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Summary record of the 1203rd meeting

Topic:

State responsibility

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between what was legal and what was illegal. They had to come out squarely in favour of international law, international responsibility and international organization, and move away from an unduly narrow emphasis on national interests and national sovereignty.

33. He fully approved of the formulation of draft article 1.

34. Mr. REUTER said he wished to join in the tributes paid to the Special Rapporteur on his report. He approved of his order of priorities. The relationship between responsibility for wrongful acts and responsibility for lawful acts was very important, but it raised a delicate question which it would be preferable to examine later. The same applied to the concept of an "international crime", which the Special Rapporteur had been a little reluctant to define.

35. He had very mixed feelings about article 1 and could only accept it with reservations. For the term "*engage*", used in the French version, meant that State responsibility came into existence from the moment when an internationally wrongful act was committed, which was not necessarily the case. The expression "*met en cause*" might be preferable, because as soon as a wrongful act occurred the question of the international responsibility of the State arose, which did not mean that such responsibility necessarily existed.

36. It might be asked whether the existence of injury was essential for affirming the existence of responsibility. But did that mean material or moral injury ? It could even be argued that every wrongful act involved moral injury and that the whole world sustained moral injury every time an internationally wrongful act was committed somewhere, which was obviously difficult to accept. Thus it could be said that an internationally wrongful act of a State engaged its international responsibility indirectly—which meant affirming that such responsibility existed—only on condition that the relationship between the concept of injury and the concept of responsibility was defined.

37. He agreed with Mr. Bartoš about the impossibility of admitting legal exceptions without restriction. But there could be justifying circumstances, as in the case of reprisals other than by force of arms, in so far as they were permitted by international law. Hence he could only accept article 1 in its present form subject to exceptions.

38. Mr. THIAM said he joined with the other members of the Commission in congratulating the Special Rapporteur on his report. He would, however, appreciate some further particulars as to the scope of his subject. The Special Rapporteur had expressed his intention of examining, during the initial phase, the problem of State responsibility for internationally wrongful acts. Was that merely a first stage, or did the Special Rapporteur consider that his task was only to consider that aspect of the problem of responsibility ? That seemed to him to be an important point, since responsibility also existed for acts that were not wrongful.

39. Then again, with regard to article 1, if it was accepted that the concept of international responsibility was more or less linked with the concept of injury, was it possible to affirm that every internationally wrongful act of a State involved that State's international responsibility, without reference to the question of injury ? It might, indeed, be asked whether every internationally wrongful act automatically caused injury and consequently involved the responsibility of the State. Personally, he was of the opinion that so long as an act caused no injury it did not involve responsibility, because there was no injury to redress.

40. Mr. SETTE CÂMARA, after paying a tribute to the high quality of the Special Rapporteur's reports, said that the clear-cut provision of article 1 gave evidence of the objectivity and pragmatic approach which were apparent throughout his treatment of the subject of State responsibility. The Special Rapporteur had admirably disentangled the subject from the fetters of its past connexion with the treatment of aliens.

41. Article 1 contained the basic norm which governed the whole topic. As pointed out by the Special Rapporteur, it was important not only because of what it contained, but because of what it omitted. In its present wording, it avoided a number of controversial subjects, such as responsibility arising from lawful acts, without closing the door to their consideration at a later stage. The doubts expressed by Mr. Reuter and Mr. Thiam could be examined when the Commission took up certain other articles of the draft.

42. On the question of drafting, he agreed with those members who had expressed doubts about the English and Spanish words used to render the French verb "*engage*".

43. Mr. RAMANGASOAVINA said he was not completely satisfied with the wording of article 1, because in his opinion the idea of State responsibility was linked with a number of concepts, not only with that of the internationally wrongful act.

44. He agreed with Mr. Thiam that lawful acts could also cause injury and, consequently, engage the responsibility of the State. In private law, any act causing injury involved the responsibility of the person who committed it, and required reparation, even if the act causing the injury was not intentional. Similalry, a State might, without any intention to harm, and even in a humanitarian spirit, carry out scientific experiments the consequences of which caused injury requiring reparation. It should therefore be stated from the outset that the responsibility of the State could be engaged by acts other than internationally wrongful acts.

The meeting rose at 12.35 p.m.

1203rd MEETING

Thursday, 10 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, 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 1 (Principle attaching responsibility to every internationally wrongful act of the State) *(continued)*

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

2. Mr. TSURUOKA said the Special Rapporteur was to be congratulated on his report, which contained essential information, together with a penetrating analysis and excellent conclusions.

3. He was willing to agree to the method and plan of work proposed by the Special Rapporteur, but would like certain points to be clarified. First of all, the articles should make it possible to establish the existence of responsibility with sufficient precision and to determine which subject of law would be entitled to invoke the responsibility. In no case should the articles allow a State which was not responsible to be regarded as being responsible or, conversely, allow a responsible State to evade its responsibility. The Commission should also clearly define the wrongful acts and the exceptional circumstances, such as *force majeure*, which could result in exoneration. As to the subjects of law entitled to invoke the responsibility, in his opinion the capacity to do so should be limited where States were not directly injured by the wrongful act.

4. He would like to know when the Special Rapporteur was going to take up the question of responsibility arising from lawful acts, which was not dealt with in the articles under consideration. Another question was whether the existence of injury should be taken into account in determining responsibility. That was of particular importance where treaty obligations of States were concerned.

5. Subject to the answer to the latter question, he approved of the very concise wording of article 1.

6. Mr. TAMMES said that the Special Rapporteur had submitted a series of articles which not only covered an important part of the traditional doctrine of State responsibility, but included a number of remarkable innovations. That achievement was largely due to the Special Rapporteur's new approach of drawing a clear distinction between substantive rules of international law and rules on the imputation of violations of those substantive rules. A commendable success had been achieved by abstaining from any major attempt at codification, such as that undertaken in the past with respect to the treatment of aliens under cover of the formal rules of responsibility.

7. He himself had supported that approach in previous discussions of the topic and believed it was still sound. Since the Commission's last discussion on State responsibility in 1970, however, certain new trends had emerged which had raised doubts in his mind, and those doubts had been strengthened by the remarks of Mr. Kearney and Mr. Hambro at the previous meeting on certain consequences of modern technology.

8. A study of such instruments as the Declaration of the United Nations Conference on the Human Environment held at Stockholm in 1972,[1] and the recent Oslo and London Conventions on dumping,[2] as well as of several of the drafts to be considered by the forthcoming United Nations Conference on the Law of the Sea, revealed two trends. The first related to acts which were neither acts of the State, being in fact acts of private individuals or enterprises, nor internationally lawful acts. It was precisely that category of acts to which reference was made in the introduction of the Special Rapporteur's third report (A/CN.4/246, para. 21).

9. There was still a third category of acts of international concern, namely, international wrongs *(faits illicites internationaux)*, as was clear from the texts to which he had referred and from the remarks of speakers at the previous meeting. The second trend was in the direction of making the State absolutely responsible for such internationally wrongful acts of all persons under its jurisdiction or control. Principle 21 of the 1972 Stockholm Declaration laid down that States had "the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction", in other words, throughout the world. If that principle were hardened into a strict rule, it would mean that in certain important matters the State would become identified with its subjects and that it would be difficult to determine the borderline between acts of the State and private acts. The responsibility was absolute and not restricted by due diligence or similar excuses, which had to be excluded in view of the tremendous interests at stake.

10. The study of those new principles also showed that it was not quite clear whether they belonged to the substantive or primary rules of international law, or to the formal or secondary rules of State responsibility. The Commission could not, however, postpone the study of those problems of absolute responsibility of the State for wrongful acts by private persons under its jurisdiction or control. Those acts were already being discussed in a great many places and must be considered when the Commission came to discuss the excellent articles of the Special Rapporteur's draft.

11. Subject to those remarks, he approved of article 1.

12. The CHAIRMAN, speaking as a member of the Commission, said it was a great satisfaction to him that the Commission was at last starting on a thorough examination of the topic of State responsibility, which had been on its agenda for twenty-five years. The work done from 1949 to 1962 had led to a dead end, so in that year the Commission had adopted a new approach. Since then, although the General Assembly had repeatedly given the topic a high priority, the Commission had had only one discussion on the substance of State respon-

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[1] A/CONF.48/14, part I.

[2] See *International Legal Materials*, vol. XI, 1972, pp. 262 and 1294.

sibility, which had taken place in 1970 and lasted only four meetings.

13. The Commission should be particularly grateful to the Special Rapporteur for having adopted the only method and plan of work that were likely to lead to fruitful results. No progress would have been possible without making a radical distinction between the rules governing State responsibility and the substantive rules of international law, the violation of which gave rise to international responsibility. If the efforts undertaken in the past to codify the rules governing injury to aliens had been pursued, some limited results might perhaps have been achieved, but there would have been no codified rules on State responsibility in itself which could govern much more important matters than the treatment of aliens—matters which related to the conduct of States in their mutual relations.

14. He welcomed the approach adopted by the Special Rapporteur in making a thorough analysis of the relevant legal writings and judicial precedents in each case. That allowed the reader to form his own opinion of the scope and effect of the provisions which the Commission would later be asked to adopt. He also welcomed the Special Rapporteur's innovation of starting with the explanatory observations and concluding with the text of the article. In the case of article 1, the brief text clearly appeared as the logical and necessary conclusion of the learned analysis which preceded it.

15. He approved of the method and plan of work adopted by the Special Rapporteur. Perhaps the latter could give some indication of the proposed timing of his submission of the various sections of his draft.

16. He agreed with Mr. Kearney's remarks on State responsibility resulting from certain activities which were at present not wrongful, such as placing a vast quantity of copper needles in orbit and, in general, activities connected with the preservation of the human environment. Such rules of international law as existed in the matter originated from the award in the *Trail Smelter* arbitration.[3] The whole subject, however, had acquired new dimensions as a result of technological progress and a better understanding of ecological phenomena. Mr. Kearney had rightly pointed out that the distinction between responsibility for wrongful acts and objective responsibility for certain lawful acts was gradually becoming blurred under the impact of such developments.

17. A valuable idea had been introduced into the discussion by Mr. Hambro, namely, that certain previously lawful acts could no longer be considered lawful because of changed circumstances. Since time immemorial, man had used the sea to dispose of waste material. In fact, the freedom to dump waste might be said to have preceded all the four traditional freedoms specified in article 2 of the 1958 Geneva Convention on the High Seas.[4] Use of the sea as humanity's *cloaca maxima* had not been a wrongful act so long as the waste dumped was well within the natural capacity of the sea for regeneration, but with the growth of the industrial society, a change of attitude had become imperative. Particularly in closed seas like the Mediterranean, whole sale dumping could cause irreparable damage to the coastal States. The risk involved in the possible shipwreck of a 20,000 ton oil tanker was perhaps tolerable, but the concern of Spain, for example, at the possibility of an accident to a 500,000-ton tanker in the straits of Gibraltar was understandable. A catastrophe of such magnitude could put an end for ten years or more to the use of the beaches in the south of Spain which were essential for its tourist trade.

18. In his third report, the Special Rapporteur had explained that the acts in question were halfway between wrongful acts and lawful acts. Consequently, although from a logical point of view he approved of the Special Rapporteur's method of considering first the cases of State responsibility for wrongful acts, he thought that no time should be lost in dealing with State responsibility for lawful acts. Such instruments as the 1972 Stockholm Declaration and the London Convention on the Prevention of Marine Pollution already contained provisions dealing with objective responsibility, sometimes referred to as "liability without fault" or "liability for created hazards" *(responsabilité pour risque créé)*, and the Committee on the Peaceful Uses of the Sea-Bed had a special sub-committee to examine the many proposals on marine pollution which would in due course be submitted to the forthcoming Conference on the Law of the Sea. Some of those drafts provided for the objective responsibility of States for acts which had hitherto been regarded as lawful. There was a real danger that the subject might be codified in piecemeal fashion. The Commission should try to prevent that by offering a coherent and general legal framework within which all those cases of objective State responsibility could be set.

19. The Special Rapporteur had pointed out in his report that internationally wrongful acts gave rise to new legal relationships, and had discerned three schools of thought, or doctrines, regarding the character of those relationships and the parties involved. He himself would examine one aspect of that problem, namely, the question whether a State injured by a wrongful act was entitled to apply a sanction to the State responsible for the act.

20. The doctrine which regarded reparation as having a punitive character and recognized the right of the injured State to use coercive measures to obtain reparation was now in need of revision. A leading exponent of that doctrine, Kelsen, considered war and reprisals as the two types of coercive measures which a State might apply. As far as war was concerned, it had been outlawed by the Charter. As to reprisals, the very first of the Principles of International Law concerning Friendly Relations and Co-operation Among States embodied in the declaration adopted by the General Assembly by resolution 2625 (XXV) stated unambiguously that "States have a duty to refrain from acts of reprisal involving the use of force". The United Nations doctrine in the matter in fact went back to a Security Council resolution of 1964 which condemned armed reprisals as being contrary to the Charter.[5]

[3] See *American Journal of International Law*, vol. 35, 1941 pp. 684-736.

[4] United Nations, *Treaty Series*, vol. 450, p. 82.

[5] Security Council resolution 188 (1964) of 9 April 1964.

21. Kelsen himself recognized that the United Nations Charter had created a monopoly of the use of force for the benefit of the Organization. That doctrine left very little scope for the exercise of reprisals. In any case, it was difficult to see what other conclusion could be drawn from the explicit terms of Article 2 (4) of the Charter, which required all Members to refrain in their international relations from the threat or use of force. In the inter-American sphere the position was even clearer: not only armed reprisals, but economic and political coercive measures were banned by article 15 of the Charter of the Organization of American States.[6]

22. There remained the question of possible action by the United Nations itself under a Security Council resolution. Kelsen himself had written that such action was more in the nature of discretionary political steps taken by the Council for the purpose of restoring peace than of legal sanctions properly so called. That interpretation was consistent with the markedly political conception of the drafters of the United Nations Charter.

23. It was important to remember that the relevant provisions of the Charter, unlike Article 16 of the League of Nations Convenant, made no provision for automatic joint action by Member States against a State convicted of aggression. The role of the Security Council was not a punitive one; any coercive action it might take was not for the purpose of restoring the legal order violated, but of re-establishing peace, which might not be the same. The legal possibility of the application of sanctions, even by the Council, was rather doubtful.

24. In support of his thesis that the injured State could apply sanctions against the offending State, the Special Rapporteur quoted from certain legal writings, the most valuable of which was the course of lectures he himself had given at the Hague Academy in 1939. But since then the signing of the United Nations Charter had undoubtedly brought about changes in that respect. The Special Rapporteur had also quoted from the writings of such authors as Eagleton and Borchard on the subject of injuries done to aliens. The doctrines put forward by those writers were based on the nineteenth century idea that a certain group of States which considered themselves "the civilized nations" were invested with the mission of maintaining order throughout the world and of punishing, in the name of the international community, States which committed internationally wrongful acts. He naturally had the greatest distaste for that obsolete doctrine.

25. With regard to the subject as a whole, however, he agreed with the Special Rapporteur's conclusion that, under general international law, an internationally wrongful act did not establish any legal relationship between the guilty State and the international community as such, since the community was not recognized as an international legal person (A/CN.4/246, para. 40).

26. He also agreed that there were certain international obligations of States which constituted obligations *erga omnes*; the violation of any such obligation, for example by genocide, constituted an international crime. A trend in the direction of recognizing the international community's personality in international law was discernible in the ruling by the International Court of Justice in the *Barcelona Traction* case.[7]

27. The Special Rapporteur had cited as a step in the same direction the statement in the first principle of the declaration adopted by General Assembly resolution 2625 (XXV): "A war of aggression constitutes a crime against the peace, for which there is responsibility under international law". He himself was of the same opinion; indeed, it was his own country's delegation which had proposed the introduction of that statement.

28. One of the merits of the present work of codification of State responsibility might be its contribution to the recognition of the international community as a subject of international law. It was worth recalling the concept of the "common heritage of mankind" which had emerged from the United Nations work on the resources of the sea-bed and ocean floor beyond the limits of national jurisdiction. It was significant that all the relevant proposals submitted to the Committee which was preparing for the forthcoming United Nations Conference on the Law of the Sea made provision for the setting up of an international body to represent the interests of the international community, to administer its property and perhaps, as a corollary, to invoke the international responsibility of States.

29. Mr. Reuter's suggestion that the word "*engage*" in the French version of article 1 should be replaced by the words "*met en cause*" [8] involved more than a mere matter of terminology; it had implications of substance. Undoubtedly, discussion on the point was coloured by reminiscences of internal criminal law. An unlawful act punishable under criminal law might well involve *(met en cause)* a person without that person being liable to punishment *(sans engager sa responsabilité)*, because of some circumstance, such as self-defence, which exonerated him.

30. Although exonerating circumstances of a similar kind were recognized in international law, the position with respect to internationally wrongful acts was different. The draft was based precisely on the assumption that where such exonerating circumstances existed, they removed the wrongful character of the act.

31. Mr. USTOR said the Special Rapporteur had produced a series of valuable reports containing a wealth of material for which he deserved the Commission's commendation.

32. The Special Rapporteur had complied with the Commission's decision and concentrated for the time being on international responsibility for wrongful acts of States, while reserving the possibility of dealing later with State responsibility for damage caused by lawful acts. The Special Rapporteur had even suggested that the title of the topic should be expanded to read "State responsibility for internationally wrongful acts". He wondered whether that was the best course to follow. Reference had already been made in the discussion to

[6] United Nations, *Treaty Series*, vol. 119, p. 56.

[7] *I.C.J. Reports 1970*, p. 32.

[8] See previous meeting, para. 35.

modern technical developments which made the problem of responsibility for damage resulting from so-called lawful acts much more timely, and the frontier between unlawful and lawful acts more fluid. The Commission should not, therefore, make any move which might be interpreted as indicating that State responsibility for lawful acts would only be dealt with at some remote future time.

33. In order to dispel any such impression, he would suggest that the title "State responsibility" be retained and that the rules governing State responsibility for unlawful acts be presented as one part of the whole topic, not necessarily the first part. A change in presentation could be made which would not affect the substance of the articles. What was now chapter II, dealing with the "Act of the State" according to international law, would become the first part of the draft. Its contents were more general than those of chapter I and were applicable both to responsibility for lawful acts and to responsibility for unlawful acts. A convenient title for that chapter would be "Introduction" or "General provisions".

34. He did not approve of the title "General Principles". As had recently been pointed out by a number of writers, including Professor Virally and Madame Bastid, the term "principle" could have very different meanings. It could mean a basic rule of international law, but it could also mean a rule that was only in the process of formation.

35. That general chapter would be followed by two parts, the first dealing with responsibility for wrongful acts and the second with the responsibility arising from lawful acts. A presentation on those lines would reassure the reader of the draft that the subject of responsibility for lawful acts would be treated later as an important part of the whole topic. There was much truth in the idea that some acts which had formerly been lawful had now become wrongful, but there would still remain many lawful acts that could entail the international responsibility of the State.

36. His criticism of the use of the term "principle" applied also to the titles and texts of the articles themselves. It was significant that that term did not appear in the corresponding articles of the 1969 Vienna Convention on the Law of Treaties.[9]

37. With regard to article 1, although he shared some of the views expressed during the discussion, he found the text basically satisfactory and supported the suggestion that it be referred to the Drafting Committee.

38. Mr. USHAKOV said that he approved in principle of the plan of work proposed by the Special Rapporteur in his introductory statement, but would like to comment on some of the main points.

39. First, he agreed that responsibility should be studied as such, independently of the rules of international law. It had to be assumed that such rules existed and that they were rules of general international law, whatever their source. But there could be no responsibility without rules. It was hardly possible to envisage the existence of responsibility in the case of a violation of rules of law which did not yet exist, for example, rules on the protection of the environment. That was not a matter of responsibility, but of the formulation of new rules, in other words, of progressive development of international law, with which the Commission was not concerned for the moment.

40. With regard to the source of State responsibility he thought it was to be found in the existence of law, since it was the property of legal rules to engage responsibility. For every legal rule was designed to protect the interests of subjects of law, whether States or individuals, and that presupposed that those interests could be injured. There was no responsibility without injury. Injury, however, should not be interpreted in the narrow sense of "material injury", as in internal law, since injury in international law could also be political or moral.

41. An internationally wrongful act engaged the responsibility of the subject of international law who committed it, because it harmed someone's interests and there was therefore injury. But, as the Special Rapporteur had pointed out, responsibility could also be engaged by a lawful act. That was what was known in international law as absolute responsibility; it derived from lawful conduct. In that case too, the existence of rules was a precondition for the existence of responsibility. Such rules did exist. They had recently been stated in the conventions governing, for example, damage caused by nuclear ships or space craft. But, that was a branch of international law which dealt with exceptions rather than general rules, and was still little developed. That was why the Commission had rightly decided, at the twenty-first session, to defer consideration of it.[10]

42. Injury caused by one subject of international law to another did not necessarily entail responsibility. For it was not enough that a rule had been violated; there must also be a rule making the consequences of the violation attributable to its author.

43. Unlike internal law, which recognized three categories of responsibility—criminal, civil and administrative—international law recognized only one, namely, international responsibility. It might be divided, for reasons of convenience, into political and material responsibility, but those categories were an integral part of one and the same responsibility. When a State committed an internationally wrongful act which caused injury engaging its material responsibility, it was obvious that the reparation demanded could not always be equal to the injury, since it might exceed the author's capacity to pay. An example was the war damage suffered by the Soviet Union; in a case like that, reparation was only partial. He accepted the views set out by the Special Rapporteur in his report and agreed with his interpretation of the term "international responsibility".

44. Some members had mentioned sanctions, which could be lawful or unlawful, depending on how they were applied. Everything depended on the rules of inter-

[9] 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. 289.

[10] See *Yearbook of the International Law Commission, 1969*, vol. II, p. 233, para. 83.

national law. There was a general prohibition of the use of force, and any violation of that rule engaged the responsibility of its author even if he had acted to protect himself against a wrongful act by another subject of law. Sooner or later, therefore, the Special Rapporteur and the Commission would have to consider the existing rules and draw up rules governing responsibility, but not at the present stage.

45. He agreed with the Special Rapporteur that it was desirable to establish different categories of rules according to the gravity of the offence. He himself had suggested that at the twenty-first session, during the consideration of the Special Rapporteur's first report.[11]

46. He could accept article 1, in principle, provided a suitable translation was found for the French word "*engage*".

47. Mr. BILGE said he fully approved of the plan of work proposed by the Special Rapporteur and the method he had adopted. The Special Rapporteur had had to do an enormous amount of work, because of the wealth of literature and jurisprudence on his subject; he had the great merit of having made a clear distinction between existing rules and rules which might come into being: for example, on the legitimacy of the use of force or the legal force of decisions of the Security Council. For the time being, however, the Commission should keep to the existing rules and international responsibility proper, which must not be confused with responsibility, criminal or civil, as understood in internal law.

48. Article 1, as drafted, was acceptable as an initial rule, and required no justification. No State would challenge such a rule, which was essential for the maintenance of international order.

49. The Special Rapporteur had been right in proposing that the Commission should confine itself, for the time being, to considering responsibility arising from internationally wrongful acts. Although he had no wish to ignore recent developments in international law, at the present stage it would be premature to study responsibility arising from lawful acts.

50. Mr. BARTOŠ said that, as he understood it, article 1 laid down as a general principle that any violation of international law, in any form whatever, engaged responsibility; in other words, that every rule of international law was a source of responsibility. He asked the Special Rapporteur to confirm that interpretation.

51. Some members of the Commission, of whom Mr. Tammes was one, had raised the question of the responsibility of the State for acts of individuals. Although that question did not arise directly out of article 1, it deserved attention. When considering responsibility, it was necessary to make a distinction, in international law, between acts and omissions. The State was responsible for preventing the commission in its territory of any act contrary to international law. If there was a direct breach of international law, whether the State had been negligent or whether it had been impossible for it to act, it incurred responsibility.

52. When the Commission came to examine the question of the attribution to the State of acts of individuals, it should include in its study the acts of established bodies such as trade unions, co-operatives, and collective enterprises, which were not State organs, but exercised a great influence on the internal order. Given the existence of those semi-public—or semi-private—bodies, the division between the public and the private domain was no longer absolute where the international responsibility of the State was concerned.

The meeting rose at 1 p.m.

1204th MEETING

Friday, 11 May 1973, at 10.5 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. Tusuruoka, Mr. Ushakov, Mr. Ustor, 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 1 (Principle attaching responsibility to every internationally wrongful act of the State) *(continued)*

1. The CHAIRMAN invited the Special Rapporteur to sum up the discussion on article 1.

2. Mr. AGO (Special Rapporteur) said that at its twenty-first session, the Commission had decided in principle provisionally to leave aside the study of certain matters. World public opinion was becoming increasingly concerned with those matters, however, and it was not surprising that members of the Commission had also raised them.

3. Mr. Kearney had been the first to do so, when he had pointed out that it was becoming increasingly difficult to make a clear distinction between responsibility deriving from a wrongful act and responsibility deriving from a lawful act. It was not so much that the distinction between those two kinds of act was becoming blurred, as that, as Mr. Hambro had observed, activities which international law had hitherto regarded as lawful were now considered wrongful,[1] and that unwritten law was developing quickly and now imposed obligations and prohibitions in fields it had not previously entered. But where that was the case, violation of such obligations and prohibitions was an internationally wrongful act, and it was from such an act that the responsibility derived.

[11] *Ibid., 1969*, vol. I, p. 112, para. 38.

[1] See 1202nd meeting, para. 32.