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Summary record of the 1460th meeting

Topic:
State responsibility

Extract from the Yearbook of the International Law Commission:-
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treaties to which they were parties—a view that he could not accept.

28. Mr. SETTE CÂMARA said that he had doubts about the parallelism between paragraphs 1 and 2 of article 27 because the relevant rules of an international organization were the source of its treaty-making capacity. An international organization might be in a position to invoke its internal rules in the case of treaties concluded *ultra vires*, under the terms of article 47 of the Vienna Convention. He fully recognized that that was a remote possibility but it should not be overlooked.

29. At the same time, he wished to congratulate the Drafting Committee on a very good compromise formulation, which would help to elicit comments from Governments.

30. The CHAIRMAN said that one of the useful features of the draft was that article 27, paragraph 3, referred separately to article 46, which would show the reader that the Commission still had to consider that article. The commentary would doubtless mention some of the problems arising in connexion with the relationship between article 27 and article 46.

31. If there was no objection, he would take it that the Commission agreed to approve the text of article 27 and that of article 2, paragraph 1 (*j*), as proposed by the Drafting Committee.

It was so agreed.

32. Mr. USHAKOV said he wished to point out that the words "according to the intention of the parties", even if they referred only to the intention of the contracting parties, meant that it would be necessary to interpret the treaty. He did not see what else they could mean.

The meeting rose at 11.30 a.m.

1460th MEETING

Thursday, 14 July 1977, at 10.10 a.m.

Chairman: Sir Francis VALLAT

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Šahović, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta.

State responsibility (*continued*)* (A/CN.4/302 and Add.1-3)

[Item 2 of the agenda]

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

ARTICLE 21 (Breach of an international obligation requiring the State to achieve a particular result) [1] (*continued*)

1. Mr. THIAM agreed with Mr. Ushakov that the expression "*in concreto*" in paragraph 1 should be deleted since a result could only be concrete. He said that the words "but leaving it free to choose at the outset the means of achieving that result" and "by the conduct adopted in exercising its freedom of choice" should also be deleted. The statement should simply read:

> "A breach of an international obligation exists if the State has not achieved the internationally required result".

2. It seemed to him that paragraph 2 introduced the idea of means whereas article 21 dealt exclusively with obligations of result. He wondered about the meaning of the expression "breach begun" since, in his view, a breach either existed or it did not. He nevertheless agreed with those who had proposed that article 21 be referred to the Drafting Committee.

3. Mr. ŠAHOVIĆ said that, in principle, he favoured the solution proposed by the Special Rapporteur in article 21, but he thought that a clearer idea should be had of the Special Rapporteur's intentions regarding the continuation of the work before a final position was taken on the article. Articles 20 and 21 seemed logical to him and they accorded with the existing position in regard to State practice and international law in general. He wondered, however, whether the Special Rapporteur had succeeded in reflecting in those articles the wealth of complex propositions which he had put forward in his report. In his opinion, a number of questions raised in the report had not been answered in article 21, and paragraph 2, in particular, did not take account of all the problems to which the Special Rapporteur had himself referred in his report.

4. He considered, first, that the content of the international obligation referred to in article 21 should be defined in that article. He further considered that article 21 modified to a certain extent the definition of a breach given in article 16,[2] which was perhaps too general to meet the needs of the draft. He wondered whether the cases covered by article 21 were exceptional or an intrinsic part of the obligation of result. In that connexion, the Special Rapporteur had given examples drawn from State practice, but one might ask whether the circumstances they involved were a logical consequence of the obligation of result and always occurred with every obligation of that kind, or whether they represented a third category of obligation.

5. He also wondered whether the remedy referred to in paragraph 2 was a legal remedy in the usual sense of the term or whether it was inherent in the obligation of result. In his view, paragraph 2 left unanswered a number of questions concerning the situations described.

6. It was necessary to determine how and when an initial course of conduct led to a situation incompatible with the required result. It was also necessary to determine how and when a treaty obligation permitted the

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* Resumed from 1457th meeting.

[1] For text, see 1456th meeting, para. 37.

[2] See 1454th meeting, foot-note 2.

State to rectify such a situation. The Special Rapporteur dealt in chapter III, section 7, of his report with the question of exhaustion of local remedies, which was linked to article 21. An article on exhaustion of local remedies would not, however, fully answer the questions raised in article 21. In his opinion, those questions should be answered not only in the commentary but also in the article itself.

7. The Special Rapporteur had considered the possibility of placing articles 20 and 21 after articles 16, 17 and 18 when the draft was examined on second reading.[3] In his own view, it would likewise be more logical to place article 21 before article 20 since the kind of obligation covered by article 21 was much more frequent than the kind covered by article 20, as the Special Rapporteur had himself said.

8. Mr. CALLE Y CALLE said that he fully agreed with the basis for article 21, which dealt with obligations of result. The Special Rapporteur, with clear and persuasive reasoning, had discussed in his report a number of examples of treaty obligations and also obligations under customary law which, although not formulated in precise terms, none the less required the achievement of a particular result. Moreover, in speaking of equivalent or alternate results, the Special Rapporteur had used a term that in English might seem at first glance to relate more to medicine or to the pharmacopoeia but was nevertheless juridical, i.e. local remedies.[4] It would acquire even greater importance when the Commission came to consider the exhaustion of local remedies as a prerequisite for the international responsibility of the State. Quite rightly, it was the comparison of an ideal result with the actual result which revealed whether or not the international obligation had been breached. In his view, doctrine, practice and jurisprudence all demonstrated the firm foundations of the rule that was now being proposed.

9. As to the drafting, the words "at the outset" in paragraph 1 could be deleted without any loss of meaning, for they implied that the State had an initial freedom of choice but that, later, the obligation would indicate the means of achieving the result. In fact, the State had freedom to choose the means throughout the existence of the obligation. Similarly, the word "internationally" might be deleted from the paragraph since the implication was that two results were involved—a national result and an international result—whereas it was quite clear from the beginning that the paragraph concerned an international obligation.

10. Paragraph 2 referred to cases in which the obligation permitted the State to remedy a situation incompatible with the required result, either through new conduct or by achieving an equivalent result. The words "in addition" should be deleted for they gave the impression that there was an additional requirement for the existence of a breach of the obligation, which was not in fact the case. Also, even though a breach could be a composite or complex act, it would be sufficient to say that the State had "... completed the breach represented by its initial conduct"; in other words, the word "begun" should be deleted.

11. It should also be remembered that the breach did not exist until the result was final or definitive, as the Special Rapporteur himself had pointed out in his report.[5] It would therefore be advisable to seek a way of incorporating the idea of final or "definitive" result in the text of paragraph 2.

12. Mr. VEROSTA said that he did not altogether see what end the Special Rapporteur had in view, but he continued to think that articles 20 and 21 were a logical complement to article 16. He wished to draw attention to the time factor, which played a very important role in article 21, since it was possible to distinguish between different stages in the breach of the international obligation referred to in that article. Article 21 stated that a breach of an international obligation existed if the State had not in fact achieved the result required by the obligation, but it also stated that a breach existed if, after initial conduct which had led to a situation incompatible with the result required, the State had not taken the subsequent opportunity afforded to it of rectifying that situation, thereby completing the breach begun by its initial conduct.

13. He would be most interested to know the content of the article which the Special Rapporteur had promised to devote to the "time of the breach of an international obligation". It would be very useful for the Drafting Committee to have a rough idea of what that article would contain before taking a final position on article 21.

14. In conclusion, he drew attention to the link existing between article 16, articles 20 and 21 and the articles that would be devoted to exhaustion of local remedies and the time of the international breach.

15. Mr. EL-ERIAN said that, having dealt in article 16 with the existence of a breach of an international obligation, in article 17 with the irrelevance of the origin of the international obligation breached, in article 18 with the time element and in article 19 with régimes of responsibility, the Special Rapporteur had now moved on, logically and systematically, to the content of the international obligation breached, which formed the subject of articles 20 and 21. Mr. Šahović's point about articles 20 and 21 being placed after articles 16 to 18 would, of course, have to be dealt with by the Drafting Committee but, for his own part, he preferred the arrangement followed by the Special Rapporteur, who was to be congratulated both on the scholarly commentary and on the drafting of article 21.

16. The present article was ambitious in that it covered a large range of cases and the various possibilities within that range. Among the examples of treaty obligations, useful reference could be made in the commentary to obligations under the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character.[6] For example, article 23 of that Convention, concerning inviolability of premises, dealt with the type of situation envisaged by the Special Rapporteur.

17. Paragraph 1 of the article was perfectly acceptable. Paragraph 2 covered a complex situation in which the

[3] See 1456th meeting, para. 23.

[4] See for example A/CN.4/302 and Add.1-3, para. 21.

[5] *Ibid.*, para. 45.

[6] See 1458th meeting, foot-note 7.

State had the possibility open to it of achieving an alternative result but failed to do so. In paragraph 45 of his report, the Special Rapporteur had said that "it must be established that the State, not having achieved the priority result, has also failed to achieve the alternative result, namely, full and complete compensation of the victims for the injury sustained". Compensation was a separate problem that related to all types of responsibility. The principle underlying compensation was reparation *in rem*, or restoration of the *status quo ante*. If the situation could not be restored, the injured party had to be compensated. His difficulty lay precisely in the Special Rapporteur's assertion that failure to comply with the obligation to make compensation itself generated responsibility. In fact, a distinction must be made between responsibility and compensation. He would be most grateful to know whether the Special Rapporteur considered that, in certain situations, compensation represented an alternative result.

18. Finally, he would venture to suggest that, in view of its complexity, paragraph 2 should form a separate article.

19. Mr. SCHWEBEL said that he greatly appreciated the acuity, legal imagination and scholarship of the Special Rapporteur's magisterial draft on what was a fundamental area of international law. Unfortunately, he was at a disadvantage in that he had not been present at the creation of the bulk of the set of articles and it was difficult to contribute to a discussion on a few of them without a full understanding of the whole, an understanding that he did not yet have.

20. Some of the provisions of the articles so far adopted seemed straightforward and even appeared to be a statement of the obvious—for example, articles 1, 2, 3, 4, 16 and 17. However, the draft was not at all simple. Its lucidity reflected subtlety, sophisticated analysis and expert legal craftsmanship. Some provisions, notably articles 5 to 15, clarified and constructively developed matters that were not in themselves altogether clear and uncontroverted. Other provisions, for example, some of those of article 18 and possibly those of article 21, paragraph 2, went into considerably more detail than was to be expected at such a high level of international legal theory. Yet others, like the provisions of article 18, paragraph 2, and article 19, adopted bold positions which had been the subject of both favourable and adverse comments by a large number of Governments represented in the Sixth Committee. It remained to be seen whether the Commission would wish to reconsider those particular provisions.

21. Article 21, like article 20, contained elements of both simplicity and complexity. Its substance and the distinctions so ably drawn in the commentary were persuasive. The result was simple but the supporting analysis was not. However, some members of the Commission had succumbed to the temptation to simplify still further the terms of article 21, a course which might lead to a very inadequate text. For instance, if paragraph 1 was reworded to read:

> "A breach of an international obligation requiring the State to achieve a specified result exists if the State has not achieved the specified result",

it would indeed be a statement of the obvious. Undue pruning of the text might cause it to lose most of its point and would certainly fail to give a sense of the depth of analysis involved in its conception. He questioned whether it was advisable to aim at a draft whose true meaning and profundity would become clear only after a study of the commentary.

22. The wording of paragraph 1 proposed by the Special Rapporteur was entirely satisfactory, but he recognized the value of the comments by Mr. Šahović and Mr. Verosta that it was difficult to adopt a final position until a clear view could be gained of the draft as a whole. A compromise version between the Special Rapporteur's excellent formulation and the suggestions for simplification that had been made in the course of the discussion might read:

> "A breach of an international obligation requiring the State to achieve a specified result but leaving it free to choose the means of achieving that result exists if, by the exercise of its freedom of choice, the State has not in fact achieved the required result".

In any event, the Drafting Committee would doubtless be able to arrive at a suitable wording.

23. It was particularly reassuring to note the emphasis laid, in paragraphs 27 and 38 of the report and in foot-note 88, on the importance of States actually implementing their international obligations, not only in law but also in fact. There appeared to be a disturbing tendency among some States to assume far-reaching international obligations which called for domestic performance; however, the enactment of, or reliance upon, the apparently requisite law—even constitutional law—was coupled with failure to observe those international obligations. A very serious question was whether some of the parties to the International Covenants on Human Rights genuinely fulfilled their international obligations, and the question became even more serious when States resisted international means of monitoring their performance.

24. Mr. REUTER said that he unreservedly shared the Special Rapporteur's approach with regard to the substance of the matter. In his view, articles 20 and 21 reflected a line of thinking which sought to shape the question of responsibility by reference to the characteristics of the obligation. Paragraph 1 of article 21 did not give rise to any problem, in his view. Paragraph 2, on the other hand, left him with the impression that the Special Rapporteur had telescoped the development of his argument and that an intermediate stage had been covered a little too quickly.

25. As was clear from the commentary, the Special Rapporteur had entered, in that case, into the area of what he had termed the "complex act", where the obligation involved a series of actions or omissions. In that connexion, the Commission would recall that Professor Rolin, in pleading in the *Barcelona Traction* case,[7] had charged Spain with a series of separate international wrongs and, in addition, with an even more serious

[7] *I.C.J. Pleadings, Barcelona Traction, Light and Power Company, Limited (New Application: 1962)*, vol. VIII, pp. 11-54.

wrong which he had termed the "global wrong" which was made up of all the individual wrongs combined. According to him, it was possible for a specific wrongful course of conduct to be constituted by the aggregate of separate wrongful courses of conduct.

26. The Special Rapporteur had already given other examples of a global wrong when he had referred in his fifth report, in proposing the text which had become article 18, to the wrong of systematic discrimination against a group of persons resulting from the accumulation of a number of particular acts which, taken individually, did not in themselves necessarily constitute international wrongs.[8]

27. He therefore proposed the following provision, which might be the subject of a separate article or be inserted between paragraphs 1 and 2 of article 21, since it established a logical link between the two:

> "Where the obligation of the State relates to a series of actions or omissions which must be considered globally in their final result, the breach of the obligation is not established in regard to international law until after the final action or omission."

28. That provision, of which the existing paragraph 2 was only one specific case, reflected the Special Rapporteur's idea that a breach begun was not a breach. It also accorded with the notion of a global wrong which Professor Rolin had sought to establish, since the global wrong had arisen only after the last element in the series of wrongful acts which constituted the breach.

29. The Special Rapporteur, however, had not selected the case of an incipient wrong where each new act was added to the previous one so as to constitute, in the end, a global wrong. He had selected one particular example of that case, namely, where one act among those constituting the wrong materially consummated the whole of the injury at the outset without the wrong being constituted legally. He had thus introduced the notion that, in the series of acts that would constitute a wrong, there were material acts and remedies, the latter representing one element of the wrong.

30. In his own view, it was difficult to introduce abruptly, into the notion of a complex wrong, the question of exhaustion of local remedies since, in international practice, the rule of exhaustion of local remedies was of a more or less empirical nature. Charles de Vischer had said that the rule was one of substance—which was the Special Rapporteur's theory—but also one of procedure.

31. Before taking a position on that particular question, he would like to know the practical consequences of the Special Rapporteur's approach regarding the scope of the obligation to exhaust local remedies. He trusted that the question would be examined thoroughly since the theory of exhaustion of local remedies was still obscure. In addition, he felt that article 21, paragraph 2, should be preceded by a more general provision, formulated in the way he had indicated earlier and expressing the idea of a complex wrong—which was the Special Rapporteur's idea—since in the existing paragraph 2 the Commission was already dealing with a very special case, namely, the combination of material acts and remedies as the act which constituted a wrong.

32. Mr. DADZIE said that, although the substance of article 21 proposed by the Special Rapporteur could not be criticized, the wording of the article did give rise to some difficulties. Thus, he agreed with Mr. Ushakov [9] and Mr. Francis [10] that the Drafting Committee should examine the use of the words "*in concreto*" and the words "at the outset" in paragraph 1. In particular, he thought that the words "at the outset" lacked the necessary legal precision. With regard to the word "exists" in the third line of paragraph 1, he shared the view expressed by Sir Francis Vallat that the Drafting Committee should consider the possibility of replacing it by the word "occurs". Similarly, the Drafting Committee might look into the possibility of replacing the word "conduct" in paragraph 1 by the word "method" in order to stress the fact that article 21 related not to obligations of conduct but to obligations of result and the means of achieving them.

33. In paragraph 2, he objected to the use of the words "a situation incompatible with the required result", and would prefer them to be replaced by the words "a situation not in conformity with the required result". He also had some slight difficulty with the word "rectify", which, in his opinion, was more commonly used to refer, for example, to the amendment of a document. He therefore suggested that the word "rectify" should be replaced by the word "remedy", which would make it clear that, if a State had followed one method in trying to achieve a required result but that method had failed, it could remedy the situation it had created by adopting another method. His reaction to the words "new conduct" in the third line of paragraph 2 was the same as to the use of the word "conduct" in paragraph 1. He therefore suggested that the words "new conduct" should be replaced by the words "new method".

34. In conclusion, he said that he fully supported the text suggested by Mr. Schwebel, although he thought that the word "occurs" would be more appropriate than the word "exists".

35. Mr. QUENTIN-BAXTER said that he supported the view expressed by Mr. Thiam concerning the use of the word "conduct" in article 21, paragraph 1, which might enable States to invoke their conduct as an excuse for not having achieved a required result. In his view, therefore, the Commission might delete the word, and could probably draft paragraph 1 in as straightforward a manner as article 20. The paragraph would thus state a principle more or less parallel to the one enunciated in article 20.

36. That having been said, he believed that the reference to the conduct of the State in article 21, paragraph 1, indicated that the relationship between obligations of conduct and obligations of result was more subtle than the Commission had yet recognized. Indeed, since jurists not infrequently had to determine whether, in a specific

[8] *Yearbook ... 1976*, vol. II (Part One), pp. 22-23, document A/CN.4/291 and Add.1-2, paras. 65-66.

[9] 1457th meeting, para. 29.

[10] *Ibid.*, para. 22.

case, a State had had an obligation of conduct or an obligation of result, and since they had often found that the State did in fact have an obligation to achieve a particular result, it might be concluded that article 21 dealt with the typical case and article 20 with the exception. However, he was not sure whether that conclusion was right.

37. In that connexion, he referred to the award rendered by the Mexico-United States General Claims Commission in the *Janes* case,[11] in which a man had been killed in circumstances which the authorities could not have been expected to prevent and in which the police had failed to take proper steps to apprehend the culprit, who had gone unpunished. During the discussion of the claim brought before that Commission, one of its members had argued that the conduct of the authorities had amounted to a "condonation" of the offence. The member in question had thus considered that what was important in that case was not the failure of the State to achieve the result of apprehending, trying, convicting and punishing the criminal, but rather the fact that the conduct of the authorities of the State against which the claim had been made had not been consistent with that State's international obligations.

38. He had given that example in order to show that the assessment of a State's conduct was often a decisive factor in determining whether or not that State had breached an international obligation, and that the situations contemplated in article 21, paragraph 2, could also arise in relation to obligations falling within the scope of article 20. Other examples were a case in which soldiers had indeed sought to protect foreigners but had failed to do so because they had merely stood by, and a case in which soldiers who had been sent to protect foreigners had in fact caused them injury by joining in an attack on them. There could be no doubt that the direct attack by the soldiers on the people whom they were supposed to protect constituted a breach of an obligation of conduct. It was, however, more difficult to determine the position in the first case, where the soldiers had simply failed to protect the foreigners in question, but he thought that, in assessing the international responsibility of the State, the element of conduct would again be decisive.

39. In his view, it was a short step from the consideration of obligations of conduct and obligations of result to the consideration of the question of complex acts, with which the Commission had dealt in article 18. In a case similar to the ones to which he had just referred, in which a foreigner was injured by a private individual, it could not be said that the State was directly involved because foreigners ran the risk of injury in any country they visited. When, however, the State reacted to the situation, sought the alleged assailant and brought the case before a court, whose decision was then reviewed by a higher court, a complex act could be said to have occurred and the conduct of the State could then be assessed only in terms of that complex act.

40. Similarly, if an administrative tribunal took an improper decision by denying a foreigner mining rights to a certain piece of land, the responsibility of the State could be said to be engaged only when the right of recourse to another administrative tribunal had been exercised and when it had been determined that the latter tribunal had also failed to take the proper action. In such a case, a breach of an international obligation could be said to exist according to the provision in article 21, paragraph 1. Yet, it was undoubtedly also right to say that, in every case in which a breach of an international obligation existed, the State was required to take the necessary action to make good that breach. He therefore found the wording in article 21, paragraph 2, which read: "in cases where the international obligation permits the State whose initial conduct has led to a situation incompatible with the required result to rectify that situation", to be insufficient, and he did not think the Commission should take a final decision on it until it had considered article 22, relating to the exhaustion of local remedies, and had defined the boundaries of a complex act or, in other words, the relationship between an initial breach of an international obligation and what followed.

41. The CHAIRMAN, speaking as a member of the Commission, compared articles 20 and 21 to the keystone of an arch; the Commission had one half of the arch and was waiting for the other. In the meantime, it was difficult for it to keep the keystone in position and to see the overall structure of the draft articles. However, some of the problems which had arisen in connexion with article 21, in particular, could be solved by referring back to article 18, dealing with complex acts, and by looking forward to article 22, dealing with the exhaustion of local remedies.

42. The question of the time of occurrence of the breach, which would have to be reserved for future consideration, therefore had to be borne in mind when article 21 was considered. Another important question to be kept in mind was the fact that the difference between obligations of conduct and obligations of result could easily become blurred. The wording of articles 20 and 21 therefore had to be general enough for the nature of the obligation in question to be determined, and the provisions of the appropriate article applied, in each individual case.

43. In support of his view that the nature of the obligation was the essence of the problem to be solved in articles 20 and 21, he referred to the example of denial of justice, which for the sake of convenience could be called a defect in the way justice was administered by the courts of a State. Although it was obvious that the State had an obligation to ensure that justice was properly administered, a breach of that obligation could not be said to have occurred until it had been shown that the courts had collectively failed to carry out their respective duties. An obligation of a different nature might, however, be involved if, in a particular case, a specific obligation had been breached. For example, a treaty might lay down an obligation for a State to allow certain aliens to enter its territory. If the immigration authorities of that State refused to allow the aliens in question to enter the country, it could be said that the obligation embodied in the treaty had been breached. Whether such a breach could be rectified by subsequent action was a matter that had to be considered in the light of the interpretation to be put on the nature of the obligation. Moreover, if the

[11] *Yearbook ... 1972*, vol. II, pp. 103-105, document A/CN.4/264 and Add.1, paras. 83-85.

treaty also provided for the exhaustion of local remedies, the nature of the obligation might change again, because the judiciary of the State would have to ensure that there were adequate remedies for the aliens in question if they were, for instance, unlawfully detained. All those factors would have to be taken into account in determining the time when the breach had actually occurred.

44. Referring to the commentary to article 21 (A/CN.4/302 and Add.1-3, chap. III, sect. 6), he said that, although it provided a wealth of information, it did not contain very many examples of State practice. The draft articles would, however, be of valuable assistance to many persons and, in particular, to ministry of foreign affairs officials. He therefore suggested that it should be indicated in the report that, although the commentary did not contain very many examples of State practice, the members of the Commission had based their conclusions on their experience of the development of that practice. He also suggested that, when Governments were requested to comment on the draft articles, they should also be requested to provide further examples of State practice in order to assist the Special Rapporteur and reinforce the experience of the members of the Commission.

45. Mr. USHAKOV stressed the importance of the distinction between obligations of means or conduct and obligations of result. With regard to obligations of result, he was more and more convinced that the emphasis should be placed not on a particular course of conduct but on a particular act. In the *Tolls on the Panama Canal* case, referred to by the Special Rapporteur in paragraph 34 of his sixth report, there had been a particular course of conduct on the part of the United States Government—the enactment of a law—but no act leading to a result that was not in conformity with the result required by the international obligation in question, since that law had not been applied. When the law was amended, the international obligation had not been breached. He therefore considered that a breach of the international obligation existed, not in the case of conduct by the State which did not in fact achieve the internationally required result, but in the case of an act by the State which was not in conformity with the result required of it by that obligation. In the case in point, there would have been a breach of the international obligation if the United States Government had levied tolls in application of the said law.

46. Referring to Mr. Reuter's remarks to the effect that the breach of an international obligation could arise out of a series of actions or omissions, in the case of a complex act, he pointed out that a single act would suffice in such a case. Where an official of the customs authorities of a State party to GATT charged duty on foreign products in breach of article III of the Agreement, there was an act conflicting with the achievement of the internationally required result, giving rise to a breach of the provisions in question. If that act was not rectified, the breach would exist from the time of the first act. If it was rectified, for example, by rescinding the mistaken decision, the second act would cancel out the first.

47. Finally, he referred to the case of a receiving State which did not accede to the request of a State for its embassy to be placed under the protection of the local police. As long as no unauthorized person entered the embassy premises, there was no act that conflicted with the internationally required result but merely a course of conduct by the receiving State. That conduct did not of itself give rise to a breach of an international obligation.

The meeting rose at 1.05 p.m.

1461st MEETING

Friday, 15 July 1977, at 10.10 a.m.

Chairman: Sir Francis VALLAT

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Šahović, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta.

State responsibility (*continued*) (A/CN.4/302 and Add.1-3)

[Item 2 of the agenda]

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

ARTICLE 21 (Breach of an international obligation requiring the State to achieve a particular result) [1] (*concluded*)

1. Mr. AGO (Special Rapporteur) said he would sum up the debate on article 21, first reviewing the principal comments made by the members of the Commission and then taking up some general matters.

2. At the outset (1457th meeting), Mr. Tabibi had stressed a fundamental point: breaches of international obligations varied according to the form of the obligations. Mr. Verosta had made excursions into the past and the future (1457th meeting) and had brought out the close link between article 21 and article 16 [2] (1460th meeting), while Mr. Francis (1457th meeting) had dwelt on a very important point, namely, that a distinction must be made between the means a State chose to achieve the required result and its actions or omissions after making that choice. Sometimes the choice was excellent but the ensuing actions or omissions prevented achievement of the required result.

3. Mr. Ushakov had shown (1457th meeting) the importance of article 21 from the point of view of both the time and the circumstances of the breach. He had spoken about the commentary to the article and also about its text, and several of his drafting comments had touched on matters of substance. Finally, he had rightly pointed out (1460th meeting) that the act of the State referred to in

[1] For text, see 1456th meeting, para. 37.

[2] See 1454th meeting, foot-note 2.