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Summary record of the 1598th meeting

Topic:
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also raised the question of the retroactive force of a *jus cogens* rule. As pointed out in paragraphs 81 and 82, there were cases, although they were not common, of treaties which laid down a primary rule of international law and provided for an admissible or mandatory response in the event of a breach of that rule. In that connexion. paragraphs 83 and 84 discussed the impact of Article 103 of the Charter of the United Nations on the content of State responsibility, and paragraph 85 dealt with the special problem of the non-fulfilment of a primary obligation arising under a multilateral treaty—particularly as the question related to articles 41 and 58 of the Vienna Convention—and also with the question of the admissibility of certain countermeasures taken pursuant to article 60 of that Convention. Paragraphs 86 to 89 dealt with another aspect of the impact of a breach of a primary rule of international law, namely, its impact on a mechanism of consultation and negotiation, on machinery for the settlement of disputes, and on an international organization in cases where the organization was empowered to take measures in response to an act that was wrongful within the context of that organization.

20. Paragraphs 90 *et seq.* considered whether there were certain obligations under international law which could never be breached in response to the internationally wrongful act of another State. In that regard, the principle underlying paragraph 5 of article 60 of the Vienna Convention was perhaps relevant to situations other than those specified in that paragraph. Within the context of qualitative proportionality, certain distinctions should be drawn between, for instance, primary obligations of a reciprocal character, special international régimes and—to cover cases where the content of the primary obligation determined the admissible or mandatory response—what might be termed parallel obligations. In that connexion, paragraph 95 referred to the impact of qualitative proportionality on quantitative proportionality and, specifically, to the problems which arose, in international as in national legal affairs, when translating quantity into quality and vice versa. Another very general problem, referred to in paragraph 96, concerned the change from "rule" to "relationship". It often fell to be decided in municipal law, as it might well do in international law, whether a breach of an obligation imposed by legislation constituted a wrongful act as between the guilty party and any other person having a material interest in the performance of that obligation. At the same time, it was a phenomenon of modern legal practice that a contract which embodied clauses designed to protect the interests of third parties could give rise to obligations vis-à-vis those third parties in the event of a breach of the contractual relationship. Such difficult borderline cases, which reflected the structural changes both in national and in international society, made it difficult to lay down hard and fast rules governing the response to any given internationally wrongful act.

21. It was in the light of those considerations that the problem of method was discussed in paragraphs 97 to 100. Since it was not possible to deal with each and every case of the breach of an international obligation, together with the corresponding admissible or mandatory response, it was suggested that the Commission should proceed by way of approximation. On that basis, it might wish to consider the limitations of possible responses under the three headings listed in subparagraphs 99 (*a*), (*b*) and (*c*).

22. Lastly, the Commission was requested, in paragraph 101, to decide whether to include a provision in part 2 of the draft articles to cover loss of the right of an injured or third State to invoke the new legal relationship which arose as a consequence of an internationally wrongful act.

23. Mr. USHAKOV said that if the Commission should decide to reopen, in part 2 of the draft articles, the question of the origin of responsibility, in other words the occurrence of an internationally wrongful act, it might be giving the impression that part 1 did not adequately cover the subject.

24. Referring to the terms of draft article 3, as adopted by the Commission,[6] he said that the objective feature of the internationally wrongful act was the breach of an international obligation owed by the State. Accordingly, it was legitimate to inquire in what circumstances and at what point that obligation arose, and it was the Commission's task to consider whether it ought to answer the question in its draft articles.

25. Secondly, with reference to draft article 30 concerning countermeasures in respect of an internationally wrongful act, in that context likewise the Commission should probably also determine whether it was its task to define the meaning of "legitimate" countermeasures or whether no definition was necessary because the question was settled by existing international law.

26. Thirdly, he expressed the opinion that, so far as the proportionality of countermeasures was concerned, the Commission had to decide, in the context of the draft articles, which of the two prevailed in cases where both primary and secondary rules co-existed.

The meeting rose at 4.40 p.m.

[6] See foot-note 1 above.

1598th MEETING

Wednesday, 28 May 1980, at 10 a.m.

Chairman: Mr. C. W. PINTO

Members present: Mr. Calle y Calle, Mr. Diaz González, Mr. Evensen, Mr. Francis, Mr. Jagota, Mr.

Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

Point of order raised by Mr. Ushakov (concluded)*

1. The CHAIRMAN, before giving his ruling on the point of order raised by Mr. Ushakov at the Commission's 1589th meeting, invited the representative of the Secretary-General to address the Commission on a point of information.

2. Mr. SCOTT (Representative of the Secretary-General) said he wished to inform the Commission that Mr. Suy, Legal Counsel of the United Nations, had recently had a meeting in New York with a member of the Permanent Mission of Afghanistan to the United Nations. In the course of that meeting, the Legal Counsel had explained that, under the Statute of the Commission, the Secretary-General was not competent to declare a casual vacancy in the Commission in the circumstances concerned, since its members were elected in a personal capacity for a fixed term, and in nearly every case upon the nomination of many more Governments than one. That conclusion was based upon the express provisions of the Statute of the Commission and the practice developed thereunder by the Commission, which had in the past taken a similar stand with regard to its own authority.

3. The CHAIRMAN said that, on 12 May 1980, a copy of a letter addressed to the Secretary-General of the United Nations by the Minister for Foreign Affairs of Afghanistan had been distributed to members under cover of a compliments slip from the Legal Counsel of the United Nations. The letter had stated that Mr. Tabibi could not "represent the legal system of the new Afghanistan". It had requested the Secretary-General to declare a seat on the Commission vacant on the ground of non-compliance with article 8 of the Commission's Statute and also requested the Commission to fill such vacancy in accordance with article 11 of its Statute.

4. The letter had been brought before the Commission at its 1589th meeting by Mr. Ushakov. On the proposal of Mr. Tsuruoka, supported by Sir Francis Vallat, the Commission had decided to postpone discussion on the question of whether or not the Commission could be seized of the matter raised by Mr. Ushakov.

5. Following consultations and an examination of the provisions of the Commission's Statute referred to in the letter, his ruling was that it was beyond the competence of the Commission to decide the issues that could arise in connexion with the matter raised by Mr. Ushakov, and that the Commission could not therefore be seized of it.

6. Mr. USHAKOV said that he was opposed to the Chairman's decision. Under article 11 of its Statute, the Commission took account, when filling a casual vacancy such as the one for which Mr. Tabibi had been elected, of "the provisions contained in articles 2 and 8 of this Statute". Just as the Commission took account of those provisions and, in particular, ensured that the persons called upon to take part in the Commission individually met the required conditions, it could also consider, in a particular case, that a member of the Commission no longer met the requirements. The questions raised in the letter from the Afghan Government were therefore within the competence of the Commission, which was in a position to remedy the situation thus created.

7. The CHAIRMAN, in accordance with rule 71 of the rules of procedure of the General Assembly, put to the vote Mr. Ushakov's appeal against his ruling.

The result of the vote was 1 in favour of the appeal and 13 against.

Accordingly, the ruling of the Chairman was upheld.

8. Mr. ROMANOV (Secretary to the Commission) added, for the sake of clarification, that the Secretariat of the Commission had circulated the letter from the Minister for Foreign Affairs of Afghanistan in response to a request received from the Legal Counsel of the United Nations.

9. The CHAIRMAN said that the Commission had thus concluded its consideration of the point raised by Mr. Ushakov and that he did not propose to allow any speakers on the issue of the competence of the Commission, which had just been decided by a vote.

10. Mr. DÍAZ GONZÁLEZ said that, while he agreed entirely with the Chairman's ruling, he considered that instead of stating that the Commission could not consider the issue it would have been more correct to state that it did not have legal capacity under its Statute to decide the issues raised in the letter from the Minister for Foreign Affairs of Afghanistan.

11. Mr. JAGOTA said that he had not taken part in the vote because the motion had related more to the content of Mr. Ushakov's statement than to the ruling given by the Chairman. If the question posed had related to the competence of the Commission to deal with the matters raised, he would have voted one way or the other.

12. Mr. FRANCIS said that he deeply regretted the stand which the Commission had been obliged to adopt. Although, strictly speaking, the Chairman's ruling was correct, the right course to follow, in his view, would have been for the Legal Counsel to raise the question of the competence of the Commission or, for that matter, of the General Assembly, with the Government of Afghanistan, after which the relevant correspondence should have been forwarded to the Commission, a course of action which would have precluded any discussion of the matter by the

* Resumed from the 1589th meeting.

Commission. He did not, however, attribute any blame to the Government of Afghanistan for raising a political issue, since that was the business of Governments, nor to Mr. Ushakov for having raised the matter before the Commission.

13. Mr. USHAKOV said that he had voted against the Chairman's decision since he considered that Mr. Tabibi no longer met the "qualifications required", as provided for in article 8 of the Statute of the Commission.

14. Mr. SCHWEBEL said that he had welcomed the information provided by the representative of the Secretary-General but agreed with Mr. Francis as to the way in which the matter should have been handled.

15. He found it most objectionable that any member of the Commission should have raised and pursued the matter. It prompted disturbing questions as to that member's concept of the character of the Commission and of his responsibilities. Moreover, had further discussion of the question not been declared out of order, there would, in his view, have been virtually no sentiment in favour of any motion of that kind regarding Mr. Tabibi.

State responsibility (*continued*) (A/CN.4/330)

[Item 2 of the agenda]

PRELIMINARY REPORT ON THE CONTENT, FORMS AND DEGREES OF INTERNATIONAL RESPONSIBILITY (PART 2 OF THE DRAFT ARTICLES) (*continued*)

16. Mr. TSURUOKA congratulated the Special Rapporteur on his excellent preliminary report (A/CN.4/330), in which he had shown both open-mindedness and moderation. Clarification on two points would be useful.

17. In paragraph 40 of the report, it was stated that a third State could not claim damages *ex tunc*, since by definition there was no injury to its material interest, but that a re-establishment *ex nunc* to the direct benefit of the injured State and a guarantee *ex ante* against further breaches might well be in the non-material interest of that State, in particular in the case mentioned in article 60 of the Vienna Convention[1]—in other words, if the treaty was of such a character that a material breach of its provisions by one party radically changed the position of every party with respect to the further performance of its obligations under the treaty. He wondered whether it was not going too far in protecting a third State to assimilate it to a directly injured State, and whether a line should not be drawn between third States and directly injured States. Such a distinction would probably facilitate acceptance of the draft articles by some States.

18. Paragraphs 62 to 76 of the report involved the question of a collective decision by the international community as a basis for the adoption of certain countermeasures. He endorsed the principle of such a decision, but it should be made clear that an organ or a group of States could take a collective decision of that kind only if it was first empowered to do so. Such a precaution would act as a guard against decisions of an arbitrary nature.

19. Mr. QUENTIN-BAXTER said that the Special Rapporteur's report would enable him to consider his own topic (international liability for injurious consequences arising out of acts not prohibited by international law) in the light of the comments not only on that report but also on Mr. Ago's report, particularly as the latter related to states of necessity (A/CN.4/318/Add.5). It was apparent (particularly from paragraph 19 of the report under consideration) that the Special Rapporteur recognized that there were one or two points at which their respective fields of inquiry touched upon each other.

20. Moreover, as both Mr. Ago and the Commission itself had already noted, there were sequelae to the question of wrongfulness that might require a decision regarding the allocation of certain matters as between the Special Rapporteur's topic and his own. Chapter V of the draft articles prepared by Mr. Ago[2] was concerned solely with circumstances precluding wrongfulness, and not with wrongfulness itself. The need to consider such circumstances within the context of State responsibility for wrongful acts had all the warrant of doctrine throughout the centuries. However, Mr. Ago had reminded the Commission that he had not been dealing with the obligations which might arise in relation to acts that were not prohibited and had also pointed out that, in the cases of distress and state of necessity, the fact that wrongfulness was precluded did not necessarily prevent a new legal relationship arising between the actor who caused the situation in question and the victim of the situation—a matter that had yet to be dealt with.

21. The Special Rapporteur, for his part, had stated that it was only logical for him to take account of such circumstances within the context of the topic now under discussion. There were excellent reasons why he should do so, the first of them being the history and doctrine of the topic and recognition given to the possibility of a new legal relationship which was not based on wrongfulness.

22. There was, however, a second reason why the Special Rapporteur should regard it as within his mandate to consider the matter. Notwithstanding the title of his (Mr. Quentin-Baxter's) topic, there had been a tendency to consider it in relation to the physical environment of States, and it was by reference to that criterion that the Working Group had defined that

[1] See 1597th meeting, foot-note 4.

[2] *Ibid.*, foot-note 1.

topic in 1978. According to the Working Group's report, it was characterized in the first instance by the fact that it concerned "the way in which States use, or manage the use of, their physical environment, either within their own territory or in areas not subject to the sovereignty of any Sate".[3] Given the body of doctrine and State practice relating to the physical use of territory and the things which flowed from it, he continued to believe that his own topic should be so limited, although that limitation was not reflected in its title. It therefore seemed that the specific issue of a new legal relationship arising in the absence of wrongfulness was broader than the full extent of his own field of inquiry, since it was clear that such an issue could arise in relation to matters which did not involve the use of the physical environment.

23. For those two reasons, it was entirely proper, and indeed necessary, that the topic should receive some consideration in the context of the Special Rapporteur's work on the present item. One way of reflecting that work in a set of articles might be to have recourse to the kind of negative clause which warned the reader that the conclusions reached in other articles did not preclude liability of a different kind.

24. In general, however, he would be inclined to characterize the situation somewhat differently from the way in which the Special Rapporteur had done so in paragraph 19 of his report, and particularly in the third sentence of that paragraph, which aimed to distinguish between the cases that fell primarily within the Special Rapporteur's subject area and the cases which fell primarily within his own. While the fundamental difference under international law between wrongful and legitimate acts of a State might seem to militate in favour of separate treatment of two types of case, he did not think that it was feasible to make a corresponding distinction between acts that were *a priori* wrongful or *a priori* legitimate. In that connexion, members would recall that, in the title of his own topic, the Commission had decided, advisedly, to speak of "acts not prohibited by international law", rather than of licit acts.

25. Some, though by no means all, of the subject-matter with which he was concerned fell within the shifting category of situations which had yet to be definitively characterized as wrongful. Thus there was a wide spectrum of matters relating to responsibility for acts not prohibited by international law that, in many cases, could have been considered within the framework of the Special Rapporteur's topic. He was thinking, for example, of cases in which wrongfulness could be alleged but in which it was convenient to the parties and in the interests of justice to refer instead to other criteria. In adopting the expression "acts not prohibited by international law", the Commission had possibly had in mind acts in respect of which the victim might be entitled to redress without the need to allege and prove wrongfulness. That concept, however, was rather different from the concept of obligations that attached, in some curious manner, to the perfectly legitimate actions of the State.

26. If any of the acts encompassed by his own topic were completely untainted by wrongfulness, it was precisely the acts referred to by the Special Rapporteur. In the case of distress and state of necessity, doctrine tended to recognize a choice, albeit a limited one. For example, if a pilot, the agent of the State, had to decide either to land his aircraft in foreign territory or to perish together with those in his charge, under the draft articles he would be required to make a choice with such care as could be exercised in the circumstances, but he would not be entitled to incur even greater danger in order to save his own life. In the case of *force majeure* and fortuitous event, however, there was not even the vestige of a choice. The international person who caused the damage was not an agent but the instrument of the other party's misfortune; he acted as he did either because he was driven to do so by an overwhelming force or because he had no way of knowing that his action was wrongful. Even in those circumstances, however, the Commission had inclined to the view that, as between an innocent actor and an innocent victim, it was not entirely certain whether the loss should fall solely on the innocent victim. Consequently, a new legal relationship might arise. All those questions were central to his own topic, but there would be no harm whatsoever in a degree of overlap.

27. Lastly, on the question of compensation or redress for injury, he fully agreed that the treatment of his own topic should not extend to the issues dealt with in the last part of the Special Rapporteur's report, such as countermeasures and sanctions, but should be concerned solely with the more limited question of just redress for injurious consequences sustained. He would, however, have to gauge his own treatment of the matter against the broader treatment which the mainstream of State responsibility required; in so doing, he would look to the Special Rapporteur for guidance on the specific question of compensation.

28. Mr. VEROSTA said that, since the Commission's discussion of part 2 of the topic of State responsibility should concentrate on matters which the Special Rapporteur considered to be of particular importance, he hoped that the Special Rapporteur would indicate those on which the Commission's guidance would be helpful. For example, it would be useful if the Special Rapporteur could explain whether he thought part 2 should be confined to rules of general international law and should exclude rules applying to international organizations.

29. Mr. RIPHAGEN (Special Rapporteur) said that, on the preliminary question of whether part 2 was needed at all, he had started out from the assumption that it was indeed necessary because both the Com-

[3] *Yearbook ... 1978*, vol. II (Part Two), pp. 150–151, document A/33/10, chap. VIII, sect. C, annex, para. 13.

mission and Governments must ascertain the consequences of State responsibility.

30. With regard to Mr. Ushakov's question (at the previous meeting) as to whether part 1 could be considered exhaustive and whether it was essential to answer all the questions left open in it, the Commission had to decide what approach or over-all policy it would follow in part 2 in dealing with the questions raised in part 1. He had, however, prepared his report in the expectation that it would be the wish of the Commission to endeavour to answer those questions.

31. Mr. Ushakov had referred to article 3 (*b*) of the draft articles[4] and to article 60 of the Vienna Convention in asking whether it was the Commission's task to decide whether or not a State had a primary obligation vis-à-vis another State. In that respect, it was clear from the title of article 60 of the Vienna Convention that a unilateral measure to terminate or suspend a treaty could be considered as a response to a breach of an international obligation under that treaty, and that such a response came within the framework of the new legal consequences and relationships arising from the breach of an obligation of that kind. The members of the Commission should also bear in mind the fact that the question of the content and origin of international obligations and primary rules of international law had been left aside in part 1. Part 2 would have to deal with it, because the provisions of article 60 of the Vienna Convention could not be overlooked. In that connexion, he referred to paragraphs 41 and 42 of the report, in which he had suggested that it was sometimes difficult to make sharp distinctions between the possible types of legal relationships created by an internationally wrongful act of a State.

32. As to Mr. Ushakov's question of whether the Commission should define the meaning of "legitimate" countermeasures in respect of an internationally wrongful act, which were referred to in draft article 30, he was of the opinion that the matter fell squarely within the subject-matter of part 2 and would therefore require the attention of the Commission.

33. Mr. Ushakov's question of whether or not the Commission had to define the rule of proportionality was a matter of policy. For his own part, he assumed that such a rule did exist and that there must, in principle, be some proportionality between the breach of an obligation and the response thereto. Nevertheless, proportionality was an elastic concept and it would be advisable for the Commission to leave the question of its definition open.

34. Mr. Tsuruoka had made a number of queries in connexion with specific paragraphs of the report, suggesting, with regard to paragraph 40, that it was going too far to assimilate a State that was not directly injured to one that was directly injured. Although Mr. Tsuruoka may have been right in saying that a line had to be drawn somewhere, account must be taken of the particular type of multilateral treaty in which the obligations of all of the parties were closely interrelated and in which the breach of an obligation by one party necessarily affected all of the parties. That idea, which was clearly stated in article 60, paragraph 2 (*a*), of the Vienna Convention, should be given further consideration by the Commission.

35. In connexion with paragraphs 62 to 76 of the report Mr. Tsuruoka had referred to countermeasures and the requirement of a collective decision, rightly pointing out that it was necessary to know which States took part in the collective decision and whether they were competent to do so. The term "collective decision" was intended to be used in a very broad sense, and the report had therefore referred to article 60, paragraph 2 (*a*), of the Vienna Convention, which used the words "unanimous agreement". The Vienna Convention did not, of course, relate to international organizations, but in drafting his report he had had in mind collective decisions taken either by the General Assembly or the Security Council of the United Nations.

36. He fully agreed that his own topic and that of Mr. Quentin-Baxter certainly overlapped on a number of points. He had, moreover, failed to take account of the fact that Mr. Quentin-Baxter's topic would only encompass environmental questions, and shared the view that the matter of compensation should be dealt with in both topics. Nevertheless, he was still of the opinion that the consequences of an act which was prohibited by a primary rule of international law but, in certain circumstances, was not a wrongful act, should be similar to the consequences of a wrongful act.

37. With regard to Mr. Verosta's request that he indicate the main points on which he would like guidance from the Commission, he drew particular attention to the general suggestions contained in paragraphs 97 to 100 of his report. It would be of great assistance if the members of the Commission informed him of their opinions on those suggestions. If they decided that part 2 of the draft articles was necessary, they would face considerable difficulties in formulating ideas on the allowable responses to internationally wrongful acts and in describing specific situations. As he had noted in paragraph 100 of the report, it was impossible to adopt an abstract approach because there were no rules that automatically applied to the allowable responses to internationally wrongful acts. Again, that was particularly true because part 1 of the draft articles was silent on the question of the content and origin of primary rules. Hence, the Commission could give only general indications of the responses that were allowed in particular cases.

[4] See 1597th meeting, foot-note 1.

38. Regarding Mr. Verosta's second question, namely, whether or not part 2 of the draft should include rules applying to international organizations, he said that part should definitely take account of the possibility that international organizations might be entitled to determine the responses of their members to internationally wrongful acts. On the other hand, it was not quite so clear whether part 2 should also deal with the responses of international organizations themselves—in other words, with the possibility that they might expel or suspend one of their members in response to an internationally wrongful act. The course of action possible in that respect depended entirely on the constituent instrument of the international organization.

39. Mr. VEROSTA said that, in his opinion, use of the expression "guilty State" should be carefully avoided in part 2 of the draft articles on State responsibility because States, and in particular the great Powers, did not like to be characterized as "guilty". The term had different connotations in criminal law and civil law, but the risk of confusion between the two made it preferable to avoid using it during the current discussion.

The meeting rose at 11.40 a.m.

1599th MEETING

Thursday, 29 May 1980, at 10.10 a.m.

Chairman: Mr. C. W. PINTO

Members present: Mr. Barboza, Mr. Calle y Calle, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Jagota, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

State responsibility (*continued*) (A/CN.4/330)

[Item 2 of the agenda]

PRELIMINARY REPORT ON THE CONTENT, FORMS AND DEGREES OF INTERNATIONAL RESPONSIBILITY (PART 2 OF THE DRAFT ARTICLES) (*continued*)

1. Mr. USHAKOV said that there were a number of points which were of fundamental importance in the present preliminary stage of the work on part 2 of the draft articles on State responsibility.

2. Under the terms of draft article 1,[1] international responsibility could be incurred on one ground alone, namely, the internationally wrongful act of a State. However, it was clear that there was another form of responsibility which was not identified as such in French terminology but was designated in English terminology by the term "liability".

3. Part 1 of the draft articles therefore seemed to leave a number of questions pending, inasmuch as international law recognized only responsibility properly speaking, whereas internal law also admitted responsibility based on risk. It was not, however, desirable for questions relating to the circumstances and the conditions determining the existence of an internationally wrongful act to remain unanswered. In his opinion, the possible shortcomings revealed by the Special Rapporteur did not fall within the scope of part 2 of the draft. Everything pertaining to the existence of the internationally wrongful act as the basis for incurring international responsibility must be dealt with in part 1; otherwise confusion might arise in the event of discrepancies between the commentaries to two consecutive parts of the set of draft articles.

4. Problems relating to matters other than State responsibility in the strict sense of the term also remained unresolved. The basis for part 1 of the draft was the existence of primary, or substantive, obligations under international law, alongside which there existed secondary rules governing responsibility. A breach of the primary rules brought the secondary rules, or rules of responsibility, into play. It was not for the Commission to say what those substantive or primary rules were, a task that would mean codifying all of international law, including the obligations created in the bilateral treaties that were being concluded almost every day. Clearly, it was not the purpose of the draft articles to define all existing substantive rules of international law.

5. The Commission could, however, examine those rules in order to identify certain categories, as had been done in draft article 19, which differentiated between international obligations in respect of which a breach constituted an international crime and obligations in respect of which a breach constituted an international delict. Obviously, the content of primary obligations (which had some effect on the content, forms and degrees of State responsibility), could not be completely ignored. Nevertheless, it was not for the Commission to concern itself with the existence of rules of substantive international law.

6. The Vienna Convention[2] did not deal with the question of responsibility; it simply defined the conditions determining the existence or absence of international obligations. For example, article 60 of the Convention merely provided that a breach by one of the parties of its obligations entitled the other party to invoke the breach as a ground for terminating the treaty or suspending its operation. Accordingly, the article did not define the responsibility of the State committing the breach; it established the existence of

[1] See 1597th meeting, foot-note 1.

[2] *Ibid.*, foot-note 4.