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Summary record of the 371st meeting

Topic:
State responsibility

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52. The Commission should not be deterred by those difficulties, for the need for codification was outstanding. To a large extent, international intercourse depended for its smooth flow on clearly formulated rules; in particular, with regard to the treatment of aliens in the broadest sense of the term—i.e., with regard not only to their persons, but also to their property, commercial interests and the like. In the contemporary world, it was of great importance to promote an international approach to such topics as the supply of capital for the development of under-developed countries. Past experience had unfortunately acted as a deterrent against assuming the risks of such capital investment, and many of the difficulties had arisen from the lack of certainty of the rules governing the position of aliens and their interests. A code on that topic that would reconcile the different points of view and find general acceptance would be of real benefit.

The meeting rose at 12.55 p.m.

371st MEETING

Wednesday, 20 June 1956, at 10 a.m.

CONTENTS

Chairman: Mr. F. V. GARCÍA-AMADOR.
Rapporteur: Mr. J. P. A. FRANÇOIS.

Present:

Members: Mr. Gilberto AMADO, Mr. Douglas L. EDMONDS, Sir Gerald FITZMAURICE, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. S. B. KRYLOV, Mr. Radhabinod PAL, Mr. Carlos SALAMANCA, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jaroslav ZOUREK.

Secretariat: Mr. LIANG, Secretary to the Commission.

State responsibility (item 6 of the agenda) (A/CN.4/96) (continued)

1. The CHAIRMAN invited the Commission to continue its consideration of item 6 of its agenda—State responsibility. If any members wished to make any general observations on the report on International Responsibility (A/CN.4/96) they would, of course, be free to do so. It would, however, facilitate consideration of the topic if the bases for discussion were subsequently taken separately.

2. Mr. EDMONDS said that the report was a most thoughtful study which would provide an admirable basis for a thorough discussion of the topic; for the moment, he would confine himself to a brief general comment. As an American poet had observed, " New occasions bring new duties ", and the closer association of the peoples of the world that had been promoted by the remarkable advance of science during the present century had led to a changed world situation in which a new light had been thrown on international duties and responsibilities. While agreeing with Sir Gerald Fitzmaurice that the subject certainly lent itself to codification,[1] he had to admit that a cursory reading of the draft indicated a range that went far beyond the rules hitherto internationally recognized in that field. It might be that the Commission, by a bold pronouncement, should take a definite step forward. His own approach, however, would be much more cautious, for it must not be overlooked that the Commission would be adopting a code which must be generally acceptable at the present time and not a set of rules full of fair promise only for the future. Without suggesting that the Special Rapporteur had in any way been too forward-looking, he felt that circumspection was required in stating existing law and in formulating rules for adoption by States.

3. Sir Gerald FITZMAURICE, while reserving his position with regard to particular articles, said he would add one or two comments to the remarks that he had made at the previous meeting. He had been struck by the very point made by Mr. Edmonds, and could only endorse the wise recommendation of the Special Rapporteur in the final paragraph of his report (A/CN.4/96, page 31), that the Commission should adopt a gradual approach to the question of codification. As drafted, the report covered the whole field of international responsibility which, although impinging at certain points on the position of the individual, was almost co-terminous with international law. The topic of paramount importance in the Commission's programme was the responsibility of States.

4. The question then arose whether an attempt should be made to cover the whole field of State responsibility, which again was almost coterminous with international law. The primary consideration was not the general responsibility of all international obligations, but, in particular, the responsibility of States for damage caused to the person or property of aliens. To urge such a limitation was in no sense to detract from the value of the report, which would be of considerable use, if only in the demarcation of the field of study and in opening up a wider view of a most important subject.

5. Mr. KRYLOV said that he was glad to share the opinion of a previous and highly distinguished Special Rapporteur, Mr. Guerrero, in whose work the history of the subject could be studied in detail.[2] In approaching the problem of state responsibility, the question naturally arose what progress had been made in the study of the subject during the quarter of a century that had elapsed since the publication of Guerrero's work. During that time the topic of international responsibility had attracted three new elements.

[1] A/CN.4/SR.370, para. 51.

[2] G. Guerrero: *La Responsabilité internationale des Etats*, Académie diplomatique internationale, 1928.

6. The first was the concept that the rights and guarantees afforded to aliens by the State should not be less than the fundamental rights of man as recognized and defined in contemporary international instruments.

7. The second was a borderline question that was by no means clear and called for further study, namely, that of a " general interest " that involved the State in the injury caused to the personal property of its nationals. That new element was illustrated by the claim of Israel against the Federal Republic of Germany submitted in respect of Nazi ill-treatment of European Jewry during the Second World War. It was claimed that such a case came within the scope of " general interest ". Personally, he doubted whether such concern on the part of the State of Israel would arouse much enthusiasm in the breast of a Jew who was a French national. The question, nevertheless, was a material one that should not be overlooked.

8. As to the third element, the Special Rapporteur, following a familiar academic practice, had kept his most telling point to the end; it was to be found in paragraph 3 of basis for discussion No. VII and amounted to a prohibition of the direct exercise of diplomatic protection through a threat, or the actual use, of force or any other form of intervention in the domestic or external affairs of the respondent State. The situation, therefore, was that State responsibility must be based on the fundamental principles of international law and on the rule he had just quoted. That point linked the approach of the Special Rapporteur with that of Guerrero, who had given prominence to the idea of non-intervention in the exercise of diplomatic protection, and in that connexion, he would refer once again to the wise precept, quoted by Grotius: *suum cuique*. He would reserve his right to comment on the other bases for discussion later.

9. Mr. SPIROPOULOS congratulated the Special Rapporteur on his report, which was of outstanding interest. It could not be compared with that on " Responsibility of States for Damage done in their Territories to the Person or Property of Foreigners ", drawn up in 1927 by the Sub-Committee set up by the Committee of Experts on the Progressive Codification of International Law, under the League of Nations (Guerrero Report) (A/CN.4/96, Annex 1), for it embodied many new ideas which, for the first time in such a document, were formulated as principles. The Special Rapporteur had confined himself to putting forward certain bases for discussion summarizing general concepts and ideas which would subsequently be submitted to the Commission in a definitive text. That was a departure from the method adopted by Sir Gerald Fitzmaurice, who, in his report on the law of treaties (A/CN.4/101), had submitted his draft in final form.

10. As regards the bases for discussion, the first, which enunciated general principles, did not call for particular attention. In bases Nos. II and III, the correct approach had been adopted in drawing a distinction between the active and passive subjects of international responsibility. In basis No. II, it was pointed out that individuals could be active subjects in so far as any act or omission considered as punishable under international law could give rise to criminal responsibility. A study of that question had already been undertaken by the Commission at its second and sixth sessions, when it had prepared a draft code of offences against the peace and security of mankind. Moreover, as the Special Rapporteur had rightly pointed out, criminal responsibility was involved only in certain circumstances.

11. The most important question was that of the passive subjects of international responsibility, dealt with in basis No. III, which in fact constituted the core of the report. The fundamental ideas expressed therein were quite new, for, as Mr. Amado has said,[3] traditional doctrine maintained that only a State could be the passive subject of international responsibility. The Special Rapporteur considered that foreign private individuals could also be so regarded, provided the injury affected their person or property, and, having enunciated that principle, he adduced the basic and completely new concept according to which, as he (Mr. Spiropoulos) understood it, a person who had violated international law would be regarded as the passive subject of international responsibility. In its codification of the topic, the Commission should keep abreast of new ideas or, at the very least, give them mature consideration. Disregarding for the time being the question of international organizations, and despite his own doubts about the possibility of adopting such an innovation, the idea of formulating it in a report was excellent.

12. According to that concept, States might become passive subjects of international responsibility where a " general interest " was involved. He was not sure that he fully grasped the meaning of that concept, to which Mr. Krylov had also drawn attention.[4] A State would always have an interest in its own nationals. The Special Rapporteur, however, had restricted that interest to certain cases in which it had an interest in the injury caused to the person or property of its nationals. In that context, " special " rather than " general " might be a better word to use. In any case, the idea that, in principle, the passive subjects of international responsibility were private individuals, but that States could also qualify for that status in cases of " general (or special) interest " was a new concept. From the traditional point of view, that idea would be acceptable, although many authors, such as Krabbe, Legouis, Politis and others would dissent, regarding foreign private individuals as the only passive subjects of international responsibility. The Commission might well establish such a principle. What was of greater importance was the question of the practical results to which it would lead, and in that respect many difficulties would certainly be met with.

13. Paragraph 3 expressed the idea that the real owner of the injured interest or right should be recognized as having the capacity to bring an international claim for the damage sustained. What would be the practical consequence of such a rule? Capacity belonged to the private individual concerned, but in paragraph 2 it had

[3] A/CN.4/SR.370, para. 47.

[4] See para. 7, above.

been urged that in cases of " general interest " a State could be the passive subject of international responsibility. The extent of the application of the principle did not emerge clearly. Did the Special Rapporteur mean, for instance, that a foreign private individual having suffered damage could bring a case before an international tribunal such as the International Court of Justice? If so, the practical result would not be an innovation, because it would always be the State which would have the capacity to bring an international claim for the damage sustained. In the absence of a precise text, therefore, it was difficult to form an opinion on the practical consequences of the application of the principle.

14. With regard to basis for discussion No. IV, the Commission would have to decide later its attitude towards the principle of responsibility in respect of violations of the fundamental rights of man. The second sentence of paragraph 1 contained the important provision, amounting to a minimum guarantee of protection —emphasized by the phrase " in any case "—that the rights and guarantees afforded to aliens by the State should not be less than " the fundamental rights of man " recognized and defined in contemporary international instruments. In other words, those fundamental rights were taken as a criterion of violation of the provisions of international law. That was a new and most important concept, to which the Special Rapporteur had rightly drawn particular attention. In view of both the Universal Declaration of Human Rights and the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome in 1950, the question could be put whether the principles embodied in those two documents really constituted a standard criterion for deciding whether the rights of an alien had been violated. Traditional doctrine had adopted a different criterion, that of the " international standard ", the validity of which, particularly since the Chorzow Factory case, [5] had been generally recognized. It might well be that a new international standard could be set up in order to determine the responsibilities of a State towards aliens in its territory.

15. With regard to sub-paragraph 2 (*b*) of basis for discussion No. V, dealing with renunciation of diplomatic protection as an exonerating circumstance, he wondered whether the manner of presenting the question was in accordance with international law. The text referred to " rights, which, by their nature, are not capable of being renounced ". Though personally unaware of any right that could not be renounced, he recognized that some jurists held that there were certain rights which a State could not waive in any circumstances. The text went on to refer to " questions in which the private person is not the only interested party ". If the implication was that in questions in which a private person was not the only interested party the State could not renounce diplomatic protection, the rule was not in accordance with traditional practice. He might quote, for instance, the Ambatielos case between Greece and the United Kingdom, which originated in 1923, but was not settled until 1956, Greece having refrained for years from bringing it before an international tribunal because it did not wish to disturb its friendly relations with the United Kingdom. Admittedly in that case the claim had been left in abeyance rather than abandoned, but there were cases in which States, being obliged to consider the general interest as well as that of the individual, had entirely abandoned the claims of their nationals. The text was therefore an extremely interesting innovation in that it laid down the clear rule that States could not abandon the claims of private persons.

16. The statement in paragraph 1 of basis for discussion No. VII that the international claim should not be considered as a new claim distinct from that brought before the local authorities was another departure of great importance. It was, however, contrary to traditional practice. He wondered, moreover, what the practical implications of such a principle would be. Assuming for the moment that an award had been made in favour of Greece in the Ambatielos case, then, under the new principle, Mr. Ambatielos, a private person having capacity to bring an international claim as a passive subject of international responsibility, would have been entitled to take measures of execution. But according to existing international law that was not possible. When an international tribunal made an award to a State in respect of a claim involving a private person, it was the State that enjoyed all the rights deriving from that award and not the private person.

17. As for the rule enunciated in paragraph 3 of basis for discussion No. VII, it dealt with what, in European diplomatic relations at least, was a very exceptional case. While regarding it as a rule which must be acceptable to all, he felt that the " intervention " would need to be clearly defined. Mere provocatory language did not constitute intervention. The term must be understood as denoting real intrusion in the domestic or external affairs of a State.

18. Mr. SALAMANCA congratulated the Special Rapporteur on the immense intellectual effort which he had made to cover every possible aspect of so vast and complex a problem; he had not hesitated to define his position very clearly and if he (Mr. Salamanca) differed from him, it was mainly on the matter of the emphasis placed on the role of the individual as a subject of international law.

19. Although not necessarily inclined towards conservative solutions, he thought it difficult, and perhaps even rash, to attempt to draw a clear-cut distinction between traditional and modern international law. Disputes regarding international responsibility, even when individual nationals were involved, were still disputes between States. The presence of private persons in such disputes was permitted by States only when it suited them. The view of the Institut de droit international quoted by the Special Rapporteur [6] in support of his thesis was, he thought, to be interpreted in that sense. Cases in which private persons were involved, either as active or passive subjects, were exceptionel and did not consti-

[5] *Publications of the Permanent Court of International Justice*, Series A, No. 9, 1927.

[6] A/CN.4/96, p. 66.

tute clear international practice. What might be called the traditional trend emerging from disputes between States alone was far more uniform. Since, however, some jurists saw a definite trend in disputes between States involving private persons, the question might be studied further, but should not be viewed as a contribution to the development of international law. The relationship between the State and the individual in international law was worthy of further study. It was noteworthy that, whereas in domestic law the sphere of action of the individual was being steadily restricted, the States in which the individual had least rights being regarded by some authorities as the most modern, in international law the opposite trend prevailed.

20. Referring to basis for discussion No. IV, he agreed that the draft covenants on human rights in process of elaboration by the United Nations laid down uniform criteria for the interpretation of human rights. But from the very outset it had been claimed that some of their provisions ran counter to those of Article 2, 7 of the Charter. The problem, in any case, was not one of recognition, since most States already recognized those rights in their domestic law. It was rather one of implementation, and on that point the Commission was bound to encounter all kinds of procedural and legal difficulties similar to those encountered when the question of an international criminal jurisdiction was discussed.

21. In considering the question of diplomatic protection, dealt with in basis for discussion No. V, the Commission, or at least its Latin-American members, might bear in mind President Roosevelt's declaration of non-intervention made in 1938 and the American Treaty on Pacific Settlement (Pact of Bogotá). The Mutual Security Agreements concluded by the United States of America with a number of States, both within and outside Latin America, were worthy of study in that connexion too. The detailed provisions included in some of those agreements for the compensation of United States investors in the event of expropriation established a kind of *a priori* diplomatic protection involving the total elimination of the private person as a subject of international responsibility. In view of the increasing number of such mutual security agreements and their comparative uniformity, it was quite possible that a solution to many problems of international responsibility might be found in the device of *a priori* diplomatic protection.

22. The question of diplomatic protection also had a bearing on basis for discussion No. VII. In the matter of international investment, as the debates in the Economic and Social Council showed, there were two conflicting trends: one based on fear of expropriation and the other on fear of exploitation. A reconciliation of those two trends might make a progressive contribution towards the solution of many problems of international responsibility. A purely practical measure that might do much to solve the problem was the establishment of international insurance companies to cover the risk of expropriation and refuse to insure any State which violated its contractual obligations. In the theoretical field, however, the wider adoption of the device of *a priori* diplomatic protection might completely transform the concept of state responsibility in the field of international investment. With the question of damage and prejudice and the punitive function of reparation measures, he would deal at a later stage.

23. So far as the Commission's plan of work was concerned, it clearly had to comply with the terms of General Assembly resolution 799 (VIII). Attempts by the Commission to solve all the problems raised by a particular subject had often given rise to conflicting reactions in the General Assembly. Since States were slow to accept the Commission's conclusions, he thought it wiser to concentrate at first on civil responsibility in a restricted sense, without prejudice to the possibility of dealing with the subject of international responsibility more fully at a later stage.

24. Mr. PAL expressed his sincere admiration for the report, which had opened up a vast field of knowledge. He wished first to be quite clear as to the exact subject under discussion. He could not understand why previous speakers had referred to " individual responsibility ". The misunderstanding had perhaps arisen through the Special Rapporteur's adoption of the rather wide term " International responsibility ". General Assembly resolution 799 (VIII), however, referred explicitly to " State responsibility ", that was, the responsibility of States to States and not the responsibility of States to individuals. Though the Commission might have occasion to take account of the actions of private persons it would only do so in so far as they gave rise to a case of State responsibility. The question of individual responsibility did not enter into the subject.

25. The same problem arose in connexion with basis for discussion No. III, where it was stated that foreign private individuals might be passive subjects of international responsibility. To accept that thesis would broaden the subject immensely. The Commission would have to consider the cases of millions of refugees and expellees who had suffered prejudice and loss of property through State action, in Korea, Indo-China, or through the partition of the Indian sub-continent, for example. He could not accept such an interpretation. The question was one of the responsibility of a State to a State, irrespective of the nature of the action that gave rise to that responsibility. A State might acquire a right *vis-à-vis* another State through an individual, but the individual could not himself acquire such a right *vis-à-vis* a foreign State.

26. The background material in the Special Rapporteur's report had confirmed his impression that the principles of international law governing state responsibility to be codified had been those governing the relations between State and State, with the individual entering into the picture merely as an agent giving rise to such responsibility. Under General Assembly resolution 799 (VIII), the reason for such codification had been declared to be the desirability of the maintenance and development of peaceful relations between States, and it was thus obvious that individuals could not in that context be regarded as subjects of international law, since they could not enforce their rights as against States. Even if basis for discussion No. III were really as wide as Mr. Spiropoulos had claimed it to be, the

Commission should avoid too broad an interpretation and keep in view the ultimate responsibility of State to State.

27. The problem of State responsibility had been under study since at least 1925. Annex No. 2 to the Special Rapporteur's report showed that bases for discussion had been drawn up as long ago as 1929 in the hope that they would secure approval by all States. Several States had given an assurance of their approval, but by no means all States had accepted the bases. That in itself was a warning against unduly broadening the subject.

28. Mr. Spiropoulos had expressed the belief in connexion with basis for discussion No. V (Exoneration from responsibility; extenuating and aggravating circumstances) that he could not conceive of a person or entity as incapable of renouncing diplomatic protection.[7] That was going too far, since it was conceivable that a right might be held by an agent on behalf of another party and that agent might not be empowered to renounce that right. There was apt to be confusion between the State and the depositary of the power of the State; the State possessed a right and the depositary exercised it.

29. Nor could he share Mr. Spiropoulos' misgivings with regard to basis for discussion No. VII (International claims and modes of settlement), in particular with regard to the use of the term " a new claim " in paragraph 1. In his understanding, one of the basic principles was that whenever a question of responsibility for the interest of a State arose, the injured individual would first resort to local remedies, and, only if they proved inadequate would he seek another jurisdiction. After local remedies had been exhausted, the State would intervene but would not lay a fresh claim by resorting to local remedies. The claim would, in fact, be the claim originally brought by the individual, and the State would be resorting to jurisdiction under international law other than that provided for local remedies.

30. The bases for discussion drafted by the Special Rapporteur covered the entire field of state responsibility and should not be extended by the Commission, even though the language in which they were couched made that possible.

31. Mr. SCELLE said that, on the Special Rapporteur's valuable report, he would only repeat a few personal observations on the lines of those he had made on his predecessor's report. Responsibility was a general aspect of international order, which, like every kind of juridical order, both national and international, must be a combination of the debits and credits that existed between members of the same society. There had been an appreciable evolution in the conception of the international society. Formerly, international law had dealt solely, or almost solely, with relations between States and the subject of international law had been primarily the State. Increasingly, however, the individual was tending to become the principal subject of international law. The responsibility of individual to individual was becoming much greater than that of State to State, since the State was tending merely to assert the responsibility of individual to individual, provided that responsibility issued from the juridical order of the State concerned.

32. The exhaustion of local remedies had originally derived from a simple act of courtesy between rulers. The relation now lay between individuals when the State was capable of asserting such responsibility. Responsibilities issuing from acts of rulers and their agents had now become the exception. Whenever the collectivity of States was not directly involved, the primary responsibility was that of individual to individual, or in other words the responsibility of individuals as subjects of law. That was the great new development. The exhaustion of local remedies was certainly needed, but those remedies were something definitely available. It even occurred sometimes that the responsibilities were criminal responsibilities, and there an extraordinary principle emerged, which would not even have been conceivable until quite recently, namely, that the responsibility was not linked with the exhaustion of local remedies nor with nationality.

33. That principle had issued from relations between the State of Israel and the State of the Federal Republic of Germany, which had agreed to recognize that there was a responsibility which was not derived from an act of a State *vis-à-vis* its subjects, but from a quite different act. From the sole fact that a State had recognized that it had incurred a responsibility which did not exist in the rules of international law now in force, a claim for responsibility *vis-à-vis* another State had emerged. It had been somewhat as if a State, which had not concerned itself with the interests of its nationals, had been asked by the international community to show that another State, at a different stage in its legislation and policy, had made itself responsible and must indemnify another State which had taken upon itself to succour violations of a general right, a human right, or in other words a right essential to all individuals. That was something quite new, so much so that many international jurists might claim that it was exceptional, but it had been an appurtenance to the recognition of human rights. That overturned the whole foundation on which international law had hitherto rested. It was, in fact, a development towards the abolition of law as between States and the substitution of a total interrelation between individuals. The judiciary and the State would apply that new form of law. The State would no longer be asked to enforce a substitute for international law, but to perform the essential function of applying the consequences of responsibility, as between individuals or as between the individual and the State; in other words, of distinguishing between subjective and objective responsibility. That responsibility, whether civil or criminal, would function within the State in the same way as in international society with respect to relations between the individual and agents of the State. That was an astonishingly rapid development towards the transformation of international law into something like municipal law. A striking example was the way in which the principle that " The King can do no wrong " had

[7] See para. 15, above.

disappeared in favour of the principle of the responsibility of the State towards the individual and its general responsibility to the international community.

34. Most qualified jurists considered that the relation of State to State expressed in diplomatic protection was on the way to eclipse and to its substitution by new rules of law. In any case, diplomatic protection had been an innovation in the relation of the rights of the individual to those of the State, and was increasingly becoming a legal fiction.

35. The Commission would be unwise to draft its codification of the rules of State responsibility in the form of a convention. It should draw up a new code to be submitted to the General Assembly. A convention would be unlikely to be accepted by the General Assembly.

36. Mr. ZOUREK observed that the question of whether individuals might be subjects of international law was the key to the Special Rapporteur's draft and had aroused acute differences of opinion. He himself could not accept such a concept. Abolition of the inter-State character of international law would mean the end of international law. Several historical examples had been adduced in which individuals had been endowed with capacity to appear before international tribunals. None, however, offered sufficient grounds for regarding the individual as a subject of international law—i.e., as endowed with the capacity to create rules of international law. It was, of course, always possible for States to endow individuals with capacity for access to international tribunals by means of international conventions, but, in doing so, they did not intend to confer on individuals the characteristics of a subject of international law. The capacity to establish rules of international law belonged only to States, and, to an infinitely less degree and in virtue of and within the limits of special arrangements, to international organizations, but certainly not to individuals.

37. A special argument often advanced had been the international protection of human rights; it had been contended that that undoubtedly conferred on the individual the characteristics of a subject of international law. That, however, was not so. The question was not a new one, save in its contemporary extent and development. It had been familiar since the conclusion of the treaties concerning minorities, which had conferred certain rights on all persons inhabiting the territories defined by them. No suggestion had, however, been made that persons inhabiting those territories had thereby become subjects of international law. States signatories to the treaties had merely been obliged to insert clauses in their constitutional law concerning the protection of minorities, so that the provisions would be binding both on the States and on the individuals concerned, but within the framework of municipal law.

38. The rules of criminal law were somewhat analogous when drafted to protect the higher interests of the family of nations. There, too, the rules of criminal law embodied in treaties became integrated in municipal law. Accordingly, it was hard to see any good grounds for regarding the individual as a subject of international law. Even if the Draft Covenants on Human Rights under consideration by the United Nations were completed and put into effect, they would not alter the situation in any way because they would merely embody international obligations which States would be bound to accord to the inhabitants of their territory. It must therefore be concluded that, save in exceptional cases which merely confirmed the rule, the individual had no direct claim to the protection of the rules of international law.

39. The Commission must seriously consider whether, if its codification was to receive the assent of States and governments, in its future work, it would be wise to base its drafts on a concept accepted by certain learned authors, but which did not form part of contemporary international law.

40. Sir Gerald FITZMAURICE said that he could only accept with great reservations the principle that an individual might have rights and obligations under international law. He could not follow Mr. Scelle all the way, although he recognized the cogency of his views. Current ideas about the position of the individual in international law had done little more than introduce an element of confusion into an area which had hitherto been relatively well regulated in accordance with the traditional idea that international law ruled as between State and State, and had done little in practice to improve the position of the individual.

41. It was perfectly possible to hold that the individual had rights and obligations, but he could only assert them through governments and—although that was more open to dispute—could only be made to comply with obligations when the State enforced them in its municipal law. He would not, however, wish it to be supposed that he was not aware of a certain evolution which must, of course, be taken into account. The traditional system of State responsibility already took account of the position of the individual and even of penal responsibility in connexion with him, because, in the case of certain injuries to foreign private persons, the State was obliged to make reparation and to see that the responsible official was punished. He therefore wondered whether it was necessary to import new ideas into the traditional law, which already covered much of the ground. It might be said in theory, with considerable force, that an individual was possessed of rights *vis-à-vis* a foreign State; but those rights could be asserted only through the State, so that that State was, in a sense, obliged to make a complaint by one of its nationals its own complaint.

The meeting rose at 1 p.m.