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Summary record of the 1314th meeting

Topic:
State responsibility

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dealt with special cases. In those provisions, the Special Rapporteur had tried to take account of the realities of international life.

33. In his written and oral presentation of article 12, the Special Rapporteur had dealt mainly with the problems raised by insurrectional movements. His analysis of judicial decisions, practice and international doctrine had been centred on cases of that kind. The problem referred to in paragraph 1 of the article, on the other hand, namely, the conduct of an organ of a State or of an international organization, was dealt with only very briefly and considered only from the point of view of article 9. And the commentary to article 9 was hardly more detailed on that point. Only by a process of deduction could it be concluded that the rule applicable to an organ of a State could also be applicable to an organ of an international organization. Since such cases seemed relatively rare in comparison with those involving insurrectional movements, it might be better not to devote a separate provision to them, but simply to mention them in article 9. The cases to which article 9 applied, and those covered by paragraph 1 of article 12, differed by reason of the capacity in which the organ in question had acted; and it was precisely that question of capacity which had caused the members of the Commission the greatest difficulties in regard to article 12.

34. He therefore proposed that all questions relating to insurrectional movements should be dealt with in a separate article. The very existence of paragraph 5 of article 12 showed that the relationship between article 12, paragraph 2, and article 13 could not be disregarded. Another solution would be to draft a saving clause which would refer to the questions covered in paragraphs 1, 3 and 4.

35. In the circumstances, he had little to add to the comments made by other members of the Commission on the text proposed by the Special Rapporteur. In view of the difficulties raised by article 12, it was important to draft it without haste, being careful to use appropriate terminology.

The meeting rose at 1 p.m.

1314th MEETING

Thursday, 22 May 1975, at 10.5 a.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Kearney, Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

State responsibility

(A/CN.4/264 and Add.1;[1] A/9610/Rev.1[2])

[Item 1 of the agenda]

(continued)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 12 (Conduct of other subjects of international law)[3] *(continued)*

1. The CHAIRMAN invited the Special Rapporteur to give any additional explanations he thought necessary regarding draft article 12.

2. Mr. AGO (Special Rapporteur) said that in his oral presentation of the article he had perhaps dwelt more on what he thought it should contain than on the problems it should not cover. As several members of the Commission considered that article 12 presented certain risks, he would like to explain three points.

3. First, the reason why he had thought it advisable to devote only one article to the conduct of an organ of a foreign State, of an international organization or of an insurrectional movement, was that article 12 was really intended only as a complement to the preceding article. According to article 11,[4] the actions of private persons not exercising any element of the governmental authority were not attributable to the State; nevertheless, the State was not exempt from all responsibility if, in connexion with such actions, its organs had adopted an attitude which could be attributed to it and which could be found wrongful under international law. The reference in article 11 to conduct of the State connected with that of the persons, groups or entities mentioned in that provision did not, moreover, settle the question whether the State had acted by commission or omission, or in complicity. It was quite a different case when the person who had acted in the territory of a State performed no official function for that State, but was an organ of another subject of international law. In the light of article 5 and the following articles (A/9610/Rev.1, chapter III, section B), the conclusion might be reached that, since the conduct of such a person was attributable to the other subject of international law in question, the territorial State would be free of all responsibility, even though it had itself adopted a wrongful attitude in connexion with that conduct. The purpose of article 12 was, therefore, to specify that, when the conduct of a person was attributable, not to the territorial State but to another subject of international law, the territorial State might nevertheless have attributed to it as a possible source of responsibility, conduct connected with that of the person in question. Since what was at issue was the conduct of an organ of another subject of international law, whatever it might be, he thought the case could be covered by a single article. He would have no objection to devoting

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[1] *Yearbook . . . 1972*, vol. II, pp. 71-160.

[2] *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10* (see *Yearbook . . . 1974*, vol. II, Part One, pp. 157-331).

[3] For text see 1312th meeting, para. 1.

[4] See 1311th meeting, paras. 21 and 23.

two or three articles to it, however, though he did not see why that was necessary.

4. Secondly, article 12 was based on two assumptions. The first was the existence of conduct which could be attributed to a State, an international organization or an insurrectional movement; the second was the localization of that conduct in the territory of another State. It mattered little, therefore, at what moment, in what circumstances or why the international organization or insurrectional movement in question had acquired the status of a subject of international law. Just as the Commission had carefully refrained from defining the primary rules concerning obligations the breach of which constituted a wrongful act, so, too, it should refrain from defining the circumstances in which an organization or an insurrectional movement became a subject of international law. Moreover, that question might equally well arise in regard to States, as had been pointed out by those members of the Commission who had referred to the notion of recognition. With regard to international organizations, the case of acts committed by United Nations peace-keeping forces was not really the only one that could be considered. There were many organs of the United Nations that travelled constantly—for example, the Secretary-General—and could be in the situation contemplated in article 12, in particular on the occasion of a press conference.

5. Thirdly, the presence of a foreign organ in the territory of a State was sometimes perfectly normal, particularly in the case of an ambassador or a consul appointed to that State, or of a Head of State on an official visit. In exceptional cases, the presence of a foreign organ in the territory might in itself constitute a wrongful act, but it would then be a wrongful act of one or other of the two States concerned and would come under article 5. In any case it would be a different act from that contemplated in article 12.

6. As to the joint participation of two States in a wrongful act, he reminded the Commission that it had referred to that question in its reports on the work of its twenty-fifth and twenty-sixth sessions. In explaining the structure of the draft, the Commission had said that it consisted of several parts, dealing respectively with the attribution of an act to the State, the breach of an international obligation and circumstances precluding wrongfulness, and it had added: "Once these points have been settled . . . there will still remain some special problems to consider: for example, the possibility of attributing an internationally wrongful act simultaneously to more than one State in respect of one and the same situation, and the possibility of making a State responsible, in certain circumstances, for an act committed by another State." [5] That concurrence of wrongfulness was very important, but the Commission must not give way to the temptation to consider it at the present stage.

7. Sir Francis VALLAT observed that the main provisions of draft article 12, contained in paragraphs 1 and 2, were expressed in negative form and designed to show that an act committed in certain circumstances would not be attributable to the State. That was what the Commission should bear in mind in discussing the article. Like other members, he was very concerned over the borderline issues, such as the status and capacity of international organizations and the recognition of insurrectional movements, which instinctively came to mind as one read the first two paragraphs; but the place to deal with such matters was not the article under discussion. On the other hand, the need to make provision in the draft articles for the conduct of other States, international organizations and insurrectional movements became abundantly clear if one thought of the doubts that would subsist if those matters were not covered.

8. It was obvious that there could be cases in which the issue was the conduct of "another State", as envisaged by the Special Rapporteur. It was equally obvious from, *inter alia*, judgments of the International Court of Justice concerning the United Nations and article XXII, paragraph 3, of the 1971 Convention on International Liability for Damage Caused by Space Objects, [6] that at least some international organizations possessed elements of international personality, could incur international responsibility and could be liable for damage. If even the possibility of such a situation was known to exist, it had to be covered in the draft articles. That it was essential to deal also with the case of insurrectional movements was clear from the wealth of material in the Special Rapporteur's fourth report (A/CN.4/264 and Add.1).

9. Nevertheless, he wondered whether the article 12 was really broad enough. Although, as always in the process of codification, the Commission must strike a balance between what was dictated by pure logic and what was known to be practical, he would be reluctant to commit himself at the present stage to a statement to the effect that there were no subjects of international law other than States, international organizations and insurrectional movements.

10. Undoubtedly all those entities could be subjects of international law, but they could well be divided into two groups, comprising States and international organizations on the one hand, and insurrectional movements on the other, according to whether the fact of their existence was normal or abnormal. That constituted an argument for drafting two separate articles. It had been perfectly reasonable to discuss States and international organizations together in article 9, and like considerations applied to article 12, the drafting of which, and that of the saving clauses at present contained in paragraphs 4 and 5, would be simplified if insurrectional movements were made the subject of a separate article. Such a division would also afford an opportunity of preparing a fuller commentary on international organizations.

11. With regard to the wording of article 12, he wondered whether the phrase "in the territory of a State", in paragraph 1, might not exclude from the effect of the article acts occurring, for example, on a ship or in an aeroplane or in an area like the exclusive "economic zone" proposed at the Third United Nations Conference on the Law of the Sea.

[5] See *Yearbook . . . 1973*, vol. II, p. 172, para. 51.

[6] See General Assembly resolution 2777 (XXVI), annex.

12. Mr. YASSEEN said that all the principles stated in article 12 were acceptable. Some of them were derived from consistent practice and a wealth of judicial precedent, whereas others, though less well established, were equally necessary. In considering article 12, members should not forget that the Commission was studying the responsibility of States, not the responsibility of all subjects of international law. The reason why it was necessary to speak of other subjects of international law was not in order to establish when they were responsible, but to exclude them from the topic under consideration. That was the purpose of article 12. The article was necessary because it supplemented articles 5 and 9, even though the principles it stated could be deduced from other provisions of the draft.

13. With regard to insurrectional movements, it should be explained that the Commission had no intention of dealing with the question of their responsibility as article 12 and above all article 13 might suggest. In fact, article 13 did not refer to the responsibility of an insurrectional movement, but to the responsibility of the State into which the movement was transformed. The subject had to be mentioned, because what was involved was the conduct of organs of a nascent State.

14. As to the structure of article 12, he pointed out that the problems raised by State organs were very different from those raised by organs of an international organization and even more different from those raised by organs of an insurrectional movement. Draft article 9 (A/9610/Rev.1, chapter III, section B), which dealt both with State organs and with organs of an international organization placed at the disposal of another State, could be divided into two articles. Similarly, the contents of paragraph 1 of article 12 could form the subject of two separate articles, one on the conduct of a State organ and the other on the conduct of an organ of an international organization. Although the phenomenon was the same in both cases, the attendant circumstances and the modalities might be very different.

15. Insurrectional movements should be dealt with in a separate article, and paragraph 2 of article 12 should not be introduced into article 13, which applied exclusively to the case in which the insurrectional movement had become a State.

16. Mr. MARTÍNEZ MORENO noted that no member had found fault with the essential principles stated in the Special Rapporteur's draft article 12. He appreciated both the reservations expressed concerning the treatment, in one and the same article, of States, international organizations and insurrectional movements, and the difficulty of separating those topics within the framework of the draft; if the problem could be solved at all, the Special Rapporteur would surely find a solution. Much of the concern caused by article 12 could be traced to the wide range of doctrinal opinions concerning the scope of the concept of a "subject of international law". Some scholars held that the State was the only subject of international law, while others took the view that the individual was the subject of international law *par excellence*. He himself was among the few jurists who considered that any international body was a subject of international law.

17. While the article should certainly apply to acts committed "in the territory of a State", he wondered whether that phrase was broad enough to include conduct occurring, say, during diplomatic asylum in a foreign embassy, or in areas such as the proposed exclusive "economic zone", where the traditional rules governing responsibility would not apply. Similarly, could the phrase "international organization" be taken to include bodies such as commissions of investigation or arbitral commissions?

18. He agreed that questions such as the recognition of belligerents and the determination of the point at which a revolutionary movement became a subject of international law were of great importance in relation to the question of the responsibility of insurrectional movements. It was clear, however, from examples ranging from the time of Jefferson Davis to the current events in South-East Asia, that such movements could be, and had been recognized as being, capable of incurring responsibility. It might be better to deal with the topic in a separate article, but it was far too important to be ignored. He thought Mr. Sette Câmara's suggestion [7] might be preferable to the phrase "structures of the insurrectional movement" used in paragraph 5 of draft article 12.

19. Mr. TAMMES said that the Special Rapporteur had condensed draft article 12 out of a wealth of convincingly and objectively presented material. The article was logical and appropriate in the general context of chapter II, since, by precluding resonsibility of a State for the conduct of organs which were extraneous to that State but acted within its territory, it served as a counterpart to article 9. He was gratified to note that the Special Rapporteur had recognized that there might be a need for rules concerning the joint responsibility of the territorial State in connexion with the conduct of extraneous organs; in that case, the place in which the conduct occurred would be immaterial. Such problems were, however, outside the scope of article 12, for the purposes of which the provisions of paragraph 3 would suffice.

20. The Commission should not devote too much attention to the question of the status of international organizations, since the object of article 12 was to preclude the attribution to the State of the conduct of organs that were clearly not its own. He doubted the wisdom of providing, in paragraph 2, that the article applied only to insurrectional movements "possessing separate international personality"; in his view, the conduct of an insurrectional movement was inherently foreign to the territorial State since, like an international organization, such a movement existed independently of the State. Even if the phrase in question was deleted, paragraph 2 would still reflect long-standing international practice and, indeed, the Special Rapporteur himself seemed, in paragraphs 158 and 195 of his fourth report, to have attached little practical importance to the difference between the situation in which an insurrectional movement

[7] See 1312th meeting, para. 23.

had, and that in which it had not acquired international personality. In his own view, the concept of the international responsibility of an insurrectional movement was not objective, like that of the personality of a State, but was dependent on the judgement of States coming into contact with the movement. Illustrations of the subjective nature of the concept were given in paragraphs 154 and 176 of the fourth report; another example was the case of claims arising out of the establishment of the Italian Socialist Republic in northern Italy in 1943. If the requirement that the insurrectional movement must possess international personality was to be retained—which he would not recommend—it would be advisable to specify that the conduct in question would not be considered as an act of the State "by a State which has recognized such personality". The reference to international personality might give rise to numerous problems and should be deleted, particularly as it had been considered unnecessary in earlier drafts on the subject.

21. Mr. QUENTIN-BAXTER agreed with other members that the scope of article 12 was limited. If in some way article 11 was the corollary of all the preceding articles, article 12 in turn served to show that the rule in article 11 held true even when the authors of an act were organs of a State or agents of some other institution having international personality. And yet the two articles had evoked different responses in the Commission. So far as article 11 was concerned, there had been unanimous agreement that little more could be done than endorse the principles enunciated by the Special Rapporteur. The only concern expressed had been that the article was so concise that its value might be underestimated. In the case of article 12, however, the questions which came "instinctively" to mind were legion. The article should be so revised that nobody would be able to read into it any intention on the part of the Commission to make a rule of law outside the scope of codification. To that end, it might well be advisable to deal with the conduct of organs of other States and that of organs of international organizations in separate paragraphs. For the reasons mentioned by Sir Francis Vallat, Mr. Yasseen and Mr. Tammes, he considered that the question of insurrectional movements should be dealt with in a separate article.

22. In seeking to gain acceptance of the draft articles, the members of the Commission should insist on the purity and logic of the Special Rapporteur's ideas. At the same time, they should bear in mind the less rational reactions which might be occasioned by a reminder of the difficulties that the disruption of a State could entail. Disruption might be the result not only of illegal insurrection, but of the exercise by a non-self-governing territory of its right to self-determination—a right fully recognized by the United Nations. If such a territory chose self-government in association with another State, the question might arise of the distribution of responsibility between the former territory and the State with which it had become associated. It would be entirely wrong for the Commission to go into such matters in the draft articles, so in order to cover the vast range of possibilities in international life, it was correct to employ the undefined term "State", as had been done in the Vienna Convention on the Law of Treaties [8] and the draft articles on succession of States in respect of treaties (A/9610/Rev.1, chapter II, section D). What the Commission ought to do, rather than draw attention to the unpleasant "abnormality" of disruption, was to emphasize the principle of the continuity of the State, which was an essential part of the coherence of international society and of orderly relations between States as subjects of international law. It was that which justified the preparation of a carefully worded separate article.

23. Mr. KEARNEY said that he shared the doubts expressed by other members about the words "in the territory of a State", in paragraph 1. It was clearly necessary to revise the wording of that phrase, but the task of the Drafting Committee would not be an easy one. One had only to think of the case of an act performed by an organ of State A on board a merchant vessel flying the flag of State B, but sailing through a part of the high seas claimed as an exclusive economic zone by State C. It would certainly be difficult to draft a formula covering all such possible cases.

24. With regard to the presentation, he was in sympathy with the idea of dividing article 12 into separate articles dealing with the different subjects now covered by a single article, even though he fully appreciated the logic of the Special Rapporteur's approach.

25. He believed that paragraph 1 of article 12 should be closely connected with article 9 (Attribution to the State of the conduct of organs placed at its disposal by another State or by an international organization). Paragraphs 2 and 5 of article 12 were more closely connected with article 13 (Retroactive attribution to a State of the acts of organs of a successful insurrectional movement).

26. The subject of insurrectional movements should undoubtedly be dealt with in the draft articles. The treatment of the subject could, however, be simplified by adopting Mr. Tammes's suggestion that the words "and possessing separate international personality" should be dropped. The removal of those words would make it possible to combine the content of paragraph 2 of article 12 with the contents of paragraphs 1 and 2 of article 13. Paragraph 5 of article 12 could then be eliminated altogether, because the idea it expressed would be conveyed by paragraphs 1 and 2 of article 13, subject to a slight revision of the language of those provisions.

27. He agreed with those members who had criticized the use of the word "structures" in paragraph 5. He also agreed that, in paragraph 2, the reference to an insurrectional movement directed "against the State" was not accurate. Most of the cases envisaged would constitute attempts to replace a government by a new government rather than a State by a new State, except in the particular circumstances where a new State came into being in part of the territory of the pre-existing State against which the insurrectional movement had been directed.

[8] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 289.

28. The saving clauses in paragraphs 3 and 4, as he understood them, merely stated that nothing in the provisions of the principal paragraphs 1 and 2 prevented the attribution of certain conduct to the State by virtue of articles 5 to 9, or to the international organization or insurrectional movement of which the authors of that conduct were organs. Those saving clauses did not necessarily mean that, in the cases envisaged, there would be a factual basis for the attribution of the conduct, or indeed a basis for the attribution of responsibility.

29. Lastly, he stressed the great difficulty of avoiding confusion between primary rules and secondary rules. In many cases it was certainly far from easy to distinguish between the two types of rule. For example, the question whether a subject of international law could have responsibility attributed to it would be regarded as being governed by a secondary rule or by a primary rule according to whether one chose to treat the issue as one of international personality or one of attribution. Another hypothetical case was that in which a group of States joined together to form an international organization and adopted a charter which provided that the organization would not be responsible for its conduct. It would be difficult to determine whether a rule that such an organization could or could not be considered as a subject of international law should be applied, or whether its conduct should be attributed to the organization regardless of the limitation in its charter.

30. Mr. TSURUOKA said he was in favour of retaining article 12, which was the result of thorough study of the relevant practice, judicial decisions and doctrine. The principles it stated were at least useful, if not essential. The practical value of those principles could be seen in many cases, including that of Japan, which, under a treaty concluded with the United States, had agreed to the stationing of American armed forces in its territory.

31. At the same time he appreciated the concern expressed by some members of the Commission and recognized that article 12 raised some very difficult problems. For example, it was uncertain what was the capacity of an international organization in international law and what conditions had to be fulfilled by an insurrectional movement in order to be distinguishable from a mere group of persons and to acquire international personality. If those very important questions were not settled, it might be difficult, if not impossible, to apply the rule in article 12. It was true that besides the "dark areas" there were also some "light areas" in which that rule was already applicable. The United Nations, for instance, had some measure of "delictual capacity".

32. As to the form of the article, he saw no objection to dividing it into two or three separate articles, though a decision on that point could be postponed until the Commission came to consider the draft articles as a whole. The word "structures", which appeared in paragraph 5, and about which some members of the Commission had expressed reservations, had already been used in article 7, so he thought it should be retained in article 12.

33. Mr. RAMANGASOAVINA said that article 12 was the logical sequel to the preceding articles, which, starting with article 5, were intended to determine in which cases the State was responsible for the wrongful acts of its own organs, of organs placed at its disposal, or even, in certain circumstances, of private persons.

34. In their comments on article 12, the members of the Commission had raised several very important and difficult problems. When could an insurrectional movement be considered to possess a separate international personality? By what tests could it be decided that an international organization had a personality such that the State in whose territory it was acting could be relieved of all responsibility? If the territorial State was a member of the international organization, could it be relieved of all responsibility? Like most of the members of the Commission, he believed it would be better not to raise the question of the recognition of international personality; for an insurrectional movement could be recognized by some States and not by others, and it was very hard to determine the proper criteria for granting it international personality. Moreover, in the case of national liberation movements such as the PLO and SWAPO, which had been recognized by the United Nations and consequently had separate international personality, the States in whose territories those movements operated could hardly invoke the responsibility of the movements to deny their own responsibility, for in so doing they would be implicitly recognizing the *de jure* existence of the movements they were fighting.

35. The principle stated in paragraph 1 of article 12 was the corollary of the principle in article 9, for if the conduct of an organ placed at the disposal of a State by another State, or by an international organization, engaged the responsibility of the State at whose disposal it had been placed only in so far as it had acted in the exercise of elements of that State's governmental authority, it followed logically that the conduct of an organ of a State, or of an international organization, acting as such, engaged only the responsibility of the State or the organization to which it belonged. In paragraph 2, that rule had been extended to insurrectional movements which possessed separate international personality, and which it was therefore logical to include among the other subjects of international law covered by article 12. The advisability of dealing with those three subjects of international law in one and the same article was, of course, open to question; but he thought that if there were three separate articles more emphasis would be placed on those entities, whereas it was not their nature that mattered, but their position in the State in whose territory they were situated. Hence he had some reservations about the division of article 12 into several articles and thought that point could be examined by the Drafting Committee.

36. Mr. USHAKOV reiterated his view that paragraphs 1 and 3 of article 12 were entirely unnecessary. It was, indeed, quite impossible to compare, as the Special Rapporteur had done, the situation of an organ of a State or of an international organization acting in that capacity in the territory of another State, with the situation of private persons acting in the territory of a State—the case covered by article 11. The two situations were totally unrelated, since private persons in the territory of a State were subject to that State's authority and jurisdiction, whereas the organs of another State or of

an international organization were not subject to the jurisdiction of the State in whose territory they were situated. The territorial State could prevent and punish the act of a private person, whereas it could neither prevent nor punish the act of an organ of another State or of an international organization acting in that capacity in its territory. It was obvious that a State could neither prevent nor punish the conduct of a representative of a foreign State in its territory, and a host State could neither prevent nor punish the conduct of an international organization located in its territory, since it had no jurisdiction over that organization. Hence there was no reason to repeat in paragraphs 1 and 3 of article 12 the provisions of paragraphs 1 and 2 of article 11, for the two articles dealt with wholly unrelated situations.

37. As to paragraph 2 of article 12, he shared the reservations expressed by some members of the Commission about the words "possessing separate international personality", because such personality seemed to him very difficult to determine. In his opinion, it would be better to say that the conduct of an organ of an insurrectional movement directed against a State could not be attributed to that State "if the insurrectional movement controls part of the territory of the State in question".

The meeting rose at 1 p.m.

1315th MEETING

Friday, 23 May 1975, at 10.10 a.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Kearney Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

Eleventh session of the seminar on international law

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

2. Mr. RATON (Secretariat) thanked Mr. Ustor, the Commission's previous Chairman, and Mr. Yasseen for having upheld the cause of the Seminar on International Law at the twenty-ninth session of the General Assembly. The eleventh session of the Seminar would open on Monday, 26 May 1975. There would be 20 participants, coming from different countries, who had been chosen on the basis of geographical and linguistic distribution that was as fair as possible. There would, however, be few representatives of African countries, because those countries had not nominated many candidates for 1975. The organizers of the Seminar had marked the celebration of International Women's Year by inviting six women to participate. There would be eight lecturers from among the members of the Commission: Mr. Martínez Moreno, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Kearney, Mr. Ustor, Sir Francis Vallat and Mr. Yasseen.

3. The Seminar could not be held without the participation of members of the Commission or without the financial contributions of Governments, which provided students from developing countries with fellowships varying in amount from $1,200 to $5,000. The amount of the fellowship awarded by Israel had not changed, but the fellowships awarded by the Netherlands, Norway, Finland and Sweden had been increased from $1,500 to $2,000, and the Federal Republic of Germany had raised the value of its fellowship to $2,500; the most valuable fellowship, of $5,000, had been awarded by Denmark. Thanks to the personal intervention of Mr. Hambro, Norway had maintained its contribution for 1975. Despite the efforts of those countries, however, the value of the fellowships had become insufficient owing to the fall of the dollar and the increase in the cost of living in Switzerland. Once again, therefore, he made an urgent appeal to Governments to award additional fellowships and to increase the value of the existing ones.

4. The CHAIRMAN expressed his satisfaction at the holding of the Seminar and said it was gratifying that most of the participants were young jurists from the third world. He thanked the donor countries for providing the fellowships, which he hoped would increase in number and value.

State responsibility
(A/CN.4/264 and Add.1;[1] A/9610/Rev.1[2])

[Item 1 of the agenda]

(*resumed from the previous meeting*)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 12 (Conduct of other subjects of international law[3] (*continued*)

5. The CHAIRMAN invited the Commission to resume consideration of draft article 12.

6. Mr. CALLE Y CALLE said that the Special Rapporteur's draft article 12 was the clearest and the best formulated text so far produced on its subject, as could be seen from a comparison with previous attempts at codification. The article dealt with acts committed in the territory of a State by an organ of another subject of international law. Its purpose was to specify that such acts could not be attributed to the territorial State.

7. The provisions of paragraph 1 were in line with those of article 9 (A/9610/Rev.1, chapter III, section B), but they could not be incorporated in that article. Article 9 dealt with the case in which an organ of another State, or of an international organization, was placed at the disposal of the territorial State. The acts of that organ were then attributed to the territorial State because it had acted under the authority or on the instructions of that

[1] *Yearbook . . . 1972*, vol. II, pp. 71-160.

[2] *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10* (see *Yearbook . . . 1974*, vol. II, Part One, pp. 157-331).

[3] For text, see 1312th meeting, para. 1.