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FIFTH REPORT ON STATE RESPONSIBILITY

by

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Addendum

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CHAPTER II

THE CONSEQUENCES OF THE SO-CALLED INTERNATIONAL "CRIMES" OF STATES (ARTICLE 19 OF PART ONE OF THE DRAFT ARTICLES)

Preliminary remarks

1. The Special Rapporteur, while recognizing that the consequences of the wrongful acts qualified as crimes of States under article 19 of Part One of the draft articles are no longer, for him, the terra incognita they surely were at the outset of his mandate, is still unable to reach any conclusions on any one of the difficult aspects of the matter. This applies to the determination of both the existing legal situation and the possible lines of progressive development of the law. The best service we feel able to render to the Commission, for the time being, is to try to identify and explore issues for further discussion. Only on the basis of the guidance offered by an adequate significant debate - in the Commission and in the Sixth Committee - could we be in a position to submit for the next session, after further thought, tentative suggestions and, possibly, draft provisions.

2. We refer of course to the determination of the consequences, de lege lata or ferenda, of the wrongful acts in question, distinguished for the mere terminological dicothomy, as adopted in 1976, between such delinquencies and other internationally unlawful acts. Although the specific matter of the distinct consequences of "crimes" has been addressed not infrequently since 1976 in the ILC and in the Sixth Committee, notably within the framework of the debate on our predecessor's draft articles 14 and 15 of Part Two and draft article 4 (b) of Part Three, it was not dealt conclusively by either body. The Commission in particular has not gone beyond the mere referral of the said draft articles to the Drafting Committee, which did not act on them. Despite the valuable proposals and debates of 1985-1986, the legal consequences of international "crimes" of States - deliberately left over for later treatment, perhaps not prudently, when article 19 of Part One was adopted - have been dealt with mainly in the remarkable, albeit not very conspicuous literature on the subject.

3. In view of its indicated purpose, the present chapter first contains, in Section 1, a review of the opinions which have been expressed so far on the consequences of international "crimes" of States in the ILC, in the Sixth Committee and in the literature. Section 2 is devoted to a tentative identification of the main substantive and procedural issues which confront the ILC in determining the consequences of the said delinquencies from the viewpoint of both lex lata and lex ferenda. Section 3 contains, by way of conclusions, equally tentative considerations on the merits of the alternative solutions theoretically conceivable for those of the identified issues which appear to us to be most important for the Commission to consider. It goes without saying that even the list of issues is anything but exhaustive. The Special Rapporteur looks forward to the additions that his colleagues and the members of the Sixth Committee may wish to make in order to give him all the guidance he needs.

SECTION 1

PROBLEMS RAISED BY THE "SPECIAL REGIME" OF CRIMES IN THE ILC WORK ON STATE RESPONSIBILITY, AS IDENTIFIED IN THE INTERNATIONAL LAW COMMISSION, IN THE SIXTH COMMITTEE AND IN THE LITERATURE

A. Introduction

4. At its twenty-eighth session (1976), the International Law Commission, welcoming the proposals of the Special Rapporteur, R. Ago, adopted on first reading a provision - article 19 of Part One of the draft on State responsibility - intended to single out from among internationally wrongful acts a "special" class of breaches referred to as "international crimes".

5. The reasons and practical considerations that led the Rapporteur and the Commission to make a distinction between "crimes" and simple "delicts" are amply illustrated in the documents relating to the work of that session of the Commission, and we can therefore simply refer the reader to them. 1/ In any event, it should be pointed out that by "crimes", as the term is used in article 19, the Commission meant those acts which the "international community as a whole" considers to be serious breaches of obligations essential for the protection of fundamental interests of that community. The Commission went on to list - unexhaustively - as examples of wrongful acts which, in the current (1976) state of international law, would constitute "crimes" within the meaning indicated: aggression, as a serious breach of an obligation of essential importance for the maintenance of international peace and security; the establishment or maintenance by force of colonial domination as a serious breach of an obligation of essential importance for safeguarding the right of self-determination of peoples; slavery, genocide and apartheid, as serious breaches on a widespread scale of obligations of essential importance for safeguarding the human being; and massive pollution of the atmosphere or the seas, as a serious breach of an obligation of essential importance for the safeguarding and preservation of the human environment. 2/

6. As pointed out by the Commission from the outset, the distinction between "delicts" and "crimes" would have not only a descriptive but also, and especially, a normative value. This distinction, in other words, was included in the draft because it involved a differentiation of "regimes of

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1/ See R. Ago, "Fifth Report on State Responsibility", (Yearbook ... 1976, vol. II, Part One, paras. 79-154), and the Commission's commentary to article 19, (Yearbook ... 1976, vol. II, Part Two, pp. 95-122). For a very valuable analysis of the notion of crime and its consequences as discussed and developed by the Commission, see M. Spinedi, "International Crimes of State: The Legislative History", in International Crimes of State: a critical analysis of the ILC's draft article 19 on State responsibility, J.H.H. Weiler, A. Cassese, M. Spinedi eds., Berlin-New York, 1989, pp. 7-138.

2/ For the complete text of article 19, see Yearbook ... 1976, vol. II, Part Two, pp. 95-96.

responsibility". Responsibility for "crimes" would entail legal consequences different from (at least in part), and more severe than, those entailed by responsibility "for delicts". 3/

7. In the pages which follow we shall attempt to analyse: (a) in what way this "special" regime of responsibility "for crimes" was gradually constructed by the Commission during the course of its work on responsibility; (b) the reactions of the Sixth Committee of the General Assembly to the views put forward in International Law Commission; and (c) the views of the doctrine concerning the content to be given to any provisions of the draft relating to the consequences of international crimes of States.

B. The "special" consequences of crimes in the work of the ILC

1. The first references to the question

8. The idea of differentiating between regimes of responsibility according to the type of wrongful act committed came up very early in the Commission's work. Its chief protagonist was Roberto Ago, who, as far back as the debates of the 1969 session, insisted on the need to take into account the difference existing between two classes of wrongful acts. In a first class he included less serious breaches, which would give rise primarily to the obligation of the responsible State to make reparation lato sensu, and only in certain cases - such as the failure to perform that obligation - to the applicability of "sanctions" against that State. In the second class he placed the more serious breaches, with regard to which the threat of "sanctions" would be admissible from the outset - a threat, however, which in such cases would be independent of the outcome of the contentious procedure on reparation. 4/ The proposal was favourably received by the International Law Commission, and a number of members even contributed to its more precise formulation. Ushakov, for example, in addition to warning that the admissibility of "sanctions" of a military nature could be spoken of only in the case of wrongful acts that violated or threatened international peace and security, stressed above all the aspect of the faculté of reaction to the wrongful act, noting that in the case of violations of fundamental interests of the international community, such faculté would also concern subjects other than the "principal victim" of the wrongful act. 5/ With regard to this latter point, other members of the Commission took a positive attitude, observing, however, that States "not especially affected" by the violation would be

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3/ See, in this connection, the commentary of the Commission to article 19 (ibid., pp. 116-118), especially paragraphs (51) to (54).

4/ Yearbook ... 1969, p. 241, and Yearbook ... 1970, vol. I, p. 177.

5/ Yearbook ... 1969, vol. I, p. 112.

entitled to react not uti singuli but uti universi, or in other words, in implementation of a decision taken collectively by authorities [sic] representing the "international community as a whole". 6/

9. As one can see, right from the start, there began to take shape two lines along which the theme of responsibility for particularly serious wrongful acts was to develop: (a) the "substance" of the consequences, which would be more severe than for other breaches; and (b) the kind of reaction, which, in the case wrongful acts affecting fundamental interests of the international community, would be, one might say, "diffuse", or downright universal.

10. On the basis of the positive responses obtained in the said preliminary debate, the Special Rapporteur formally proposed to set apart in the draft articles a category of more serious wrongful acts - which could be qualified as "crimes" - to which a "special" regime of responsibility would attach. 7/ This proposal met with the approval of the vast majority of the Commission's members 8/; so much so that in 1976, following the discussion of Ago's fifth report (devoted precisely to the differentiation between wrongful acts according to the subject matter of the obligation breached and the notion of "international crime" of the State 9/), draft article 19 was adopted on first reading. 10/

2. The commentary to article 19

11. The Commission's commentary to article 19, in line with the Special Rapporteur's report, deals primarily with the grounds for the division of internationally wrongful acts into two distinct conceptual categories ("delicts" and "crimes"), leaving the problem of the special consequences of the latter to Part Two of the draft. However, traces can also be found in

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6/ Sette Camara, Yearbook ... 1970, vol. I, p. 184; Yasseen, ibid., p. 190; Ustor, ibid., p. 210; Ago, ibid., p. 177, and Yearbook ... 1970, vol. II, pp. 184-185.

7/ Yearbook ... 1973, vol. II, p. 172.

8/ Ibid., vol. I, pp. 5-14. The only voice decidedly against was that of Reuter, ibid., p. 8.

9/ Yearbook ... 1976, vol. II, Part One, document A/CN.4/291 and Add. 1 and 2, especially paragraphs 79-155.

10/ Ibid., vol. II, Part Two, pp. 95-122. Reservations concerning the article were expressed only by Kearney, Tsuruoka and Reuter (Yearbook ... 1976, vol. I, pages 13, 17-18 and 245, respectively). However, as M. Spinedi observes, "They did not dispute the fact that contemporary international law attached to certain particularly serious wrongful acts different consequences from those arising from all other wrongful acts. They only doubted the usefulness of dealing with these special responsibility rules in the draft articles the Commission was engaged in drafting." (op. cit. (footnote 1 above), p. 22).

that commentary of at least three general indications regarding the "special" regime of responsibility which characterizes "crimes" according to the Commission.

(i) First of all, it is affirmed that the distinction between different regimes of responsibility is one that is currently in force in general international law. The effort to be made by the Commission must therefore consist in the codification of lex lata rather than in an elaboration de lege ferenda. 11/

(ii) In the second place, even though several different hypotheses have been inserted in the same provision by way of examples - such as aggression, colonial domination or massive pollution - that does not mean that they all entail the same consequences: rather, the regime of "aggravated" responsibility would vary according to the crime. 12/

(iii) Thirdly, the Commission forewarned that the codification of the "special" regime of responsibility could not in any way derogate from the provisions of the Charter concerning "certain acts which it particularly sets out to prevent and punish. In so far as certain provisions of the Charter are now an integral part of general international law on the subject with which the Commission is concerned, they will be logically and faithfully reflected in its work. Otherwise, precisely because of their "special" nature and also because of the provisions of Article 103, the provisions of the Charter would always prevail over those of a general codification convention". 13/

3. The debate on article 19

12. Further elements concerning the substance of the "special" consequences of crimes can be inferred from the debate that took place among the members of the Commission, also in connection with Ago's fifth report.

13. For example, the Special Rapporteur stated that, in his opinion, in the case of a crime, the State which was the victim of the breach might, in addition to demanding reparation lato sensu, also apply "sanctions" against

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11/ Yearbook ... 1976, vol. II, Part Two, paragraph (54) of the commentary to article 19.

12/ Ibid., paragraph (53). In this connection it should be noted, however, that the Commission saw fit to retouch the proposal of the Special Rapporteur, who had made a distinction between breaches of obligations essential to the maintenance of international peace and security and other crimes, with only those breaches entailing "extreme measures of coercion and sanctions" (Yearbook ... 1976, vol. II, Part One, paragraph 150).

13/ Yearbook ... 1976, vol. II, Part Two, paragraph (55) of the commentary to article 19.

the law-breaking State. This would imply resorting to reprisals not only functionally related to the performance of the primary obligation breached or to reparation, but also to a merely "afflictive" aim, although the latter might involve the use of force only in specific cases. 14/ Other members of the Commission, too, referred to the possibility of applying "sanctions" (in addition, obviously, to claiming reparation) in the case of crimes, though they did not clarify further what exactly they meant by "sanctions". 15/ In this connection, the sole point widely shared seems to have been that only in the case of aggression, hence by way of self-defence, would unilaterally decided armed measures be deemed admissible. 16/ It must be borne in mind, however, that even earlier, in the commentary to article 1 of Part One, the Commission as a whole had expressed itself as follows on the meaning to be attributed to the term "sanctions":

> "The term 'sanction' is used here to describe a measure which, although not necessarily involving the use of force, is characterized - at least in part - by the fact that its purpose is to inflict punishment. That is not the same purpose as coercion to secure the fulfilment of the obligation, or the restoration of the right infringed, or reparation, or compensation." 17/

14. As to the extent of the right to react (with measures not involving armed force), some members viewed it as broad enough to permit, in the case of crimes, the adoption of measures by each and every State even in the absence of a decision taken by an international body, 18/ while others maintained that collective or generalized measures, even not involving the use of armed force, were allowable only if previously authorized and supervised by a

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14/ Yearbook ... 1976, vol. II, Part One, document A/CN.4/291 and Add. 1 and 2, paragraphs 80 et seq. In this connection, however, see the position expressed by Ago in Yearbook ... 1971, vol. II, Part One, pp.206 et seq.

15/ Bedjaoui (Yearbook ... 1976, vol. I, Part Two, pp. 11-12); Yasseen (ibid., p. 63); Hambro (ibid., p. 64); Sette Camara (ibid., p. 68); Martinez Moreno (ibid., p. 70); Ramangasoavina (ibid., p. 76); Bilge (ibid., p. 87); and Castañeda (ibid., p. 242).

16/ Significant in this connection were the remarks of Kearney (ibid., p. 77, paragraphs 34-38) and Castañeda (ibid., pp. 241-242, paragraph 29).

17/ Yearbook ... 1973, vol. II, p. 175, paragraph (5) of the commentary to article 1.

18/ Ago (Yearbook ... 1976, vol. I, p. 18); Quentin-Baxter (ibid., p. 80); Bedjaoui (ibid., pp. 80-81, paragraph 19); Castañeda (ibid., pp. 241-242, paragraph 30); and Ushakov (Yearbook ... 1969, vol. I, p. 112).

competent international organ, and more specifically, the Security Council. 19/ It should also be pointed out that many members of the Commission did not hesitate to consider some of the measures provided by the Charter of the United Nations as being precisely among the most typical "widespread and multilateral" sanctions that might be taken in the case of crimes: either "social" measures like expulsion or suspension, or, in the case of aggression, measures under Chapter VII. 20/

4. The commentary to articles 30 and 34

15. On the two main aspects of the "special" regime of responsibility for "crimes" (greater severity of consequences and diffusion of the faculté of reaction), the ILC also expressed itself on the occasion of the adoption, on first reading, of draft articles 30 and 34, respectively, concerning "countermeasures" and "self-defence" as circumstances excluding wrongfulness.

16. In the commentary to article 30, it is affirmed, for example, that countermeasures may be meant not only "[to] secure performance", but also "[to] inflict punishment" 21/. In response to certain wrongful acts or in the presence of certain circumstances - which the commentary, however, does not specify - the countermeasures would not merely have the function of obtaining cessation or reparation lato sensu. It might also have an independent purpose and might therefore be adopted at the same time that claims were put forward for cessation or reparation or even after the close of the contentious proceedings on reparation. Concerning the substance of the countermeasures, the point was made that, outside the case of self-defence, no wrongful act could warrant recourse to unilateral measures involving the use of armed force.

17. The same commentary to article 30 further points out in its paragraph (22) that by virtue of a decision of a competent international body pronouncing itself against a serious breach of a fundamental obligation, resort to countermeasures would be possible also on the part of "not directly" injured States. A derogation could also come about to such general rules or

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19/ Thus, explicitly, Sette Camara (ibid., p. 68), and, implicitly, Kearney, who stressed the contrast between such unilateral action and the system established in the Charter for the safeguard of international peace and security (ibid., p. 77).

20/ Ago (Yearbook ... 1976, vol. I, pp. 58, 66, 90), Yasseen (ibid., p. 63); Sette Camara (ibid., p. 68); Vallat (ibid., p. 69); Martinez Moreno (ibid., pp. 70-71); Ramangasoavina (ibid., p. 76); Kearney (ibid., pp. 76-77); Tsuruoka (ibid., p. 78); Rossides (ibid., pp. 82-83); Ustor (ibid., p. 84); El-Erian (ibid., pp. 85-87); and Bilge (ibid., p. 87). Only Reuter and Castañeda expressed doubts as to the rightness of considering measures under Chapter VII as forms of international responsibility (ibid., p. 242 and p. 245, respectively.

21/ Yearbook ... 1979, vol. II, Part Two, p. 116, paragraph (3) of the commentary to article 30.

principles as prior demand of reparation, proportionality and prohibition of armed reprisals. Nothing is said, however, of the possibility of countermeasures adopted by "indirectly" injured States uti singuli.

18. With regard to article 34, some members of the Commission observed that resort to measures involving armed force by way of self-defence might be justified not only in the event of an armed attack, but also in response to other wrongful acts consisting in breaches less serious than the unlawful use of force. 22/ As has been pointed out, 23/ this would suggest that the idea was largely shared within the Commission that a given type of wrongful act (aggression and, according to the less "restrictive" opinions, any serious breach of the prohibition against the use of force) might entail a consequence (resort to armed force by way of self-defence) distinct from, and "aggravated" in comparison with the consequences common to other internationally wrongful acts.

5. Recapitulation

19. The inferences of the work of the Commission on Part One of the draft can be summarized as follows:

(i) According to the Commission, general international law already provides a different regime of responsibility for the kind of wrongful acts indicated in article 19;

(ii) Such a regime is not always the same, but varies according to the crime, though it is distinguished by certain general characteristics from the regime of delicts;

(iii) Among crimes, only armed aggression (or, according to some, serious violation of the prohibition of the threat or use of force) justifies unilateral armed reactions by way of individual or collective self-defence, as provided by general international law and recognized in Article 51 of the Charter;

(iv) A crime justifies the adoption of countermeasures (even for other than purely "executive-reparative" purposes - though this is not explicitly indicated as a distinctive feature of responsibility "for crime" alone) on the part not only of the State (if any) primarily injured by the breach, but also of any other State in any way injured by the wrongful act;

(v) While there is no unanimity concerning the possibility for "not directly" injured States to react uti singuli to a crime by means of unilateral measures, there does seem to be agreement within the Commission that the reaction of such States may be very severe (in derogation, for example, from the principles of prior demand for

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22/ Reuter (Yearbook ... 1980, vol. I, pp. 190-191); Diaz Gonzalez (ibid., pp. 220-221)); Pinto (ibid., pp. 222-223); and Tabibi (ibid., p. 230).

23/ Spinedi (op. cit. (footnote 1 above)), pp. 42 et seq., esp. 43.

reparation and proportionality and from the prohibition against armed countermeasures) if it follows a decision of a collective body competent to deal with the situation created by the crime;

(vi) The measures originating in a "collective source" that might be adopted to sanction a crime, as distinguished from a delict, include, according to the majority of the Commission, the suspension of membership in the United Nations or expulsion from the Organization under Articles 5 and 6 of the Charter, as well as such measures as the Security Council may determine under Chapter VII.

6. The 1984-1985 proposals

20. In his reports on Part Two, Professor Riphagen expresses views in many respects in line with the conclusions just summarized. Such is the case especially for the proposition that "the international crimes listed (as possible examples) in paragraph 3 of article [19] cannot each entail the same new legal relationships. 24/ While recognizing this variety in the consequences of different crimes, Riphagen still tries to ascertain the "elements of special legal consequences common to all international crimes" 25/ and generally distinguish the regime of crimes from that of delicts.

21. As regards the obligations of the wrongdoing State (which might roughly be identified, in the terminology we use, with the "substantive" consequences), Riphagen does not appear to consider the regime of responsibility arising from crimes as differing from that of delicts. The obligations to put an end to the breach, to provide restitutio in integrum or compensation and to provide appropriate guarantees against repetition fall on the author State, according to Riphagen, as a result of the commission of any internationally wrongful act, whether "delict" or "crime". 26/ Other members of the Commission, moreover, seem to have been in agreement with this view. 27/

24/ Preliminary report (Yearbook ... 1980, vol. II, Part One, document A/CN.4/333), para. 98.

25/ Fourth report (Yearbook ... 1983, vol. II, Part One, document A/CN.4/362), para. 58.

26/ Preliminary report (Yearbook ... 1980, vol. II, Part One, document A/CN.4/330), pp. 113-114; and Second report (Yearbook ... 1981, vol. II, Part One), pp. 91-92.

27/ As M. Spinedi notes, "in considering the special forms of responsibility for international crimes, [the members of the Commission] do not refer to the new obligations of the State author of the wrongful act" (op. cit. (footnote 1 above), p. 93).

22. With regard, on the other hand, to "instrumental" consequences for so-called "directly" injured State, they differ only in the case of aggression, according to Riphagen, from those generally stemming from "ordinary" wrongful acts. In that case, in addition to the fact that recourse to armed force in self-defence is justifiable, the countermeasures that might be adopted by the "directly" injured State are in fact limited only by the principle of proportionality and respect for jus cogens, "subject", obviously, "to the application of the United Nations machinery for the maintenance of international peace and security". 28/ In the case of crimes other than aggression, however, the regime of countermeasures that might be adopted by the injured State does not differ, according to Riphagen, from the regime of any other internationally wrongful act. 29/ As for the other members of the Commission, they agreed that an armed reaction by the "directly" injured State was admissible only by way of self-defence in the event of aggression. 30/ It does not seem to us, however, that they pronounced themselves in any way on the difference between the regime of countermeasures available to such a State in the case of other crimes and the regime of countermeasures in the case of delicts.

23. Particular attention was given by Riphagen to the features of responsibility for "crime" from the standpoint of the "not directly" injured States. In keeping with the stance taken by the Commission during the work on Part One of the draft, Riphagen affirms in particular that every crime determines a responsibility erga omnes, that is to say, with respect to all States other than the author of the wrongful act. 31/ However, the position of this plurality of States in the responsibility relationship would not be the same as that of a State which is the "principal victim" of a crime: the legal situation of "not directly" injured States would include, according to Riphagen: (a) the right to demand cessation, reparation and guarantees against repetition; (b) the obligation not to help the author of the breach to maintain the situation created by the crime; (c) the right to engage, vis-à-vis the author of the crime, in behaviour otherwise condemnable or in breach of the principle of non-intervention in internal affairs, it being understood, however, that this right would not be unconditional and would last until the competent United Nations organ takes a decision regarding the "sanctioning" of the crime; and (d) the obligation to carry out the measures decided as sanctions for the crime by United Nations bodies, the latter being indeed the

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28/ Fourth report (see footnote 25 above), para. 55.

29/ Ibid., paras. 53-54.

30/ According to M. Spinedi, "this is apparent from the fact that it was only in connection with the consequences of aggression that ILC members discussed, in 1982 and 1983, if they had to deal with self-defense in the draft articles" (op. cit., (footnote 1 above), p. 94, note 312).

31/ Fourth report (see footnote 25 above), para. 59.

competent "authority" for dealing with the consequences of a crime, even if it does not involve threat to international peace or security. 32/

24. The regime just described would undergo a change - in the direction of greater severity - in the presence of a crime of aggression. In this case, every State (other than the author of the wrongful act) has the same rights as the "principal victim" of the crime. In particular, force could be resorted to by way of individual or collective self-defence. What is more, the reference to the United Nations system would be more precise: every State would in fact be obliged to carry out such "sanctions" as may be decided by the Security Council on the basis of Chapter VII of the Charter. 33/

25. It must be added, however, that the position of Riphagen on the legal status of the described (or any other) regime of "responsibility for crime" differs considerably from that adopted by the Commission in its commentary to article 19. According to him, the described regime would not correspond, except for the special consequences of aggression, to the present state of international law (lex lata). Its adoption would be a matter of progressive development. 34/

32/ Ibid., paras. 59-63.

33/ Ibid., paras. 52 and 64.

34/ Ibid., paras. 58 and 67.

26. Riphagen embodied his proposals in draft articles 5, paragraph (e), 14 and 15, presented to the Commission in 1984. 35/ Those provisions read as follows:

Article 5

For the purposes of the present articles, "'injured State' means

...

(e) if the internationally wrongful act constitutes an international crime [and in the context of the rights and obligations of States under articles 14 and 15], all other States.

Article 14

1. An international crime entails all the legal consequences of an internationally wrongful act and, in addition, such rights and obligations as are determined by the applicable rules accepted by the international community as a whole.

35/ Riphagen had initially presented a very similar provision in draft article 6 as contained in his Third report of 1982 (Yearbook ... 1982, vol. II, Part One, document A/CN.4/351 and Add. 1-3, p. 48). The text of the article was as follows:

Article 6

1. An internationally wrongful act of a State, which constitutes an international crime, entails an obligation for every State:

(a) not to recognize as legal the situation created by such act; and

(b) not to render aid or assistance to the author State in maintaining the situation created by such act; and

(c) to join other States in affording mutual assistance in carrying out the obligations under (a) and (b).

2. Unless otherwise provided for by an applicable rule of international law, the performance of the obligations mentioned in paragraph 1 is subject mutatis mutandis to the procedures embodied in the United Nations Charter with respect to the maintenance of international peace and security.

3. Subject to Article 103 of the United Nations Charter, in the event of a conflict between the obligations of a State under paragraphs 1 and 2 above, and its rights and obligations under any other rule of international law, the obligations under the present article shall prevail.

2. An international crime committed by a State entails an obligation for every State:

(a) not to recognize as legal the situation created by such crime; and

(b) not to render aid or assistance to the State which has committed such crime in maintaining the situation created by such crime; and

(c) to join the other States in affording mutual assistance in carrying out the obligations under subparagraphs (a) and (b).

3. Unless otherwise provided for by an applicable rule of general international law, the exercise of the rights arising under paragraph 1 of the present article and the performance of the obligations arising under paragraphs 1 and 2 of the present article are subject, mutatis mutandis, to the procedures embodied in the United Nations Charter with respect to the maintenance of international peace and security.

4. Subject to Article 103 of the United Nations Charter, in the event of conflict between the obligations of a State under paragraphs 1, 2 and 3 of the present article and its rights and obligations under any other rule of international law, the obligations under the present article shall prevail.

Article 15

An act of aggression entails all the legal consequences of an international crime and, in addition, such rights and obligations as are provided for in or by virtue of the United Nations Charter." 36/

7. The ILC debate on the 1984-1985 proposals

27. Although they were referred to the Drafting Committee, Professor Riphagen's proposals had not been the object, as noted, of a particularly thorough debate. From the general tone of the members' comments, it is apparent in particular that those proposals, however much they may have been considered a good starting point for the elaboration of the regime of

36/ Yearbook ... 1984, vol. II, Part One, document A/CN.4/380, p. 2.

crimes, were still in need of important modifications and more detailed development. 37/ Regarding some points, however, a few more specific indications can perhaps be deduced.

28. For example, an objection shared by a number of members was that Riphagen's proposal did not sufficiently differentiate between the position of States "not directly" injured and that of the State that was the "principal victim" of the breach. If, in the case of a crime, every State automatically had the same rights as those enjoyed by a State "directly" injured by a mere delict (as article 14, paragraph 1, seems to imply), then, in the case of a crime, every State would be entitled not only to receive pecuniary compensation, but even to adopt the same countermeasures as the "directly injured" State. This, to a number of members, appeared pernicious as far as a just, peaceful and orderly conduct of international relations was concerned. 38/ To this objection, Riphagen replied that the "active" situation of a State "not directly" injured by a crime would depend on the type of injury actually sustained. For example, pecuniary compensation might be claimed only if the State in question had actually been materially damaged by the international crime. 39/ The same would apply to countermeasures, in the sense that a "State which is considered to be an injured State only by virtue of article 5, subparagraph (e), enjoys this status as a member of the international community as a whole and should exercise its new rights and perform its new obligations within the framework of the organized community of States." 40/ Therefore, in the absence of and prior to any collective decision taken "within the framework of the organized community of States", a State injured only within the meaning of article 5, subparagraph (e), could

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37/ See the interventions of Lacleta Muñoz (Yearbook ... 1982, vol. I, p. 222), Razafindralambo (ibid., p. 223); Malek (ibid., p. 207); Jagota (ibid., p. 216); Barboza (ibid., p. 219); Sinclair (ibid., p. 213); and Ni (ibid., p. 214). Riphagen had admitted, moreover, that it had not been his intention to insert in his provisions an exhaustive list of the consequences of crimes, but only to furnish a basis for further elaboration by the Commission. The "minimal" and "open" character of the regime outlined by Riphagen is clearly reflected in the text of article 14, paragraph 1, where it is provided that any further "special" consequence of a crime might in any event be established by the international community as a whole.

38/ See in this connection the interventions of Sinclair, Quentin-Baxter and McCaffrey in Yearbook ... 1984, vol. I, pp. 302, 304 and 305, respectively.

39/ Ibid., p. 317.

40/ Sixth report (Yearbook ... 1985, vol. II, Part One, document A/CN.4/389), paragraph (10) of the commentary to article 14.

resort uti singulus, according to Riphagen, solely to the measures of non-recognition and solidarity provided for in article 14, paragraph 2. 41/

29. A further observation is in order here. Without any objections on the part of other members of the Commission and in fact sharing the opinion that had been expressed by some of them, 42/ Riphagen tended to eliminate from the concept of international responsibility, and especially from the aims legitimately pursuable through countermeasures, any punitive aspect, or, if one prefers, any aspect other than those relating to the performance of the obligation breached and the reparation of damage. 43/ This would apply even in the case of crimes, at least as far as the countermeasures that might be adopted by States uti singuli were concerned. 44/ On the other hand, the punitive aspect is not expressly denied by Riphagen for possible "sanctions" applied pursuant to collective decisions taken by competent international bodies.

30. A final remark can be made with regard to the role to be assigned to the procedures and measures already provided for in the Charter of the United Nations. The prevailing opinion among the members of the Commission seems to favour explicitly the inclusion, in the regime which is to govern crimes, the application of those measures which the Charter, based on the specific features of the case, admitted or actually imposed. We refer essentially to measures of self-defence in the case of aggression and the procedures provided for in the Charter for the maintenance of international peace and security. 45/

41/ Ibid., paragraph (6). This position of Riphagen had already appeared quite clearly in his Third report. (Yearbook ... 1982, vol. II, Part One, document A/CN.4/354 and Add. 1 and 2), paras. 95-96 and 136-143. In this connection, see also Spinedi (op. cit. (footnote 1 above), p. 124).

42/ Reuter (Yearbook ... 1976, vol. I, p. 245, Yearbook ... 1981, vol. I, p. 129 and Yearbook ... 1982, vol. I, p. 204) and Schwebel (Yearbook ... 1980, vol. I, p. 91).

43/ Second report (Yearbook ... 1981, vol. II, Part One, document A/CN.4/344), para.35. See also Mr. Riphagen's intervention at the 1759th meeting of the Commission (Yearbook ... 1983, vol. I, pp. 23 et seq.).

44/ Third report (Yearbook ... 1982, vol. II, Part One, document A/CN.4/354 and Add. 1 and 2), para. 140.

45/ See the interventions of Ushakov (Yearbook ... 1982, vol. I, pp. 235 and 239); Evensen (ibid., p. 214); Yankov (ibid., p. 237); Flitan (Yearbook ... 1983, vol. I, p. 105); Al-Qaysi (ibid., p. 114); Balanda (ibid., p. 123); Koroma (ibid., p. 129); Jagota (ibid., p. 127); Barboza (ibid., p. 133); and McCaffrey (ibid., p. 141). Doubts regarding the legal correctness and the political appropriateness of referring to the mechanism provided by the Charter for the maintenance of international peace and security were expressed by Reuter (Yearbook ... 1984, vol. I, p. 278) and Malek (ibid., p. 310).

8. Recapitulation of the ILC positions

31. Let us attempt at this point to recapitulate the conclusions on which the Commission, following its work on Part One of the draft and the examination of Riphagen's proposals, seems to have reached some degree of agreement with regard to the "special" regime of international crimes of States.

(i) From the position expressly taken by the Special Rapporteur, to which other members of the Commission did not object, seems to emerge that the task to be performed would be not so much to codify the possible (and confused) lex lata on the subject as to specify, by way of progressive development, the common minimum whereby it would be appropriate to "aggravate" the consequences of crimes with respect to those of delicts.

(ii) Such a minimum is not to be found in the legal situation of the State that is the "principal victim" of the breach (if there is one): the rights and facultés of such a State are no different - unless quantitatively, in relation to the seriousness of the injury - from those which would accrue to it as principally injured party in respect of any internationally wrongful act.

(iii) A "special character" does exist, on the other hand, in the legal situation of States "indirectly" injured, considered from the viewpoint of their reaction uti singuli. Unlike the situation of States which are "indirectly" injured by a delict, the situation of States "indirectly" injured by a crime would be characterized by a necessary minimum threshold. That threshold would no doubt involve the obligations of "non-recognition" and "non-collaboration with the author of the crime" as indicated by Riphagen; but it would presumably also involve, in view of the widespread dissatisfaction within the Commission over the "scantness" of this indication, something more as well. On the other hand, it seems also to be agreed that the legal involvement of the States in question should not go so far as to justify the unilateral adoption by one or more of them of measures intended to inflict punishment on the author of the wrongful act.

(iv) The restrictions to the possibility of individual "sanction" of a crime on the part of States uti singuli would be narrowed in the event of a collective decision taken by an authority representative of "the international community as a whole". In that case any "not directly" injured State might be authorized or actually obliged to adopt, vis-à-vis the wrongdoer, the measures decided upon by the "organized international community" - such measures to be possibly harder than those otherwise permitted.

(v) The hypothesis in which the phenomenon just referred to might well occur - a hypothesis considered by the majority of the Commission to be of central importance - would be that of measures decided collectively by the competent organs of the United Nations on the occasion of breaches calling for the operation of specific procedures provided for in the Charter.

(vi) Differentiated from this "minimum" general regime would be the case of aggression, the only crime that justifies a unilateral armed reaction, by way of collective self-defence, on the part of any State other than the aggressor. The crime in question further authorizes any State to resort to non-armed countermeasures subject to less strict limitations (substantial or procedural) than those attaching to other wrongful acts. The only applicable restrictions would be proportionality and the prohibition of breaches of jus cogens obligations. All this (self-defence and "aggravated" countermeasures) would be subject to the procedures of Chapter VII of the Charter for the maintenance of international peace and security.

C. Reactions of States in the Sixth Committee

1. The problem of criminal liability

32. Turning to the reactions in the Sixth Committee at the time of adoption of article 19 of Part One of the draft, the majority of States, especially those of the "socialist area" and the "developing world", agreed with the Commission's choice. Only a few Western States, including Australia, France, Greece, Portugal, Sweden and the United States were decidedly opposed. 46/ The recurrent criticism in their positions related essentially to the risk of a "criminalization" of State behaviour, which they felt to be inherent in the distinction proposed by the Commission. According to the said States, international law did not at that stage know any forms of responsibility similar to those provided by the criminal law of States. There was not at present, at the inter-State level, a generally accepted international body which could be considered sufficiently representative and impartial to be entrusted with the function of deciding "sanctions" of a penal type. Furthermore, "criminalizing" State behaviour would mean raising the possibility of collective criminal liability to the level of a rule of law - a development which would be incompatible with juridical civilization. The Commission's draft ought to have dealt solely with the aspects of State responsibility relating to reparation and not with sanctions. Sanctions, if any, would have to be decided at the political level, not in connection with the determination of responsibility for international wrongful acts. 47/

33. Opposition to punitive measures, understood as measures corresponding to the forms of criminal responsibility provided for in national legal systems,

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46/ Australia (A/C.6/31/SR.27, paras. 17-20, and subsequently A/C.6/38/SR.50, paras. 53-55); France (A/C.6/31/SR.26, para. 4, and subsequently A/C.6/38/SR.41, para. 26); Greece (A/C.6/31/SR.23, paras. 11-12); Portugal (A/C.6/31/SR.23, para. 17); and United States (A/C.6/31/SR.17, paras. 8-12; A/C.6/33/SR.40, para. 2, and subsequently A/C.6/38/SR.47, para. 67). The position of Sweden is to be found primarily in a written commentary on the draft of the Commission (Yearbook ... 1981, vol. II, Part One, document A/CN.4/342 and Add. 1-4, p. 78);

47/ The latter observation was made only by Greece. For the reference, see the preceding note.

was also expressed by a group of European States. While accepting in principle the distinction proposed, those States reserved their opinion for the time when the Commission would define the consequences of crimes. 48/ It must be stressed, however, that such reservations were made by States which nevertheless pronounced themselves in favour of a "special regime" of responsibility "for crimes". For those States, the consequences of crimes should in no way include forms of criminal or punitive responsibility which, in addition to being contrary to the principle of the sovereign equality of international persons, would favour the imperialistic claims of States capable of imposing "punitive sanctions". 49/

34. To conclude on this point, it is to be noted that quite a few of the States that had initially opposed or seriously questioned the idea of a responsibility "for crime" displayed, when commenting on the proposals subsequently advanced by Professor Riphagen, an attitude less hostile toward the possibility of identifying a "special" regime for the consequences of particularly serious wrongful acts. This was presumably due to the "mild", "non-penalistic" character of those proposals. 50/

2. The "substantive" consequences of crimes

35. Moving away from the debate on the admissibility of a "criminal" responsibility of States, not much was said in the Sixth Committee with regard to the "special features" characterizing - de lege lata or ferenda - the regime of the kind of wrongful acts contemplated in article 19. 51/

48/ Austria (A/C.6/31/SR.20, para. 2 and A/C.6/38/SR.41, para. 41); Denmark (A/C.6/31/SR.19, para. 5); Federal Republic of Germany (A/C.6/31/SR.24, para. 73; and Yearbook ... 1981, vol. II, Part One, p. 75); Japan (A/C.6/31/SR.21, para. 8); and Spain (A/C.6/SR.54, para. 35).

49/ German Democratic Republic (A/C.6/35/SR.49, para. 15 and A/C.6/38/SR.36, para. 67); Bulgaria (A/C.6/38/SR.52, para. 57); Poland (A/C.6/38/SR.53, para. 33); Ukrainian Soviet Socialist Republic (A/C.6/38/SR.54, para. 24); Hungary (A/C.6/38/SR.53, para. 22); and Union of Soviet Socialist Republics (A/C.6/38/SR.53, para. 43).

50/ See, for example, the stance taken by Greece (A/C.6/37/SR.40, para. 47); Japan (A/C.6/37/SR.46, para. 19); Australia (A/C.6/37/SR.48, para. 9); Sweden (A/C.6/37/SR.41, para. 12); and the United States (A/C.6/37/SR.52, paras. 22-23).

51/ It may be useful, however, to recall the stands taken on this point by Bulgaria, the Federal Republic of Germany and the United States. The opinion of the first, for example, was that in the case of a crime, the injured State might immediately adopt countermeasures without awaiting the negative outcome of a prior demand of reparation (A/C.6/36/SR.51, para. 6). According to the Federal Republic of Germany, on the other hand, it would be necessary, even in the case of a crime, to exhaust the available means of finding a peaceful solution before being able legitimately to resort to any unilateral measure (A/C.6/38/SR.39, para. 7). As for the United States

3. Faculté of reaction

36. As regards the faculté of reaction, only two States doubted that the commission of a crime - or, in any event, of a serious breach of rules safeguarding the interests of the entire international community - generated an erga omnes responsibility. Few, however, pronounced themselves on the question whether such responsibility implied the possibility for any State, even if only "indirectly" injured, to resort unilaterally to countermeasures. 52/ No significant comments were made with respect to Riphagen's proposal regarding the "minimal" obligations of general law ("non-recognition" and "solidarity") that would be incumbent on all States other than the wrongdoing State in case of an international crime. 53/ However, widespread dissatisfaction was expressed, in the Sixth Committee as well, with the idea of reducing the "specificity" of crimes to such "minimal" obligations without properly developing the regime of the obligations of the wrongdoing State and the rights of the "directly" injured State.

4. The role of the "organized international community"

37. Still on the subject of the "faculté of reaction", a number of States did not hesitate, on the other hand, to espouse the position of the Commission that a typical consequence of a crime should be the adoption of measures by all States uti universi, namely within the framework of the "organized international community". This position rested, as noted, on the obvious underlying reference to cases calling for the application of measures provided for in the Charter of the United Nations, in particular those of Chapter VII. Some States, however, deemed that mentioning such measures in the draft would be inappropriate. This was either because their application was already governed by the Charter and, what is more, from a perspective different from that of the consequences of wrongful acts, 54/ or because of the risk of broadening the "sanctioning power" of United Nations bodies, notably of the Security Council, beyond the limits laid down for them by the Charter. That

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(which, it should be recalled, was opposed to the distinction), it suggested that if provision was indeed necessary in the draft, by way of progressive development, for "special" consequences in the case of particularly serious wrongful acts, then mention should have been made of the obligation of the responsible State to pay "exemplary" or "punitive" damages (A/C.6/31/SR.17, para. 12).

52/ Some expressed themselves favourably, though in somewhat general terms: Indonesia (A/C.6/31/SR.30, para. 33); Sri Lanka (A/C.6/31/SR.31, para. 15); and the Federal Republic of Germany (Yearbook ... 1981, vol. II, Part One, document A/CN.4/342 and Add. 1-4, p. 75).

53/ Only Algeria and Romania (A/C.6/37/SR.48, para. 35 and A/C.6/37/SR.49, para. 9 respectively) were decidedly in favour, though they rather stressed the need to develop and specify the scope of such obligations.

54/ France (A/C.6/31/SR.26, para. 5); and Greece (A/C.6/31/SR.23, paras. 11-12).

risk was considered to be a very serious one especially in view of the fact that the United Nations bodies involved would be the political organs, constitutionally not suitable for an impartial juridical assessment of the cases to be dealt with. 55/

38. Widespread agreement was finally discernible, in the Sixth Committee, on considering self-defence, both individual and collective, in response to aggression as the "special" consequence of a wrongful act that would permit unilateral recourse to armed force, even by "not directly" injured States. Some delegations, however, doubted the appropriateness of regulating this hypothesis in the draft, inasmuch as it was already provided for and governed by the Charter of the United Nations. 56/

5. Recapitulation of Sixth Committee positions

39. Summing up the scant guidelines emerging from the Sixth Committee debates:

(i) There seems to be a broad consensus that responsibility for serious breaches of obligations of essential importance to the international community should be somehow distinguished from the consequences of any "ordinary" internationally wrongful act. A considerable part of the international community, however, evinces a certain hesitation when it comes to using the notion of "responsibility for crime" to characterize such a regime;

(ii) It is also widely agreed that any "special" regime of crimes should be devoid of any "penalistic" connotation, in the sense that not even in the case of crime should one admit "punitive" measures left to the unilateral discretion of the injured parties, especially in respect of "not directly" injured States;

(iii) There is a vague tendency, however, to consider the "specificity" of the consequences of crimes as lying not in the existence of generalized obligations of "non-recognition" and "solidarity" incumbent on all States, but also in a greater severity of the "substantive" obligations of the wrongdoing State and of the "instrumental" rights of the State (if any) "directly" injured by the breach.

(iv) The conviction is prevalent that, in the case of crimes, erga omnes responsibility amounts essentially to the possibility for the "organized international community" to authorize or even oblige any State, by virtue of decisions taken by "competent" organs, to adopt "sanctions" - even severe ones - against the wrongdoer. Examples

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55/ Japan (A/C.6/31/SR.21, para. 8); Australia (A/C.6/31/SR.27, para. 20); and Spain (Yearbook ... 1982, vol. II, Part One, document A/CN.4/351 and Add.1-3, p. 17).

56/ Federal Republic of Germany (A/C.6/38/SR.39, para. 3); Australia (A/C.6/38/SR.50, para. 42); and United States (A/AC.6/38/SR.41, para. 4).

are the procedures and measures provided for certain situations by the Charter. There is however no unanimity among the members of the Sixth Committee regarding the appropriateness of "explicitly" evoking such procedures or measures in the draft;

(v) Aggression is distinguished from all the other crimes. It is deemed to be the only wrongful act that would permit a unilateral armed reaction, by way of self-defence, on the part of "not directly" injured States as well as the victim State or States.

D. Scholarly views

1. Introduction

40. While the proposals of the International Law Commission concerning the regime of crimes have not reached an advanced stage of elaboration, they have elicited comments from numerous scholars. In the following pages, we shall endeavour to present the doctrinal trends relating to the present state of international law with regard to the "special" consequences of crimes and its possible lines of development in the future. 57/ We begin with the relationship between the State which is the "principal victim" of the crime and the wrongdoing State, in order to see whether, according to writers, it is any different from the relationship between an injured State and a wrongdoing State as a result of an "ordinary" wrongful act.

2. The wrongdoer/victim relationship

41. Not many authors consider the "specificity" of the regime of crimes as manifesting itself within the framework of the said relationship. Among those who express themselves on the point, only a few deal with the "substantive" obligations incumbent on the wrongdoing State vis-à-vis the "directly" injured State. This aspect, as we have seen, has not been given much attention in the work of the Commission, either. As regards reparation (lato sensu), one author stresses, for example, that in the case of a crime, unlike that of a delict, no derogation should be admissible (between injured State and wrongdoer) from the obligation of restitution in kind in so far as "inalienable" interests covered by cogent rules are involved. 58/ Another

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57/ We wish to make it clear that the following analysis relates to the observations of scholars regarding the manner in which the consequences of crimes should be treated in the draft of the International Law Commission. It does not deal, however, with the literature on specific instances of crime (such as aggression, genocide or apartheid) or the typical and possibly "special" consequences of such crimes that can be inferred from the practices of States or international organizations or from the related instruments.

58/ B. Graefrath, "International Crimes - A Specific Regime of International Responsibility of States and its Legal Consequences", in International Crimes of State, op. cit. (footnote 1 above), p. 165. On the point mentioned by Graefrath, let us emphasize that the prohibition against "substituting" by covenant a pecuniary compensation for restitutio when this would jeopardize legally inalienable interests has already been emphasized by

author stresses that, in the case of a crime, the wrongdoing State would still be subject, even after making reparation, to the obligation to provide the necessary guarantees against repetition. 59/

42. With regard to the "instrumental" consequences, the doctrine is divided concerning the conditions of lawful recourse to countermeasures by the "directly" injured State. Whereas, according to some authors, the right of the injured State to resort to countermeasures arises, even in the case of crimes, only after unsuccessful demands for cessation/reparation have been made and the available means of settlement have been tried, 60/ others believe that the injured State may resort immediately 61/ at least to the countermeasures which appear to be reasonably necessary to bring about the cessation of a wrongful conduct in progress. 62/

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the present Special Rapporteur even with regard to consequences of "delicts"; indeed, the possibility that failure to make restitutio might violate such interests may occur even in consequence of wrongful acts "minoris generis" as compared with a crime. The only question to be resolved might then relate to the exception of excessive onerousness as set forth in article 7 of Part Two.

59/ F. Lattanzi, Garanzie dei diritti dell'uomo nel diritto internazionale generale, Milan, 1983, pp. 530-531.

60/ P.M. Dupuy, "Implications of the Institutionalization of International Crimes of States", in International Crimes of State, op. cit. footnote 1 above), p. 180; G. Carella, La responsabilita dello Stato per crimini internazionali, Naples, 1985, pp. 134 and 143.

61/ F. Lattanzi, op. cit. (footnote 59 above), p. 530; R. Hofmann, "Zur Unterscheidung Verbrechen und Delikt im Bereich der Staatenverantwortlichkeit", in ZaöRV, 1985, pp. 221-222.

62/ B. Graefrath, op. cit. (footnote 58 above), p. 165.

43. A wider agreement exists with respect to the limits to the exercise of countermeasures on the part of the injured State. Most commentators are of the opinion that the proportionality limitation 63/ and/or the jus cogens limitation 64/ apply also in the case of crimes.

44. A broad consensus also exists on the function of the countermeasures of the injured State. Indeed, while no one questions that they might be adopted to bring about cessation of "criminal" conduct or, by way of an extrema ratio, to guarantee reparation lato sensu, nearly all rule out the possibility of their being used for purely punitive purposes. 65/

45. Lastly, it is hardly necessary to recall that the vast majority of authors consider the crime of aggression as an exception to the general regime, at least to the effect that the "directly" injured State is entitled

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63/ G. Carella, op. cit. (footnote 59 above), pp. 143-144; K. Hailbronner, "Sanctions and Third Parties and the Concept of International Public Order", in Archiv des Völkerrechts, 1992 (30), p. 4: Y. Dinstein, "The erga omnes Applicability of Human Rights", ibid., p. 19; B. Graefrath and M. Mohr, "Legal Consequences of an Act of Aggression: the Case of Iraqi Invasion and Occupation of Kuwait" in Austrian Journal of Public International Law, 1992 (43), pp. 133-136. Against, F. Lattanzi, according to whom, in the case of reaction to crimes, no problem of proportionality can be posed (op. cit. (footnote 59 above), p. 531).

64/ Y. Dinstein, op. cit. (footnote 63 above), pp. 19-20; B. Graefrath and M. Mohr, op. cit. (footnote 63 above), p. 136; K. Oellers-Frahm, "The erga omnes Applicability of Human Rights", in Archiv des Völkerrechts, 1992 (30), p. 36; A.J.J. de Hoog, "The Relationship between Jus Cogens, Obligations Erga Omnes and International Crimes: Peremptory Norms in Perspective", in Austrian Journal of Public International Law, 1991 (42), p. 201. See also J. Cardona Llorèns, "La responsabilidad internacional por violación grave de obligaciones esenciales por la salvaguarda de intereses fundamentales de la comunidad internacional (el 'crimen internacional')" in Anuario de Derecho Internacional, 1985, p. 326.

65/ Very clear in this respect are the positions taken, among others, by J. Cardona Llorèns (op. cit. (footnote 64 above), pp. 325-332); B. Graefrath (op. cit. (footnote 58 above), p. 165); P.M. Dupuy, (op. cit. (footnote 60 above), p. 180). Quite different is the opinion of M. Spinedi ("Contribution à l'étude de la distinction entre crimes et délits internationaux" in Quaderni de 'La Comunità Internazionale', 1984 (2), pp. 35-42), according to whom countermeasures/reprisals are always recognized in international law as having a function that is primarily punitive, i.e., does not conform strictly to an executive-reparatory function; and this can obviously not fail to apply to the measures that might be taken by a State against which an international crime had been perpetrated.

to adopt measures involving the use of force by way of self-defence. 66/ It must be noted, however, that a significant number of writers extend the legitimacy of the use of force by the "victim of a breach" even to cases of reaction to the coercive imposition of colonial domination (or "alien domination"), namely in favour of the people subjected to such imposition. 67/

3. The wrongdoer/"not directly" injured States relationship

46. We must now turn to the relationship between the author of a crime (an erga omnes violation by definition), on the one hand, and the "not directly" injured States - uti singuli - on the other hand. Like the Commission, the authors who have dealt with the matter hold unanimously that it is primarily in the regime of this relationship that one finds the most "special" aspect of the consequences of crimes as distinguished from "ordinary" wrongful acts.

47. With regard to the "substantive" consequences, no appreciable objections are found in the literature to the idea that in the case of crimes, any State other than the State author of the wrongful act would be entitled to claim cessation and reparation lato sensu. 68/ This right seems to exist even in the absence of any prior intervention on the part of international more or less representative bodies.

66/ For the bibliography on this "special" consequence of aggression and on the various ways in which it is interpreted, we refer the reader to the parts of the Special Rapporteur's earlier reports where the problem has been discussed, i.e. the Third report (A/CN.4/440 and Add.1, paragraphs 9 (note 7) and 97-102; and the Fourth report, (A/CN.4/444/Add.1, paragraphs 58-64).

67/ The literature on the subject is abundant. See inter alios, R. Higgins, The Development of International Law through the Political Order of the United Nations, p. 103 et. seq.; A. Cassese, "Political Self-Determination. Old Concepts and New Developments", in United Nations Law Fundamental Rights, Alphen aan des Rijn, 1970, p. 119; N. Ronzitti, le guerre di liberazione nazionale e il diritto internazionale, Pisa, 1974, pp. 98 et. seq.; A. Ben Salah, "Autodétermination des peuples: les deux niveaux", in Marxismo, Democrazia e diritto dei popoli, Scritti in onore di Lelio Basso, Milano 1979, pp. 727 et. seq.; and White, Self-Determination: Time for a Re-Assessment, in Netherlands International Law Review, 1981, p. 151. Reference should also be made to the travaux préparatoires of the Friendly Relations Declaration (General Assembly resolution 2625 (XXV), and to the commentaries on the relevant part of that Declaration.

68/ Thus, among others, B. Graefrath, op. cit. (footnote 58 above), p. 165; G. Abi Saab, "The Concept of 'International Crimes' and its Place in Contemporary International Law", in International Crimes of State, op. cit. (footnote 1 above), p. 149; E. Jimenez de Aréchaga, "Crimes of States, Jus Standi, and Third States", op. cit. (footnote 1 above), p. 255; and D.N. Hutchinson, "Solidarity and Breaches of Multilateral Treaties" in BYBIL, 1988, p. 197.

48. More varied are the positions of writers on the faculté of "not directly" injured States to resort unilaterally to countermeasures. According to some authors, this right or faculté can be considered as admitted de lege lata in general international law and indeed constitutes the most certain among the distinctive features of the regime of international crimes of States. 69/ Other authors take a more cautious stance, stressing that the faculté of all States and each State uti singulus does not arise automatically from the commission of a crime. It only comes about subsidiarily, so to speak, i.e. where there is no possibility of intervention by the "organized international community" or that "community" remains out of the picture owing to an impasse in its decision-making mechanisms 70/ - or by way of "solidarity" with the principal victim of the crime (if there is one), which should then previously request the help of other States. 71/ Some writers, especially Italian, are of the opinion that unilateral countermeasures by any State "not directly" injured are admissible with regard to certain wrongful acts, but not with regard to the entire category of breaches contemplated in article 19 of Part One of the Commission's draft. According to these writers, the only countermeasures admissible de lege lata would be, in the situation we are discussing, collective self-defence against aggression and unarmed interventions in favour of a people whose aspirations towards independence are forcibly repressed by "alien domination". 72/ A number of authors consider, on the contrary, that "generalized" resort to unilateral countermeasures is inadmissible (or to be prohibited) - save in the case of aggression - even in response to an international crime: otherwise one would

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69/ Though there are a variety of nuances, this, we feel, is the position, for example, of F. Lattanzi, op. cit. (footnote 59 above), p. 533; C. Dominicé, "Legal Questions Relating to the Consequences of International Crimes", in International Crimes of State, op. cit. (footnote 1 above), p. 262; and Y. Dinstein, op. cit. (footnote 1 above), p. 19.

70/ G. Abi Saab, op. cit. (footnote 68 above), p. 150; I. Sinclair, "State Crimes Implementation Problems: Who reacts?", in International Crimes of State, op. cit. (footnote 1 above), p. 257; M. Spinedi, op. cit. (footnote 1 above) p. 133; D.N. Hutchinson, op. cit. (footnote 68 above), pp. 212-213; A.L. Sicilianos, Les réactions décentralisées à l'illicite: des contre-mesures à la légitime défense, Paris, 1990, pp. 171 and 205-206.

71/ J. Cardona Llorèns, op. cit. (footnote 64 above), p. 322; M. Mohr, "The ILC's distinction between 'international crimes' and 'international delicts' and its implication", in U.N. Codification of State Responsibility (B. Sinuma, M. Spinedi, eds.), New York, 1987, pp. 131-132; R. Hofmann, op. cit. (footnote 61 above), pp. 226-228; K. Hailbronner, op. cit. (footnote 63 above), p. 9; A.J.J. de Hoog, op. cit. (footnote 64 above), p. 213.

72/ Thus, for example, A. Cassese, "Remarks on the Present Legal Regulation of Crimes of States" in Etudes en l'honneur de R. Ago, vol. III, Milan, 1987, pp. 49-54; and B. Conforti, "Il tema di responsibilità degli Stati per crimini internazionali" in ibid., pp. 108-110.

run the risk of justifying any and all abuses and arriving at a situation of anarchy and bellum omnium contra omnes. 73/ The sole exception to this prohibition would be precisely the case of aggression, in reaction to which not only would the use of force by way of self-defence permissible, but particularly severe and immediate unilateral measures on the part of all States would also be admissible. 74/

49. The writers who admit recourse to unilateral countermeasures on the part of any "not directly" injured State do not go much beyond that general admission. They do not make more significant contributions regarding the legal regime that might govern such countermeasures (possibly different from the regime of the countermeasures that may be adopted for a mere delict). 75/ The only point on which the majority of the authors in

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73/ K. Marek, "Criminalizing State Responsibility", in Revue belge de droit international, 1978-1979, p. 481; B. Graefrath, op. cit. (footnote 58 above), p. 167; F.M. Dupuy, op. cit. (footnote 60 above), pp. 177-179, and "Observations sur le 'crime international de l'Etat'", in RGDIP, 1980, pp. 483-484; E. Jimenez de Aréchage, op. cit. (footnote 68 above), pp. 255-256; T.O. Elias in International Crimes of State, op. cit. (footnote 1 above), p. 193; Elagab, The Legality of Non-Forcible Counter-Measures in International Law, Oxford, 1988, p. 59; K. Sachariew, "State Responsibility for Multilateral Treaty Violations: Identifying the 'Injured State' and its Legal Status" in Netherlands International Law Review 35 (3), 1988, p. 280; and H. M. Ten Napel, "The Concept of International Crimes of States: Walking the Line between Progressive Development and Disintegration of the International Legal Order", in Leyden Journal of International Law, 1988, pp. 165-166.

74/ In this connection see, for example, R. Hofmann, op. cit. (footnote 61 above), p. 229, and B. Graefrath, op. cit. (footnote 58 above), p. 166, where the reference is "to the sequestration or confiscation of property of the aggressor or its nationals situated abroad, the suspension of all bilateral treaties with the aggressor State, the punishment of its leaders for the crime against peace".

75/ With regard to what are referred to as "pre-conditions", A.L. Sicilianos affirms that immediate countermeasures may be adopted provided that the criminal behaviour is still in progress and there is a situation of emergency (op. cit. (footnote 70 above), p. 206). As for the limits, M. Mohr considers that States "not directly" injured may react, by virtue of the "proportionality/reciprocity principle", only by countermeasures proportional to the injury sustained as a result of the crime (op. cit. (footnote 63 above), p. 137). According to F. Lattanzi, finally, the regime of countermeasures in question does not differ substantially from that which governs the measures that may be adopted by a State "directly injured" by a crime (op. cit. (footnote 59 above), p. 533).

question insist is that it would not be lawful for "not directly" injured States to pursue, through their measures, punitive aims, i.e., aims other than the cessation of the wrongful act or reparation lato sensu. 76/

50. Moving from the area of rights/facultés to that of any possible obligations under general law of "not directly" injured States, a high degree of doctrinal consensus seems to exist in the sense that such obligations are to be considered a typical, and "special", consequence of international crimes. 77/ We refer in particular to the obligations of "non-recognition" and "solidarity" mentioned by our predecessor in article 14, paragraph 2, of Part Two of the draft. Of the two types of obligation, it is especially the obligation not to recognize as "legal" (i.e., presumably, as producing legal effects at the international level and in the respective national systems) any acts performed by the law-breaking State in respect of the "governance of the situation" produced by the crime that is deemed by most to be, de lege lata, a "special" consequence of crimes as opposed to delicts. 78/ It is less

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76/ Explicit in this respect are, in particular, M. Mohr, op. cit.(footnote 63 above), p. 139; C. Dominicé, "The Need to Abolish the Concept of Punishment", in International Crimes of State, op. cit. (footnote 1 above), pp. 257-258; A.L. Sicilianos op. cit. (footnote 70 above), pp. 52-54; B. Graefrath and M. Mohr, op. cit. (footnote 63 above), pp. 133 and 139; and, among those who deny altogether the admissibility of the countermeasures in question, K. Marek, op. cit. (footnote 73 above), p. 463. Less "drastic", on the other hand, are the positions of M. Spinedi, op. cit. (footnote 65 above), pp. 28 et seq. and K. Zemanek, "The Unilateral Enforcement of International Obligations", in ZaöRV, 1987 (47), pp. 37-38. F. Lattanzi (op. cit. (footnote 59 above), p. 533) admits a function that is afflictive and not only executive-reparative in the countermeasures of States "indirectly injured" by a crime.

77/ B. Simma observes in fact that "the majority of observers, following the bilateralist way of thinking, would probably agree that the very idea of obligations on the part of 'third' States in case of a violation of international law is a remarkable innovation, not to speak of the substance of such solidarity". (International Crimes: Injury and Countermeasures. Comments on Part 2 of the "ILC Work on State Responsibility" in International Crimes of State, op. cit. (footnote 1 above), p. 305).

78/ Thus, among others, J. Cardona Llorèns, op. cit. (footnote 64 above), pp. 312 et seq.; G. Abi Saab, op. cit. (footnote 68 above), p. 149; B. Graefrath, op. cit. (footnote 58 above), p. 168, who calls attention to various signs that point in this direction (the "Friendly Relations" text, the text of the Definition of Aggression, the United Nations resolutions in the cases of Rhodesia, the South-African presence in Namibia, the creation of Bantustans by South Africa and the Israeli-occupied territories); P.M. Dupuy, op. cit. (footnote 60 above), p. 181; E. Jimenez de Aréchaga, op. cit. (footnote 68 above), pp. 255-256; B. Conforti, op. cit. (footnote 72 above), pp. 108-109, who, however, confines this "special" legal consequence solely to the hypotheses of aggression and violation of "external" self-determination;

easy, on the contrary, to find writers explicitly adhering to the conclusion that general international law actually provides for "positive obligations of solidarity" incumbent on all States "not directly injured" by a crime, requiring each such State to participate in the adoption of measures (possibly as decided by an international body) that are designed to help the "most directly" injured State or to restore legality. 79/

4. The role of the "organized international community"

51. A good look seems finally indispensable at the stances taken by writers regarding the legal situation of States other than the author of the crime, considered uti universi. We refer to the problem of the possibility for the "organized international community" to deal with the various issues and implications of international responsibility "for crime". Here, too, a fairly wide range of positions is to be found.

52. At one end of the spectrum are the authors who feel that competence belongs, de lege lata, exclusively to United Nations organs. They obviously think particularly of the Security Council, that body to take coercive action, under Chapter VII of the Charter, to implement any measures called for by an international crime of a State. 80/ In the opinion of those writers, the hypothesis of "threat to the peace" provided for in Article 39 of the Charter is in fact susceptible of broad enough interpretation for the Council to be able to cover the acts defined as "international crimes". 81/ Clearly,

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J. Frowein, "Collective Enforcement of International Obligations", in ZaöRV, 1987 (47), p. 77; B. Graefrath and M. Mohr, op. cit. (footnote 63 above), pp. 110 and 114.

79/ See, for example, the reservations of A.L. Sicilianos, op. cit. (footnote 70 above), p. 171, and K. Hailbronner, op. cit. (footnote 63 above), pp. 11-15, according to whom, de lege lata, there does not exist any obligation of "active solidarity", but only, if anything, the obligation not to interfere with any action undertaken by the "organized international community".

80/ B. Graefrath, op. cit. (footnote 58 above), pp. 164-168.

81/ Ibid., p. 164. According to the author, "An international crime, being a serious violation of an international obligation essential for the protection of fundamental interests of the international community by definition is an international affair which establishes the jurisdiction of the United Nations." (ibid.). And again: "States have authorized the Security Council to determine the existence of an international crime ... to decide upon measures necessary to stop the continuation of the wrongful conduct and to enforce universal respect for the observance of those international obligations which are fundamental for the maintenance of international peace." (ibid., p. 167).

once it was accepted that the "specificity" of the regime of crimes consisted in the said competence of the Security Council under the Charter, the obligation for every State to render effective any "sanctions" decided by that organ would follow as a matter of course. 82/

53. Not far from that position are the authors who, while they do not - unlike those just mentioned - consider the system of Chapter VII of the Charter as at present suitable for the implementation of the "special" regime of responsibility for all crimes (but rather deem it applicable only to aggression and crimes constituting a breach of the peace or a threat to the peace), do nevertheless similarly wish to see such implementation provided for by the United Nations security system. This should be achieved, in their view, by progressive development (lex ferenda). That system is the only one that might, in their opinion, "ensure that minimum guarantees of objectivity which ought to inspire a regime of responsibility for crime of a general character". 83/

54. Other writers, starting from an analogous reading (from the perspective of responsibility) of Chapter VII of the Charter, arrive at a different, more "restrictive", conclusion whereby the category of crimes should be limited to those wrongful acts that constitute a breach of or a threat to the peace, so as to place the concept of responsibility for crime "on a firmer legal footing", without at the same time improperly broadening the scope of the Charter security system. 84/

82/ Ibid., p. 167.

83/ B. Conforti, op. cit. (footnote 72 above), p. 107. Along the same lines, E. Jimenez de Aréchaga, op. cit. (footnote 68 above), pp. 25-26.

84/ V. Starace, "La responsabilité résultant de la violation des obligations à l'égard de la communauté internationale" in Recueil des cours ..., 1976-V, pp. 294 et seq.. Along the same lines, see J. Quigley, "The International Law Commission's Crime-Delict Distinction: a Toothless Tiger?", in Revue de droit international et de sciences diplomatiques et politiques, 1988, pp. 137 and 133 et seq.. P.M. Dupuy, "Observations sur la pratique récente des sanctions de l'illicite", RGDIP, t. 87/1983/3, pp. 505-548. According to the latter author, it would not be appropriate, in particular, to provide, in the draft of the Commission, for a regime of responsibility for the crime of aggression that was different - alternative or subsidiary - from the mechanism established in Chapter VII of the Charter of the United Nations and the related competence of the Security Council - the more so if, on the basis of such a different regime, resort to unilateral countermeasures were admitted. For the author in question one may fear that this replacement of action will lead to a weakening of the prestige and authority of the world organization, whose incapacity to keep the peace would thus be underlined by the unsupervised, albeit generous, actions of certain States. The very basis of the notion of crime, which aims above all at ensuring respect for obligations essential to the international community as a whole, risks all too often to become a convenient excuse for the initiatives of States who will seek in the concept of "carte blanche for public order" a justification for actions taken in furtherance of their own foreign policy

55. Not far off from the view just mentioned, but more clearly defined, is the opinion according to which competence for "sanctioning" crimes, at least those involving a threat to the peace, does indeed belong to the international community as "organized" within the United Nations and specifically the Security Council. However, it would belong to the United Nations "primarily" and not "exclusively". There would still remain the possibility that States uti singuli legitimately resort to peaceful countermeasures against the author of a crime if United Nations reaction proved to be blocked or ineffectual. 85/ The switch to this "secondary" unilateral competence would be viewed somewhat favourably, according to some authors, if there issued from the competent organs of the United Nations - albeit "incapable" of acting - even a simple "verbal" condemnation of the crime, as a guarantee of the legitimacy of measures that States uti singuli might wish to undertake. 86/

56. The tendency to disengage, whenever possible, the "sanctioning" of crimes from the Chapter VII security system and from an "exclusive competence" of the Security Council, often viewed as liable to risks not only of immobilization 87/ but also of "political manipulation", 88/ manifests

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goals. After all, whatever might be the good faith of the States applying the sanctions, their actions will be more easily opposable by the States they are aimed at for not being under United Nations aegis. And here the question arises whether the very institutionalization of crime might not harbour the seeds of international anarchy.

85/ R. Hofmann, op. cit. (footnote 61 above), p. 226; M. Mohr, op. cit. (footnote 63 above), pp. 131-132 and 138; I. Sinclair, op. cit. (footnote 70 above), p. 257; C. Dominicé, "Legal Questions...", op. cit. (footnote 69 above), pp. 262-263; A.L. Sicilianos, op. cit. (footnote 70 above), pp. 171 and 206-213.

86/ D.N. Hutchinson, op. cit. (footnote 68 above), p. 203; A.L. Sicilianos, op. cit. (footnote 84 above), p. 213; J. Quigley, op. cit. (footnote 70 above), pp. 144, 150. A "primary" and not "exclusive" competence of the United Nations is indicated also by K. Oellers-Frahm, according to whom it would still not be legitimate for States uti singuli to intervene "ancillarily", but rather for "regional organizations" such as OAS or EEC: if even these regional bodies proved unable to decide on the application of collective "sanctions", that would mean that, a fortiori, no agreement existed within the international community for the adoption of unilateral measures on the part of individual States either, and such measures could therefore not be deemed admissible (op. cit. (footnote 64 above), pp. 34-35).

87/ In this regard, see for example the doubts expressed by B. Simma, op. cit. (footnote 77 above), pp. 312-313.

88/ Thus, among others, C. Dominicé, op. cit. (footnote 69 above), pp. 262-263; D.N. Hutchinson, op. cit. (footnote 68 above), pp. 210-211; and also Ch. Leben: "Les contre-mesures étatiques et les réactions à l'illicite dans la société internationale", AFDI., 1982, p. 28.

itself also in the suggestions of those authors who tend to favour some role of the International Court of Justice in the matter. Such a role is conceived in the form either of a competence of the Court for disputes relating to an international crime 89/ or of an ex post facto verification of the "legitimacy" of the threatened sanctions. 90/

89/ S. Torres Bernardez, "Problems and Issues Raised by Crimes of States: An Overview", in International Crimes of State, op. cit. (footnote 58 above), pp. 278-279; J. Quigley, op. cit. (footnote 84 above), pp. 128-129.

90/ D.N. Hutchinson, op. cit. (footnote 68 above), p. 211; and P.M. Dupuy, op. cit. (footnote 60 above), pp. 182-183, who calls for a mechanism in which the General Assembly would decide on the basis of a qualified majority whether to request the Security Council to intervene in order to "sanction" a crime; the Council would decide, also by a qualified majority and with the exclusion of the right of veto, the measures to be taken; finally, to complete the whole, a procedure for settling differences would be indispensable. Here one might take as a basis article IX of the Convention on Genocide and article XII of the Convention on Apartheid. However, a comparison of these two provisions shows that the first allows unilateral resort to the ICJ while the second seems to maintain the requirement for a consensual approach. The author stresses the importance of the options offered (ibid., p. 183). Without explicitly referring to the International Court of Justice, T.O. Elias, too, stresses the appropriateness of providing "judicial channels" in the regime of responsibility to be proposed for crimes in the following terms:

> "it cannot be forgotten that a judicial solution has in practice a limited ambit in which to operate and that international judicial process remains in principle voluntary. But it is against this background that the significance emerges of the development, in contemporary international law, of procedures whereby the application of the law is entrusted to third parties and not only to the State or States immediately concerned. That development is but the vehicle for making manifestly evident the exigencies of the international community, the general concerns and interests of that collective and interdependent entity which is the international community of today" (op. cit. (footnote 73 above), p. 193).

B. Simma is more sceptical when, commenting on Riphagen's proposals, he makes the following remarks:

> "the link between Article 14 and the procedural safeguard of compulsory jurisdiction of the International Court of Justice proposed in 1986 will not stand the test of political realities. Such third-party adjudication certainly is to be welcomed, some would even say, to be regarded as an indispensable corollary of the acceptance of 'international crimes'. But let us be realistic: the idea that a significant part of United Nations Member States would be prepared to involve the Court in the issues listed in Article 19 is simply utopian" (op. cit. (footnote 77), p. 307).

57. Lastly, and in a position diametrically opposed (or nearly so) to that of the doctrine mentioned in paragraph 52 supra, mention must be made of the authors for whom neither the United Nations (and in particular the Security Council) nor any other international organization has - de lege lata and in the sphere of general law - any competence, be it exclusive or primary, for the regulation of the reactions of States "not directly" injured by a crime. Such States, according to this view, thus retain full possession uti singuli of the right to react, if need be, by means of countermeasures, against a State that has committed a serious breach of obligations intended to safeguard the fundamental interests of the international community. It must be added, however, that the same authors usually also express the wish that the matter be taken care of by way of progressive development, namely by attributing the necessary functions and powers to appropriate international institutions not necessarily identifiable with any particular organ of the United Nations. 91/

58. The literature is very scarce on the possible delimitation of the scope of the "sanctions" applicable in case of a crime by the "organized international community". Some, for example, stress that measures decided by United Nations organs cannot in any event have punitive purposes. 92/ Others are concerned at the possibility of collective measures whose implementation might be ultimately prejudicial to the interests of "innocent" States, in which case provision would have to be made for an obligation of "solidarity". One should provide for an equitable distribution, by means of compensation mechanisms, of the burdens borne by States as a result of " sanctioning" operations. 93/ Finally, it is sometimes recalled that the

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Decidedly opposed to recognizing an international court as being an appropriate body for dealing with crimes is B. Graefrath, op. cit. (footnote 58 above), pp. 168-169.

91/ G. Abi-Saab, op. cit. (footnote 68 above), pp. 148-149; K. Hailbronner, op. cit. (footnote 63 above), pp. 9-10; E. Klein, "Sanctions by International Organizations and Economic Communities", in Archiv des Völkerrechts, 1992 (30), pp. 102-106; A.J.J. de Hoog, op. cit. (footnote 64 above), pp. 207-211; and, similarly, B. Simma, "Grundfragen der Staatenverantwortlichkeit in der Arbeit der International Law Commission", in Archiv des Völkerrechts, 1986 (24), p. 402. To these should be added, obviously, the authors who pronounce themselves even more decidedly in favour of the possibility for States "not directly" injured to resort uti singuli to countermeasures against a State guilty of an international crime (see footnote 64 above).

92/ P.M. Dupuy, op. cit. (footnote 60 above), p. 184; J. Cardona Llorèns, op. cit. (footnote 64 above), pp. 331-333, who refers primarily, however, to the possibility of applying, as a consequence of a crime, "sanctions" like expulsion or suspension from an international organization.

93/ K. Hailbronner, op. cit. (footnote 63 above), pp. 12-15; K. Doehring, "Die Selbstdurchsetzung völkerrechtlicher Verpflichtungen" in ZaöRV, 1987 (47), p. 50; J. Delbrück, "International Economic Sanctions and Third

severity of the reaction of the "organized international community" should be commensurate with the gravity of the crime: particularly so in the case of aggression. 94/

States", in Archiv des Völkerrechts, 1992 (30), pp. 92-93 and 96-98. According to these authors, the measures in question are entirely forbidden, even if decided by the "organized international community", if they are prejudicial to "vital" or "essential" interests of "innocent" States.

94/ Here we refer not so much to collective measures involving the use of armed force, as provided by Chapter VII of the Charter (and more specifically Article 42) - which may by general admission be implemented against an aggressor State - as to another particularly severe type of "sanction" (or rather, perhaps, "guarantees of non-repetition") which, according to some - if we properly understand them, the "organized international community" might surely apply in the case of aggression, but not always in the case of other international crimes. According to B. Graefrath and M. Mohr, for instance, "Another specific legal consequence in case of international crimes are the possible limitations of the exercise of sovereign rights to ensure non-repetition of the crime. After the Second World War, these limitations took the form of provisions on demilitarization, establishment of demilitarized zones, prohibition of certain weapons, in particular weapons of mass destruction, and certain types of missiles. Very similar provisions, or at least the same approach, can be found in resolution 687 (1991)". In particular, the verification procedures instituted by virtue of that resolution "go far beyond what has until now been applied by the AIEA or what was foreseen in the draft convention against chemical weapons. The control and verification procedures are clearly part of the sanctions and the legal consequences applied by the Security Council to ensure non-repetition of the aggression. They can be understood as a limitation on the exercise of sovereign rights and justified as a legal consequence in case of a crime of aggression" op. cit. (footnote 63 above), pp. 127-128) (emphasis added).
