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Summary record of the 1536th meeting

Topic:
State responsibility

Extract from the Yearbook of the International Law Commission:-
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1536th MEETING

Tuesday, 22 May 1979, at 10.5 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

Also present: Mr. Ago.

State responsibility (*continued*) (A/CN.4/318 and Add.1–3, A/CN.4/L.289/Rev.1, A/CN.4/L.290)

[Item 2 of the agenda]

DRAFT ARTICLES SUBMITTED BY MR AGO (*continued*)

ARTICLE 28 (Indirect responsibility of a State for an internationally wrongful act of another State)[1] (*continued*)

1. Mr. TSURUOKA said that, in the light of comments made by some members of the Commission, he wished to announce two changes in the text of article 28 which he had proposed on 17 May 1979 (A/CN.4/L.289). The first was the omission of the word "exclusively" in paragraph 2, the object being to introduce the idea of a dual responsibility on the part of the State which exerted coercion and on the part of the State which had committed the internationally wrongful act. The other change was the addition of a paragraph 3.

2. The revised text (A/CN.4/L.289/Rev.1) read as follows:

"1. Directions given by one State to another State or control exercised by one State over another State in a field of activity shall, if it is established that the directions are given or the control is exercised for the purpose of the commission of an internationally wrongful act carried out by the latter, constitute an internationally wrongful act, even if those directions or that control, taken alone, would not constitute the breach of an international obligation.

"2. Coercion exerted by one State against another State by means of the threat or the use of force in violation of the principles of international law embodied in the Charter of the United Nations shall, if it is established that the coercion was exerted for the purpose of the commission of an internationally wrongful act carried out by the latter, entail the international responsibility of the State which exerted the coercion.

"3. Paragraphs 1 and 2 are without prejudice to the application of other provisions of the present draft articles, such as article 1, concerning international responsibility to a State which commits an internationally wrongful act as a result of directions given, control exercised, or coercion exerted by another State."

3. Mr AGO said he thought he could detect a certain softening of the extreme position taken by Mr. Ushakov in his earlier statements. Yet he had difficulty in accepting Mr. Ushakov's proposition that, while the general concept of indirect responsibility existed, it existed in the science of law rather than in positive law, for the science of law had created the concept of indirect responsibility to describe and explain certain situations for which provision was made in positive law.

4. Commenting on the cases mentioned by Mr. Ushakov as occurring in internal law, he noted that, as far as responsibility for the act of another was concerned, Soviet law did not differ greatly from the law of the common law countries or of the Roman law countries. Where the owner of a vehicle was liable in the event of an accident caused by a person whom he had permitted to use his vehicle (the case mentioned by Mr. Ushakov at the previous meeting), the liability of the owner of the vehicle arose not because he had given his permission, which was a lawful act, but because of the accident caused by the driver, which was precisely an unlawful act committed by another party. In that situation, the permission given had set up between the owner and the user of the vehicle a certain relationship in consequence of which the former was answerable for the act of the latter. Similarly, where the master was liable for damage caused by his apprentice, the master was responsible not for the fact of having employed the apprentice, which was a lawful act, but for the errors committed by the apprentice, such liability being founded on the relationship between master and apprentice. The fact of having engaged the apprentice had simply set up that relationship. Hence in both situations, as also in the case of the liability of parents for their children's actions, the responsibility was for the act of another and not for the actor's own conduct. Under article 1384 of the French Civil Code a person was answerable not only for damage he caused himself but also for damage caused by persons for whom he was responsible.

5. In international law the problem of indirect responsibility could arise in three types of situation: in relations of dependence, like protectorates; in relations between a federal and a federated State that had kept a separate international personality; and in cases of military occupation. As far as dependent relationships were concerned, he pointed out that in some cases the protectorate had in fact applied to States and not to dependent territories, as Mr. Ushakov had contended. For example, in the case of Morocco, the protectorate established by the Treaty of Fez, although created in the context of colonial policy, had applied to a State, not to a colony; the Moroccan State had remained a State with its own international personality, and the Sherifian authorities had sometimes been entirely free to act in certain internal areas. Although, as Mr. Usha-

[1] For text, see 1532nd meeting, para. 6.

kov had said, dependent relationships had become virtually obsolete, it was not impossible, as Mr. Francis had pointed out, that they might recur at some future time under a different guise.

6. The relations between a federal and a federated State should not be equated with dependent relationships between States, for the situation was quite different. The relationship varied greatly from case to case. In some cases the federal State had totally abolished the federated State's international personality, whereas in others the federated State had retained some measure of international personality. The cantons of Switzerland, for example, possessed a limited international treaty-making capacity. Normally, the federal State was answerable for any breaches committed by the canton, even for breaches of international obligations entered into by the canton. In such cases it was therefore proper to speak of international responsibility for the act of another—but those were uncommon cases.

7. The third case, that of military occupation, was the most important, because it was the most topical and the commonest. It was in respect of that case that his own views differed most from Mr. Ushakov's. In his opinion, no distinction should be drawn between partial and total occupation of a State's territory, for, contrary to what Mr. Ushakov had said, a State did not necessarily cease to exist if its entire territory was occupied. During the Second World War, for example, Belgium, the Netherlands and Denmark, although wholly occupied, had certainly not ceased to exist as States. Similarly, when Germany, after occupying the northern half of French territory, had extended its occupation to the whole of the territory, France had continued to exist as a State and, as before, to act in that capacity, although under the control of the German authorities. Hence there was no difference between the position of a partially occupied State and that of a wholly occupied State from the point of view of responsibility for internationally wrongful acts committed by organs of the occupied State while under the control of the occupying State.

8. Nor did he agree with Mr. Ushakov that a distinction could be drawn between an illegal and a liberating occupation, for, whatever the reason for the occupation, the relationship between the controlling State and the State under control existed and should have implications in the matter of responsibility.

9. As far as coercion was concerned, he considered, like Mr. Ushakov, that article 52 of the Vienna Convention [2] dealt with a situation totally different from that contemplated in article 28. Hence the concept of coercion would not necessarily be identical in the two articles. Under article 52 of the Vienna Convention, coercion was given as grounds for declaring a treaty void—which explained the reference in the article to the threat or use of force. Under article 28, on the other hand, it was not really necessary that the coercion should involve the use of armed force, for a State might very well oblige another State to commit an internationally wrongful act without resorting to armed force, for example by means of economic pressure.

10. Like Mr. Riphagen (1535th meeting), he thought that the phenomenon dealt with in article 28 could occur in *de jure* situations and in *de facto* situations. He pointed out, in that connexion, that military occupation was not only a *de facto* situation but also to some extent a *de jure* situation, for the relations between the occupying State and the occupied State were governed by the international law of war under which, for example, the occupying State had a duty to maintain law and order in the occupied territory.

11. The question whether the concept of indirect responsibility belonged to part I or to part II of the draft articles had been raised by Mr. Riphagen. The question had been answered by Mr. Jagota, who had said that part I of the draft was concerned with the internationally wrongful act as a source of responsibility, whereas part II would be concerned with the content, forms and degrees of international responsibility. Accordingly, it was quite proper that part I of the draft should deal with the issue whether an internationally wrongful act entailed the responsibility of one State rather than that of another.

12. Chapter IV of the draft dealt with abnormal situations that entailed exceptions to the principles laid down in chapter I. Under article 27, [3] a State that gave aid or assistance to another State for the commission of an internationally wrongful act was doing something which *per se* might be lawful, such as the sale of weapons, but which, owing to the connexion between that action and an unlawful action (for example, the sale of weapons to be used for aggression against another State), was tainted with illegality. The State that had provided such assistance was therefore answerable not for the wrongful act committed by the State receiving the assistance but for its own unlawful act in providing the assistance. A second wrongful act was thus involved—an act which entailed the responsibility of its author. Article 28, by contrast, did not envisage the commission of a second unlawful act: it was by reason of the relation of dependence between the two States that the dominant State was responsible for the dependent State's wrongful act.

13. Unlike Mr. Riphagen, he did not think that the scope of indirect responsibility should be limited to cases where the obligation breached was an obligation *erga omnes*, in other words, an obligation towards the totality of the membership of the international community.

14. He agreed with Sir Francis Vallat (1534th meeting) that the rule in article 28 should be drafted in modern terms, for although the phenomenon of indirect responsibility was traceable chiefly to obsolete situations, it continued to occur in connexion with present-day situations. He further agreed with Sir Francis

[2] See 1533rd meeting, foot-note 2.

[3] See 1532nd meeting, foot-note 2.

Vallat that articles 1 and 2 of the draft should not be tampered with. The exceptions provided for in articles 27 and 28 to the principles laid down in articles 1 and 2 were perfectly normal; the Commission itself had anticipated them in paragraph (11) of its own commentary to article 1, by recognizing that there might be "special cases in which international responsibility devolves upon a State other than the State to which the act characterized as internationally wrongful is attributed".[4] Nor would article 28 constitute an exception to the principle of article 1 if it confined itself to postulating the existence of a non-exclusive indirect responsibility, in other words, a responsibility that was additional to but did not necessarily rule out the responsibility of the party that had committed the internationally wrongful act.

15. He further agreed with Sir Francis Vallat that the rule in article 28 should not be cast in negative terms. With regard to the word "indirect", which Sir Francis thought should be dropped, he shared Mr. Jagota's opinion that it was relatively immaterial whether the adjective was or was not retained, for in any case the responsibility with which article 28 was concerned would remain a responsibility for the act of another, in other words, an indirect responsibility.

16. He agreed with Mr. Jagota's analysis at the previous meeting of the connexion between article 28 on the one hand and articles 9 and 12 on the other. The State under control might of course exceed the directions received, as Mr. Jagota had pointed out, and he agreed with Mr. Verosta (1533rd meeting) that that State should not be encouraged to commit an internationally wrongful act by being allowed to evade its own responsibility too easily.

17. According to Mr. Šahović, (1535th meeting), the real problem was the exclusive nature of indirect responsibility, a point that would have to be clearly settled by the Commission. In Mr. Jagota's opinion (*ibid.*), however, it was clear that, logically, if attribution of the internationally wrongful act were severed from attribution of responsibility, the responsibility should be exclusive. Other members of the Commission had countered with the argument that the responsibility of the State under control should subsist side by side with that of the controlling State; in that connexion Mr. Pinto (*ibid.*) had referred to "manipulation" of one State by another. For his own part, however, he would point out that in the circumstances contemplated by article 28 the manipulation occurred not in connexion with the actual commission of the wrongful act, but as part of the general activity in the context of which the wrongful act was committed.

18. He stressed that the issue whether *force majeure* could be a defence to the charge of an internationally wrongful act was outside the scope of article 28; the point would have to be dealt with in chapter V, concerning exceptions. The issue with which article 28 was concerned was whether there was responsibility for the act of another and whether such responsibility was or was not exclusive.

19. According to the version of article 28 proposed by Mr. Tsuruoka (para. 2 above), the dominant State's control would constitute an internationally wrongful act superimposed on the internationally wrongful act committed by the subordinate State and directly entailing the dominant State's responsibility. The case envisaged in that text would therefore be one of direct responsibility, closely akin to that dealt with in article 27. In the case of indirect responsibility envisaged in article 28, on the other hand, the dominant State was answerable not for its control of the subordinate State but for the wrongful act committed by the subordinate State while under that control. As Mr. Jagota had said, the real issue was the transfer of the responsibility of the party committing the international wrong to the responsibility of another State which controlled the field of activity in which the internationally wrongful act had occurred.

20. He would be prepared to endorse Mr. Jagota's proposal (1535th meeting, para. 16), but, like its sponsor, he was not sure whether two cases—that of control and that of coercion—should be treated separately or together. The two had some aspects in common, but the traditional situations in which the issue of indirect responsibility arose—protectorate, military occupation, federal State—were situations characterized by a stable relationship between two States, whereas coercion occurred in an *ad hoc* situation in which the State directly influenced the commission of the internationally wrongful act.

21. Mr. USHAKOV completely disagreed with Mr. Ago's treatment of the question of occupation. Unlawful military occupation, which involved the disappearance of the occupied States as sovereign and independent States, could not, as Mr. Ago claimed, be placed on the same footing as liberating occupation, the object of which was to terminate a domination. During the Second World War, Nazi Germany's occupation of Belgium and the Netherlands, which had as a consequence disappeared as sovereign independent States, had been radically different from the liberating occupation by the allied armed forces. There was yet a third form of occupation, that of Germany after that country's capitulation, at which time Germany had likewise not existed as a sovereign independent State. An occupation of that kind, which was lawful, could likewise not be equated with unlawful enemy occupation.

22. Mr. RIPHAGEN said it had in no way been his intention to suggest, at the previous meeting, that article 28 should be transferred to part II of the draft. On the contrary, he considered that the Commission should seek a solution along the lines suggested by Mr. Tsuruoka. His point had been that there was an overlap between article 28 and part II, inasmuch as indirect responsibility did not have the same consequences as direct responsibility. In other words, the responsibility of State A, which committed the act, might differ from that of state C, which influenced the

[4] *Yearbook... 1973*, vol. II, p. 176, document A/9010/Rev.1, chapter II, section B, article 1, para. (11) of the commentary.

act, and any such difference could have a significant impact on the various situations that would arise in that context. His position, which fell somewhere between Mr. Ushakov's and Mr. Ago's, was that some limitation was indicated in the case of indirect responsibility.

23. Mr. SCHWEBEL said it had been established international law since the Nürnberg trials that a plea of superior orders was not available as a full defence to a person accused of a war crime, although it might be admissible in mitigation. That was a telling analogy, which cut across the proposition that there should be exclusive responsibility on the part of the dominant State; assuming the subservient State to be in the position of a person accused of violating the laws of war, such a State could not plead superior orders to relieve it entirely of responsibility, although it could enter such a plea in mitigation of the measure of damages attributable to it.

24. He did not dispute Mr. Ago's argument that there was much logic in favour of the exclusivity of responsibility on the part of the superior State, but he thought that the case in point was one where logic did not perhaps make sense, given the realities of the modern world. Bearing in mind the examples cited by certain other members, he believed that the Commission would be best advised to adopt the path of joint, rather than exclusive, responsibility.

25. Mr. VEROSTA, referring to Mr. Ushakov's remarks, said that a distinction must indeed be drawn between illegal military occupation on the one hand, and occupation of liberation and the presence of troops after the cessation of hostilities on the other. However, he could not agree that, in the case of illegal occupation, the occupied State ceased to exist. Under positive international law, the occupied State did not disappear, but remained a paralysed legal entity, since it lacked organs able to take action. He cited as evidence the Moscow Declaration on Austria of 1 November 1943,[5] in which the Soviet Union, the United Kingdom and the United States had expressed the unanimous view that Austria had been the first free country to fall victim to Hitler's policy of aggression and that it should be liberated from German rule. If Austria had not existed at the time, there would have been no question of liberating it. However, the great Powers had treated the annexation of 1938 as null and void, and Austria had resumed its place in the international community. Unfortunately, in the control treaty, the victorious Powers had used the term "occupation", which had been appropriate during hostilities but had ceased to be appropriate after the end of hostilities. The legal personality of the militarily occupied State could therefore be said to continue until the final settlement of the situation, after which it might obviously disappear. It was impossible to place the Hitlerite military occupation on the same footing as the occupation by the liberating Powers or the stationing of military control authorities, which raised certain problems of shared responsibility.

26. Mr. NJENGA thought that draft article 28 should not be read as providing for exemption from responsibility for an internationally wrongful act in all cases without exception, since domination, coercion and control were matters of degree. Clearly, if one State was under the complete domination of another, then any action on the part of that State which led to an internationally wrongful act should entail the responsibility of the dominant, and not of the subservient, State.

27. That, indeed, had been the position of a number of protectorates, which had been in effect little more than colonies. Other protectorates, however, had retained a measure of international status and could not therefore be said to have been in a position to avoid responsibility for an internationally wrongful act. Likewise, where a protectorate had retained responsibility for the day-to-day administration of its affairs, it too had to be responsible for its acts. If, on the other hand, the international status of a protectorate was merely notional, so that effective power rested with the State which exercised control over it, then the acts of the authorities of the protectorate could be assimilated to those of agents acting for the State in question.

28. The same held true of a federated State. In the case of Switzerland, for example, if a canton enjoyed a degree of autonomy and consequently a certain international status, it would be wrong in principle to exempt it from responsibility simply because it was subject to a higher federal authority.

29. Again, in the case of military occupation, the question was not whether such occupation was beneficial or otherwise, but who was responsible for running the country. Thus in France, under the German occupation, the Vichy administration, which had been responsible for the daily administration of non-military matters, could not have avoided its international responsibility for making good any loss or damage incurred by alleging the fact of military occupation, since it had acted in the capacity of a State and been recognized as such.

30. A State could not, therefore, avoid its responsibility by claiming that it had acted in pursuance of the directions of a higher authority, apart from cases where the domination was so absolute that the authorities of the State committing the internationally wrongful act could be held to have acted as agents of the dominant State. He appreciated that economic coercion could be particularly compelling where a country was totally dependent on another for its economic survival, and that such a country would even be open to pressure as far as the conduct of its affairs was concerned. Nonetheless, he did not think it could be completely exonerated from responsibility, although the extent of the domination or coercion might be regarded as a mitigating factor in assessing compensation for any loss or damage caused by the internationally wrongful act.

[5] *American Journal of International Law, Supplement of Documents* (Washington D.C.), vol. 38, No. 1 (January 1944), p. 7.

31. It was important to avoid creating a new category of States which acted as they saw fit and then claimed that they had done so under the domination of another State or that their freedom of action had been curtailed. In international relations, domination was a relative term, and exemption from responsibility should be confined to cases where the domination was so complete that the dominated State had to do as it was told for its very survival.

32. He would therefore suggest that draft article 28 be reworded, on the basis of the amendments proposed by Mr. Jagota and Mr. Tsuruoka, to reflect the situation more realistically.

33. Mr. JAGOTA said that the situations examined in the report under discussion were illustrated by examples, rather than categories, of cases and he had therefore thought it useful, in his variant A (A/CN.4/L.290), to merge the two paragraphs of article 28 in a single paragraph. However, the argument that the article should be formulated in two paragraphs was defensible and he had an open mind on that question.

34. On the other hand, the question whether the concept of indirect responsibility should be exclusive, additional or parallel called for much more careful consideration. He entirely agreed with Mr. Njenga that the wording of the article should not lead to the establishment of a new category of States that would be absolved of responsibility for internationally wrongful acts committed by them. It had also been rightly pointed out that account must be taken of different degrees of coercion, domination or control, and the article should not be cast in such broad terms that it would enable both the dominating and the dominated States to evade responsibility for their acts.

35. Mr Schwebel had referred to the prime responsibility of the wrongdoer and, in that connexion, had mentioned the principles embodied in the Charter of the Nürnberg Tribunal. The military manual issued by the United Kingdom in 1942 had specified that no liability was incurred for a wrongful act if the act was committed pursuant to superior orders. However, that view had been modified in 1944. At the Nürnberg trials, the defendants had invoked superior orders. At that time, it had been argued that the accused had had no option but to obey, for otherwise they would have been executed. The matter had been taken into account by the Commission itself in formulating the Principles of International Law recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal,[6] and had also doubtless been taken into consideration in the draft code of offences against the peace and security of mankind,[7] which had been before the General Assembly at its last session. If the wrongdoer had a moral choice open to him, he would be held liable for the wrongful act in question. Conversely, if there was no moral choice possible to the wrongdoer, in other words if he had no freedom of decision or action, superior orders could be invoked as a complete defence. Nevertheless, it was essential to bear in mind that that matter related to the liability of an individual under international criminal law, which was totally different from the much broader concept of State responsibility.

36. Article 19 of the draft defined certain international crimes and, for the purposes of article 28, one approach might be to specify that, where the internationally wrongful act constituted an international crime, the responsibility should be concurrent and could not be transferred from one State to another. But he was not convinced that the State committing the wrongful act should incur responsibility in cases in which it had been forced by another State to adopt a particular course of conduct and had had no option but to obey. The point to remember was that, when the State committing the act had no freedom of decision, responsibility should lie with the State that had forced the State in question to commit the wrongful act. In his proposal, he had sought to emphasize that aspect by referring to an internationally wrongful act committed by a State—and it must be a State, not a Non-Self-Governing Territory or a colony—that "must submit", words which signified that the State had no option but to submit, in law or in fact, to the directions, control or coercion of another State. The use of the words "in law or in fact" also overcame the problem of deciding whether or not military occupation was lawful or justifiable. Consequently, responsibility would lie with the State that made the other State submit to its directions, control or coercion. However, an essential qualifying condition was the phrase "but only to the extent of the limitation on its freedom of decision". That form of words took account of degrees of coercion, and also covered the case of excessive zeal in the execution of instructions or abuse of power on the part of local authorities.

37. If the concept of exclusive responsibility was partially dropped, the underlying philosophy of article 28 itself would be changed, for indirect responsibility would then become joint or parallel responsibility. In that case, article 28 would become similar to article 27. In his opinion, the transfer of exclusive responsibility, confined to the special cases in which the State committing the act had lost complete freedom of decision and had been compelled by another State to commit the act in question, would be completely realistic. Provision could of course be made for certain exceptions, such as the commission of internationally wrongful acts that constituted international crimes. Obviously, the question of exclusive or concurrent responsibility was too important a matter to be settled hastily. Further reflection was required so that the Commission could prescribe a rule that would promote international peace and security, eliminate situations of dominance and clearly pinpoint where the responsibility lay.

38. Sir Francis VALLAT said that the Commission had reached a stage at which matters needed to be resolved in less formal discussion, and he hoped that,

[6] See *Yearbook... 1950*, vol. II, pp. 374 *et seq.*, document A/1316, part III, paras. 95–127.

[7] See *Yearbook... 1971*, vol. II (Part Two), pp. 97 and 98, document A/CN.4/245, paras. 437-441.

in connexion with article 28, greater use would be made of the possibility of commenting on any text that would be produced by the Drafting Committee. Clearly, a number of difficult issues were involved and it was now necessary, in view of the statement by Mr. Jagota, to place on record exactly what the Commission had said on the question of responsibility for superior orders.

39. Principle IV of the Principles of International Law recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal [8] stated that the fact that a person acted "pursuant to order of his Government or of a superior" did "not relieve him from responsibility under international law, provided a moral choice was in fact possible to him". The presumption was that the individual was not relieved of responsibility for what he had actually done, and the reference to "a moral choice" simply qualified a general principle. With regard to sovereign States, the tendency of judicial and arbitral decisions had been to presume that a State was responsible for its own acts, and a very strong case was needed if a State was to be relieved of that responsibility. In his opinion, the point to which the Commission's attention had now been drawn strengthened the case for preserving the responsibility of the State that actually committed the international wrongful act.

40. The clarification by Mr. Jagota gave cause for fresh anxiety, since Mr. Jagota's interpretation very considerably narrowed the scope of the circumstances in which a State other than the State committing the wrongful act might be responsible for the act perpetrated. Moreover, it would still leave in the draft a lacuna that would not be covered by the other articles, particularly articles 5 to 15. He was extremely grateful to Mr. Jagota for drawing attention to the Nürnberg principles, but his conclusions in that regard were frankly different from those reached by Mr. Jagota.

41. Mr. SCHWEBEL said that a further reason for adopting a prudent approach to the interesting distinction suggested by Mr. Jagota in respect of criminal acts was that, in view of the discussion of article 19 which had taken place in the Sixth Committee, the Commission would doubtless wish to be cautious about the treatment of article 19, lest that article should make an impact on other articles of the draft. On second reading of article 19, the Commission would have to consider very carefully the debate in the Sixth Committee and any additional comments by States in order to judge whether the approach taken in article 19 was a viable one. Again, for the fundamental reasons given by Sir Francis Vallat, it was essential to avoid the danger of a lacuna in the set of draft articles.

42. Mr. USHAKOV considered, unlike Mr. Ago, that Morocco should be regarded as a newly independent State within the meaning of article 2, paragraph 1 (*f*), of the 1978 Vienna Convention,[9] namely, as a State "the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible".

43. Mr. REUTER could not agree that the responsibility of the State was comparable to that of the individual. As the Statute of the Nürnberg Tribunal and the Judgment of that Tribunal made clear, leniency must be shown to the individual who had no choice other than suicide. But the position was not the same for a State; the option of suicide was always open to it, which was what made it great. That was why a State which had committed an international crime could not be exonerated, no matter how great the pressure exerted on it.

44. He might concede that, during the Second World War, the Italian police who had resisted when the Italian State had ceased to exist could be said to have acted as an organ of the German State, or that the Vichy French police force had found itself in a position where it ought to have been considered as an organ of Germany. But that was a question of attribution, which should be dealt with in another article. It was conceivable that the officers of the Vichy French police, whose acts of an international character would be attributed to the German State, should be tried according to the principles of the Nürnberg Tribunal for having obeyed orders which they should not have obeyed.

45. As far as shared responsibility was concerned, he found it difficult to agree that one State should be exonerated in the case of an international crime in which two States were implicated. Bringing pressure to bear on a State to commit a certain act was an international crime, but it was another international crime not to resist that pressure, since there was no moral consideration to prevent a State from committing suicide.

The meeting rose at 12.55 p.m.

1537th MEETING

Wednesday, 23 May 1979, at 10.10 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Dadzie, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

Also present: Mr. Ago.

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[8] *Yearbook... 1950*, vol. II, p. 375, document A/1316, part III.

[9] See 1535th meeting, foot-note 4.