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Summary record of the 1454th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
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between international organizations and the exercise of State jurisdiction, for it was through a study of the interplay of international treaties and national legislation that the Commission would be able to decide which rules should be included in a codification instrument.

41. With regard to the subject-matter of the study, he noted that most members of the Commission assumed that it would deal with the effect of the existence and operation of international organizations in the territory of States; in other words, with the effect or lack of effect of internal law on international organizations, not with the international relations of organizations and States or the international relations of organizations *inter se*. He drew attention to that assumption in order to stress the fact that, at present, it would be unwise for the Commission to place undue restrictions on the subject-matter of the study. Moreover, if that assumption was correct, it would mean that the study should deal with three basic questions, namely, the capacity or status of international organizations in internal law, the privileges of international organizations and the immunities of international organizations.

42. He had specially mentioned such capacity because he thought that one of the basic questions to be answered in the study was whether an international organization had legal capacity to contract within the system of internal law and to act as a body corporate by virtue only of its establishment and existence. He was particularly aware of the importance of that question because, in the United Kingdom, it had had to be decided whether a commodity council, to which the relevant agreement had accorded only the capacity of a body corporate with no privileges and immunities, was governed by United Kingdom legislation, which dealt essentially with capacity in the context of privileges and immunities. Although that problem had been solved by the adoption of the necessary Order in Council, it had clearly shown that the question of the capacity or status of an international organization was separate from the question of its privileges and immunities.

43. In that connexion, he thought the study should deal with the scope and content of Articles 104 and 105 of the Charter of the United Nations, which also made a distinction between the legal capacity necessary for the exercise of the Organization's functions and the privileges and immunities necessary for the fulfilment of its purposes. It should also be borne in mind, however, that, if the study dealt with the status, privileges and immunities of an international organization itself, as distinct from those of its officials and experts, it would be moving away from diplomatic law and towards the subject of State immunity, which the Commission had not yet examined but which it might take up as a topic parallel to that being studied by the Special Rapporteur. Although there was, in a sense, a parallel between State immunity and the immunity of an international organization, there was also a very fundamental difference between those two concepts, for State immunity was based on the idea of a State's sovereignty and absolute immunity from foreign jurisdiction, whereas the immunity of an international organization derived from its constitutent instruments and any relevant agreements that conferred on it the privileges and immunities necessary for the exercise of its functions. The parallel between those two concepts could be seen, however, in cases where, for example, local courts dealt with questions of immunity and of waiver in very much the same manner for international organizations as for States.

44. Mr. EL-ERIAN (Special Rapporteur) said that, in referring to the example of the 1944 British Diplomatic Privileges (Extension) Act, Sir Francis Vallat had been quite right in pointing out that many developments had taken place since 1944 and that it was now generally agreed that a functional approach should be adopted in studying the question of the status, privileges and immunities of international organizations. He had given that example in his report mainly in order to show that the origin of the law relating to the status, privileges and immunities of international organizations was not entirely conventional in nature

45 He fully agreed with Sir Francis Vallat that the study should deal with the question of the capacity of international organizations in internal law as distinct from the question of their privileges and immunities. In addition, he thought that a further distinction should be made between the legal capacity of international organizations themselves and the legal capacity of their officials, experts and other persons conducting official business on their behalf. Thus, one of the Commission's main concerns would be the problem of the representation of an international organization in the territory of a State and the status it should enjoy in order to exercise its functions if it sent a representative to another organization in the territory of another State.

The meeting rose at 1 p.m.

1454th MEETING

Wednesday, 6 July 1977, at 10.10 a.m.

Chairman: Sir Francis VALLAT

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Dadzie, Mr. El-Erian, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Šahović, Mr. Schwebel, Mr. Sette Câmara, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov.

Long-term programme of work
[Item 8 of the agenda]

and

Organization of future work (*concluded*)
[Item 9 of the agenda]

PRELIMINARY REPORT ON THE SECOND PART OF THE TOPIC OF RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS (*concluded*) [A/CN.4/304]

1. Mr. EL-ERIAN (Special Rapporteur), summing up the discussion, said that the comments made and the views expressed had done much to clarify the approach to be adopted. Mr. Tsuruoka, speaking at the 1453rd meeting, had rightly pointed out that the main purpose of the study would be to produce a useful codification instrument. Mr. Šahović (1452rd meeting) had stressed the need for an analysis of the practice of States and international organizations and its impact on the United Nations system. Mr. Reuter (1453rd meeting) had drawn attention to the need to take account of the particularities of diplomatic law in its application to relations between States and international organizations. Mr. Quentin-Baxter (1453rd meeting) had said that the Commission should adopt a cautious approach in its study of the topic, while Mr. Francis (1453rd meeting) had advocated a combination of caution and boldness, and Mr. Sette Câmara, Mr. Calle y Calle and Mr. Dadzie (1452nd meeting) had spoken in favour of a vigorous and daring approach. Mr. Schwebel (1453rd meeting) had emphasized the need to reconcile the functional requirements of international organizations and the security interests of host States, and Mr. Ushakov (1453rd meeting) had pointed out that, in view of the many conferences and meetings of international organizations and their organs held throughout the world, all the member States of the United Nations were or might be host States, whose interests should be taken into account in the study.

2. It had been maintained by Mr. Šahović that, although the preliminary report seemed to deal mainly with treaty law, the future study should concentrate on the impact of practice on the functioning of international organizations, particularly in view of the increasingly important role they played in international life. In paragraphs 57 to 62, he had rather briefly discussed the place of custom in the law of international immunities; he would deal more fully with that question in the next report he submitted.

3. With regard to the scope of the study, it had been stressed that the Commission should concentrate on the formulation of basic residuary rules without going into the details of specific cases. Thus, the problem the Commission would have to face would be that of striking a balance between the need to identify the gaps to be filled in the practice, as it had developed since the adoption of the 1946 and 1947 conventions on the privileges and immunities of the United Nations and of the specialized agencies, and the need to avoid excessive detail so as not to hinder the development of the international law relating to the legal status, privileges and immunities of international organizations. In that connexion, Mr. Reuter had said that the Commission would face a difficult task in trying to formulate basic rules to govern every aspect of the status, privileges and immunities of the many different types of international organization that now existed. Mr. Ushakov, however, believed that the Commission would, in fact, be able to formulate a set of residuary rules on the basis of a thorough and cautious study of general international law as distinct from conventional law.

4. Several members of the Commission had also stressed the need to decide whether the study should cover only organizations of a universal character belonging to the United Nations system or whether regional organizations should also be included. He thought it was too early to settle that question, since it was only when the basic rules had been formulated that it would be possible to see whether or not there were any general rules which could be applied to all international organizations, including the operational regional organizations referred to by Mr. Reuter. On that question, Mr. Ago had advised against any undue restriction of the scope of the study, pointing out that the future draft articles should provide as broad a basis as possible for the discussions of an international conference convened to adopt a convention.

5. As to the subject-matter of the study, Mr. Reuter had taken the view that, as a first step, the Commission should study only the legal status, privileges and immunities of organizations. In the preliminary report, however, it was suggested that the future study should also deal with the question of the privileges and immunities of international officials, experts and other persons engaged in the activities of international organizations and with that of the status of representatives sent by one organization to another. In any event, those were questions on which the Commission could take a decision at a later stage.

6. In his introduction to the preliminary report, he had not taken a stand on the question of the form which a future codification instrument might take. The Commission's Statute provided for many different types of instrument (convention, additional protocol, code or declaration), but that was also a matter on which the Commission could take a decision later.

7. Several members of the Commission had referred to specific examples of international organizations and organs which should be included in the material he would study. Mr. Sucharitkul had suggested (1452nd meeting) that he should also study the internal law of States. He would take those suggestions into account and include in his study additional information available on internal law and on such bodies as UNDP, CMEA, OPEC and the Danube Commission. He would be grateful to the United Nations Secretariat for any help it could give him in obtaining additional information on subsidiary bodies of the United Nations, various regional organizations and the internal law of States.

8. He thought that the members of the Commission were in favour of undertaking a study on the second part of the topic of relations between States and international organizations, and that they supported the recommendation he had made in paragraph 78 of his preliminary report, namely, that the United Nations and the specialized agencies should be requested to provide him with up-to-date information on the practice they had followed during the past 13 or 14 years. The Commission also seemed to agree that he should be authorized to use any available material and information relating to organizations of a universal character and to regional organizations. It had reached tentative agreement on the structure of the study, which would, for the time being, relate both to the privileges and immunities of international organizations themselves and to the privileges and immunities of international officials, experts and other persons

engaged in the activities of international organizations. As suggested by Sir Francis Vallat (1453rd meeting), he would also consider the question of the legal capacity of international organizations. Subsequently, the Commission would have to decide whether a future codification instrument could include provisions on the legal status and immunities of international organizations without entering into the broader topic of State immunity.

9. He thanked the members of the Commission and the Secretariat for their assistance in the preparation of his preliminary report and for the encouragement they had given him to proceed with the task. In making his study, he would try to strike a balance between practice and theory and to reconcile the different approaches to the second part of the topic of relations between States and international organizations.

10. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to authorize the Special Rapporteur to continue his study of the second part of the topic of relations between States and international organizations; to prepare a further report, which would be based on the guidelines laid down in the preliminary report (A/CN.4/304) and would take account of the views expressed and the points raised during the discussion; and to seek additional information on the topic from the United Nations, the specialized agencies and regional organizations.

It was so agreed.

State responsibility (A/CN.4/302 and Add.1-3)

[Item 2 of the agenda]

Draft articles submitted by the Special Rapporteur

Article 20 (Breach of an international obligation calling for the State to adopt a specific course of conduct)

11. The CHAIRMAN invited the Special Rapporteur to introduce his sixth report (A/CN.4/302 and Add.1-3) and, in particular, his draft article 20, which read:

Article 20. Breach of an international obligation calling for the State to adopt a specific course of conduct

A breach by the State of an international obligation specifically calling for it to adopt a particular course of conduct exists simply by virtue of the adoption of a course of conduct different from that specifically required.

12. Mr. AGO (Special Rapporteur) said that, especially to facilitate the task of the new members of the Commission, he would begin by briefly tracing the history of codification work on State responsibility.

13. The first attempt had been made at the Conference for the Codification of International Law (The Hague, 1930), which had studied State responsibility for the breach of international obligations solely in regard to the treatment of foreigners, whether natural or legal persons. When the Commission had taken up the topic, it had done so initially in that form, since the study of State responsibility by legal theorists had traditionally been linked with the treatment of foreigners. The Commission had soon come to realize, however, that to approach the subject in that way would mean in fact codifying the law relating to foreigners, in other words, the primary rules of international law, which imposed on the State international obligations concerning the treatment of foreigners, rather than the rules relating to international responsibility arising out of the breach of those primary rules. The 1930 Codification Conference had failed largely because it had confused the definition of the primary rules of international law on the treatment of foreigners with that of the consequences of breaking those rules.

14. With the support of the General Assembly, the Commission had therefore decided, in 1963, to adopt a new approach, which had been summed up by the formula "all the responsibility and nothing but the responsibility". It was then that it had decided not to associate the study of State responsibility with any particular matter, such as the treatment of foreigners, but to consider responsibility as a consequence of the breach of any kind of international obligation. The matter of the law relating to foreigners was in fact so controversial that it accounted for the failure of the 1930 Conference, which had been unable to agree in particular on the question whether the treatment accorded by a State to foreigners should be the same as it granted to its own nationals or should be measured by a special standard. In short, the Commission had decided not to deal with the definition of the primary obligations of international law, but merely to presume the existence of those primary obligations and to consider only those obligations which were termed secondary because they followed the primary obligations chronologically and were created by a breach of those primary obligations. The Commission had also decided to follow the suggestions of the General Assembly, that the study of responsibility should not be confined to the breach of obligations concerning the treatment of foreigners but should include the breach of existing obligations in other fields, some of which were even more important for relations between States.

15. In deciding to focus its attention on the codification of general rules of State responsibility, which were applicable in whatever sphere the breach of an international obligation had occurred, the Commission had not intended to neglect the work already done. However, it had been obliged at the same time to take account of the consequences which the recent evolution of certain primary rules, in one field or another, might have for the purposes of codification of the rules of responsibility. It was fully conscious of the need to take into consideration any evolution which had been completed and also, where evolution was still in progress, to engage where necessary in the progressive development of international law.

16. Those decisions had occupied the Commission up until 1967. During the next few years, it had drawn up the plan of its study and decided on the criteria to be applied, the method of work to be followed and the terminology to be used. With the approval of the General Assembly, it had then worked on the preparation of a draft convention using the method it had already followed for a long time. However, it did not necessarily follow that a convention would finally be adopted. It would be for the General Assembly to make a final decision in that connexion as between the various possibilities open to it.

17. The Commission had also decided to confine its study strictly to international responsibility for internationally wrongful acts, not because it was indifferent to the very serious problem of so-called responsibility for risks or for lawful acts but because those two categories of responsibility were quite different and should be dealt with separately. The first category had its origin in the breach of a primary obligation whereas the second came under the primary rules themselves. It was probably due to the poverty of legal language that the one term "responsibility" was used to designate two quite different ideas. In that connexion, it should also be remembered that activities which were lawful at one time might subsequently become unlawful. Such a change depended on the universal conscience.

18. As to the distinction between primary rules, which imposed international obligations on States in different areas, and secondary rules, which established the consequences of a breach of such obligations, common sense should be applied. There was certainly no need for the Commission to define within the context of codification of responsibility the content of primary obligations. If it wanted to do so, considering that State responsibility could arise from the breach of any international obligation, the Commission would inevitably have to cover the whole of international law. It did not follow, however, that the content or nature of international primary obligations had no bearing on international responsibility. That point had come to the Commission's attention the previous year, when it had envisaged making a distinction between internationally wrongful acts according to their seriousness, and had been led to refer to the content of international obligations and to take into consideration their importance for the interests of the international community as a whole.[1] At the present session, it would also have to refer, if not to the content of primary obligations, at least to the form they took and the way in which they imposed their requirements on States.

19. Reviewing the articles thus far adopted by the Commission,[2] he pointed out that the four articles in chapter I stated general principles, while articles 5 to 15 in chapter II concerned the objective element of an internationally wrongful act and set out the conditions of existence of an "act of the State" under international law. In taking up chapter III in 1976, the Commission had turned its attention to the objective element of an internationally wrongful act, namely, the breach of an international obligation. In article 16, the Commission had generally defined the circumstances in which there was a breach of an international obligation. In article 17, it had stated the principle of the irrelevance of the origin of the international obligation breached for the purposes of the qualification of the act committed in breach of that obligation as internationally wrongful, while in article 18 it had laid down the requirement that the international obligation must be in force for the State at the time the act that was to be qualified as internationally wrongful was performed, and had established the consequences of that basic principle in relation to the various types of act of the State.

20. At the end of chapter III, it would have to revert to a question linked to article 18, namely, the duration of an internationally wrongful act. For the duration might determine the amount of reparation due, and the answer to the question whether a given internationally wrongful act fell within the jurisdiction of particular courts or commissions, whose competence was often limited by their constituent instruments to acts committed before or after a certain date.

21. In 1976, the Commission had considered whether it would be advisable, in referring to the content of international obligations, to make distinctions according to the degree of seriousness of the breach of certain obligations in relation to the breach of other obligations. After clearly indicating that the breach of any international obligation constituted an internationally wrongful act, it had stated that, according to the present conviction of States, as reflected in certain international instruments now in force, there were international obligations whose observance was of such concern to the international community that their breach constituted a crime in the eyes of that community taken as a whole. The concept of an "international crime" had then been contrasted with that of an "international delict", which was applied to the breach of other obligations. The Commission had for the time being refrained from examining the consequences of that distinction for the régime of international responsibility. At a later stage, it would be necessary to establish whether the breach of a given international obligation entailed a reparation or a sanction, and to determine the active subject of responsibility. In other words, it had to be determined whether only the injured State was entitled to invoke responsibility or whether some other subject of international law, in particular an international organization, had the same right.

22. In 1976, the Commission had thus considered the conclusions that could be drawn from the content of an international obligation to determine the existence of a breach. It had emphasized the importance of that content for the international community, in particular from the standpoint of the maintenance of international peace and security, the independence of States, fundamental human rights or the safeguarding of certain resources common to all mankind. Other factors might come into play, however, and give rise to distinctions regarding the breach of international obligations. It might be the nature of the obligation, the form it took, rather than the content that could be taken into consideration: how and in what form the obligation applied to States and what it required of them. In that respect, international obligations differed. Sometimes an international obligation, with a view to achieving the aim set out, not only indicated the required objective to the State but also specified the means by which the State was to achieve it. On the other hand, it might simply require the State to achieve a certain result, leaving it free to choose the means at the internal level. In the former case, the State was specifically required to take certain legislative, executive or judicial measures or to refrain from them; in the latter case, the State had

[1] *Yearbook ... 1976*, vol. II (Part Two), p. 71, document A/31/10, para. 69.

[2] *Ibid.*, pp. 73-75, document A/31/10, chap. III, sect. B, subsect. 1.

merely to achieve the required result but was free to use the means it chose.

23. Legal doctrine had long made that distinction, emphasizing that in certain fields obligations of the latter type were much more common. There were, however, many examples of obligations of the former type. For instance, under article 1, paragraph 1, of the Convention relating to a uniform law on the international sale of goods (The Hague, 1 July 1964), each contracting State undertook to incorporate a uniform law into its own legislation.[3] The Hague Conventions on Private International Law contained the texts of laws which the ratifying States undertook to introduce into their internal legal order.[4] Some of the international labour conventions also provided for legislative action by the contracting States. On that point, it should be noted that, in reply to a question put by the United States Government, the ILO had replied in 1950 that that Government should, in principle, enact the required law, unless its constitution embodied the principle that treaties automatically formed part of "the law of the land"; in such a case, the legislative act was already contained in the instrument of accession to the international labour convention concerned.[5] Other examples were the State Treaty for the Re-Establishment of an Independent and Democratic Austria (15 May 1955), which required Austria to codify the principles set out in that treaty and to give effect to them in its legislation, and also the 1965 International Convention on the Elimination of All Forms of Racial Discrimination and the 1960 Convention against Discrimination in Education, which contained similar provisions.[6] An obligation might even relate to the abrogation of a law, as in the case of the 1955 Austrian State Treaty, which required Austria to repeal or amend all legislative and administrative measures adopted during the Nazi period which conflicted with the principles set out in that treaty.

24. The action required by the obligation might also be incumbent on an executive organ. Peace treaties often imposed specific obligations: for instance, to deliver arms, scuttle warships or dismantle fortifications. There were also cases in which action was required of a judicial organ. A peace treaty might require the competent authorities of a State to revise certain orders of prize courts.

25. In some cases, the conduct required was an act of omission. For instance, under article 10, paragraphs 1 and 2, of the 1955 Austrian State Treaty, Austria had undertaken to keep in force—in other words, not to amend or repeal—the laws already adopted for the liquidation of the remnants of the Nazi régime, and also the law of 3 April 1919, concerning the House of Hapsburg-Lorraine, which prohibited restoration of the imperial régime. In the sphere of diplomatic relations, the police forces of a State were required to refrain from entering certain premises which enjoyed special protection, such as the premises of embassies, consular missions and international organizations. The armed forces of a country were also under an obligation not to enter the territory of another country. The Treaty of Versailles [7] had imposed an obligation on the German armed forces not to enter the Ruhr—an obligation whose breach by the Nazi régime was the first stage of the crisis leading up to the Second World War. All those cases involved an obligation to refrain from adopting a particular course of conduct.

26. To determine whether there had been a breach of an international obligation in those various cases, it was sufficient to ascertain whether a particular act had taken place and, if so, in what circumstances. For instance, in the case of the obligation imposed on Germany by article 115 of the Treaty of Versailles, which provided for the dismantling of the fortifications of the Island of Heligoland, it was necessary to ascertain whether those fortifications had actually been destroyed. Thus, a breach existed whenever the act or omission of the State was not in conformity with a specifically determined and required conduct.

27. It should be borne in mind that the breach of an international obligation consisting of a specifically determined action or omission required of a State occurred independently of whether that action or omission on the part of the State had had harmful consequences. It might be that that action or omission had had no consequences and that none the less the failure to adopt the conduct required by international law was in itself a breach of the international obligation. For instance, article 10, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights,[8] required States to make "punishable by law" the employment of children and young persons in "work harmful to their morals or health or dangerous to life or likely to hamper their normal development". That obligation was breached merely by the fact that a State party to the Covenant had not enacted the required legislation, even if no specific instance of the prohibited practice had been reported in that State.

28. State practice confirmed the justification for a distinction based on the difference in the objective of the international obligation required of the State. The Swiss Government had brought out that distinction clearly in its reply to point III, No. 1, of the request for information addressed to States by the Preparatory Committee for the 1930 Codification Conference. To the question:

> Does the State become responsible [in the case of]. ... Failure to enact legislation necessary for the purpose of implementing the treaty obligations of the State or its other international obligations?

the Swiss Government had replied:

> We should ... be adopting too absolute an attitude if we merely replied in the affirmative to [this] question. ... Failure to enact legislation may of itself involve the international responsibility of the State if some agreement to which the State is a party expressly obliges the contracting parties to enact certain legislation. On the other hand, in the absence of a contractual provision of this kind, it is not failure to enact a law which involves the responsibility of a State, but rather the fact that this State is not in a position, by any means, to fulfil its international obligations....[9]

[3] See A/CN.4/302 and Add.1-3, para. 5.

[4] *Ibid.*

[5] *Ibid.*

[6] *Ibid.*

[7] *Ibid.*

[8] General Assembly resolution 2200 A (XXI), annex.

[9] See A/CN.4/302 and Add.1-3, para. 8.

29. Some of the international labour conventions imposed on States parties the obligation to enact or repeal particular legislative provisions. A commission had been appointed under article 26 of the Constitution of the ILO to examine a complaint filed by the Government of Ghana concerning the observance by the Government of Portugal of Convention No. 105 of 1957 (Convention concerning the Abolition of Forced Labour). The Commission had stated in its report that the international obligations placed on the State by certain conventions required the formal rescission of a particular legislative provision and that "a situation in which a legal provision inconsistent with the requirements of the Convention subsists but is regarded as obsolete" or as being superseded *de facto* could not be considered satisfactory for the purposes of the application of the Convention.[10] The Commission had therefore concluded that in that case there had been a breach of the obligation imposed by the Convention. The Commission appointed under article 26 of the Constitution of the ILO to examine the complaint filed by the Government of Portugal concerning the observance by the Government of Liberia of Convention No. 29 of 1930 (Convention concerning Forced or Compulsory Labour) had arrived at exactly the same conclusion.[11]

30. The distinction he had made between the two types of international obligation was also confirmed by doctrine, which on that point coincided with State practice. Writers, from Heinrich Triepel onwards, had stressed that, when an obligation required of a State conduct—whether active or omissive—"which must necessarily be carried out in certain ways and by specific bodies", any conduct of the State which was not in conformity with that specifically required constituted as such "a direct breach of the existing international legal obligation", so that, "if all the other requisite conditions exist, we are confronted with an internationally wrongful act".[12]

31. One might be tempted to adopt, in international law, language which was commonly used in civil-law countries and refer to "international obligations of conduct" or, if it was preferred, "of means", and "international obligations of result". However, it was necessary to ensure that the use of such terminology, which could be very useful in practice, did not give rise to ambiguity, for, as Mr. Reuter had shown, the distinction made in the civil-law systems of certain countries between "obligations of conduct" and "obligations of result" was not exactly the same. Moreover, civil-law systems were not in force in all countries. Accordingly, until the Commission's attitude was known on that matter, he had referred to an "obligation calling for the State to adopt a specific course of conduct" and an "obligation requiring the State to achieve a particular result".

32. The case covered by article 20—that of the breach of an international obligation requiring the State to adopt a specific course of conduct—was evidently the simpler of the two. The real difficulties would arise with article 21, which related to the breach of an international obligation requiring the State to achieve a particular result, because the situation was not as clear and precise in that case as in the first.

The meeting rose at 12.55 p.m.

[10] *Ibid.*, para. 9.

[11] *Ibid.*

[12] *Ibid.*, para. 11.

1455th MEETING

Thursday, 7 July 1977, at 10.05 a.m.

Chairman: Sir Francis VALLAT

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Dadzie, Mr. El-Erian, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Šahović, Mr. Schwebel, Mr. Sette Câmara, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta.

State responsibility (*continued*) (A/CN.4/302 and Add.1-3)

[Item 2 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*continued*)

ARTICLE 20 (Breach of an international obligation calling for the State to adopt a specific course of conduct [1] (*continued*)

1. Mr. TABIBI said that the Special Rapporteur's excellent report and oral presentation provided a very illuminating introduction to article 20. The rule established by that article set out the obligation imposed on a State by international law; it related, first, to relations between States and, second, to matters of concern to the whole international community. The second of those elements was of the highest importance for inter-State relations were governed by many rules of international law. However, under the terms of the article, the interests of the international community took precedence, since a State was required to act or not to act in some specifically determined way.

2. The cardinal importance of that principle and, thus, of the article itself lay in the fact that it co-ordinated inter-State relations, which were important for world peace, and safeguarded the interests of the world community by demanding that a State should take legislative, administrative or judicial measures to satisfy a specific requirement, or should refrain from a particular course of conduct. As the Special Rapporteur had pointed out, international law in a sense invaded the sphere of the State by requiring some specific component of the State machinery to adopt a particular course of conduct. Most important of all, the article clearly established the supremacy of international law over internal law.

[1] For text, see 1454th meeting, para. 11.