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Summary record of the 1684th meeting

Topic:
State responsibility

Extract from the Yearbook of the International Law Commission:-
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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.

had provided for two exceptions to the basic rule, one relating to cases in which there was malice and the other to cases where there were no effective remedies under local law. While the first of those two exceptions was readily understandable, it was a little difficult to characterize the extent of the "effective remedies" rule. There might be no effective remedies within the ordinary scope of the judicial branch of the government, but remedies might be offered by the executive or, conceivably, by legislative branches.

5. More generally, he considered that, because the subject was so vast, it was necessary to move into detail by degrees and to be careful not to deal too quickly with rules that were stated with great particularity. The experience of Part 1 suggested that it was necessary to maintain a very open texture in the articles on State responsibility. The method of approach required differed entirely from that adopted by a domestic lawyer who, when drawing up a conveyance, sought to close every loophole. The Commission was trying to crystallize perceptions of some generality that would have to be qualified in the context of the draft articles, but also explained in the commentary.

6. He doubted the need for article 4, subparagraph 1 (*a*), which seemed to involve a degree of circularity. The mere fact that an act was wrongful meant that it should be discontinued; discontinuance, moreover, was not the only means of avoiding wrongfulness.

7. Lastly, he considered that the Commission's best approach would be to use the data it gathered from the test bore to see whether more opencast methods should not be applied, at least for the immediate future.

8. Mr. VEROSTA, remarking that at the 1668th meeting he had asked the Special Rapporteur whether the three articles in chapter 1 of Part 2 were exhaustive or whether it might be necessary to add to the general principles when formulating new rights of the injured State and rights of third States, quoted the comments made in that connection by the Special Rapporteur (1668th and 1670th meetings) and Mr. Reuter (1669th meeting).

9. At the present stage of the debate, however, he wondered whether articles 1 to 3 should be maintained, even in an improved draft. Members of the Sixth Committee might share some or most of the doubts voiced by members of the Commission and might be misled by three articles which dealt mainly with the situation of the guilty or other State. In his view, therefore, the Drafting Committee should give serious consideration to the possibility of replacing articles 1 to 3 by an introductory article that would link Part 2 to Part 1 of the draft. The wording proposed by Sir Francis Vallat (1683rd meeting, para 32) would provide a convenient starting point for the Drafting Committee.

10. He noted that, in article 4, paragraph 1, the three new obligations of a State which had committed an internationally wrongful act were linked by the word "and"; so far as subparagraph 1 (*b*) was concerned, however, it should be preceded by the word "or".

11. He further noted that in article 5 the word "option", used in the sense of a right on the part of the guilty State, appeared twice. Bearing in mind the content of articles 1 to 3, that created the impression that the Commission was mainly interested in the position of the wrongdoer. It was unfortunate that the draft article dealt first with the wrongdoer, then with new obligations of the wrongdoer and, lastly, with the option open to the wrongdoer. It would have been preferable to start with the rights of the injured State, which corresponded to the obligations of the wrongdoer. In that connection, he observed that lawyers would do well to avoid the word "parameter", which was more appropriate in the context of sociology.

12. He had understood the Special Rapporteur to say that chapter III, concerning the new rights of the injured State, might involve no more than a suspension of obligations. He would appreciate it if his understanding could be confirmed.

13. If the articles were maintained as drafted, it should be made clear in the commentary that no attempt was being made to draw up a "Magna Carta" for the State that had committed the wrongful act.

14. On two points of drafting, he said he considered that article 4 should not start with a reference to article 5. If such a reference was really necessary, it should be placed at the end of article 4, possibly in a separate paragraph. He also considered that the words "has the option", in article 5, paragraph 1, should be replaced by the word "may", leaving it to be explained in the commentary that what was involved was an option for the State that committed the internationally wrongful act.

15. Mr. USHAKOV, supplementing his statement made at the previous meeting, said that of all the rights of the injured State, the most important was undoubtedly the right to take countermeasures in consequence of an internationally wrongful act. Draft article 30 of Part 1, which was devoted to countermeasures, concerned not only international crimes, but also international delicts. Whatever the internationally wrongful act, the injured State could therefore take countermeasures—provided, of course, that they were legitimate under international law. Countermeasures could be taken as soon as an internationally wrongful act had been committed and in advance of any request for *restitutio in integrum* or for reparation. The Special Rapporteur did not seem to have taken that right into consideration in his listing of the rights of the injured State. In doctrine, however, the injured State, and possibly other States, had the right to take countermeasures, which were sometimes described as measures of retaliation or unarmed reprisals. It followed that, even if the Commission confined itself in the first instance to international delicts, it would have

to make allowance, on the basis of doctrine as well as of States practice and international jurisprudence, for the right to take countermeasures.

16. Mr. YANKOV, agreeing that the subject under discussion called for careful study in all its facets, said he greatly appreciated the theoretical value of the suggestions which the Special Rapporteur had made. His initial thought on reading a set of draft articles, however, was always: How would Governments react? Would they feel that the rules were too general and theoretical to be of practical use to diplomats and practising lawyers? He raised the point not out of any wish to criticise, but as a general warning. In future, for example, it might be desirable to concentrate more on State practice than on analyses of a purely theoretical nature. It would also be useful to take account of the work being pursued by other bodies concerned with codification.

17. On specific points, he said that he endorsed, in particular, the views set forth in paragraphs 82 to 86 of the Special Rapporteur's report (A/CN.4/344). He also agreed on the need to link Parts 1 and 2 of the draft. He considered, however, that the reference in article 4, subparagraph 1 (*a*), to release and return of persons and objects held through the internationally wrongful act was a somewhat restrictive illustration of an otherwise very general rule. In his view, there were other equally important aspects of the wrongful act that might likewise deserve emphasis, so that if one such aspect was spelt out, it might be thought necessary to enumerate them all.

18. The same point arose in connection with the three-step approach provided for under articles 4 and 5—the three steps being stopping the breach, reparation, and restitution or re-establishment of the situation as it had existed before the breach. The question was whether release or return of persons and objects held through the breach might not be interpreted, in certain circumstances, as a re-establishment of the situation as it had existed before that breach.

19. Mr. SUCHARITKUL said that he agreed entirely with the Special Rapporteur regarding the need for a general approach not only to articles 1, 2 and 3, but also to articles 4 and 5. Paragraph 1 of article 4, in particular, called for careful consideration, since its wording had far-reaching implications. As he saw the matter, the obligations of a State which committed an internationally wrongful act could be divided into three types in terms of time: present obligations, past obligations, and future or continuing obligations.

20. Applying that approach to article 4, subparagraph 1 (*a*), which laid down a general obligation to discontinue the wrongful act, he would cite as an example of the first type of obligation one that arose out of an isolated act such as the killing of hostages. In such a case, the requirement under subparagraph 1 (*a*) would have little meaning if the hostages had already been killed, although to discontinue the wrongful act could be interpreted to mean not killing any more hostages, in which case the obligation would be one for a future obligation. As an example of the second type of obligation he would cite the obligation that arose out of violation of air space. In such cases, the wrongful act was committed at the moment of the intrusion into the air space. It was not always easy to discontinue such an act immediately. Moreover, once the aircraft left the air space of a territory, there was no longer any violation and, consequently, discontinuance was no longer possible. Thirdly, an example of a future or continuing obligation was holding hostages or occupying diplomatic premises.

21. Bearing in mind those three types of obligation, he agreed fully that it was necessary to apply general principles, rather than enumerate all possible cases.

22. The concept of apology, provided for in article 4, paragraph 3, was also in the nature of a future obligation, inasmuch as it amounted to an assurance that there would be no recurrence of the wrongdoing. He knew of several instances when apologies, incorporating by implication such assurances, had been readily accepted by the wronged State. Apology, therefore, was more than a matter of comity.

23. Lastly, while he thought that there might be some justification for dealing with the treatment of aliens in a separate article, as in article 5, he wondered whether there might not be equal justification for dealing separately with other types of internationally wrongful act. Clearly, treatment of aliens was a classical concept of State responsibility, but the Commission was seeking to cover a much wider field of State responsibility.

24. He also shared the concern voiced regarding the subjective element: damage and compensation, in his view, had to be assessed on the basis of the extent of the damage suffered and damage intended. Consequently, the criterion should be the actual physical consequences suffered, rather than the wrongdoer's intent. In that connection, he noted the reference made to the inherent obligation to submit to, or accept, countermeasures.

25. Mr. REUTER, referring to the comments by Mr. Ushakov, stressed that, by deliberately using an expression as vague as that of "countermeasures" in the title of draft article 30 of Part 1, the Commission had placed itself in the position of having to make that term more specific in Part 2. In its report on the work of the current session, it would have to indicate whether it intended to exclude certain aspects of countermeasures or to deal with them later. The expression "countermeasures", which involved solely the idea of posteriority, denoted all measures taken in consequence of an internationally wrongful act. The problems which it raised were of four kinds.

26. Some of those problems had been examined by the Commission and were regulated in the Vienna

Convention.[3] That instrument indicated which countermeasures could be taken in consequence of a breach of an obligation arising from a treaty. However, no decision had been taken with regard to customary obligations, and it was perhaps time for the Commission to take up that matter.

27. Other problems related to the concept of equivalence, which made possible, in the event of a breach of an obligation arising from a treaty, the adoption of measures other than those authorized by the treaty. Still further problems arose from the fact that the concept of equivalence was rarely respected in practice. All too often, the State which took countermeasures acted with the idea of constraining *restitutio in integrum*. For example, could a State, in order to ensure observance of an air transport agreement, take measures which, while remaining within the framework of that agreement, were accompanied by coercion? In his opinion, such a situation did not involve responsibility, but the power to exercise coercion, particularly armed coercion. If the Commission shared his opinion, it should state so explicitly in its report.

28. Lastly, countermeasures posed the serious problem of penalty. In Part 1 of the draft articles, the Commission had taken the course of recognizing, in respect of responsibility, genuine criminal responsibility. In that connection, he observed that the concept of punishment deliberately decided upon *ex post facto* must be distinguished from the concept of coercion, which could go beyond self-defence. While it might be true that a State could disarm an aggressor in the heat of the action, could it impose a penalty on that aggressor after the event? By admitting the existence of international crimes, and perhaps even international delicts, the Commission seemed to be moving towards the acceptance of such a possibility.

29. Although he had not yet dealt with those questions, the Special Rapporteur no doubt had them in mind and intended to take them up at a subsequent stage. However, it might be appropriate for the Commission to refer to them without delay in its report.

30. Mr. USHAKOV stressed that the question of proportionality arose only in the case of countermeasures, and not in that of *restitutio in integrum* or reparation.

31. The rights of the injured State (and possibly of other States) should include the right to demand guarantees against the repetition of an internationally wrongful act, whether that act was a crime or international delict.

32. Mr. RIPHAGEN (Special Rapporteur), summing up the discussion, recalled that, in his preliminary report,[4] he had made clear his intention to deal separately with the various aspects of the topic covered in Part 2 of the draft articles. Draft articles 4 and 5 were concerned not with the new rights of other States, but with the new obligations of the author State. Consequently, the references made by some members of the Commission to the question of countermeasures were not yet relevant, since that aspect was to be dealt with later.

33. As to the possibility of dealing with the question of countermeasures first, he saw no difficulty in re-drafting articles 4 and 5 to indicate what other States could require of the State which was the author of a wrongful act. However, to do so, it would first be necessary to define what were the obligations of the author State. Moreover, the draft articles would still have to deal with the question what the author State could do to avoid countermeasures.

34. Referring to observations made concerning draft article 4, subparagraph 1 (*b*), he said that the belated or substitute performance of an international obligation could not be equated with the equivalent result referred to in article 22 of Part 1 of the draft articles, although there was inevitably some overlapping.

35. A number of speakers had referred to the need for more references to practice and jurisprudence. As he had explained in paragraph 105 of his report, he had found that the past reports of the Commission on the topic contained a wealth of jurisprudence which he had considered it unnecessary to repeat. Moreover, very little jurisprudence existed concerning the questions dealt with in draft articles 4 and 5.

36. In referring to draft article 1, Mr. Barboza (1683rd meeting) had expressed some doubts as to whether an obligation could survive a wrongful act. It should be noted in that connection that, even in the event of the breach of an obligation to pay an amount of money by a certain date, the obligation to pay still existed.

37. With regard to draft article 4, subparagraph 1 (*c*), it was doubtful whether a standard as sweeping as that applied in the *Factory in Chórzow* case (see A/CN.4/344, para. 37) could be considered adequate in terms of modern international law.

38. Concerning the question of reparation as substitute performance of an obligation, he said that it might be somewhat optimistic to believe that a perfect balance could be achieved. Moreover, while he agreed that the question of the real sanctions which might be applied should be dealt with, it would not be appropriate to do so in the context of the obligations of the author State.

39. With regard to draft article 5, he said that he did not regard the re-establishment of the situation that had existed prior to the breach as a general obligation of the author State, but simply as a qualified obligation existing in cases relating to the treatment of aliens. Indeed, in practice, international tribunals most fre-

[3] *Ibid*, footnote 4.

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

quently called for reparations, rather than the re-establishment of the situation as it had existed before the breach.

40. He had already referred, at the previous meeting, to Sir Francis Vallat's proposal concerning the drafting of an article that would serve as a link between Parts 1 and 2 of the draft. That proposal was also consistent with the approach advocated by Mr. Ushakov, and should be accorded careful consideration. As he understood it, the proposed article was not to replace the existing draft articles 1 to 3, but was simply to serve as an introduction to them.

41. Referring to observations made by Mr. Quentin-Baxter concerning draft articles 4 and 5, he said that some overlapping between the three parameters proposed was inevitable.

42. With regard to the question of an analogy with draft article 22 of Part 1, he said that in substance there was a link between the obligation to exhaust local remedies and the typical nature of obligations relating to the treatment of aliens.

43. Referring to article 4, subparagraph 1 (*b*), he said that, while a State could certainly not invoke its internal law as an excuse for failure to perform its obligations, it was nevertheless helpful, when an obligation had been breached, if States could apply such remedies as were provided for within the framework of their own legal systems.

44. Without being presented with specific examples, it was difficult to determine whether the obligation to re-establish the situation as it had existed before the breach disappeared only in the cases mentioned in draft article 5. If there were other cases in which the provisions of article 4, subparagraph 1 (*c*), were not applicable, they could certainly be mentioned.

45. With regard to Mr. Quentin-Baxter's observations concerning article 5, subparagraph 2 (*b*), he said that he knew of no case in which a State had been required to enact legislative measures with retroactive effect.

46. Finally, Mr. Quentin-Baxter had correctly noted that article 4, subparagraph 1 (*a*), did not refer to remedies. He had in fact stated as much in his report. Although some authors referred to the practice of discontinuation of a wrongful act as an example of *restitutio in integrum*, the two generally did not coincide.

47. Referring to observations made by Mr. Verosta, he said that he still held the view that draft articles 1 to 3, if drafted in the manner proposed by Mr. Aldrich (1669th meeting, paras. 5 and 6), could serve a useful purpose as an introduction to Part 2.

48. With regard to draft article 4, subparagraphs 1 (*a*) and (*b*), he said that even if the breach was discontinued there could be consequences which required reparation, or even the re-establishment of the situation as it had existed before the breach. In many cases, there were three quite separate steps to be taken.

49. Referring to observations made by Mr. Ushakov and Mr. Reuter concerning the question of countermeasures, he said that, as he had stated earlier, that question was to be taken up at a later stage. He believed that there was much to be said for a step-by-step approach to the topic.

50. Mr. Yankov had criticized the abstract approach to Part 2 of the draft articles. However, a similar approach had been adopted to Part 1. The Commission should endeavour to strike a balance between practice and theory, if the articles were to have any practical value.

51. Mr. Yankov had also wondered whether subparagraph 1 (*a*) of article 4 might not be too restrictive, and whether it had any place in that article. The answer to the second question depended on the approach adopted to the draft. There could be no doubt that the injured State had the right to call for a discontinuation of the breach. Moreover, the subparagraph in question was prevented from being excessively restrictive by the inclusion of the words "and prevent continuing effects of such act".

52. Mr. Sucharitkul had presented an interesting analysis of the time element of international obligations, with which he fully agreed.

53. Referring to other observations made by Mr. Sucharitkul, he said that the provision of an apology to the injured State was referred to extensively both in literature and in jurisprudence as one of the consequences of an international wrongful act.

54. The question whether the provisions of draft article 5 could cover types of international obligation other than those concerning the treatment of aliens could be taken up in the Drafting Committee.

55. The intent of the author State was important in the cases referred to in draft article 5. A clear distinction existed between an incidental violation of an obligation concerning the treatment of aliens by a State, which involved no deliberate intention to cause harm to another State, and the deliberate massacre of all the nationals of another State.

56. He proposed that draft articles 4 and 5 should be referred to the Drafting Committee.

57. Sir Francis VALLAT said that, in suggesting the insertion of a new introductory article, he had not intended to exclude the possibility of incorporating in the draft provisions based on draft articles 1 to 3. He did, however, have serious doubts as to the utility of including draft articles 2 and 3, at least in their current form.

58. Mr. VEROSTA, referring to his earlier statement, said that he had simply wondered whether any analogous norms discovered in the course of further research on the topic would be inserted in Part 2 of the

draft articles or whether it might not be more appropriate to place them in Part 1.

59. The CHAIRMAN said that, if there were no objections, he would take it that the Commission decided to refer draft articles 4 and 5 to the Drafting Committee.

It was so decided.

The meeting rose at 1 p.m.

1685th MEETING

Monday, 6 July 1981, at 3.30 p.m.

Chairman: Mr. Doudou THIAM

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

International liability for injurious consequences arising out of acts not prohibited by international law (A/CN.4/346 and Add.1 and 2)

[Item 5 of the agenda]

DRAFT ARTICLE SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 1 (Scope of these articles)

1. The CHAIRMAN invited the Special Rapporteur to introduce draft article 1 (A/CN.4/346 and Add.1 and 2, para. 93), which read:

Article 1. Scope of these articles

These articles apply when:

(*a*) activities undertaken within the territory or jurisdiction of a State give rise, beyond the territory of that State, to actual or potential loss or injury to another State or its nationals; and

(*b*) independently of these articles, the State within whose territory or jurisdiction the activities are undertaken has, in relation to those activities, obligations which correspond to legally protected interests of that other State.

2. Mr. QUENTIN-BAXTER (Special Rapporteur) said that in preparing his second report (A/CN.4/346 and Add.1 and 2) he had been guided by the Commission's view, which was supported by the Sixth Committee, that the topic should be dealt with in absolutely general terms.

3. One of the most important bases established at the preceding session of the Commission had been that the topic should be placed in the field of primary rules.[1] The many difficulties experienced by writers on the subject could be attributed to the lack of a distinction between primary and secondary rules. Usually the questions raised had been seen as involving a type of responsibility which was completely foreign to the classical rules of State responsibility. Out of that preconception had grown a very significant doctrinal impasse, in which the notion of strict liability had been seen as competing with the classical rules of State responsibility. In that regard, the distinctions emanating from Part 1 of the draft articles on State responsibility[2] had made it possible to reduce the real problem of strict liability to a more moderate perspective. Where the nature of an activity was such that the State in which the activity took place ought to have been aware of the possibility of injurious consequences arising out of the activity, or where representations had been made to it by the representatives of other States concerning such injurious consequences, the problem of strict liability scarcely arose. The problem of strict liability was limited to small categories of cases in which damage could not be foreseen and where wrongfulness was precluded, or in which no amount of care on the part of the State concerned could have prevented the occurrence of injurious consequences. However, those were exceptional cases which had, wrongly, been allowed to obscure much larger issues.

4. In the contemporary world, situations in which an activity conducted in one State produced harmful transboundary consequences were common, and it was more difficult than in the past to control or characterize such activities or to define the rights of the parties involved. Some writers on the topic considered it of paramount importance to maintain the traditional view that States were responsible only for consequences that were intended or foreseen and were still allowed to take place, while others, under the influence of municipal law, supported the concept of strict liability, under which certain activities were considered, by their very nature, as giving rise to consequences so harmful that any State allowing them to take place must accept responsibility for those consequences. However, that doctrine was not easily reconciled with the accepted doctrines of State responsibility. There had, therefore, been the strongest possible inducement to admit the doctrine, if at all, only in a very limited number of situations.

5. Great difficulty had been encountered in finding logically satisfying criteria to justify the abnormal admission of the doctrine. Those opposed to it saw it as an assertion of the view that all harm caused across a frontier was wrongful. However, Principle 21 of the Declaration of the United Nations Conference on the Human Environment (see A/CN.4/346 and Add.1

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[1] See *Yearbook ... 1980*, vol. II (Part Two), p. 160, para. 138.

[2] *Ibid.*, pp. 30 *et seq.*