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Summary record of the 1204th meeting

Topic:
State responsibility

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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.

4. Mr. Ushakov had rightly said that there was a general principle linking responsibility for a wrongful act with any breach of rules of law, whereas a lawful act generated responsibility only if a substantive or primary rule so provided. If injury caused by a lawful activity—that was to say, one that was not prohibited, such as activities in outer space—entailed an obligation to make reparation, that was not, strictly speaking, a matter of responsibility, but of a guarantee. There could be a violation if the person causing the damage refused to make reparation, thus failing to fulfil an international obligation and committing an infringement which generated responsibility. Once again it could be seen that a distinction must be made between the rules which attached responsibility proper to the violation of an obligation and the rules which imposed the obligations whose violation could entail responsibility. Whatever the field of law—obligations concerning the treatment of aliens, prohibition of aggression, obligations of States with respect to the environment, and so on—the formulation of the substantive rules and that of the rules on responsibility for failure to fulfil the obligations deriving from the substantive rules were entirely separate and it was only when there was failure to fulfil an obligation that there was responsibility in the proper sense of the term, namely, responsibility for an internationally wrongful act.

5. He saw no reason why the Commission should not also study responsibility for risk, that was to say, the guarantee which States must give against possible injury from certain "lawful" activities, but that was not part of the topic of responsibility for wrongful acts, and the two studies should therefore be conducted separately, by different special rapporteurs. In any case, he doubted whether the subject was yet ripe for codification. The rules governing it—conventions, declarations and so on—were still in gestation; others would certainly follow them. Thus it could not be said that unwritten general rules already existed which placed an obligation on the State to make reparation for injury caused by a lawful but dangerous activity; there were only instruments covering certain parts of that very extensive subject-matter.

6. He did not believe, like Mr. Ustor, that it was necessary to change the new title of his report, which clearly showed what was the subject dealt with. In defining the fundamental principles, the Commission should indicate that it was referring to responsibility for internationally wrongful acts, but should not give the impression that in its opinion only wrongful acts gave rise to international responsibility.

7. As to what should be understood by "international responsibility", he had indicated in the considerations preceding the formulation of article 1 that he understood that expression to mean the whole set of new legal relationships created by a wrongful act. The expression had been used by many writers—old ones such as Anzilotti and modern ones like Jiménez de Aréchaga; it was also to be found, in practically the same form, in a collective work by Soviet writers. What must be emphasized was the novelty of the legal relationships established as the result of failure to fulfil an international obligation. As the Chairman had rightly observed, it was too early to say what those relationships were. That would be the last stage to be reached.

8. It was only to enable the Commission to form a judgment based on full knowledge that he had set out the main theories in his report: the traditional theory, according to which the new relationships were bilateral relationships of an obligatory nature—the obligation of the State committing the breach to make reparation and the subjective right of the injured State to claim reparation; the theory of Kelsen, which assumed that the legal order was an order based on constraint and characterized by sanction; and the theory he himself supported, according to which the consequences of a wrongful act included both the obligation to make reparation and subjection to a sanction, depending on the nature of the wrongful act, the injury it had caused and other circumstances.

9. It was therefore important that members of the Commission should digest the idea, emphasized by Mr. Ushakov, that notions of internal law—civil law in particular—could not be simply transferred to international law and that international law did not recognize the same categories of responsibility—civil, criminal and administrative—as internal law, but only one single responsibility, which was the same for the whole of the international legal order, but could have different aspects in different cases.

10. The question raised by Mr. Reuter and Mr. Ramangasoavina—whether the factors combining to make an act wrongful did or did not include injury as an additional element—would be discussed in another chapter.

11. Several members of the Commission had pointed out that there were so-called exceptional circumstances such as *force majeure*, accident, self-defence, consent of the injured State, imposition of a sanction and state of necessity, in which the act did not entail responsibility. Not only did those circumstances exist, but they were so important that it would be necessary to devote a whole chapter to them; it was, however, too soon to deal with them at the present stage of the work. All he wished to say about them for the moment was that, in all those cases, the absence of responsibility was not an exception to the rule; in reality there was no responsibility because there was no wrongful act. The exceptional circumstances eliminated not the responsibility, but the wrongfulness.

12. Mr Tammes had raised a question which was worth considering: that of the attribution to the State of the acts of private persons. There again, a distinction must be made between the sphere of lawful activities—acts of private persons for the possible consequences of which the State assumed responsibility—and that of unlawful activities. In the latter sphere it was necessary to distinguish between certain acts of private persons which could, exceptionally, be considered as acts of the State generating responsibility, and the more frequent cases in which the act of the State generating responsibility was merely an omission on the part of the State to take the necessary precautions to prevent an act from being committed by private persons. Those were questions

relating to determination of the act of the State, and the Commission would revert to them in due course.

13. With regard to the point of terminology raised by Mr. Reuter, the essential was to find what form of words best expressed the idea that the internationally wrongful act was a "source of new relationships".

14. Finally, although the definition of international responsibility would, of course, be the result of all the work done on the subject by the Special Rapporteur and the Commission, he felt bound to remind the Commission once again of his own understanding of responsibility. "International responsibility" meant, globally, all the forms of new legal relationships which could result in international law from a wrongful act of a State, irrespective of whether they were limited to a relationship between the State which committed the wrongful act and the State directly injured by it or extended to other subjects of international law as well, and irrespective of whether they were centred on the guilty State's obligation to restore the rights of the injured State and to repair the damage caused, or whether they also involved the faculty of the injured State itself, or of other subjects, of imposing on the guilty State a sanction permitted by international law. The Commission was not called upon at that stage to decide on the nature of the relationships established by the wrongful act, but simply to note that that set of new relationships was the inevitable consequence of the internationally wrongful act.

15. Article 1 had been compared in importance with *jus cogens*. In his opinion, its importance was comparable with that of the *pacta sunt servanda* principle in the law of treaties.

16. The CHAIRMAN suggested that, since there was a link between articles 1 and 2, the Commission might accept article 1 provisionally and refer it to the Drafting Committee after it had discussed article 2.

17. Mr. YASSEEN suggested that article 1 be referred to the Drafting Committee on the understanding that it would have several articles before it at the same time.

18. Mr. AGO said he hoped the Commission would have completed its examination of article 2 by the time the Drafting Committee was set up.

19. Mr. ELIAS said that, since the Commission was considering the draft article by article, it would be in accordance with its normal practice to refer article 1 to the Drafting Committee, subject to whatever might be decided later.

20. The CHAIRMAN said that the composition of the Drafting Committee would be decided at the next meeting; meanwhile, the Commission would continue its discussion.

21. Mr. USTOR said he wished to assure the Special Rapporteur that he was quite aware of the difference between the responsibility of a State for wrongful acts committed by it and its responsibility for damage caused by lawful acts. He fully expected, however, that the comments made by Mr. Kearney, Mr. Hambro and Mr. Tammes at the two previous meetings would be repeated in the Sixth Committee.

22. If, however, the Special Rapporteur and the Commission wished to deal with the two questions separately, then it was quite possible that the title of the draft ought to be changed to make it clear that it referred only to wrongful acts, and that some wording should be introduced to indicate that for the time being the Commission was dealing only with internationally wrongful acts and that it might consider the question of responsibility for lawful acts later.

23. Mr. KEARNEY said that he did not propose any basic change in the approach adopted by the Special Rapporteur who, in paragraph 5 of his third report (A/CN.4/246), had himself drawn attention to the two aspects of State responsibility, namely, responsibility for wrongful acts and responsibility for lawful acts. His own concern was solely with ensuring that the Commission took into account the problem of acts whose results were not entirely predictable, but might be irreversible if damage occurred.

24. Owing to the rapid advance of technological developments, the world was moving into an era in which all countries were becoming increasingly concerned about the risks connected with those developments. Many countries, for example, had already prohibited the use of certain additives in foodstuffs, although it had not yet been fully proved, except on the basis of animal experiments, that they could induce cancer in human beings. As he had previously mentioned, there was similar uncertainty about supersonic aircraft, which might disrupt the ozone layer of the upper atmosphere and cause it to admit excessive sunlight to the earth's surface, thus increasing the incidence of skin cancer. In dealing with State responsibility the Commission was bound to take those questions into account.

25. The CHAIRMAN, speaking as a member of the Commission, said that, while he agreed with the Special Rapporteur's basic approach, he thought it solved only part of the problem of State responsibility. As Mr. Kearney had pointed out, the whole question of possible risk from technological developments was still in such a fluid state that it was difficult to apply to it the existing rules of international law. For example, article 2 of the Geneva Convention on the High Seas,[2] of 29 April 1958, proclaimed certain freedoms with respect to the use of the high seas by all nations, but also stated that "These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas". It was not clear, however, whether that provision would cover the case of an "oil spill" in the territorial waters of one State, which might spread to the waters of another State and cause pollution there.

26. Similarly, the decision in the *Trail Smelter* arbitration[3] had recognized no specific rule of international law, but had been based merely on principles of equity. Such cases arose from situations in which a lawful act

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

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

had caused material damage and had thus created responsibility on the part of a State to make reparation. Too much reliance should not be placed on comparisons with internal law, but he might refer to the responsibility of a factory owner to one of his workmen who was injured by an intrinsically dangerous machine, the use of which was certainly not unlawful. Problems of that kind of responsibility came within a related field of international law, which in his opinion was so important that the Commission should begin to study it.

27. Mr. YASSEEN said he was not sure that new legal relationships arising from a lawful act could be termed "responsibility". The question was undoubtedly of great importance in modern international life and warranted examination, but it could be considered as an independent question. It would be better not to prejudge the issue, and keep to the method adopted by the Special Rapporteur.

28. To allay the concern of certain members and define the Commission's attitude, however, the Special Rapporteur should state clearly in his commentaries that the Commission had not wished to prejudge the nature of the question of new relationships arising from a lawful act, that that question could be examined later and dealt with separately, and that the Commission was fully aware of the need to examine it in view of its importance in the modern world.

29. Mr. BARTOŠ said that he, too, was still in favour of the method adopted by the Special Rapporteur.

30. Of course, Mr. Ustor, Mr. Kearney and the Chairman were not wrong. The concepts of the quasi-offence and guarantee against risk of injury also existed in international law and there could be other sources of responsibility than wrongful acts. The Special Rapporteur should therefore say so clearly in the report to be submitted to the General Assembly, as Mr. Yasseen had proposed. It would be premature to begin studying those questions immediately, at the risk of obscuring the concept of international responsibility so clearly expounded by the Special Rapporteur.

31. Mr. HAMBRO said he regretted that the Commission could not enter into a long discussion of the moving frontiers of international law which had been created by modern scientific developments. The Commission was not an academy of theorists; it was expected to achieve practical results. Some self-abnegation on its part was obviously necessary, and the Special Rapporteur had given proof of it in his report, although perhaps it should be stated somewhat more explicitly that the Commission was fully aware of all the implications of the problem of State responsibility.

32. Mr. USHAKOV said that the Special Rapporteur had mentioned a collective work by Soviet writers and he would like to add that in the Soviet Union the question of the new legal relationships arising from failure to fulfil an obligation was always dealt with in a branch of law known as "the theory of law". The philosophy of law laid down that the violation of a legal rule always gave rise to new legal relationships.

33. Mr. BILGE said that the Commission's position was clearly set out in paragraph 5 of the Special Rapporteur's third report. It would therefore be sufficient to indicate in the Commission's report that the question had arisen again and that the Commission had confirmed its position.

34. Mr. SETTE CÂMARA said he was convinced that the Special Rapporteur's approach to the problem was absolutely correct. It could hardly be claimed that there were at present any clear-cut rules of international law covering responsibility created by modern technological developments. The few cases which had arisen had been solved in an anarchic fashion and it would be premature for the Commission to attempt to deal with the problem.

35. He agreed that it was a problem which could not be ignored, but he did not think the Commission could discuss it simultaneously with the problem of a State's responsibility for its internationally wrongful acts. After all, article 1 did not refer to such acts only; if certain acts which were lawful at the present time should become unlawful in the future, they would automatically be covered by article 1.

36. Mr. RAMANGASOAVINA said he thought it was simply a matter of procedure, since all the members of the Commission agreed with the Special Rapporteur that responsibility for wrongful acts should be considered separately.

37. Some members, however, wished to show that the Commission was aware that responsibility might also arise from lawful acts and that the Special Rapporteur's draft would be incomplete unless a part of it was devoted to that question. Consequently, not only the Commission's report, but also the draft itself should state what it was proposed to do later, and include an assurance that the question of the consequences of lawful acts would be examined in another part of the report or in another study.

38. Unlike the Special Rapporteur, he did not think that the obligation to make reparation for any injury resulting from a lawful act was simply a matter of guarantee. It was undoubtedly a matter of responsibility. The existing conventions allowed great freedom to States which had the means to conduct experiments or engage in enterprises that involved increasingly great risks, for example, the exploitation of the sea-bed or outer space, the consequences of which could be very serious for other States.

39. Nor did he quite share the view that responsibility for lawful acts was still vague. The 1944 Chicago Convention on International Civil Aviation,[4] for instance, had already clearly delimited a part of it. There was every reason to believe that the law would continue to evolve in that direction, in view of the rapid development of science and technology and the increasing risk of injury it entailed.

40. Mr. ELIAS said he agreed with Mr. Sette Câmara and Mr. Hambro; if the Commission attempted to deal with responsibility for lawful acts, there was a danger that the subject might become so complicated that it would prove impossible to produce any draft articles at all.

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[4] United Nations, *Treaty Series*, vol. 15, p. 296.

41. The subject had been properly delimited during the discussion in 1970, as the Special Rapporteur had correctly reported in the following sentence in his third report. "The majority of the members of the Commission observed that owing to the entirely different basis of the so-called responsibility for risk, the different nature of the rules governing it, its content and the forms it may assume, a simultaneous examination of the two subjects could only make both of them more difficult to grasp" (A/CN.4/246, para. 5).

42. The Commission should therefore avoid indulging in philosophical subtleties and concentrate on responsibility for internationally wrongful acts, without, however, shutting its eyes to the responsibility that might be created by lawful acts. As Mr. Sette Câmara had rightly observed, once such acts became unlawful, they would automatically fall within the purview of article 1. As Mr. Hambro had pointed out, the Commission was not an academy where lectures were given on the purely theoretical side of international law, but a body which was expected to produce practical results in the form of concrete rules which could be accepted by the General Assembly and by the international legal community at large.

43. It would be sufficient, therefore, if the Commission merely indicated in its commentary to article 1 that, while concerned over the possible risks from new developments of technology, it had decided to confine itself, for the present, to State responsibility for internationally wrongful acts.

44. The CHAIRMAN said that two issues had been raised during the discussion. The first was the proposal by the Special Rapporteur that State responsibility for wrongful acts and State responsibility for risk, which meant responsibility for lawful acts, should be treated quite separately. The second issue was whether, in the Commission's report to the General Assembly on the work of the present session, a passage should be included on the lines of paragraph 5 of the Special Rapporteur's third report.

45. There was another passage in that report which dealt with the same question in slightly different terms. It was in paragraph 20 and stated that nothing prevented the Commission "from also undertaking, if it sees fit, a study of this other form of responsibility, which is the safeguard against the risks of certain lawful activities"; it added that "It could do so after the study on responsibility for wrongful acts has been completed, or it could even do so simultaneously but separately".

46. Mr. AGO said he must point out, once again, that the fact that he had not dealt in his report with the question of responsibility arising from lawful acts did not mean that he did not appreciate the topical importance of that new phenomenon. If the Commission thought the subject was ripe for codification, it could consider the advisability of placing it on its agenda and appointing a special rapporteur to study it. But it should not add further obstacles to those which it already had to face in the codification of responsibility for wrongful acts; for if it introduced the question of responsibility for lawful acts, it might meet with another setback.

47. He was afraid the distinction between lawful and wrongful acts might become too fluid. It was, indeed, difficult to accept that some acts fell midway between lawfulness and unlawfulness, since it was infringement of the rules of international law that generated responsibility. But those rules were constantly evolving and a rule prohibiting certain activities was now in process of formation. That was why, in some fields, no decision could yet be taken on the wrongfulness of certain acts. There could be no wrongful act without violation of an obligation existing at the time the act was committed. Hence it could not be claimed that an act which had been lawful at the time it was committed had since become unlawful.

48. It was true that the consequences of certain activities which had been lawful up to the present were now causing serious concern in view of the rapid progress of science and technology in the modern world. And if an activity came to be recognized as really dangerous for mankind, it should be prohibited, and would then become wrongful. Activities such as flying supersonic aircraft or operating giant tankers, which could not be prohibited at present, but which involved risks and could cause material damage, should be made subject to certain safeguards required under international law, and the person exercising the activity should be liable for reparation in the event of damage. Where such activities were made the subjects of treaties, such as the 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere, any violation of the treaty constituted a wrongful act.

49. With regard to the need for separate consideration of the questions of responsibility for wrongful acts and responsibility for lawful acts, he would refer to the Commission's reports for 1969 (para. 83) and 1970 (paras. 66 and 74) and to paragraph 5 of his third report, which indicated that the Commission had decided to proceed first to consider the topic of the responsibility of States for internationally wrongful acts and to consider separately the topic of responsibility arising from lawful activities, as soon as progress with its programme of work permitted.

50. With regard to the title of the draft, it might be useful to indicate that, in accordance with the Commission's conclusions, the topic under consideration was State responsibility for internationally wrongful acts. It would then be known that the general principles the Commission was considering related to that question. When the Commission had made sufficient progress on that first question, it might propose to the Sixth Committee that it should place the question of responsibility for lawful acts on its agenda. For the time being, however, the two questions should not be confused.

51. The CHAIRMAN said he feared that the General Assembly would have serious reservations on any suggestion of delay in considering such a serious and urgent question as responsibility for lawful acts. That should be borne in mind when drafting the passage of the Commission's report which would record the conclusions of the present debate.

52. Mr. AGO pointed out that it would even be necessary to study the two questions together, for if the second

study were begun after the first study had been concluded, it might give the impression that they were two successive stages of the same question rather than two separate questions.

53. Mr. KEARNEY said that the English version of paragraph 5 of the Special Rapporteur's third report made it clear that the Commission was not in any way inhibited in the timing of its consideration of the subject of responsibility for risk. The last sentence of that paragraph stated that the Commission "intends to consider separately the topic of responsibility arising from lawful activities", subject only to one qualification "as soon as progress with its programme of work permits".

54. He was therefore led to think that the question of responsibility for risk should perhaps be considered by the Commission in connexion with the review of its long-term programme of work, particularly as the Commission was also to examine the priority to be given to the topic of the law of the non-navigational uses of international watercourses,[5] a subject which gave rise to problems of responsibility for lawful activities.

55. Mr. ELIAS said that, while it was technically possible for the Commission to undertake a parallel study of responsibility for risk, he wished to warn his colleagues of the danger of confusion that would result from the consideration of two sets of papers—one dealing with responsibility for wrongful acts and the other with responsibility for lawful acts. There would inevitably be a danger of members transferring their thoughts on one subject to the other and of the discussion on one subject having an undesirable impact on the discussion of the other.

56. To make real progress, the Commission should concentrate on the present topic and clarify its thoughts before going on to examine supplementary rules on responsibility for lawful acts. That, of course, would not prevent members from referring to the question of responsibility for risk when discussing problems of the environment or of the non-navigational uses of international watercourses.

57. Mr. BILGE said that, in internal law too, there was always a responsibility based on risk. He did not think the word "separately", used by the Special Rapporteur, was sufficient. As Mr. Elias had said, it should be made clear that it was a new topic.

58. Mr. TSURUOKA said he did not think it necessary to decide immediately on the procedure to be followed in considering the question of responsibility for lawful acts. The Commission should first examine the Special Rapporteur's reports. In the meantime, the officers of the Commission could discuss how to deal with the second topic.

59. He would like the Drafting Committee to pay particular attention to the used of the words "international" and "internationally". The term "internationally wrongful" did not seem clear. Did it mean an act that was wrongful under international law? In his view, the word "internationally" had political overtones.

[5] Item 5 of the agenda.

60. Mr. AGO said that he had begun by using the expression "*fait illicite international*" ("international illicit act") in his report.[6] As far as he could see, the two terms were synonymous and interchangeable.

61. The CHAIRMAN said that no formal proposal had been made during the discussion that the Commission should undertake a study of the question of responsibility for risk. The problem of the action to be taken by the Commission with regard to the new topic could, of course, be raised in connexion with item 5. Meanwhile, if there were no further comments, he would take it that the Commission agreed to refer article 1 to the Drafting Committee which would be set up, for consideration in the light of the discussion.

It was so agreed.[7]

The meeting rose at 12.50 p.m.

[6] See *Yearbook of the International Law Commission, 1970*, vol. II, p. 177, footnote to table of contents of the second report.

[7] For resumption of the discussion see 1225th meeting, para. 50.

1205th MEETING

Monday, 14 May 1973, at 3.15 p.m.

Chairman: Mr. Mustafa Kamil YASSEEN

Present: Mr. Ago, Mr. Bartoš, Mr. Bedjaoui, Mr. Bilge, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov.

Co-operation with other bodies

[Item 8 of the agenda]

1. The CHAIRMAN said that the European Committee on Legal Co-operation had invited the Commission to be represented at the session it was to hold from 21 to 25 May. As the Commission could not delegate one of its members while it was itself in session, he proposed that it should convey its regrets to the Committee and request it to send the Commission its report as usual.

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)

2. The CHAIRMAN invited the Commission to resume consideration of the draft articles submitted by the Special Rapporteur.