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Summary record of the 1469th meeting

Topic:
State responsibility

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28. To conclude with regard to that aspect of the problem, he hoped that Mr. Tsuruoka would not insist on relegating the rule of the exhaustion of local remedies to part 3 of the draft since what was in effect important was to stress in part 1 that aspect of the rule which related to the performance or breach of an international obligation.

29. However, the real problem, and the one on which Mr. Jagota and Mr. Njenga (1467th meeting) and Mr. Dadzie had dwelt, was that of the limits of the principle of exhaustion of local remedies. In general, the Commission did not seem favourably disposed towards the automatic extension of the principle to nationals. Yet the principal conventions on human rights provided for its application to nationals, in order to protect the State by limiting international interventions with respect to violations of human rights. Most members of the Commission seemed, however, to feel that human rights were governed by purely conventional rules, and that it was better to leave it to treaties to develop in that respect the principle of exhaustion of local remedies. It should therefore be stated in the commentary that the Commission had studied the matter; that it considered that the application of the principle of exhaustion of local remedies to the treatment of nationals seemed to come more within the sphere of conventional rules; and that it had felt it inappropriate to consider that application as also provided for by general international law, and had decided to take into account only that aspect of the principle which concerned the treatment of aliens.

30. The most difficult problem, and one to which Mr. Tsuruoka had reverted, was the territorial aspect of the question: should the application of the condition of exhaustion of local remedies be limited to acts which had occurred in the territory of the State and to private persons residing in that territory? The consequences of such a limitation might be very serious since that would amount to considering any act committed by any organ outside the boundaries of the territory or to the prejudice of a non-resident as making the result required by the international obligation definitively inaccessible and, finally, transforming virtually all obligations of result into obligations of conduct in such cases. It might be preferable to state in the commentary that the Commission had decided to await the comments of Governments on those points before taking a final stand on the matter.

31. In his view, the Commission need devote no more time to the case in which there was simultaneous injury to a State and to private persons for, in such an instance, it was normal for the injury caused directly to the State to absorb the private injury and generate immediate responsibility. As Mr. Ushakov had pointed out, that was yet another area where there was often confusion between the exhaustion of local remedies as a condition for the generation of international responsibility and the fact of applying to national courts to obtain reparation.

32. He considered that the essential problem was to avoid creating a situation in which the guilty State could use recognition of the principle of exhaustion of local remedies as a pretext for its inaction. In his opinion, it would be best not to venture into an enumeration of exceptions to the rule but merely say that the remedies must be real, in other words, actually exist at the internal level; be effective, that is, be capable of producing the result required by the international obligation; and be accessible to private persons, for if remedies existed in internal law but private persons could not use them in concrete cases, that would be tantamount to their being non-existent.

33. Mr. FRANCIS, referring to the Special Rapporteur's comments concerning exceptions to the rule of exhaustion of local remedies, said he feared that, if the last sentence of article 22 was retained, it might provide an escape mechanism for States to claim that their international responsibility was not established until after local remedies had been exhausted without satisfaction. He therefore suggested that if, for technical reasons, the Drafting Committee could not enumerate in article 22 the basic exceptions to the rule, it should at least add a general proviso to the article in order to make it clear that the rule of exhaustion of local remedies was without prejudice to the responsibility of States where exceptions to that rule actually existed.

34. Mr. RIPHAGEN, referring to the question of exceptions to the rule of exhaustion of local remedies in cases where States acted outside the scope of their jurisdiction, said that, while he agreed with the Special Rapporteur that it was difficult to know what the exact limits of national jurisdiction were, his opinion was that such limits existed. He therefore expressed the hope that, in considering article 22, the Drafting Committee would take account of the fact that the rule of exhaustion of local remedies should not apply in cases where States acted outside the scope of their jurisdiction.

35. The CHAIRMAN said that the comments made by Mr. Francis and Mr. Riphagen would be taken into account by the Drafting Committee.

36. If there was no objection, he would take it that the Commission decided to refer article 22 to the Drafting Committee.

It was so agreed.[4]

The meeting rose at 11.50 a.m.

[4] For the consideration of the text proposed by the Drafting Committee, see 1469th meeting, paras. 11 *et seq.*

1469th MEETING

Tuesday, 26 July 1977, at 10.05 a.m.

Chairman: Sir Francis VALLAT

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Castañeda, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sette Câmara, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov Mr. Verosta, Mr. Yankov.

State responsibility (*concluded*) (A/CN.4/302 and Add.1-3, A/CN.4/L.263/Add.1)

[Item 2 of the agenda]

Draft articles proposed by the Drafting Committee (*concluded*) *

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the revised text of article 20 and the texts of articles 21 and 22 proposed by the Committee (A/CN.4/L.263/Add.1), which read:

Article 20. Breach of an international obligation requiring the adoption of a particular course of conduct

There is a breach by a State of an international obligation requiring it to adopt a particular course of conduct when the conduct of that State is not in conformity with that required of it by that obligation.

Article 21. Breach of an international obligation requiring the achievement of a specified result

1. There is a breach by a State of an international obligation requiring it to achieve, by means of its own choice, a specified result if, by the conduct adopted, the State does not achieve the result required of it by that obligation.

2. When the conduct of the State has created a situation not in conformity with the result required of it by an international obligation, but the obligation allows that this or an equivalent result may nevertheless be achieved by subsequent conduct of the State, there is a breach of the obligation only if the State also fails by its subsequent conduct to achieve the result required of it by that obligation.

***Article 22. Exhaustion of local remedies*[1]**

When the conduct of a State has created a situation not in conformity with the result required of it by an international obligation concerning the treatment to be accorded to aliens, whether natural or legal persons, but the obligation allows that this or an equivalent result may nevertheless be achieved by subsequent conduct of the State, there is a breach of the obligation only if the aliens concerned have exhausted the effective local remedies available to them without obtaining the treatment called for by the obligation or, where that is not possible, adequate compensation.

2. Mr. TSURUOKA (Chairman of the Drafting Committee) said that the Drafting Committee had found it necessary, in the light of the articles subsequently referred to it on the topic of the breach of an international obligation, and particularly article 21, to review the text of article 20 which it had originally submitted to the Commission and which, subject to some oral amendments, had been approved by the Commission at its 1462nd meeting. In doing so, the Drafting Committee had had in mind the terms under which articles 20 and 21 had been referred to it by the Commission and its wide mandate under the Commission's established practice. Bearing in mind article 21, which referred to the "conduct" of the State, and also article 18, paragraph 4,[2] which provided for the case where the act of the State was composed of a "series of actions or omissions", the Committee had, in the title and text of its proposed new article 20, replaced the words "action or omission" by the words "course of conduct", which was the term originally suggested by the Special Rapporteur in the version of article 20 given in his sixth report (A/CN.4/302, and Add.1-3, para. 13).

3. The text of article 21 corresponded to the wording which had been proposed by the Special Rapporteur in paragraph 46 of his report and had been referred to the Committee at the 1461st meeting. The changes that had been made were of a purely drafting nature and were intended to bring out the meaning of the provision more clearly while maintaining the necessary degree of concordance with the language of other related provisions of the draft. Paragraph 2 in particular had been worded in such a way as to emphasize the fact that it concerned a particular instance of the application of the general rule stated in paragraph 1, namely, the case where the result required by an international obligation or an equivalent result could be achieved by subsequent conduct of the State.

4. Article 22 (Exhaustion of local remedies) reproduced the substance of the text which had been proposed by the Special Rapporteur in paragraph 113 of his report and had been referred to the Drafting Committee at the 1468th meeting. Some drafting changes had been made in the light of comments by members of the Commission and concrete proposals submitted by some of them for the attention of the Committee. The text proposed by the Committee had been drafted so as to show clearly that the case contemplated by article 22 was related to the case envisaged in article 21, paragraph 2. The word "aliens" was used in order to limit the scope of the article. Also, the Drafting Committee had decided, in order not to overburden the text, that a definition of the expression "local remedies" should be inserted in the commentary to the article. For the moment, the definition selected by the Committee appeared in the foot-note to the title of the article. It referred to "natural or legal persons" in general, without specifying whether aliens or nationals were concerned. The new text of the article maintained the references to effectiveness and availability of the local remedies, since several members of the Commission attached importance to those points. The final sentence of the original text had been omitted, the Committee having felt that it was unnecessary and might give rise to problems of interpretation.

Article 20[3] (Breach of an international obligation requiring the adoption of a particular course of conduct)

5. The CHAIRMAN observed that the use in the English version of the article of the term "course of conduct", which implied continuity, could be interpreted as excluding conduct comprising a single act from the scope of the article. Since it was clear from the versions in the other languages that such an interpretation was not the Drafting Committee's intention, the Commission should say so in its commentary and give thought to the possibility of revising the English text on the second reading of the draft articles.

6. If there was no objection, he would take it that the Commission adopted, on that understanding, the title

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* Resumed from the 1462nd meeting.

[1] Definition of "local remedies" to be inserted in the commentary to article 22:

"Local remedies" means those remedies that are open to natural or legal persons under the internal law of a State.

[2] See 1454th meeting, foot-note 2.

[3] See 1462nd meeting, paras. 18 *et seq.*

and text of article 20 proposed by the Drafting Committee.

It was so agreed.

ARTICLE 21 [4] (Breach of an international obligation requiring the achievement of a specified result).

7. Mr. JAGOTA, referring to paragraph 2 of the article, said that the emphasis added by the word "only" was unnecessary. That word, and consequently the word "also", should be deleted.

8. Mr. USHAKOV said that in his view the word "only" was essential in order to show that the initial conduct of the State was not enough to bring about a breach of the obligation.

9. Mr. AGO (Special Rapporteur) said that, although the word "only" had not appeared in his original draft, after hearing Mr. Ushakov's comment, he felt it should be retained in order to dispel any possible doubt as to the meaning of the rule stated in article 21, paragraph 2. He considered the word "also" to be absolutely essential since it created the link between the initial and subsequent conduct of the State, on the basis of which it could be definitely concluded whether or not there had been a breach of the obligation. It should not be forgotten that there was a breach only if both the initial and the subsequent conduct had failed to produce the required result.

10. The CHAIRMAN said that, if there was no objection, he would take it that the Commission adopted the title and text of article 21 proposed by the Drafting Committee, subject to further consideration, on the second reading of the draft articles, of the points raised at the present meeting.

It was so agreed.

ARTICLE 22 [5] (Exhaustion of local remedies)

11. Mr. RIPHAGEN said that article 22 had been drafted so as to show that it referred to a special subcategory of the obligations dealt with in article 21, paragraph 2. However, he found the words used to describe that subcategory somewhat unsatisfactory since, in some legal systems, the expression "natural or legal persons" was interpreted so widely as to include States and subsidiary organs of States which had legal personality. He therefore considered it necessary to state in the commentary that the expression as used in article 22 and in the accompanying definition of the term "local remedies" had a more limited meaning.

12. Since article 22 dealt with the case where subsequent conduct of the State could produce either the treatment required by an international obligation or "an equivalent result", it seemed illogical to say that the purpose of the exhaustion of local remedies was to secure the required treatment or "adequate compensation". While it might be held, in respect of certain particular international obligations, that "adequate compensation" was in fact "an equivalent result", the Commission should not assert *a priori*, as it seemed to be doing, that such was always the case. That being so, the words "or, where that is not possible, adequate compensation" should be either deleted or replaced by the words "or an equivalent result".

13. While the article already made it clear that the aliens concerned must co-operate in achieving the result required by the international obligation, it did not mention another essential point, the question of the limits of the jurisdiction of the State. That omission might be remedied by the addition to the text, after the words "whether natural or legal persons", of the words "in accordance with its internal law" or "within its jurisdiction".

14. Mr. AGO (Special Rapporteur), replying to the comments by Mr. Riphagen, said that he felt the word "aliens" was sufficiently clear, particularly as it was a direct translation of the unambiguous French expression *particuliers étrangers*.

15. He would not be against the incorporation in the article of a reference to the jurisdiction of the State but he felt that, if the Commission was to adopt such a suggestion, the words "within its jurisdiction" or "in accordance with its internal law" should be inserted after the word "accorded".

16. With reference to the amendment suggested by Mr. Riphagen to the end of the article, he said that the existing text distinguished between what the obligation required of the State, namely, the achievement of a "result", and what the alien could expect to receive from the State or one of its judicial organs, namely, the required "treatment" or a substitute treatment. In that connexion, it should be noted, as Mr. Riphagen had pointed out, that, with respect to the result to be achieved, some obligations openly offered States an alternative, others did not. For example, an obligation might bind a State either to refrain from confiscating the property of an alien or, if it did confiscate it, to pay proper compensation. The payment of such compensation could be considered to represent a result equivalent to the primary result required but either would constitute the alternative envisaged by the first obligation. However, in the case of an obligation binding a State not to re-arrest an alien, it was obvious that the first obligation indicated only one result to be achieved, and not two results considered as equally normal. That would not prevent the adequate compensation offered by the State to the arrested alien from being exceptionally considered to be a treatment equivalent to that required by the first obligation if the latter had become unrealizable.

17. Mr. USHAKOV said that the text made it quite clear that the treatment to be accorded to aliens was treatment within the limits of the jurisdiction of the State. In his opinion, that point did not have to be expressly stated in the draft article, the wording of which could not be interpreted in any other way.

18. Mr. QUENTIN-BAXTER said that the discussion about the possibility that the expression "aliens, whether natural or legal persons" might include foreign States had made him realize how specific the corresponding

[4] For the consideration of the text originally submitted by the Special Rapporteur, see 1456th meeting, paras. 37 *et seq.*, 1457th, 1460th and 1461st meetings.

[5] For the consideration of the text originally submitted by the Special Rapporteur, see 1463rd meeting, 1465th meeting, paras. 7 *et seq.*, 1466th meeting, paras. 2 *et seq.*, 1467th and 1468th meetings.

French term was on that point. When the Commission had considered the original text of article 22, he had made the point that there were cases where even States submitted themselves to the internal law of another State.[6] It was therefore undesirable, and might even be dangerous, to formulate the rule in article 22 in such a way as to exclude any possibility of its application to foreign States. However, it seemed that Mr. Riphagen, in raising the question, had had a different purpose in mind, namely, to ensure that article 22 should not seem to be imposing any additional requirement on foreign States in the much commoner class of cases where there was no obligation to exhaust the local remedies. He believed that, in both contexts, the addition to the article of an expression of the kind suggested would be helpful.

19. To some extent, he shared the view of Mr. Ushakov concerning the use of the phrase "within its jurisdiction" for, as all members of the Commission were aware, it was extremely difficult in the present state of the law to give any concrete description of the limits of the jurisdiction of a State. However, he could see no objection to the insertion, after the words "whether natural or legal persons", of an expression such as "under its internal law".

20. Mr. AGO (Special Rapporteur) said that, in his commentary to article 22, he had described the differences of opinion which had emerged, in both doctrine and practice, on the question whether the rule of exhaustion of local remedies should apply to the case in which the State acted as a private person.[7] He had reached the conclusion that the Commission was not required to take a decision on that question and should leave it to be settled through practice.

21. Mr. YANKOV said that the addition to the article of a reference to the "internal law" or "jurisdiction" of the State would only complicate matters and would in fact be superfluous, for in no event could the article be interpreted as requiring the State to accord treatment which it was not within its power to provide. Consequently, either the article should be left unchanged or, at the most, the words "by it" should be inserted after the word "accorded".

22. Mr. DÍAZ GONZÁLEZ said that the problem under discussion seemed to have been solved already, for the article referred to "local remedies" and that expression was defined as meaning remedies "open to natural or legal persons under the internal law of a State".

23. Mr. RIPHAGEN said that he would not insist on the change he had suggested but he was still convinced that the article should be more explicit.

24. Mr. USHAKOV said that he opposed Mr. Riphagen's suggestion because he thought that, although there could be a second result equivalent to the result originally required, there could be only one treatment. For example, if a State decided to expropriate an alien in order to build a road across land belonging to him, there were two possible results: non-expropriation of the alien or, if expropriation was justified in the public interest, compensation of the alien in an equitable manner. In such a case, however, there was only one possible treatment. If the initial result had not been achieved—in other words, if the State had expropriated the alien in question—all it could do would be to compensate him in an equitable manner.

25. Mr. JAGOTA welcomed the fact that the scope of application of article 22 was now confined to aliens as several members of the Commission had requested. He would like it to be made clear, by the addition of the words "within its jurisdiction" after the words "whether natural or legal persons", that the aliens in question were not only those who had placed themselves under the territorial jurisdiction of the State but also those who, through circumstances such as business relationships or residence, had links with it. For the time being, however, he would accept the text as it stood.

26. The words "but the obligation allows that this or an equivalent result may nevertheless be achieved by subsequent conduct of the State" were taken from article 21, paragraph 2, in order to show that the obligations referred to in article 22 were a subcategory of those dealt with in article 21, as mentioned by Mr. Riphagen. Logically, article 22 should have been divided into two paragraphs, like article 21, with the second paragraph showing clearly that, where the obligation allowed the State to discharge its undertaking through subsequent conduct, it was breached only if that subsequent conduct, with the local remedies exhausted, failed to produce the desired result.

27. The word "only" added an emphasis which could be interpreted as implying that the responsibility of the State would not arise until or unless something happened, a matter the Commission should not judge at the present stage. From the legal point of view, nothing would be lost if the word was deleted. In the English version, the use of the word "adequate" would undoubtedly lead to controversy, particularly since the compensation concerned would be due mainly in cases of expropriation of aliens' property. The Commission should use instead the word "appropriate", which had appeared in the earlier version of the article and was also to be found in the Charter of Economic Rights and Duties of States.[8]

28. Mr. AGO (Special Rapporteur) observed that Mr. Jagota had objected (1467th meeting) to the original text of article 22 on the ground that there might be obligations which specifically required the State to extend certain treatment to private persons by its initial conduct. With that objection in mind, the Drafting Committee had altered the article to make it clear that it referred only to cases in which the obligation permitted the State to achieve the required result by either its initial or its subsequent conduct. He reiterated his wish that the word "only" be retained. He would have no objection, however, to the replacement in the English version, of the word "adequate" by the word "appropriate", since that would not alter the meaning.

29. Mr. SUCHARITKUL said that, in view of the sensitive nature of the questions of treatment of aliens

[6] 1467th meeting, para. 49.

[7] See A/CN.4/302 and Add.1-3, particularly paras. 103-104.

[8] General Assembly resolution 3281 (XXIX).

and exhaustion of local remedies, the Commission should try to maintain a balance in article 22 between the interests of all sovereign States, for every State had the duty both to accord certain treatment to aliens and to protect the interests of its own citizens abroad. The Commission should, however, bear in mind that, in matters of protection of the interests of their citizens abroad, States were not really equal, either in law or in practice. The law must therefore be designed to assist the smaller States, which were less able than the larger ones to protect the interests of their citizens abroad.

30. The Commission should also remember that, although the question of treatment of aliens had once again become topical, it was no longer the same as in the past, when aliens were accorded far better treatment than nationals in receiving States. Indeed, in many cases aliens had not even been subject to local jurisdiction and had benefited greatly from extra-territorial privileges. In the light of those considerations, he had no difficulty in agreeing to the suggestion that the Commission should include in the text of article 22 the words "within its jurisdiction", which suitably reflected the current circumstances of aliens.

31. The question of compensation was also a sensitive one which the Commission might do best to avoid for the time being if it did not wish to hamper the efforts of the many third world countries, which were concerned with the matter in an attempt to secure a development of international law more in keeping with their own development needs. In that connexion, he feared that the words "adequate compensation" at the end of article 22 would give rise to considerable difficulties. If the Commission could not find a better formula, it should either delete the expression or replace it by the words "compensation under international law".

32. Mr. ŠAHOVIĆ said he regretted that article 22 as reformulated applied only to aliens. The Special Rapporteur had rightly extended the scope of the article to cover nationals but the majority of the Commission had expressed a preference for a more restrictive provision. Yet the Commission must always have the development of international law in mind, and it was conceivable that the rule stated in article 22 would come to apply more and more to nationals. He asked that his point of view should be reflected in the Commission's report.

33. Mr. SCHWEBEL said he doubted whether the Commission would be able to improve on the wording of article 22 as proposed by the Drafting Committee, but he could nevertheless agree to the addition of the words "within its jurisdiction". He would be unable, however, to support Mr. Jagota's suggestion that the words "adequate compensation" should be replaced by the words "appropriate compensation" in the English version. If any change was to be made at the end of article 22, the suggestion by Mr. Sucharitkul should be adopted, but the best course would be to leave the article in its present form on the understanding that the suggestions and views expressed during the discussion would be fully reflected in the commentary to article 22 and in the summary record of the meeting.

34. Mr. EL-ERIAN said that, although he had no difficulty in supporting the wording and content of article 22, he thought that the Commission would have to give further consideration to the place of the article in the draft.

35. He supported Mr. Jagota's suggestion that the words "adequate compensation" should be replaced by the words "appropriate compensation" in the English version, since the latter were used in article 2, paragraph 2 (*c*), of the Charter of Economic Rights and Duties of States.

36. Mr. NJENGA said that he also supported Mr. Jagota's suggestion that the wording at the end of article 22 should be brought into line with the wording of article 2, paragraph 2 (*c*), of the Charter of Economic Rights and Duties of States.

37. In his opinion, the definition of "local remedies" to be inserted in the commentary to article 22 would be clearer if the words "and that offer a meaningful opportunity for redress of their alleged wrong" were added at the end of the definition.

38. Mr. AGO (Special Rapporteur) said that Mr. Njenga's view that the local remedies to be employed must be remedies which offered the claimant a real possibility of obtaining the treatment called for by the international obligation was already reflected in the text of article 22 through the use of the words "effective local remedies". That view would also be reflected in the commentary to the article.

39. Mr. SETTE CÂMARA said that he fully supported the text of article 22 approved by the Drafting Committee since it took account of the points of view of all members of the Commission. In addition, he was glad that the Commission had decided that the definition of "local remedies" would appear only in the commentary to article 22 because, in his opinion, there was something of a discrepancy between the definition and the text of the article. In particular, the definition referred to "natural or legal persons" whereas article 22 was rightly confined to the treatment of "aliens, whether natural or legal persons". He therefore suggested that, in order to bring the wording of the definition into line with that of the article, the words "aliens, whether" should be added before the words "natural or legal persons" in the definition. He was thinking, for example, of the cases, now very common, in which aliens in a particular country were forbidden to own immovable property.

40. Mr. USHAKOV said that he wished to make a distinction between the rules of international responsibility and the primary rules which determined whether, for example, the property of foreigners could be nationalized with or without compensation. In his opinion, compensation was not mandatory in general international law. In the case under discussion, it was a question not of compensating aliens by applying a primary rule, such as a treaty provision by which a State agreed to pay compensation to aliens whose property it had nationalized, but of it no longer being possible to obtain the required treatment. Examples of that were where a person had been wrongly arrested and then released or where a State had not fulfilled its obligation to prevent an attack in which a person had lost his life. It was therefore important to distinguish between the primary rule and the rule of international law that applied in respect of responsibility.

41. Mr. SCHWEBEL said he agreed with Mr. Ushakov that the Commission should not engage in a discussion of the measure of compensation due in cases of nationalization. He did not feel that article 2, paragraph 2 (*c*), of the Charter of Economic Rights and Duties of States, an instrument which did not have the force of law and had been voted against by many States, could be considered as an instructive or useful basis for the wording at the end of article 22. Since the article dealt solely with the question of exhaustion of local remedies, the Commission would be wise to keep to the text proposed by the Drafting Committee.

42. Mr. VEROSTA said that he found the draft article prepared by the Drafting Committee entirely acceptable at the first reading stage. In order to avoid any misunderstanding concerning the scope of the provision, which related to a specific case of breach of an international obligation of result, the Commission might even make it paragraph 3 of article 21 later on.

43. Mr. EL-ERIAN said that, while he agreed with Mr. Ushakov and Mr. Schwebel that, technically, the question of compensation had no place in the current discussion, he thought the Commission should take account of the very important psychological and political factors involved in the questions of treatment of aliens and exhaustion of local remedies. Although he also agreed with Mr. Schwebel that the Charter of Economic Rights and Duties of States was not an internationally binding instrument, the fact remained that it had been adopted by a large majority of the international community.

44. Mr. SUCHARITKUL said he was glad that Mr. Ushakov and Mr. Schwebel agreed that the Commission's current task was not to discuss the problem of compensation in cases of nationalization. He personally supported Mr. Riphagen's view that there was no need to refer to the question of compensation in article 22 at all.

45. Mr. USHAKOV said that, while he had no objection to the use, in the English version, of the words "appropriate compensation", he thought that the problem to which the discussion of the words "adequate compensation" had given rise was one of substance and not one of terminology.

46. Mr. SCHWEBEL said that in the light of the discussion, in which several members had referred to the Charter of Economic Rights and Duties of States, he opposed the suggestion that, in the English version, the words "adequate compensation" should be replaced by the words "appropriate compensation". He himself suggested that the Commission should either delete the reference to compensation entirely or replace the words "adequate compensation" by the words "equivalent treatment".

47. Mr. RIPHAGEN said that a logical solution to the problem would be to follow Mr. Schwebel's suggestion to replace the words "adequate compensation" by "equivalent treatment", a term which would make it clear that article 22 did not and could not set out to define what an international obligation allowed or what was meant by an equivalent result.

48. The CHAIRMAN, speaking as a member of the Commission, said he thought that the inclusion of the words "adequate compensation" in article 22 might give rise to considerable difficulties because it was not certain, in every case where it proved impossible to exhaust the effective local remedies available, that reparation would take the form of compensation. There were many other kinds of remedy which the Commission had not considered in its discussion. It would therefore be unwise to limit the scope of article 22 by referring only to compensation. In any case, if the Commission discussed the question of compensation in greater depth at a later stage, it would also have to discuss the primary rule and to qualify the compensation in some way. In that connexion, he doubted whether compensation could be "appropriate" if it was not "adequate". He therefore supported Mr. Schwebel's suggestion that, in order to avoid the problem to which the discussion of the question of compensation had given rise, the Commission should replace the words "adequate compensation" by the words "equivalent treatment".

49. Mr. AGO (Special Rapporteur) said that he too favoured the deletion of the word "compensation" since everyone interpreted it in his own way. In that connexion, he wished to point out that there was absolutely no question of taking into consideration the primary rules relating to the treatment of aliens. He also stressed the fact that compensation did not necessarily have an economic value. For example, the family of a person who had been killed as a result of an omission by a State might request the posthumous award of a decoration or other mark of honour instead of financial compensation. It would therefore be best to avoid the term "compensation" and have recourse to the notion of "treatment". The concluding portion of article 22 might therefore be amended to read "without obtaining treatment compatible with that called for by the obligation."

50. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to amend the wording at the end of article 22 to read: "without obtaining the treatment called for by the obligation or, where that is not possible, an equivalent treatment."

It was so agreed.

51. The CHAIRMAN suggested that, in accordance with normal English usage, the words "natural or legal persons" in the English version of article 22 and of the definition of "local remedies" should be replaced by the words "natural or juridical persons". If there was no objection, he would take it that the Commission agreed to that.

It was so agreed.

52. The CHAIRMAN said that, if there was no objection, he would take it that the Commission adopted the title and text of article 22, as amended, and the text of the definition of "local remedies", as amended, on the understanding that the definition would be inserted in the commentary to article 22.

It was so agreed.

The meeting rose at 12.45 p.m.