful act was committed.

35. He did not think that article 9 raised any difficulties where an organ was lent by one State to another State. In the case of the personal union cited by Mr. Reuter when he had referred to the President of France, who was simultaneously co-Prince of Andorra, it could not be said that an organ was lent by one State to another, since the Head of State did not act as an organ on loan. In the case of personal union between two States, it could not be said that the head of State was lent by one of the two States to the other. Hence the hypothetical situation mentioned by Mr. Ushakov was impossible.

36. On the other hand, article 9 seemed to exclude the possibility of a State lending anything other than a State organ, although it could place at the disposal of the recipient State organs of public corporations or of autonomous public institutions, as mentioned in article 7. He therefore regretted that, by appearing to refer only to State organs, the Special Rapporteur had restricted the provision to the situation covered by article 5, whereas article 6 should also be borne in mind. He hoped that the Drafting Committee would find a formu-

la that took account of that problem as well as Mr. Ushakov's objections.

37. Mr. CALLE Y CALLE said that during the discussion of article 8, Sir Francis Vallat had drawn attention to the various categories of conduct covered by chapter II.[8] He himself wished to draw attention to the fact that the whole of chapter II was intended to define the various sources of conduct which gave rise to State responsibility, because the acts in question were considered as acts of the State according to international law. Article 5, which was the first provision of chapter II, dealt with the conduct of organs of the State, understood as the basic elements of the State structure. In the following articles, however, the term "organ" was used in the wider sense of a subsidiary organ. It was in that wider sense that the term had to be construed in article 9.

38. The provisions of article 9 were necessary, to show that responsibility for the acts of transferred organs or servants rested not on the lending State, as would normally be the case, but on the recipient State. The key condition, for the purposes of that attribution, was that the organ should be effectively under the authority of the State at whose disposal it had been placed. The article added the requirement that the organ should have acted "in accordance with" the instructions of the recipient State. He would prefer to use the broader expressions "under the instructions" and "*bajo las órdenes*" in the English and Spanish texts.

39. He could give a practical example in support of article 9, taken from experience in his own country during the disastrous earthquake of 1970. Among other forms of aid, Peru had been lent manned helicopters by the Soviet army and the United States navy, and a battalion of Swedish military engineers, placed at the disposal of the United Nations, had been lent by that Organization, which had borne the cost of certain relief operations. Clearly, if the foreign military personnel in question had committed any internationally wrongful act, the responsibility should have been borne by Peru and not by the lending State concerned.

40. There could be no doubt that article 9 dealt with a practical phenomenon of contemporary international life. With the growth of multilateral and bilateral technical assistance schemes, it was becoming increasingly common for officials, experts and agents of one country to be lent to another. There were also cases in which States placed their agents at the disposal of an international organization, and it was necessary to protect the lending State from having to bear international responsibility for acts performed by such agents when acting on behalf of the organization.

41. In the case of organs lent by an international organization to a State, difficulties could arise from the fact that the international personnel concerned sometimes retained their privileges and immunities, thereby preventing the recipient State from resorting to local remedies. That State might then be held responsible for its inability to apply sanctions for internationally wrongful acts.

42. He found the provisions of article 9 logical and coherent, and supported their inclusion in the draft.

43. Mr. SETTE CÂMARA supported the proposal to introduce a provision on the use of the term "organ", in order to solve the problem raised by the divergence of views on the subject.

44. Article 9, which dealt with "transferred servants", had its place in the draft and would serve to close any loopholes that might enable a State to escape responsibility. The cases listed in support of the article in the Special Rapporteur's third report[9] showed that its provisions dealt with realities of present-day international life and not with theoretical or academic hypotheses. He found the contents of the article satisfactory and agreed that it should be sent to the Drafting Committee.

45. As to the drafting, he thought it unnecessary to include the words "as a subject of international law" in the title or the words "in international law" in the text, since the title of chapter II showed that the whole chapter dealt with "The act of the State according to international law". In addition, he suggested that the words "that State" should be replaced by the words "the latter State", in order to remove the ambiguity created by the fact that two different States were previously mentioned. The term "legal order" was usually employed only with reference to a State. In the case of an international organization, it seemed more appropriate to refer to its "constitution", "statute", "constitutive treaty" or "constituent instrument".

46. On a point of substance, it was desirable that the article should cover the lending of autonomous public institutions. For example, in Brazil there was a State company called Petrobras, which had the monopoly of oil prospecting and production and which was a typical "public corporation" of the kind mentioned in article 7. It was quite common for that company to lend its services to other South American countries. Since it was not an organ of the Brazilian State, such loans would not fall within the terms of article 9. He would be glad to know the views of the Special Rapporteur on the possibility of covering that case, and also the case of territorial public entities which might place servants at the disposal of foreign States.

The meeting rose at 1 p.m.

[8] See 1259th meeting, para. 2.

[9] See *Yearbook ... 1971*, vol. II, Part One, pp. 269-273.

1262nd MEETING

Wednesday, 22 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. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes; Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Yasseen.