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Summary record of the 1207th meeting

Topic:
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Extract from the Yearbook of the International Law Commission:-
1973, vol. I

25. Article 2 as proposed by the Special Rapporteur was therefore satisfactory, subject to any improvements the Drafting Committee could make in the light of the discussion.

26. The CHAIRMAN, speaking as a member of the Commission, said he was in agreement with the formulation of article 2 and with the theoretical and practical considerations which preceded it in the Special Rapporteur's third report (A/CN.4/246, paras. 49 to 74).

27. He supported the basic conception of State responsibility as consisting of two elements: a subjective one and an objective one. The subjective element was constituted by conduct capable of being attributed to the State concerned, not to an individual or a group of individuals. That link with the State was of a legal character. It was not a natural connexion. As Kelsen had pointed out, the link was not that which connected cause and effect but, like all legal links, that which connected means and ends.

28. In that respect, he fully agreed with the view that the legal connexion in question had to be established in international law and not in internal law. The attribution of responsibility to the State was a matter governed by international law, not by internal law.

29. With regard to the objective element, he agreed with the Special Rapporteur that what gave rise to State responsibility was not the breach of a primary rule of international law, but failure to comply with an international obligation incumbent upon the State. Such an obligation could have its source, for example, in treaty rights or in a judgement or arbitral award.

30. He supported the Special Rapporteur's treatment of the problem of abuse of rights. The importance of that problem in the context of State responsibility was not in doubt, but it did not affect the secondary rules governing State responsibility as such. The problem was really whether there was a primary rule of international law which limited the exercise by the State of its rights or capacities. If international law recognized such a limitation, the abuse of a right by a State would then necessarily constitute a breach of the primary rule which laid down that limitation.

31. The Special Rapporteur had rightly not included injury among the constituent elements of State responsibility. Some confusion had arisen on that point because in regard to the treatment of aliens it had been repeatedly held that no claim could be preferred in the absence of an injury to the alien concerned. The reason was, of course, that a State's obligation in the matter was, essentially, not to injure aliens wrongfully or allow them to be injured under certain circumstances. Where no injury could be established, there was no breach of the relevant primary rule of international law, so that State responsibility did not come into play. That did not mean, however, that the existence of injury was a necessary component of State responsibility.

32. Lastly, there were certain omissions which in themselves constituted violations of an obligation under international law and generated State responsibility. An example was a treaty which required a State to enact certain legislation as part of its national law; failure to do so would engage its international responsibility. The omission was in itself sufficient, since injury—moral or material—to the other States parties to the treaty was inherent in such a situation. Treaties dealing with human rights laid an obligation on States to take certain legislative measures for the benefit of their own citizens; failure to do so could be invoked by any of the other States parties to the treaty since it was sufficient in itself to cause injury to them.

33. He supported the proposal that article 2 should be referred to the Drafting Committee for consideration in the light of the discussion.

The meeting rose at 1 p.m.

1207th MEETING

Wednesday, 16 May 1973, at 10.10 a.m.

Chairman: Mr. Jorge CASTAÑEDA

Present: Mr. Ago, Mr. Bartoš, Mr. Bilge, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

Welcome to Sir Francis Vallat

1. The CHAIRMAN welcomed Sir Francis Vallat, who had been elected a member of the Commission to fill one of the four casual vacancies which had occurred since the last session. Sir Francis had been known to many members of the Commission since 1950 as a distinguished and friendly colleague in the Sixth Committee of the General Assembly at United Nations Headquarters.

2. Sir Francis VALLAT said he regarded election to the Commission as one of the greatest honours which could be paid to an international lawyer. He was grateful for the warmth of the welcome he had received and, while not wishing to intervene at the present stage of the discussion, he hoped little by little to be able to make some contribution to it.

Appointment of a drafting committee

3. The CHAIRMAN suggested that the Commission appoint a drafting committee of eleven members, consisting of the First Vice Chairman as Chairman, the General Rapporteur, and the following members of the Commission: Mr. Ago, Mr. Elias, Mr. Kearney, Mr. Pinto, Mr. Reuter, Mr. Tsuruoka, Mr. Ushakov and Sir Francis Vallat, together with one of the two newly elected Latin American members—either Mr. Martínez Moreno or Mr. Calle y Calle.

It was so agreed.

State responsibility

(A/CN.4/217 and Add.1; A/CN.4/233; A/CN.4/246 and Add.1 to 3; A/CN.4/264 and Add.1)

[Item 2 of the agenda]

(resumed from the previous meeting)

ARTICLE 2 (Conditions for the existence of an internationally wrongful act) *(continued)*

4. The CHAIRMAN invited the Special Rapporteur to sum up the discussion on article 2.

5. Mr. AGO (Special Rapporteur) said that the comments made during the discussion related mainly to points which he had dealt with in his introduction, suggesting that it would not be advisable to mention them in the text of article 2. Generally speaking, members had spoken in favour of the proposed text, subject to a few drafting amendments.

6. Reference had been made to the case in which, for an internationally wrongful situation to be complete, some external event must be added to the conduct of the State. Members appeared to agree that that case should be dealt with later, in connexion with the violation itself, and need not be mentioned in the definition of conditions for the existence of an internationally wrongful act.

7. Several members had expressed their attachment to the notion of abuse of rights, though they had not asked that it be introduced into article 2. In their opinion, although, when dealing with State responsibility, no attempt should be made to define the substantive or primary rules, it was nevertheless frequently necessary to refer to the content of those rules. It was necessary in certain cases, to rely on the content of the rules for assessing the gravity of an internationally wrongful act. And some rules, such as those on self-defence and *force majeure*, might remove the wrongful character of conduct which would otherwise appear to be a violation of an obligation. That would be the case if military aircraft of a State were compelled by *force majeure* to fly over the territory of another State which they were normally prohibited from flying over. In the case of abuse of rights the situation was reversed: the exercise of a right became unlawful only from the moment when the limits imposed on its exercise by international law were exceeded.

8. As the Commission appeared to consider that the notion of abuse of rights should not be introduced into article 2, he would confine himself to considering the possibility of drafting an article on abuse of rights for inclusion in the section relating to the violation; but it was important that such a provision should be really justified by the special nature of the situation. Moreover, the Commission should not enter a field which was so extensive that it deserved to be explored for its own sake, independently of the question of State responsibility.

9. Members had also recognized that the notion of damage should not be introduced into article 2, since it was not a third constituent element of the internationally wrongful act. On the other hand, it would sometimes have to be taken into consideration as an element of the substantive rule. It would have to be discussed twice: first, when the Commission dealt with the question of the violation, since in some cases the obligation violated was, precisely, an obligation not to cause damage, so that without damage there could be no violation. That was true, in particular, of all State obligations not to cause injury to aliens, or to ensure that no injury was caused to them by other persons. Secondly, it would have to be taken into account when the Commission examined the consequences of the internationally wrongful act. At that stage, damage would be a necessary element of reference, for example, for determining the amount of reparation.

10. It should be noted that the existence of an internationally wrongful act and hence of State responsibility did not in itself imply the existence of a situation which would justify an action before an international court. The right of action depended on special rules and often on conventions.

11. As Mr. Reuter had pointed out, when determining the conditions for the existence of an internationally wrongful act, it was necessary to ensure that a State could not escape the consequences of an unlawful situation. It was established doctrine that when a State had given another State an undertaking to do or not to do something, any act or omission on its part which was contrary to that undertaking constituted an injury. The existence of material or moral damage in addition to that injury was not necessary to make an internationally wrongful act. In all cases there was infringement of the international legal order. That situation was duly covered by the simple statement that an internationally wrongful act existed in the case of failure to fulfil an international obligation.

12. In most cases, of course, there was damage in addition to the injury inherent in the violation of an international obligation, but the existence of such damage was not indispensable. In addition to the examples already given by other members of the Commission, there were the conventions of the International Labour Organisation dealing with the freedom of trade unions and the prohibition of forced labour. If a State party to those conventions did not grant its trade unions the treatment provided for in the rules of the conventions, or if it subjected its own nationals to forced labour, it infringed the human rights of its citizens. In doing so it did not cause damage to any other State; but if the conventions were to have any meaning, the other States parties must be able to hold it responsible for an internationally wrongful act.

13. With regard to the drafting of article 2, Mr. Elias had suggested that the expression "act or omission" should be used rather than "action or omission". In its original form, the English version of the provision had contained the word "act", but Sir Humphrey Waldock, then a member of the Commission, had pointed out that the expression "*fait internationalement illicite*" could only be rendered in English by the expression "internationally wrongful act", since the word "fact" was not a precise legal notion;[1] that was why he had suggested

[1] See *Yearbook of the International Law Commission, 1970*, vol. I, p. 189, para. 28.

using the word "action" in contrast to "omission". That difficult question could be considered by the Drafting Committee.

14. As Mr. Ushakov had suggested, the objective word "attributable" should be used instead of "attributed", since conduct might have been wrongfully attributed by one State to another. Some members had proposed using the word "imputable", as against "imputed".

15. On the other hand, the reference to international law should be retained, since everything depended on knowing whether international law could, in certain cases, depart from internal law and consider a particular act as being an act of the State.

16. With regard to the expression "in virtue of", it was true that it might not perhaps entirely correspond to the French expression "*en vertu de*". In the original version of the provision [2] he had used the words "under international law", but in view of the Commission's discussion he had replaced them by "in virtue of" which seemed to him appropriate, though that expression might possibly be replaced by the words "according to". It would be for the Drafting Committee to find a solution.

17. As to the difference in wording between the Statute of the International Court of Justice and the article under consideration, he did not see any important difference in meaning between the French words "*violation*" and "*manquement*"; perhaps the latter was not so strong as the former. The Drafting Committee should consider whether the word "breach" would not be a suitable rendering of "*manquement*", or whether it would be better to say "*violation*" in the French version.

18. Lastly, he appealed to Mr. Bilge not to press for the transposition of sub-paragraphs (*a*) and (*b*). It was customary to mention the subjective before the objective criterion, and in the case in point it was necessary to find out whether certain conduct attributable to the State existed before determining whether it constituted failure to comply with an international obligation.

19. Mr. USTOR said he was satisfied with the ideas advanced by the Special Rapporteur in support of article 2, but wondered if it would not be simpler merely to say that an internationally wrongful act existed when an act of State was of such a character that it failed to comply with the international obligations of the State. That would eliminate the reference to "conduct", and in fact the whole subjective element would disappear, while the notion of an "act of State" would be explained in article 5 and the succeeding articles.

20. Secondly, he wondered whether article 2 should not precede article 1; chapter I would then begin by stating what was an internationally wrongful act and go on to describe the consequences of such an act.

21. Mr. KEARNEY said that the use of the expression "act of State" would raise certain technical complications, at least in the English version. The expression had been the subject of interpretation by the United States Supreme Court in the quite complicated case of *Banco Nacional de Cuba* v *Sabbatino*,[3] as well as decisions in numerous other cases. The phrase was used in a completely different sense in those cases, which concerned the issue whether a foreign court would review the validity of an act by a foreign government under its internal legislation. The same issue had been the subject of consideration in a number of cases in the courts of other States.

22. He suggested that the introductory phrase in article 2 be amended to read: "An act is internationally wrongful when:", which would be more consistent with the French version.

23. The CHAIRMAN, speaking as a member of the Commission, said he wondered whether the present formulation of article 2, with its subdivision into sub-paragraphs (*a*) and (*b*), might not be rather too schematic. After all, it was the "conduct" of the offending State which violated the international obligation and that "conduct" constituted a single element.

24. Mr. AGO (Special Rapporteur) said he thought it would be both difficult and inadvisable to draft article 2 as a single sentence, since it was essential to indicate that the conduct was attributed to the State in virtue of international law and to state two ideas, corresponding to two main chapters which would follow, namely, that the conduct was an act of the State and that it constituted failure to comply with an international obligation.

25. The expression "act of the State", must first be distinguished from the expression "act of State". In French, the expression "*fait de l'Etat*" denoted conduct attributed to the State, whereas the expression "act of State" expressed a different idea; it was, precisely, in order to avoid that expression that he had refrained from using the French term "*acte de l'Etat*".

26. The CHAIRMAN suggested that article 2 be referred to the Drafting Committee.

It was so agreed.[4]

ARTICLE 3

27. *Article 3*

Subjects which may commit internationally wrongful acts

Every State may be considered the author of an internationally wrongful act.

28. The CHAIRMAN invited the Special Rapporteur to introduce article 3 in his third report (A/CN.4/246).

29. Mr. AGO (Special Rapporteur) said that when the Commission had examined his first draft of article 3 [5] at its twenty-second session, it had decided against using the words "capacity to commit internationally wrongful acts", because they might be interpreted as meaning that international law authorized its subjects to contravene the legal order it was establishing, which was absurd. The Commission had recognized that capacity was a subjective legal situation—a sort of power attributed to

[2] *Ibid., 1970*, vol. II, p. 195.

[3] 367 US 398 (1964).

[4] For resumption of the discussion see 1225th meeting, para. 68.

[5] See *Yearbook of the International Law Commission, 1970*, vol. II, p. 197.

subjects of law—and that the capacity to act, for instance, to conclude treaties, was a concept entirely different from delictual capacity, which in fact contained the idea that in certain circumstances a person was not capable of committing a wrongful act. It had therefore been necessary to find suitable wording to express that idea in international law, and that was why he proposed saying that the State was capable of committing a wrongful act or, better, "may be considered the author of a wrongful act".

30. The importance of the principle set out in article 3 was bound up with the principle of the equality of States. It was useful to establish clearly that in international law all States were equal in regard to the possibility of having an internationally wrongful act and the consequent responsibility attributed to them. It would, for example, be unthinkable for a State to argue that, because it had only just acceded to independence it was not capable of committing an internationally wrongful act. International law did not recognize anything equivalent to the status of a minor, in other words, of a person not possessing delictual capacity, as recognized in internal law. At its twenty-second session, the Commission had not contested that principle, though it had considered the possibility of introducing restrictions in two kinds of exceptional situations.

31. The first was that of the component states of a federal State which had preserved some measure of international personality, for example, the capacity to conclude international agreements in certain fields specified in the constitution. That was the case, for instance, of the Swiss cantons. Personally, he was not really convinced that such capacity had any consequences in regard to responsibility. Indeed, as the Commission would see later when it came to consider the question of attributability, it was to the federal State that failure by a member state to comply with an international obligation was generally attributed. Moreover, at the Vienna Conference on the Law of Treaties, the federal States had firmly opposed any allusion to the separate international personality of their component states. To simplify matters, it would be better not to take account of that situation in article 3.

32. The second exceptional situation was that in which the organs of one State acted in the territory of another State for and on behalf of the latter. For example, that was the case—increasingly rare, it was true—of States that were not yet independent or were under military occupation. There, too, he was willing to adopt the view, expressed by the Commission at its twenty-second session, that it would be better not to touch on that question in connexion with article 3.

33. In each case, everything depended on whom the failure to comply with the obligation should be attributed to. The Commission could confine itself to affirming the basic principle that there was no distinction between States in regard to the possibility of committing an internationally wrongful act. That rule was a consequence of the equality of States.

34. Mr. USHAKOV said he approved the principle stated in article 3, but had reservations about the wording. In the first place, the only subject of law referred to in the article was the State, so the plural should not be used in the title. Next, the Commission was dealing with responsibility, yet no idea of responsibility was to be found in the present wording of article 3, which merely stated the principle that an internationally wrongful act could be attributed to a State.

35. What was needed, therefore, was a formula indicating both that a State could be the author of a wrongful act and that it could be held responsible for that act. As it stood, article 3 left some doubt about the responsibility a State incurred for any internationally wrongful acts it committed. Obviously, any State could be the author of an international offence, but if it was said that a State was responsible for a wrongful act, that clearly meant that it might commit such an act. The wording of the article should bring out the idea of responsibility.

36. Mr. YASSEEN said he was glad the Special Rapporteur had decided not to use the expression "capacity to commit internationally wrongful acts", since it could have given rise to misunderstanding.

37. Like Mr. Ushakov, he noted that article 3 spoke not of responsibility, but of attributability, that was to say only of the legal link connecting an act or omission with a subject of law—the State. There was, in fact, no need to specify in article 3 that the State could be held responsible for the wrongful act attributed to it, since that principle had already been laid down in article 1, which stated that every internationally wrongful act of a State involved its international responsibility. Thus the problem was solved.

38. Similarly, there was no need to devote an article to attribution itself, independently of its effects, since article 2 already provided that conduct consisting of an action or omission could be attributed to the State in virtue of international law.

39. He agreed that there was no need to cover the exceptional situations mentioned by the Special Rapporteur in article 3, assuming it was retained, since obviously one could not attribute to a State an act which it had not been capable of committing. It should be clearly understood, however, that one of the consequences of sovereignty was to make States equal in regard to internationally wrongful acts, and that the concepts of "majority" and "minority" did not exist in international law.

40. Mr. AGO (Special Rapporteur) said that, as Mr. Yasseen had clearly seen, article 3 was concerned with the attribution of a wrongful act to the State, not with the determination of responsibility. It was intended to express the idea that a State could not claim, on grounds of youth, that it did not possess the capacity to have an internationally wrongful act attributed to it. Viewed from that angle, attributability was the counterpart of sovereignty.

41. The problem Mr. Ushakov had raised was different; it was the problem of capacity to be held responsible. If the Commission wished to draft an article on that point, the content of the rule it expressed would have to be different, for although every State was capable of committing an internationally wrongful act, it did not follow that it could always be made to suffer the consequences of the wrongful act attributed to it.

42. Where attribution was concerned, it was sovereignty that counted. In the case of responsibility, it was freedom, in other words the conditions which enabled a sovereign State to act freely. If a State acted under constraint or the control of others, the responsibility would be attributed to another State. The theory had been worked out with particular regard to situations which were now rare—for instance, the case of protectorates—though they still existed in the case of military occupation. If the organs of an occupied State committed a wrongful act, it was the State under whose control the act had been committed that would be held responsible. The difference between attribution and responsibility was that in the case of attribution there were no exceptions to the rule, whereas in the case of responsibility exceptions were inevitable.

43. Mr. SETTE CÂMARA said that article 3 dealt with the problem of what was commonly known as the "international delictual capacity" of the State. He congratulated the Special Rapporteur on the very ingenious manner in which he had drafted the article so as to avoid using the word "capacity" with reference to a breach of an international obligation, while at the same time, by the use of the passive voice, ruling out any unreasonable suggestion of a faculty to commit wrongful acts.

44. The Special Rapporteur had explained that he had considered it necessary to include in the draft an express provision to the effect that no State, whatever the circumstances, might claim that it was not capable of committing a wrongful act. The concept of limitations on delictual capacity existed, of course, in municipal law with regard to minors and persons of unsound mind. International law, however, did not know any concept of that kind.

45. The Special Rapporteur had been right in disposing of the possibility that a component unit of a federal State might be deemed to have committed an internationally wrongful act. Such remnants as still existed of the international personality of states members of federations were mere historical curiosities and did not merit consideration in article 3.

46. In his third report the Special Rapporteur had considered the different case of the territory of a State in which another State, or subject of international law, acted in its place (A/CN.4/246, para. 83). In that case, the responsibility for wrongful acts would be transferred to the State that was acting on behalf of the State to which the territory belonged. No one could quarrel with the Special Rapporteur's conclusions on that point.

47. It was obvious that the so-called "international delictual capacity" was not confined to States, but pertained to all subjects of international law. An international crime could be committed even by an individual, as in the traditional case of piracy and the modern case of war crimes. The Special Rapporteur had, however, been right in not going into those problems, but confining his attention to the topic of State responsibility. Nevertheless, a passage should be included in the commentary to make it clear that the absence from the draft of any mention of the "delictual capacity" of subjects other than States, such as insurgents or international organizations, did not mean that those subjects could not be held responsible for the commission of internationally wrongful acts.

48. Mr. RAMANGASOAVINA said he had no criticism of the principle set out in article 3, which was the corollary of article 1. It was logical that a sovereign State should be held responsible for any wrongful act of which it was the author. But article 3 stated a truth so obvious that it might be asked whether it was not superfluous.

49. The use of the word "subjects" in the title made it broader in scope than the body of the article, which related solely to the State. If the article was retained, therefore, its title should be brought into line with the statement of principle.

50. Mr. ELIAS said that during the Commission's discussion of the Special Rapporteur's earlier draft in 1970,[6] several members had objected to any formulation based on the concept of "capacity" to commit internationally wrongful acts. They had taken that position despite the Special Rapporteur's explanation that the notion of capacity was not being used in the sense in which it was used, for example, in article 6 of the Vienna Convention on the Law of Treaties.[7]

51. The Special Rapporteur had then made it clear that he wished to rule out the notion that a State might be able to escape liability by arguing that it was of recent creation or that its freedom of action in international relations was restricted. He had also wished to dispose of the problem of protectorates and of component members of a federal union.

52. The amended text now introduced by the Special Rapporteur had considerably clarified the position, but had not completely dispelled the doubts expressed in 1970. He did not wish to re-open the discussion on the question of component members of federal unions, but he had serious doubts about the explanations given in paragraph 82 of the Special Rapporteur's third report. It was suggested there that, in the event of failure of a component member of a federal State to fulfil an international obligation directly contracted by that component member, such failure might be attributed, at the international level, to the federal State rather than to its component member.

53. But it was not at all certain that that would be the position in all cases. For instance, there was the problem which had arisen recently when the Province of Quebec had purported, under the British North America Act of 1867, to enter into a cultural agreement with France concerning education. In the hypothetical case of liability being incurred by Quebec for a breach in that connexion, it would hardly seem right to place the responsibility on the shoulders of the Federal Government of Canada, which had protested against the conclusion of the agreement at the time. In any case, he did not think it was necessary to pursue that matter for purposes of the formulation of article 3.

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[6] See *Yearbook of the International Law Commission, 1970*, vol. I, pp. 175-178, 181-192 and 209-227.

[7] See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 290.

54. The Special Rapporteur had also drawn attention to the situation which could arise when, in the territory of a given State, another subject of international law was acting in its place (A/CN.4/246, para. 83). The subject in question could be an international organization, as had been the case of the United Nations in the Congo, where the police forces of a number of countries had been deployed by the Organization. The Special Rapporteur's third report indicated that international responsibility in that case rested with the Organization, rather than with the State part of whose sovereignty was being temporarily exercised by the United Nations.

55. He would not dwell on the title of article 3, which would obviously be adjusted when the final formulation was adopted, but wished to examine the text in the light of the statement that what it sought to express was "primarily the idea that every State is on an equal footing with others with regard to the possibility of having its conduct characterized as internationally wrongful" and that where all the conditions for the existence of an internationally wrongful act were present, no State could hope to prevent its own actions or omissions from being regarded as reprehensible by international law (A/CN.4/246, para. 81). As he saw it, that essential point appeared to be already covered by the absolute terms of article 1, which laid down that "Every internationally wrongful act of a State involves the international responsibility of that State".

56. In the context of the law of treaties, it was appropriate to deal with the question of capacity to conclude treaties; but in the case of internationally wrongful acts it was not essential to stress the question of so-called "capacity". His own suggestion would be that article 3 should be redrafted in terms of liability, which was the correlative of power, on some such lines as "Every State is liable for its internationally wrongful acts". That formulation would cover the two points raised by Mr. Ushakov.

The meeting rose at 1.5 p.m.

1208th MEETING

Thursday, 17 May 1973, at 10.15 a.m.

Chairman: Mr. Jorge CASTAÑEDA

Present: Mr. Ago, Mr. Bartoš, Mr. Bilge, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

State responsibility

(A/CN.4/217 and Add.1; A/CN.4/233; A/CN.4/246 and Add.1 to 3; A/CN.4/264 and Add.1)

[Item 2 of the agenda]

(continued)

ARTICLE 3 (Subjects which may commit internationally wrongful acts) *(continued)*

1. The CHAIRMAN invited the Commission to continue consideration of article 3 in the Special Rapporteur's third report (A/CN.4/246).

2. Mr. TSURUOKA said he approved of the principle stated in article 3, which he could accept as it stood. Although it was clear that that principle was a consequence of the equality of States, he did not believe, like some other members of the Commission, that there was no need to formulate it expressly in the draft articles. It had its place in the part of the draft devoted to general principles.

3. Article 3 was, however, open to two criticisms: first, although it appeared to be a corollary to article 1, it was differently constructed; secondly, it did not refer to responsibility, but to the attribution of a wrongful act to the State, that was to say, only to the link attaching an act to the State. To clarify the idea it was desired to express, a supplementary article should be drafted on the attribution of responsibility, and if such an article was not included immediately after article 3, it should at least be indicated in the commentary that the matter would be separately dealt with later.

4. With regard to the drafting, the word "considered" could be deleted for the sake of simplicity.

5. Mr. KEARNEY said the discussion had shown that article 3 was a difficult one. In his view, it stated not so much a legal rule as a basic principle on which international society functioned, namely, that no State, whatever its circumstances, could escape the application of the rules of international law on State responsibility.

6. The Special Rapporteur had cited as an example the case of a new State, which could not claim that it was so inexperienced in international affairs that it could not be held responsible for its internationally wrongful acts. It was equally possible to imagine the case of a State that was so old and exhausted that it could not be held responsible. Other grounds could also be imagined for claiming exoneration.

7. The subject of the present discussion was a fundamental principle of international order, namely, that the obligations of international law must apply equally to all States without exception. There were many theories regarding the basis for general acceptance of international law. He himself favoured the simple proposition that acceptance was essential to the maintenance of peace and respect for human dignity.

8. He was in favour of retaining in the draft the idea expressed in article 3, despite the suggestion by some members that it was so basic and obvious that it need not be stated. The idea was not covered by the provisions of article 1. The statement that every internationally wrongful act of a State involved its international responsibility left open the question of what constituted an internationally wrongful act for that State. Article 2 went some way towards providing an answer to that question by stating that a State committed an internationally wrongful act when it failed to comply with an international obligation incumbent upon it. It did not, however, provide a complete answer, because the question still arose whether, under certain circumstances,[1] a State was considered not to be required to comply with its