Document:-
A/CN.4/SR.1683

Summary record of the 1683rd meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1981, vol. I

acts that directly infringed the rights of a foreign State and acts that infringed those rights only indirectly, through the person of the foreign State's nationals. However, the division between the two types of acts was not necessarily absolute: the true intention of a State's breach of an obligation towards aliens might be to harm the interests of the aliens' State of origin, in which case the act would then also be a breach of an obligation towards a State. Similarly, if a State breached an obligation to accord certain treatment to aliens, it might also act in breach of another obligation to observe internationally recognized "minimum standards"—for example, because it failed to provide those aliens with effective local remedies. The draft articles must take account of such cases of coincident breaches.

17. As an extension of their categorization of wrongful acts, articles 4 and 5 represented an attempt to introduce an element of "proportionality" between wrongful acts and their consequences for the author State. However, he had deliberately refrained from mentioning the concept of proportionality in those provisions and considered that it should not be cited anywhere in Part 2. It underlay the draft, but it would not be appropriate for the Commission to enunciate it in the form of a rule.

18. Turning to the actual text of the articles, he said that article 4 began with a reference to article 5 because each article dealt with a different type of obligation. Paragraph 1 of article 4 detailed the successive stages of belated performance of an obligation. Thus, a State must first stop the breach and take action to "prevent [its] continuing effects", a concept borrowed from Part 1 of the draft, and then apply such remedies as were possible under its internal law. The reference to article 22 of Part 1 of the draft[4] was intended to show that, whereas, in a case of injury to aliens, it was those aliens who must take the initiative in seeking the benefit of the local remedies, in a case of direct damage to the interests of another State—for example, in an attack upon one of its diplomatic missions—it was the author State itself which must automatically extend those remedies. The rule stated in subparagraph (*c*) was, as could be seen from his report, the most controversial.

19. Paragraph 2 provided for substitute performance of the obligation through the payment of a sum of money if it proved materially impossible for the author State to apply the provisions of paragraph 1. Since the amount of the payment could only be determined in the light of the specific damage caused, he had merely reproduced the very general wording used in the judgement of the Permanent International Court of Justice in the *Factory at Chórzow* case (see A/CN.4/344, para. 37).

20. Paragraph 3 provided for substitute performance *ex ante*. He was uncertain whether paragraphs 2 and 3 should always go together, and had included the latter provision simply because material impossibility to comply with paragraph 1 would, after all, be the fault of the author State, and he did not think that payment of damages by that State would be sufficient, particularly if the harm suffered by the other State was not of the kind that could be offset by monetary payment.

21. With regard to article 5, paragraph 1, it should be noted that article 22 of Part 1 of the draft stipulated that local remedies must have been exhausted before a damaging act could be considered a wrongful act of a State. Since the wrongful act would have occurred within the domestic jurisdiction of the author State, it was justifiable to give that State the option of re-establishing the situation that had existed before the breach or of paying monetary compensation. He favoured the incorporation in the text of the words "within its jurisdiction", but had placed them within brackets in deference to the members of the Commission who had expressed the opposite view during the lengthy discussions on that subject in connection with article 22 of Part 1 of the draft.

22. Paragraph 2 of article 5 covered cases in which the wrongful conduct against aliens was aggravated by an intention to harm their State of origin or by the non-availability or inadequacy of local remedies. In his opinion, the author State should once again be given a choice of procedure in such circumstances, but if it opted to act in conformity with article 4, paragraph 2, it should also be required to comply with article 4, paragraph 3, since it would not have been materially impossible for it to repair the breach.

The meeting rose at 11.25 a.m.

[4] See 1666th meeting, footnote 3.

1683rd MEETING

Thursday, 2 July 1981, at 10.10 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Barboza, Mr. Calle y Calle, Mr. Díaz González, Mr. Francis, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Relations with the International Court of Justice

1. The CHAIRMAN said that the Commission was greatly honoured to welcome Mr. El-Erian, Member of the International Court of Justice. He asked Mr. El-Erian to convey the Commission's greetings and good wishes to the Members of the Court and the Registrar.

2. Mr. EL-ERIAN, representing the Court in the absence of Sir Humphrey Waldock, thanked the

Commission for the opportunity to participate in its work.

3. In a letter to the Chairman of the Commission, Sir Humphrey, who was unable to attend the meetings in person, had stressed the significance of the Commission's codification work for the judicial activity of the Court. The Court valued, and wished to maintain, its strong links with the Commission.

4. In its latest judgements and advisory opinions, the Court had applied and interpreted a number of conventions concluded on the basis of draft articles prepared by the Commission. In one judgement concerning diplomatic and consular immunity,[1] the Court had based itself on the rules clearly formulated in the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations. The Court had also examined with great care and appreciation the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. In an advisory opinion,[2] the Court had made use of the 1969 Vienna Convention on the Law of Treaties.

5. The Commission's work was indeed useful to the Court even before it became an international convention. Article 56 of the Commission's draft articles on treaties concluded between States and international organizations or between international organizations had been relied upon by the Court as illustrative of customary law and a guiding indication of a residual rule.

6. He would be happy to convey the Commission's message to the members of the Court.

State responsibility (*continued*) (A/CN.4/344)

[Item 4 of the agenda]

The content, forms and degrees of international responsibility (*Part 2 of the draft articles*) (continued)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*continued*)

ARTICLES 4 AND 5[3] (*continued*)

7. Mr. USHAKOV noted that unlike articles 1 to 3,[4] which dealt with primary rules, articles 4 and 5 were concerned with State responsibility.

8. Turning to article 4, he said that the use of the word "shall" implied the existence of an obligation or obligations. No beneficiary was specified, although it seemed essential to indicate the holder of the right corresponding to the obligation imposed on the author State of an internationally wrongful act. The problem was a very general one and did not arise in respect of Part 1 of the draft articles, since the international responsibility of the State was a result of its wrongful act whoever might be the beneficiary of the obligation.

9. In Part 2, on the other hand, it was important to know the beneficiary of the obligation, the subject of international law, in order to determine the parties towards which the State had an obligation. In his opinion, the Commission should limit the scope of the articles to internationally wrongful acts constituted by the breach of an obligation in respect of which another State was the beneficiary. It was desirable that the Commission should indicate its position on that point clearly, beginning with the initial provisions of Part 2 of the draft.

10. If the Commission restricted the scope of its work to inter-State relations, it would have to determine whether the relationship of responsibility existed only between the responsible State and the injured State or whether other States also had an interest in the matter. It seemed obvious that in some cases other States were also affected by the breach of an international obligation, the source of responsibility. It was essential to indicate those cases precisely, and it was certainly not sufficient to say that the State "shall".

11. Furthermore, the limits of responsibility depended on the category of the obligation breached, since it could be an obligation *erga omnes* or an obligation arising, for example, from a bilateral treaty. As the consequences of the breach would be different, the Commission should clarify its views before enunciating rules on the content of responsibility, which would depend on the identity of the beneficiary and the category of the obligation breached. A further difficulty was that article 4 did not make it clear whether the author State of an internationally wrongful act was bound by the secondary rules, i.e. the rules on responsibility, or by the primary rules.

12. The Commission would have to decide on what basis it would enunciate the secondary rules, the wording of which would clearly indicate that they were rules on the effects of responsibility. The approach should, he thought, be the reverse of that adopted in the case of Part 1, which was concerned with the responsibility of the author State for the breach of obligations, whereas Part 2 should look at the problem from the standpoint of the rights of the directly injured State and, where the primary obligations breached were obligations *erga omnes*, other States also.

13. It would be better to begin with a form of words such as "An internationally wrongful act of a State creates for the injured States . . .", and then to state the content of the new rights arising for the injured States

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[1] United States Diplomatic and Consular Staff in Tehran, Judgment: *I.C.J. Reports 1980*, p. 3.

[2] Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion; *I.C.J. Reports 1980*, p. 73.

[3] For texts, see 1666th meeting, para. 9.

[4] *Idem.*

from the internationally wrongful act, thus clearly placing the article in the category of secondary rules. It had to be recognized that it was for the injured State to decide whether to invoke or to refuse to invoke the responsibility of the author State.

14. The words "discontinue the act" at the beginning of subparagraph 1 (*a*) were unsatisfactory. The point was not that the author State should discontinue its wrongful act, but that it should not have committed a wrongful act in the first place. It was odd to say that the State should not continue to act unlawfully when it was under a duty not to embark on unlawful conduct. Without changing the meaning of the provision, it would be more logical to say that the wronged State had the right to call on the responsible State to discontinue its wrongful act.

15. The opening words of paragraph 2, "To the extent that it is materially impossible for the State", were puzzling, since it was difficult to see how it could be materially impossible for a State to discontinue its unlawful act. Moreover, paragraph 2 contained a very general formula which derived from the notion of *restitutio in integrum*. In his opinion, that notion was only applicable where it was possible to make full restitution of goods. In some situations, restitution was impossible and the injured State or other States had the right to request a return to the *statu quo ante*, i.e. a return to the situation which existed before the breach. However, a concrete situation that no longer existed could not be re-established. Only the legal situation could be re-established, for example, by reinstating a treaty which had been violated, or laws which had been abolished or by restoring a territory to its former status. It was a question of re-establishing a situation in law and not in fact. In addition to the right to *restitutio in integrum*, the injured State had the right to reparation for damage caused by the wrongful act of a State, as well as the right to request the punishment of persons physically responsible for the wrongful act, or an apology or other amends, in the case of insult to the flag, for example.

16. The Commission should draw up a list of the rights arising for the injured State from an internationally wrongful act. Logically, the list should begin with the most serious offences, the international crimes defined in draft article 19 of Part 1,[5] since they created the greatest rights for the victims. The list should go on to enumerate the other offences described as international delicts, and then identify the beneficiary States of the obligations created by the offence and define the meaning of such terms as *restitutio in integrum*, reparation, rule of assessment, etc. The adoption of a general approach of that kind would simplify the drafting of the secondary rules of responsibility.

17. Article 5, subparagraph 2 (*a*), raised the question of intent. Although it was of little importance in determining the origin of responsibility to determine whether the obligation was breached "with premeditation", to borrow the terms used in ordinary criminal law, the existence of attenuating or aggravating circumstances, on the other hand, was relevant to the consequences of responsibility. During its consideration of Part 1, the Commission had already touched on that question, which was of major importance in Part 2 and should therefore be studied in depth.

18. Turning to a more general issue, he believed that an internationally wrongful act affecting individuals, whether natural or juridical persons, did not differ from any other internationally wrongful act of a State. The notion of "local remedies" was not relevant to the consequences of international responsibility, but only to its origin, as was clear from the text of articles 21 and 22 adopted by the Commission. If local remedies had been exhausted (in the case of article 22) or a breach of an international obligation to achieve a specified result had been observed (in the case of article 21), the wrongful act existed, responsibility was entailed, and the fact that the responsibility resulted from a State's breach of obligations affecting individuals was of little significance. The individuals were not parties to any subsequent proceedings and retired into the background behind the injured State if the responsibility of the author State resulted from breach of one of its international obligations.

19. There would be no justification for the Commission to take up the question of the treatment of aliens and their property at the beginning of Part 2, since it would thus give an unfavourable impression to States by deliberately reverting to an outmoded concept of international responsibility, whereas contemporary international law concentrated its attention in that matter on international crimes and the most serious offences, such as armed aggression. It would therefore be preferable to begin with the most important aspects.

20. Mr. BARBOZA said that, having been unable to participate in the Commission's previous discussion of the topic, he wished to comment on draft articles 1 to 3.

21. On grounds of logic, he had many misgivings about article 1. Violation of a primary rule was irreversible, and it seemed to be generally recognized that, once breached, a primary obligation could no longer be performed as such. Thus, an obligation to pay a sum of money by a certain date could never be executed if it was not performed within the specified period, since it was impossible to reverse the flux of time. The new obligation arising under the secondary rules was necessarily a different obligation, whatever the category to which it belonged according to the definitions in articles 20 *et seq.* of Part 1.

22. It could not therefore be said that an obligation which had been breached continued to exist. It would surely be better to state that the breach of an obligation

[5] See 1666th meeting, footnote 3.

created an obligation to make reparation. While understanding the arguments put forward by the Special Rapporteur in his report (A/CN.4/344), he thought that the Commission's approach should be above all strictly logical.

23. Article 2 was acceptable in principle, subject to the comments made, particularly, by Mr. Reuter and Mr. Aldrich at the 1669th meeting.

24. Article 3 seemed to express an undeniable truth, but it would be better to say that a breach of an international obligation had no consequences other than those provided for in the draft articles.

25. Article 4 was satisfactory as a whole. Paragraph 1 seemed to refer to the case of *restitutio in integrum*, as was confirmed by the wording of subparagraph (*c*). He was not, however, certain that the list of measures in subparagraphs (*a*), (*b*) and (*c*) was exhaustive and would prefer the provision to be drafted along the same lines in more general terms.

26. The machinery of *restitutio in integrum*, which sought to remove the consequences of a breach, was frequently only an ideal solution, and paragraph 2 dealt with a situation in which such a solution was materially impossible. It therefore provided for the possibility of reparation to restore the balance destroyed by the breach.

27. With regard to paragraph 3, he noted that the injury could have moral aspects, and thought that provision should be made for reparation of the same kind. The provision raised the question of sanctions, which tended to upset the balance between the parties involved for specific reasons. He noted that that concept existed in international law, since the Security Council could decide to apply sanctions—which were, however, different in nature from those that might arise in the draft, since they reflected the public interest of the international community as a whole.

28. Lastly, article 5 seemed to be a special case of application of article 4, since it gave the State the choice between *restitutio in integrum* and reparation in the event of a breach of certain individual obligations. In that connection, he was not in favour of the distinction mentioned by the Special Rapporteur in paragraph 72 of his report.

29. Sir Francis VALLAT said that he wished to raise what he felt was the key question in approaching Part 2 of the draft articles, namely, that of the precise relationship between those articles and the provisions in Part 1 of the draft. While the articles in Part 1 had only been adopted on first reading and were, therefore, open to modification, the form of the articles was the result of very careful and mature reflection within the Commission. It therefore seemed to him that, in devising Part 2 of draft, the Commission would be well advised to build on and work within the framework of Part 1. It would then be easier to adapt Part 2 to any changes that might subsequently be decided in Part 1.

30. To illustrate his point, he observed that the key to the structure of Part 1 was founded in article 3, for the articles in that part were concerned with responsibility, which was linked to the internationally wrongful act of a State. Article 3, then, had two parts, corresponding to the two branches of such an act. In subparagraph (*a*), every word was of vital importance, and the inclusion of the term "omission" was basic to the presentation of the articles throughout Part 1. In that connection, he wondered whether it was appropriate to refer in Part 2, article 4, paragraph 1, to a State which had "committed an internationally wrongful act", for the word "committed" automatically implied action, as opposed to omission. In his view, it would be wiser to follow the approach of article 3 Part 1.

31. He noted too that subparagraph (*b*) of article 3 in Part 1 spoke of conduct constituting "a breach of an international obligation of the State", and that nowhere in Part 1 was a State described as having committed a breach of an obligation. The whole structure of that part was built on the idea of the attributability to a State of a particular act on the basis of conduct which constituted a breach of an international obligation. In Part 2, however, which was supposed to deal with the legal consequences of an internationally wrongful act, articles 1 to 3 referred to a "breach of an international obligation by a State". In the circumstances, he doubted whether they could be accepted, as they stood, as statements of general principles.

32. He had a further difficulty with the initial articles of Part 2 in as much as they expressed ideas that were very different in character from those contained in the opening articles of Part 1. The articles in Part 1 laid down, not principles akin to rules, but the basic framework of the part concerned. As Mr. Ushakov had in effect been saying, Part 2 should similarly begin with a statement of its framework. That was all the more important as the present articles 1 to 3 had no logical connection with articles 4 and 5. Such a statement might read:

> "An internationally wrongful act of a State gives rise to obligations for that State and to rights for other States in accordance with the provisions of this part of the present articles".

The reference to "an internationally wrongful act of a State" would be a direct reflection of the terminology of Part 1 of the draft, and the sentence as a whole would provide a starting point for consideration of the obligations and rights arising from the act. The rights, as Mr. Ushakov had remarked, were not necessarily limited to the rights of the injured State, but might include rights of other States.

33. The next article in Part 2 might reflect article 1 of Part 1 and express a point central to the study of the consequences of wrongful acts. It might read:

> "An internationally wrongful act of a State does not as such affect for that State the existence of the

obligation of which the conduct attributed to that State constitutes a breach".

The later articles on compensation, restitution and the like should reflect jurisprudence far more than seemed at present to be the case. For example, it seemed to him that the core of most judgements of the Permanent Court of International Justice and the International Court of Justice had been a declaration of the rights of the claimant State; reparation had been treated as a secondary matter, and restitution had come even further down the scale. He believed that the Commission should follow an inductive approach based on such known practice.

34. With regard to articles 4 and 5, it seemed to him, from an examination of international practice and jurisprudence, that article 19, paragraph 1 of Part 1, however important it might be was not a natural starting point for the Commission's work. Once again, the Commission should begin from matters of which it had experience and on which it could hope to make practical progress. The Commission lacked experience of the application of the rules stated in article 19. Furthermore, the article was closely concerned with the primary obligations of States and, unlike the other articles in the draft, it depended on the consequences of the breach of an obligation that fell within its ambit, a matter which the Commission might have to consider if it was asked to resume work on a draft code of offences against the peace and security of mankind.

35. That being so, his advice was that the Commission should not rush into the examination of the consequences of internationally wrongful acts falling within the scope of article 19, but should, as it usually did, start from the ground floor and work gradually up to the higher storeys, where problems might be more difficult.

36. Mr. RIPHAGEN (Special Rapporteur) agreed with Mr. Ushakov that it was possible to approach the subject-matter of articles 4 and 5 from the point of view of the rights of the injured State and other States, rather than from that of the obligations of the author State. While he himself had not followed that procedure, he had noted, in introducing the articles, that there was a close connection between the various parameters associated with the topic. Mr. Ushakov's point could be at least partly met by adopting an opening article for Part 2 of the kind suggested by Sir Francis Vallat, although that would not resolve the problem of the failure to identify the beneficiaries of the obligations to which Part 2 related. The reason for the omission of such identification was, perhaps, that he had been over-influenced as Special Rapporteur by the abstract approach followed in Part 1 of the draft, which considered obligations virtually as having an independent existence. His personal opinion—and, no doubt, the opinion of many other members of the Commission—was that obligations must always be owed to someone.

37. To his mind, it would be very difficult to deal fully with the question of the identity of the beneficiaries of obligations in the opening articles of Part 2. The problem was a very intricate one, on which he had touched in his preliminary report.[6] While the "directly injured State" and the "other States" might indeed have rights, and even obligations, in respect of an obligation of the author State, whether they did or not was dependent on the nature of the primary obligations applicable to that State and the nature of the breach in question. Even if—as was not his intention—that matter was dealt with at the beginning of Part 2, it would be necessary to discuss the substance of the present articles 4 and 5 in conjunction with it, for the rights of States other than the author State must be described by reflection upon the obligations of that State. As he had already mentioned at the previous meeting, he had begun Part 2 by considering the new obligations of the author State because the draft as a whole dealt with obligations.

38. The answer to Mr. Ushakov's question whether the obligations listed in article 4 were primary or secondary was that they were something in between the two. That was because he himself had distinguished between "belated performance" and "substitute performance" of an obligation: belated performance might be considered "primary", but substitute performance was obviously "secondary". Basically, the question was related to the use of particular terminology. Mr. Ushakov's suggestion for the rewording of article 4 seemed to be covered by Sir Francis Vallat's proposal for a new introductory article for Part 2.

39. Mr. Ushakov's contention that article 4, subparagraph 1 (*a*), was pointless since an author State was inevitably subject to a primary obligation not to continue a wrongful act should be set against the claims that had been advanced in the literature to the effect that an obligation disappeared with its breach, since it could no longer be fulfilled. While he rejected such claims—a debt, for example, was not cancelled simply because it was not paid on the due date—the fact that they had been made justified the retention of the provision in question.

40. As for Mr. Ushakov's contention that article 4, paragraph 2, could not refer to subparagraph 1 (*a*) of that same article because it was never materially impossible to stop a breach, he himself was not certain that that was always the case. In any event, paragraph 2 referred not only to the first part of paragraph 1, but to all the parts of that paragraph.

41. Mr. Ushakov appeared to believe that "*restitutio in integrum*" was possible only in the case of physical objects and could not be effected in the case of rights. It should be noted in that respect that, while he had used the phrase in his report, he had deliberately refrained from including it in any of his draft articles.

[6] See *Yearbook ... 1980*, vol. II (Part One), document A/CN.4/330.

As could be seen from several references in his report, he agreed with Mr. Ushakov that it was only legal situations that could be re-established. He also agreed with Mr. Ushakov that, in certain circumstances, the author State could be required by another State to punish the person physically responsible for a wrongful act. Indeed, he had also noted in his report that some national legal systems authorized individuals to petition a court for the punishment of a wrongdoer if no State organ took such a step. Both those kinds of situation were covered by article 4, subparagraph 1 (*b*). Similarly, Mr. Ushakov's reference to the fact that in some instances an apology might be sought was covered by the provisions of article 4, paragraph 3, where the making of an apology was presented as an obligation.

42. On the very important question whether the draft articles should begin by discussing the obligations arising from aggression and proceed to those arising from lesser offences, he believed with Sir Francis Vallat, but for different reasons, that they should in fact do the reverse. In his view, the regime of State responsibility in cases of aggression was very special and was closely linked to the existence of the United Nations and of the Charter of the Organization. He doubted the wisdom of starting with a special regime, rather than raising the general issue of State responsibility; he also doubted, with regard to the special regime in question, whether the Commission could improve on the consensus relating to aggression that was apparent from the Charter of the United Nations, the Definition of Aggression[7] and the other relevant United Nations instruments.

43. With regard to Mr. Ushakov's comment that article 5 gave the impression of a return to the old approach of considering State responsibility only in terms of the treatment of aliens, he wished to emphasize that that was in no way what he had sought in drafting the article. He had mentioned the treatment of aliens merely because of the necessity, when discussing new obligations, to distinguish between types of breach. In point of fact, article 5 denied the existence of an automatic obligation upon the author State to restore the situation that had existed before the breach; whether that approach was acceptable or not, it was certainly not the old approach.

The meeting rose at 1.05 p.m.

[7] General Assembly resolution 3314 (XXIX), annex.

1684th MEETING

Friday, 3 July 1981, at 10.10 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Barboza, Mr. Calle y Calle, Mr. Díaz González, Mr. Francis, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

State responsibility (*concluded*) (A/CN.4/344)

[Item 4 of the agenda]

The content, forms and degrees of international responsibility (Part 2 of the draft articles) (continued)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*concluded*)

ARTICLES 4 AND 5[1] (*concluded*)

1. Mr. QUENTIN-BAXTER said that, in the light of applying the first of the Special Rapporteur's three suggested parameters (see A/CN.4/344, para. 7), articles 4 and 5 could be regarded as a test bore which went right through the strata of the subject.

2. In regard to the substance of those two articles, he had serious doubts about the content of article 4, subparagraph 1 (*b*), since article 22 of Part 1 of the draft,[2] which dealt with exhaustion of local remedies, was a very important example of the broader obligation under article 21, paragraph 2. That provision allowed a State which had failed in its first line of conduct an opportunity to substitute conduct before the question of breach of the obligation was settled. He would therefore have thought that article 22 would always be applied before an internationally wrongful act was deemed to have occurred, and he wondered why it was necessary to refer to that article in a provision dealing with the consequences of the breach of the obligation.

3. He also had some doubts about the phrase at the end of that same subparagraph 1 (*b*), which read "such remedies as are provided for in, or admitted under, its internal law": it seemed at least to suggest that the inadequacies of internal law could be used as an excuse for failure to comply with obligations under international law. In general, the limitations of internal law were never an answer to the duties that arose under international law, and he therefore failed to see the need for such a reference in the context in question.

4. He wondered whether the obligation to re-establish the situation as it had existed before the breach should be modified in, and only in, the particular case of the treatment of aliens, dealt with in article 5. He appreciated that the Special Rapporteur's line of reasoning was based on a large body of State practice, but he considered that the balance between restitution and compensation should be stated in somewhat more general terms. He noted in that connection that under article 5 the Special Rapporteur

[1] For texts, see 1666th meeting, para. 9.

[2] See 1666th meeting, footnote 3.