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Summary record of the 1737th meeting

Topic:
State responsibility

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38. At the present session the Commission had concentrated on the various introductory provisions proposed by the Special Rapporteur in his third report (A/CN.4/354 and Add.1 and 2), and had referred back to those proposed in the second report (A/CN.4/344). It might be worth while to refer the old articles 1 to 3 and the new articles 1 to 6 to the Drafting Committee, on the understanding that consideration of them would not prejudge their placement within the draft as a whole. The old articles 4 and 5 might be redrafted as safeguard clauses and placed at the end, rather than at the beginning, of part 2. With regard to article 6, the Commission might consider the possibility of devoting a separate chapter to the legal consequences of international crimes, as opposed to international delicts. Such a chapter would need to be fuller than the existing article 6, since it would have to deal with the question of international crimes within the broad framework of the three parameters to which the Special Rapporteur had drawn attention.

The meeting rose at 1.05 p.m.

1737th MEETING

Wednesday, 30 June 1982, at 10 a.m.

Chairman: Mr. Paul REUTER

State responsibility (*continued*) (A/CN.4/342 and Add.1-4,[1] A/CN.4/344,[2] A/CN.4/351 and Add.1-3, A/CN.4/354 and Add.1 and 2, A/CN.4/L.339)

[Agenda item 3]

***Content, forms and degrees of international responsibility (part 2 of the draft articles)*[3] (continued)**

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

ARTICLES 1 to 6[4] (*continued*)

1. Mr. McCAFFREY said that it would be unfortunate if, for the second consecutive year, the Commission did not receive any draft articles on State responsibility from the Drafting Committee. He therefore strongly endorsed the suggestion (1736th meeting), made by Sir Ian Sinclair and Mr. Reuter that the Commission should select a manageable set of introductory general articles and refer them to the Drafting Committee. That step was important, not only for the information of the Sixth Committee, but also for the Special Rapporteur in continuing his work on the topic. At the current stage, it would be preferable not to attempt to deal with articles which began to present a catalogue of possible legal consequences of internationally wrongful acts. The Commission should first agree on general introductory provisions, and then turn to articles dealing with breaches of obligations flowing from various types of primary relationships. While he appreciated the Special Rapporteur's projection of the direction to be taken in the study of the topic, he agreed with the suggestion made by Mr. Calero Rodrigues (*ibid.*), that the Special Rapporteur should try to provide the Commission with a schematic outline of the topic.

2. He appreciated the Special Rapporteur's explanation (*ibid.*) of the reasons for the almost total withdrawal of the draft articles submitted in his second report (A/CN.4/344, para. 164). While he agreed with the withdrawal of articles 4 and 5, the same was not true of articles 1 and 3. Those articles served a useful purpose—at least at the current stage of the Commission's work—in defining the scope and effects of the provisions of part 2, although it might subsequently be found that they had no role to play in the final draft. One of the main criticisms of those articles had been that they focused too much on the author State, rather than on the victim State. The principles which they embodied were important, however, and might perhaps be placed later in the draft, rather than at the beginning, so that they did not set the tone for part 2. Moreover, those principles were so closely related that the two articles might be combined. One possible way of doing that was suggested in paragraphs 29 and 31 of the Special Rapporteur's third report (A/CN.4/354 and Add.1 and 2). That formulation, though obviously much more general than the texts of the two separate articles, could be enlarged upon in the commentary. Moreover, in view of the escape clause contained in the new draft article 3 (*ibid.*, para. 147), which referred to other applicable rules of international law, the suggested formulation would not imply that part 2 contained a complete regulation of the three parameters.

3. Another possible way of combining the two former articles would be simply to delete article 3 and to add to article 1 the words "nor does such a breach in itself deprive that State of its rights under international law". Article 3 should be carefully examined, however, to determine whether it was necessary to add some qualification concerning the right of self-defence, so that the provision could not be interpreted as meaning that the author State was protected against self-defence, which was justified by Article 51 of the Charter. In that respect, the more general formulation that had been proposed had its advantages.

4. He noted that, at the previous session, the Special Rapporteur had explained[5] that the former article 2 was meant to act as a kind of escape clause to enable any self-contained regime, established either by a treaty or by customary law, to be applied instead of the draft ar-

[1] Reproduced in *Yearbook ... 1981*, vol. II (Part One).

[2] *Ibid.*

[3] Part 1 of the draft articles (Origin of international responsibility), articles 1 to 35 of which were adopted on first reading, appears in *Yearbook ... 1980*, vol. II (Part Two), pp. 30 *et seq.*

[4] For the texts, see 1731st meeting, para. 2.

[5] *Yearbook ... 1981*, vol. I, p. 130, 1667th meeting, para. 3.

ticles. The new article 3 performed the same function, though more effectively, because it was more clearly formulated. He agreed with previous speakers that article 3 could still be improved on and endorsed the suggestions made (1733rd meeting) by Mr. Jagota and Mr. Calero Rodrigues on that point.

5. While the principles stated in the former draft article 4 were of a fundamental character and had a place in chapter II of part 2, the Commission should not deal with those specific principles at the current stage, but should concentrate on laying a foundation, in the form of an introductory first chapter, for the following year's work. The same considerations applied to the former draft article 5.

6. He agreed with previous speakers that the new article 6 concerned an area in which the Commission would have to proceed very cautiously. Also like other speakers, he could not support it in its current form. It would be preferable for the Commission not to dissipate its energies on such a highly sensitive subject before laying the general groundwork for part 2 of the draft articles.

7. With regard to the relationship between the articles submitted in the second report and those in the third report, it would seem most practical, at that stage, to focus on the articles of a general or introductory nature, on the substance of which the Commission was in general agreement. One way of organizing the selected draft articles from the second and third reports would be to begin with the new article 3, placing after it the combined former articles 1 and 3, and then the new articles 2, 4 and 5, though not necessarily in that order.

8. As he had said earlier, he agreed with the Special Rapporteur that the new article 1 did not state a substantive rule and could therefore be omitted. Indeed, the fact that some members of the Commission thought it did state a substantive rule indicated that it was potentially misleading and should be deleted. In conclusion, he proposed that the former draft articles 1 and 3 in the second report, together with the new draft articles 2, 3, 4 and 5 in the third report, should be referred to the Drafting Committee.

9. Mr. YANKOV said he agreed with many of the proposals and comments made by previous speakers. He noted that, at both the preceding and the current sessions, the Commission had devoted much time to considering the question of the link between parts 1 and 2 of the draft. While that question was of some significance, the Commission should consider its practical, rather than its general conceptual or philosophical aspects. The question could not be debated exhaustively and, rather than attempt further analysis of the main features of the rules constituting the framework of part 1, the Commission should go on to consider the consequential nature of the rights and duties of States or the legal relationships deriving from them. Failure to adopt a more practical approach could leave the Commission open to criticism that it spent more time in doctrinal debate than in studying the urgent problems of internationally wrongful acts and State responsibility. The Commission also had a duty to provide the Special Rapporteur with specific guidelines for his future work. The first report on State responsibility had been submitted to the Commission in 1955, and since that time, all facets of the topic had been discussed, so it was not as though the Commission was only just beginning its work.

10. He agreed with a number of members of the Commission that the linking article, namely the new draft article 1, appeared to be a repetition of something already stated in part 1, and that it might ultimately prove to be of little significance. Article 1 was purely introductory, as the Special Rapporteur himself had said, so it could not be regarded as dealing with any essential aspect of part 2.

11. The main issues to which the Commission should address itself were those relating to the consequences and nature of the legal relationships arising out of internationally wrongful acts. It should define the nature and scope of the consequences and draw up a catalogue of them which, although it could not be exhaustive, could be sufficiently indicative to render the rules set out in the draft articles pertinent and give them legal weight.

12. Many members of the Commission had referred to the difficulties resulting from internationally wrongful acts or the abuse of power on the pretext of self-defence. It was generally agreed that inernational law, as a doctrine and a system of legal rules, had undergone significant changes where the concept of international responsibility was concerned. There had been a noticeable broadening in the scope of that concept, so that the consequential relationships arising out of internationally wrongful acts were currently seen in terms of both *ratione personae* and *ratione materiae*. Obviously, in most instances, the consequential relationship arising out of an internationally wrongful act would be a direct relationship between the author State and the injured State. Nevertheless, the global system of international relationships had undergone changes which should be taken into account in the Commission's consideration of the articles to be included in part 2. A case in point was the inherent right of self-defence. While it was true that that right was provided for in Article 51 of the Charter of the United Nations, the world had developed since the drafting of that provision. Unless the Commission attempted to define what constituted self-defence by States it would be failing to deal with a very important aspect of the topic under study.

13. In his view, the new draft articles 1 to 6, as contained in the Special Rapporteur's third report (A/CN.4/354 and Add.1 and 2, paras. 145-150), did not constitute an adequate basis for a set of viable and effective rules dealing with the relationships arising out of internationally wrongful acts.

14. With regard to the question of proportionality, he agreed with the views expressed by Mr. Ushakov (1733rd meeting), not only because of the difficulty of

defining the concept, but also because of the significant differences between the international legal order and internal law, in terms of material rules and institutional lawmaking, enforcement and adjudication machinery. How were damages to be assessed on a basis of proportionality, and who was to make the assessment? Even if the assessment was to be made in purely material terms, difficulties could arise, since questions of State responsibility and, in particular, those concerning the degrees of that responsibility, had very clear political connotations, which made objective and impartial assessment difficult. While he did not altogether rule out the enunciation of a principle of proportionality, the question should be approached with caution.

15. He doubted whether article 3 was adequate in its present form and agreed with the suggestions made by Mr. Calero Rodrigues (*ibid.*), Mr. Ushakov (1734th meeting), and other speakers for redrafting it. In conclusion, he agreed with the suggestion that the Special Rapporteur should provide a schematic outline of the draft in order to facilitate the Commission's work.

16. Mr. QUENTIN-BAXTER said he agreed with the emerging consensus in the Commission that a small group of draft articles could be adopted at the current session, in order to facilitate the future work of the Commission and of the Special Rapporteur and to provide a focus for discussion in the Sixth Committee of the General Assembly.

17. He also agreed with the view expressed by a number of members of the Commission that the new draft article 6 raised questions of such importance and of such a special nature that the Commission should not attempt to settle them in the short time available at the current session. It was important to include such an article in the draft, since it clarified a very important area of the Commission's work; but for the time being, greater progress could be made by considering the other articles.

18. He would be content to take no definitive action on the new draft article 1, which should not be seen as stating a broad positive rule, but as providing a link with part 1 of the draft. While there was nothing to be lost by postponing discussion on whether article 1 was necessary, he was not convinced that the draft would be complete without some provision on similar lines. Further consideration of the former draft articles 1 and 3 might help the Commission to reach a decision in that regard. Those articles had a place in the draft; the Commission should not hesitate to state even the most basic propositions when dealing with a topic of such great profundity. He would prefer the two articles not to be combined, since the propositions they contained were not linked. The texts could be considered by the Drafting Committee.

19. The Drafting Committee had received sufficient guidance from the Commission to enable it to deal with the new articles 3, 4 and 5. He agreed with the view that article 3 should be regarded as an improved version of the former article 2. It drew attention to the fact that, in dealing with primary and secondary rules, the Commission was dealing with abstractions rather than ultimate realities, and the proposition it stated was sufficiently important to justify its inclusion in the draft. There appeared to be general agreement that the new articles 4 and 5 were pertinent to the Commission's work on the topic.

20. The new article 2 could give rise to difficulties. The concept of proportionality, though of considerable importance and having a place in the draft, was so vast that considerable thought would be needed to decide what could be said about it at that stage. Moreover, the article was drafted in such broad terms that it might even be thought to suggest that a great deal of disproportionality was to be expected. It went beyond the question of reparations into the difficult realm of contermeasures and sanctions. Draft article 2 should be referred to the Drafting Committee at the current session, but only after further consideration by the Commission.

21. Mr. KOROMA said he fully approved of the symmetrical approach to the structure of part 2 which had been proposed by Mr. McCaffrey, and which the Special Rapporteur should be encouraged to adopt, especially as several members of the Commission had said that the original structure of part 2 should not have been abandoned. The Commission should nevertheless be careful not to repeat every category of legal consequences in the articles relating to the three parameters. The proposed restructuring should not apply to article 6, which, like article 19 in part 1, could stand on its own.

22. There was definitively a case for establishing a link between parts 1 and 2 of the draft, as had been made abundantly clear in chapter V of the third report. (A/CN.4/354 and Add.1 and 2). That link could be established by deleting the words "in conformity with the provisions of the present part two" from the new article 1, which could then be referred to the Drafting Committee together with the new articles 2 and 3.

23. It would also be helpful to retain the former articles 1 to 5 proposed in the second report (A/CN.4/344, para. 164). Indeed, if the former articles 1 and 3 were combined, they would provide an obvious reference to the principle of proportionality embodied in the new article 2.

24. At the previous meeting he had expressed the view that, although it would be for States to determine criteria relating to self-defence, the Commission could suggest objective criteria to guide States in that undertaking. He had meant that the Commission should provide objective criteria which might help States to determine exactly when the exercise of the right of self-defence was tantamount to a breach of an international obligation entailing international responsibility.

25. Mr. USHAKOV suggested that part 2 of the draft should begin with an article 1, paragraph 1 of which could be worded on the following lines:

"The international responsibility of a State engaged under the provisions of part 1 of the present articles consists in measures, restrictions and other legal consequences of an internationally wrongful act of the State for the States concerned provided for by international law."

The reference to the responsibility of a State engaged under the provisions of part 1 of the draft would provide a link between parts 1 and 2; the reference to measures, restrictions and other legal consequences of an internationally wrongful act covered sanctions in so far as they were defined as legal consequences. Paragraph 2 of article 1 could be drafted to read:

"The measures, restrictions and other legal consequences of an internationally wrongful act referred to in paragraph 1 may be applied, as appropriate, by the United Nations and/or by the State or States so authorized by international law."

The provision would thus draw a distinction between legal consequences according to whether they could be applied by the organized international community or by the authorized State or States.

26. It was important to start by drawing up a list of the possible legal consequences of an internationally wrongful act. In drawing up that list, which could not be exhaustive, the Commission could be guided by the measures provided for in the Charter of the United Nations. But of course other legal consequences were provided for by international law. Once those legal consequences had been ascertained from practice and the list had been drawn up, it would be possible to specify when and how they could be applied. But it was with the most serious internationally wrongful acts, namely international crimes, that the Commission should begin. If it did not adopt that method, it would be bogged down in vain theoretical discussions. In his view, it was pointless to dwell on distinctions between a general regime of international responsibility and subsystems.

27. Mr. RIPHAGEN (Special Rapporteur), summing up the debate, said he had an open mind about the new article 1, which he had proposed in his third report in response to a request by the Commission. That article could either be regarded merely as a kind of "menu" and, therefore, as unnecessary, or it could be worded exhaustively to prevent it from being interpreted *a contrario*. Some members of the Commission had said that the new article 1 should refer to the three parameters, while others had suggested that a reference to "other rules of international law" should be added at the end; the inclusion of those words would, however, make it necessary to consider the relationship between article 1 and article 3. Mr. Jagota (1733rd meeting) had said that a reference to the rules of international law might give the impression that the articles the Commission was proposing were very tentative indeed. The drafting suggestions could be considered by the Drafting Committee.

28. Many members had referred to the former articles 1 and 3 proposed in his second report (A/CN.4/344, para. 164) and had, in general, seemed to appreciate those articles more at the current session than they had at the previous session. Although he would, of course, be willing to retain those articles as a kind of framework for the various legal consequences that arose if the author State refused to stop a breach, they could be considered self-evident or even, as Mr. Barboza had said, illogical. In that connection, Mr. Barboza (1734th meeting) had cited the example of an international obligation to pay a specific sum of money on a certain date, payment made later being regarded only as a performance of a substitute obligation; but as Mr. Francis had said (*ibid.*), that was an exceptional case, because most international obligations were expressed in abstract terms. The rule stated in the former article 3 was, as many members had pointed out, already implied by the principle of proportionality; in their view, that rule gave too much protection to the author State. In any event, the former articles 1 and 3 could be discussed by the Drafting Committee in connection with its consideration of the new article 1.

29. Referring to the proposal made by a number of speakers that the new article 3 should be placed immediately after the new article 1, he said it was true that there was an obvious link between such a general article and the deviations that might be allowed to States which agreed *inter se* on certain obligations and on the legal consequences of a breach of those obligations. But there was also an obvious link between the new article 3 and the new articles 4 and 5, inasmuch as the special rules agreed on by States in establishing obligations were subject to the rules embodied in articles 4 to 6. Most members of the Commission had agreed that the wording of the new article 3 should not be so broad as to detract from the meaning of all the other articles. The words "to the extent" and the word "prescribed" in that article had been criticized, but the function of those words was merely to shift the burden of proof. The Drafting Committee could take that point into account and also discuss the use of the word "every", which should probably be avoided in a legal text such as the one being prepared.

30. The new article 2 on proportionality had been both acclaimed and rejected. He had drafted it, however, only in order to deal with what was known as quantitative proportionality, namely, proportionality between the facts of the case. He attached considerable importance to the words "the performance of the obligations" and the words "the exercise of the rights", because article 2 referred to the fact that, in each particular case, account had to be taken of the seriousness of the act and the seriousness of the response to that act, through the application of some rule of proportionality, and to the fact that every international obligation stated in abstract terms could be more or less seriously breached. Article 2 of the Definition of Aggression[6] provided that the Security Council might, in certain circumstances, determine that an act of aggression was not

[6] General Assembly resolution 3314 (XXIX) of 14 December 1974, annex.

to be regarded as such because it had not been of sufficient gravity. It was thus not only a breach, but also an obligation, that might be more or less serious, but as Mr. Ushakov had pointed out (1733rd meeting), it was for the lawmakers to characterize certain types of obligations as being more important than others. In any case, the difference between the two types of proportionality should be taken into account.

31. Several members of the Commission had said that article 2 had not been drafted forcefully enough, particularly because of the use of the word "should" and the words "manifestly disproportional". He had decided to use the words "manifestly disproportional" after studying the Commission's comments and reports on the draft articles in part 1 and, in particular, article 34 on self-defence, in connection with which the Commission had referred to logic and the context of each particular case, in a vague reference to "proportionality".[7] He nevertheless had an open mind about the use of the expression "manifestly disproportional", which could be discussed by the Drafting Committee.

32. The new article 4 had not met with much criticism, except by Mr. Ushakov (1734th meeting), with whom he agreed that the concept of *jus cogens* was not entirely clear, although he did think that it was concerned with the safeguarding of the human being, who must not be the victim of a response to an internationally wrongful act. Under the humanitarian law relating to armed conflict, for example, restrictions on methods of warfare were, after all, valid both for an aggresssor State and for a State acting in self-defence. Even if self-defence could be invoked, account still had to be taken of humanitarian rules. It was to a limitation on possible reactions to an internationally wrongful act that article 4 related.

33. Article 5, which had met with little criticism, referred to the peremptory rules embodied in the Charter of the United Nations, which applied to any internationally wrongful act. Mr. Malek (1732nd meeting) had maintained that the Commission should also deal with the concept of self-defence and indicate in greater detail whether that concept was or was not applicable. That view had been supported by Mr. Koroma, but opposed by Mr. Evensen (1733rd meeting), Sir Ian Sinclair (1736th meeting), Mr. Ushakov (*ibid.*) and Mr. Yankov. His own view was that the Commission would have a hard time dealing with the question of self-defence, because States had expressed very different views on it. Indeed, the widely varying practice and views of States in regard to self-defence would make it very difficult for the Commission to propose any provision that would be acceptable to all of them.

34. The new article 6 had received as much criticism as was to be expected. What he had attempted to do in that article was to explore an uncharted area of State practice. The notion of an international crime defined in article 19 of part 1 of the draft was a new one, and there had not been much experience of the responses of States to such crimes, especially as article 19 covered so many different matters. Article 6 was thus an attempt to start a discussion, but it was certainly not intended to give an exhaustive list of the consequences of international crimes. Perhaps Mr. Calero Rodrigues had been right in suggesting (1733rd meeting) that, at that stage, it would be better only to refer in article 6 to the fact that the obligations arose for "every other State". That would certainly make it easier to draft article 6. He would also urge the Commission not to follow the *a contrario* argument that whatever was not stated in article 6 was not a legal consequence of an international crime. It seemed obvious to him that, in regard to some of the crimes referred to in article 19, some States might be more concerned than others; what article 6 was intended to do was merely to describe the minimum for all States.

35. In reply to a question put by Mr. Balanda (1734th meeting), he said that, since the obligations provided for in article 6 applied to victim States, such States were indeed under an obligation to exercise their rights.

36. He had to disagree with Mr. Ushakov (*ibid.*) that article 6, subparagraph 1 (*a*), applied to all breaches of international obligations. There were international obligations within the meaning of part 1 of the draft which played a role only in bilateral relations. In such cases, third States were not necessarily under an obligation not to recognize the result of a breach. For example, a treaty between State A and State B, relating to the protection of investments, might contain a rule providing that the investments of one of those States in the other State must not be nationalized without adequate compensation. He submitted that if it was alleged by State A that State B had not acted in accordance with that bilateral obligation, a third State could not take a stand on that matter, which concerned only State A and State B. He therefore doubted that subparagraph 1 (*a*) of article 6 applied to the breach of all international obligations.

37. Mr. Ushakov had also criticized subparagraph 1 (*b*) as being a modification of article 27 in part 1 of the draft. He did not think that was true, because article 27 dealt with aid and assistance given by one State to another State for the commission of an internationally wrongful act, whereas article 6, subparagraph 1 (*b*), referred to the situation created by such an act. As far as subparagraph 1 (*c*) was concerned, there might be some circumstances in which third States had an obligation to help other States to redress the situation created by an internationally wrongful act.

38. Since there were so many unsolved problems concerning article 6, particularly as a result of its relationship with article 1, it might be better to wait until more work had been done on the article before referring it to the Drafting Committee.

39. He wished to make it quite clear that, contrary to what Mr. Ushakov had said (1732nd meeting), the ar-

[7] *Yearbook ... 1980*, vol. II (Part Two), p. 60, para. (22) of the commentary to article 34.

ticles proposed in his third report had in no way been intended to depart or detract from the articles in part 1. With regard to the sources of obligations, Mr. Ushakov had referred to article 17, which was, of course, very relevant to part 1, though it was less relevant to part 2, because a technical breach of a bilateral treaty would not have the same legal consequences as an international crime and because, in principle, the breach of a bilateral treaty had consequences only for the parties to that treaty. In any event, article 17 did not prejudge the legal consequences of the breach of an international obligation. Although it was open to discussion whether a treaty establishing a boundary in itself created obligations, the Commission had, in the past, recognized that there were special treaties which created objective regimes, the object and purpose of which were different from those of other treaties and which must be taken into account at some point in the Commission's work on the topic of State responsibility.

40. Mr. Malek (1731st meeting) had referred to article 35 in part 1 and asked whether it should not be enlarged upon in part 2. The Commission had discussed that question and agreed that it should be dealt with in the context of Mr. Quentin-Baxter's topic.

41. Sir Ian Sinclair (1733rd meeting) had requested him to explain the meaning of the terms "system" and "subsystem". Other members had also had difficulty with those terms, which he had attempted to define in his oral introduction to the third report (1731st meeting) and which, as he had said, referred to substantive, procedural and status rules. He would never use those terms in the text of an article, however; they had merely been suggested as "background" terms to illustrate the great difficulties involved in fitting all the elements of the topic into a set of draft articles.

42. In reply to some of the questions raised at the current meeting, he noted that criticism had been directed at the new introductory articles in general and the new article 2, on proportionality, in particular. In trying to answer the question who was to be the judge of proportionality, it would be difficult for the Commission to avoid using terms that required interpretation. He would be glad if the members of the Commission were in favour of including a provision on the settlement of disputes, because it was unlikely that States would ever agree to rules on State responsibility unless provision was made for a dispute settlement procedure, and because part 2, like part 1, was bound to refer to rules of *jus cogens*.

43. Mr. McCaffrey had made some comments on the structure of part 2, and of part 3 on implementation, suggesting that separate chapters should contain introductory articles and articles on the three parameters. He had taken note of that suggestion and of the remarks made by other members to the effect that the three parameters should not put the articles in a straightjacket. He had introduced the three parameters only in order to provide a background or framework for the Commission's thinking, however, and he was not absolutely sure that it would be possible to fit them into the text of the draft articles.

The meeting rose at 1 p.m.

1738th MEETING

Thursday, 1 July 1982, at 10 a.m.

Chairman: Mr. Paul REUTER

State responsibility (*concluded*) (A/CN.4/342 and Add.1-4,[1] A/CN.4/344,[2] A/CN.4/351 and Add.1-3, A/CN.4/354 and Add.1 and 2, A/CN.4/L.339)

[Agenda item 3]

Content, forms and degrees of international responsibility (part 2 of the draft articles)[3] (concluded)

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

ARTICLES 1 to 6[4] (*concluded*)

1. Mr. RIPHAGEN (Special Rapporteur), continuing his summing up, said he had been pleased to note that the members of the Commission seemed to agree that a number of framework articles would be useful; that a catalogue of the legal consequences of an internationally wrongful act should be drawn up; that consideration should be given to the circumstances in which legal consequences might be precluded; and that a part 3 on implementation would be necessary.

2. Although there had been some criticism of the content and wording of the new articles 2 and 6, the idea that provisions along those lines should be included somewhere in the draft had been generally supported. The problem of the order in which the articles would be placed in the draft was of minor importance at the current stage and could be solved by the Drafting Committee.

3. The new article 6 had been criticized mainly because it might be interpreted as a provision which prescribed all the legal consequences of an international crime. Such an interpretation would, however, be incorrect and might be the result of the persistent tendency of lawyers to reason *a contrario*. The Drafting Committee might therefore consider Mr. Calero Rodrigues' suggestion (1733rd meeting) that, in article 6, account should be taken only of some of the legal consequences of an

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[1] Reproduced in *Yearbook ... 1981*, vol. II (Part One).

[2] *Ibid.*

[3] Part 1 of the draft articles (Origin of international responsibility), articles 1 to 35 of which were adopted on first reading, appears in *Yearbook ... 1980*, vol. II (Part Two), pp. 30 *et seq.*

[4] For the texts, see 1731st meeting, para. 2.