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Summary record of the 1364th meeting

Topic:
State responsibility

Extract from the Yearbook of the International Law Commission:-
1976, vol. I

had to create the rule applicable in that particular case, as if he was himself legislator. It was obvious that in cases of that kind, the judge's decision was the source of often the case in international arbitrations that the arbitrator did not apply a rule already existing in the international legal order, but himself created a rule, particularly if he was empowered to settle the case before him *ex aequo et bono*. But what he wished to stress most of all was that, whatever the origin of the international obligation, from the moment the obligation came into existence, it could be breached and its breach was an internationally wrongful act which entailed the responsibility of the author.

43. Mr. El-Erian had been right in noting, with regard to paragraph 5 of the report, that the expression *acte juridique* had been incorrectly translated into English. The reference was not to a "legal instrument" *(instrument juridique)* but rather to a unilateral act. In its judgment in the *Nuclear Tests* case [14] the International Court of Justice had attributed to a unilateral statement by the President of the French Republic the force of an international legal obligation, and had even gone so far as to say that, if that obligation was not discharged, it would have to review its own decision. Thus, the sources of international obligations were numerous and the wording selected must be broad enough not to exclude any of them.

44. He could not agree with Mr. Ustor that article 16 was superfluous, because it was necessary not merely to state that the breach of an international obligation was always an internationally wrongful act, whatever the source of the obligation, but also to bring out that the application of any one régime of responsibility rather than another could not depend on the source of the obligation. It was clear that the régime of responsibility was not necessarily the same for all internationally wrongful acts. There were cases when the breach of an obligation entailed only the obligation to make reparation, and others when it also called for the application of sanctions. There were also cases when the only "active" subject of responsibility was the State whose rights had been infringed, and cases where other States too (or international organizations) could invoke that responsibility. But it was important to emphasize that the source of the obligation breached was irrelevant to the régime of responsibility applicable. It could not be put forward as a principle that obligations deriving from a treaty were more or less important than those resulting from custom. The distinction between the régimes of responsibility must be based on something else.

45. With regard to the relationship between the concept of international crime and that of *jus cogens*, to which Mr. Kearney and Mr. El-Erian had referred, he himself, while reminding the Commission that it would come up for closer examination during the consideration of article 18, said that there was a certain link between the concept of *jus cogens* and that of *crime*. The two concepts could be said to be linked despite the fact that the fields they covered were not identical, and that it was possible moreover to affirm the existence of rules of international *jus cogens* without first specifying what those rules were —whereas, extreme care had to be taken, when maintaining that the breach of an international obligation was an international crime, to state precisely which were the obligations the breach of which could constitute a crime. That being so, he said that he himself had spoken of progressive development rather than merely of codification of international law in that matter, but the notion of international crime, like that of *jus cogens*, was quite old. As early as 1914, in a note concerning an arbitral award in a river case, Anzilotti had made a distinction between peremptory and dispositive rules of international law. Towards the middle of the nineteenth century the Swiss jurist Bluntschli had established very clearly, in respect of international responsibility, the distinction to be made between the breach of certain obligations and that of others. At the beginning of the First World War, American jurists had reverted to the same distinction. Consequently, the Commission would not be venturing on untrodden ground.

The meeting rose at 1.5. p.m.

[14] Nuclear tests (*New Zealand* v. *France*), Judgment, *I.C.J. Reports 1974*, p. 457.

1364th MEETING

Friday, 7 May 1976 at 10.15 a.m.

Chairman: Mr. Abdullah EL-ERIAN

Members present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Rossides, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

State responsibility (*continued*) (A/CN.4/291 and Add.1-2)

[Item 2 of the agenda]

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

ARTICLE 16 (Source of the international obligation breached)

1. The CHAIRMAN invited the Special Rapporteur to introduce article 16 of his draft article (A/CN.4/291 and Add.1-2) which read:

Article 16. Source of the international obligation breached

1. The breach by a State of an international obligation incumbent upon it is an internationally wrongful act, regardless of the source of the international obligation breached.

2. The fact that the international obligation breached results from one source rather than from another does not justify, in itself, the application of a different régime of responsibility to the breach complained of.

2. Mr. AGO (Special Rapporteur) suggested that the Commission begin by considering certain formal aspects of the international obligation in order to see whether they could be said to have a bearing on the characterization of an act committed in breach of that obligation and the responsibility resulting from it. The Commission might then consider the substantive aspects which related to the content of the international obligation.

3. In the case of the formal aspects, the first question was that relating to the source of the obligation. That question concerned, not what was required by the international obligation of the State bound by it, but the manner in which the obligation had arisen. As he had indicated in his preliminary considerations, it was not necessary for that purpose to formulate a theory of the sources of international obligations, but merely to determine whether the source of an international obligation had an incidence on the possibility of describing a breach of the obligation as an internationally wrongful act, or at least on the kind of responsibility which would be entailed by that breach.

4. If the true formal "sources" of international law, and hence the obligations laid States upon by the rules derived from those sources were considered, it would be seen that an international obligation could have three main origins: it could arise either from a customary rule of law, or from a treaty, or from a general principle of law applicable within the framework of the international legal order. An international obligation might nevertheless also result from a decision by an organ of an international organization, in particular the Security Council, a court judgement or arbitral award, or, in some cases, a unilateral act of a State. The Commission, however, was not concerned with drawing up an exhaustive list of international obligations but with deciding whether or not, once the existence of an international obligation was established, a breach of that obligation always constituted an internationally wrongful act, irrespective of the source of the obligation, and if so, whether or not a distinction should be made between different types of internationally wrongful act according to the source of the obligation breached.

5. On that point there often appeared to be a tendency to refer to the internal legal order. Most systems of internal law distinguished between breaches of obligations created by a contract and breaches of obligations resulting from a law or a general rule. A distinction was thus made between two types of civil wrong: contractual (breach of contract) and extra-contractual (tort), which in French law, for example, included *délits* and *quasi-délits*. Should an analogous distinction be made in international law?

6. The problem was therefore not only to establish —in accordance with the principle already implicitly set forth in article 3—that the breach of an international obligation was an internationally wrongful act, whatever the source of the obligation breached; it was also necessary to determine whether, for example, the customary or contractual source of the obligation had or had not an incidence on the régime of responsibility applicable in the event of a breach. In that connexion, agreement must be reached on what should be understood by the expression "régime of responsibility". There was no doubt that not all breaches of an international obligation had the same consequences. A breach might entail the obligation to make reparation, but it might also entail the applicability of sanctions. Furthermore, there was considerable variation in the matter even of reparation and sanctions. In the matter of reparation, for example, a distinction had to be made between reparation pure and simple—restoring the previous situation, equivalent reparation—required when it was impossible to restore the previous situation—and satisfaction—which might consist of an apology or the punishment of the culprits when there was moral injury (for example, when a country's honour had been impugned by the infringement of one of its subjective rights) and other possible forms of compensation. In the matter of sanctions, there was even greater variety, since sanctions could be individual or collective, ranging from the severance of diplomatic or commercial relations and the blockade of ports to the granting of military assistance to the victim of an aggression, or possible reprisals, since even war might in some cases be considered as a sanction.

7. But that was not all. It was also necessary to know whether the subject which might claim reparation or inflict sanctions was a particular State or a number of States, or all the States of the international community, or an international organization. This was not the occasion to establish the cases which that might happen, and the safeguards to which it should be subject. What had to be accepted at the present stage was, generally speaking, that the breach of an international obligation could entail different régimes of responsibility and that consequently there were different kinds of internationally wrongful acts. The present problem was accordingly to ascertain whether of not to distinguish between different categories of these acts according to differences in the source of the obligation breached.

8. In order to avoid one serious source of misunderstandings, it would be wise from the outset to separate the cases with which the Commission would have to deal, namely those where responsibility resulted, not from the breach of a genuine international obligation, but from the breach of one of those obligations, generally of a purely economic character, which arose under internal law by virtue of a contract concluded between one State and another State, or more particularly between a State and foreign private individuals. Such contracts were not international treaties, since the contracting State did not participate in them as a subject of international law: they were instruments of internal law, generally governed by the legal order of the State which concluded them, although in that context certain writers sometimes invoked the operation of a "transnational" law or "international law of contract". In any case, since such contracts were not governed by the international legal order, the breach by a State of an obligation entered into under such a contract could not entail the international responsibility of that State. Before that situation could be changed, it would be necessary to establish the existence of a genuine international obligation, the source of which was custom or treaty, requiring the State to respect a

specific contract concluded under internal law. In any case, even then, a breach of the contract by the State would constitute an internationally wrongful act only if it entailed a shortcoming in respect of the international obligation requiring the State to respect the contract.

9. It might be noted that the case-law appeared to consider as an internationally wrongful act the breach of any obligation arising from any rule of international law, whatever, the origin of the rule. That was apparent from the judgment of the International Court of Justice on 5 February 1970 in the *Barcelona Traction* case,[1] and in the award made on 22 October 1953 by the Italian-United States Conciliation Commission in the *Armstrong Cork Company* case.[2] A glance at the large number of international arbitral awards was enough to show that, in the opinion of the judges and arbitrators who made them, the breach of an international obligation was always an internationally wrongful act which entailed the responsibility of the State, whatever the source—treaty, custom or other—of the obligation.

10. Clearly, therefore, in international jurisprudence the source of the obligation breached was not considered as having any bearing on the characterization as wrongful of the conduct constituting the breach. Nevertheless, it might still be asked whether, according to the same jurisprudence, the source of the international obligation breached by the State's conduct likewise had no incidence on the determination of the régime of the international responsibility entailed by such conduct and whether, a distinction should not be made between different categories of internationally wrongful acts according to the source of the obligation breached. However, there was nothing to suggest that international jurisprudence had endeavoured to establish a distinction between régimes of responsibility according to the source of the obligation breached. A comprehensive review of international judicial decisions in fact showed that the source of the various obligations had played no part in that respect and that no relationship had been established between the choice of the régime of responsibility and the source of the obligation breached.

11. State practice left no doubt as to the position of Governments on that question. The opinions expressed by Governments in their replies to the questionnaire sent to them by the Preparatory Committee of the 1930 Hague Conference for the Codification of International Law had been most revealing. The Austrian Government in particular had distinguished, according to source, three different categories of rules of international law which imposed obligations on States concerning the treatment of foreigners-provisions of treaties, special rules of customary law, and general principles of customary law—but had stated that infringement of any obligation deriving from those three sources "directly involved State responsibility" (A/CN.4/291 and Add.1-2, para. 22). None of the States had proposed that a distinction should be drawn, in respect of State responsibility, between the breach of a treaty obligation and the breach of an obligation arising from another source, whatever it might be. Taking into account the replies received, the Preparatory Committee had drafted two bases of discussion for the Third Committee of the Conference, which had finally agreed to distinguish between three sources of international obligations: treaties, custom and the general principles of law (*ibid.*, paras. 23-24), but the distinction was not reflected by any distinction between the types of wrongful acts constituted by breaches of the obligations arising from those sources.

12. As the Hague Conference had been concerned with only a limited aspect of State responsibility—responsibility for damage caused to the person or property of foreigners—it had envisaged only one form of responsibility—the obligation to make reparation for damage caused through the breach of any international obligation concerning the treatment of foreigners. It had provided for different forms of reparation, but had not made their choice dependent on the source of the obligation breached. During the debate on the distinction to be made between the various types of consequences arising out of the breach of international obligations concerning the treatment of foreigners (Basis of Discussion No. 29), no one had suggested that different types of responsibility should be applied depending on whether the obligation breached resulted from a treaty, custom or some other source (*ibid.*, para. 25).

13. At the present time, the Commission was, of course, considering State responsibility as a whole and not only responsibility in regard to the treatment of foreigners, as the Hague Conference had done. It was nevertheless worth remembering that, in the course of the debates on the subject in the Sixth Committee of the General Assembly, the members of that Committee had not suggested that breaches of obligations resulting from treaties, custom or some other source should be subject to different régimes of responsibility. While it was true that some of them had at times recommended that the International Law Commission should devote particular attention to the consequences of the breach of obligations arising out of certain principles of the Charter of the United Nations, or certain legal resolutions of the General Assembly, those suggestions had been prompted by what representatives considered as the particularly important content of the obligations in question rather than by their source.

14. The codification drafts relating to State responsibility drawn up by private bodies as well as those prepared under the auspices of international organizations were based on the same criteria as international judicial decisions and State practice, stating only that the breach of an international obligation, whatever its source might be, always constituted an internationally wrongful act and always entailed international responsibility. It was particularly interesting to recall that article 1, paragraph 2 of the preliminary draft on international responsibilities of the State for injuries caused in its territory to the person or property of aliens, prepared in 1957 by Mr. García Amador, explicitly provided that international obligations whose breach entailed State responsibility were those "resulting from any of the sources of international law".[3]

[1] *I.C.J. Reports 1970*, p. 4.

[2] United Nations, *Reports of International Arbitral Awards*, vol. XIV (United Nations publication, Sales No. 65.V.4), p. 159.

[3] See *Yearbook... 1975*, vol. II, p. 128, document A/CN.4/106, annex.

15. Consequently, there seemed to be no exception to the principle that the source of the obligation breached in no way affected the wrongful character of a State's act or the régime of responsibility arising from that act. Was it necessary to depart from that principle, hitherto observed in jurisprudence and State practice, and to distinguish for the purposes with which the Commission was concerned, between the sources of international obligations? For example, should a distinction be made between breaches of obligations arising from customary rules and those arising from treaty rules? Some writers had advocated such a distinction. Unfortunately, their argument appeared to be based on a mistaken assumption that the situation in international law was the same as that in internal law, though in fact the two were quite different.

16. In his opinion, it would be wrong to base the approach on an imagined parallel between internal law and international custom on the one hand, and between contracts in internal law and international treaties on the other hand. In the international juridical order, it might be said that, custom covered only part of the field which in internal law was covered by legislation, the rest being covered by treaties, particularly multilateral treaties. The object of multilateral treaties was obviously often the protection of interests which were just as general and essential for the international community as those protected by international customary rules. There was therefore no justification for equating the responsibility resulting from breaches of obligations created by treaties with the responsibility entailed by breaches of obligations arising from custom.

17. Furthermore, notions differed as to the relation between customary rules and treaty rules: some writers considered that customary rules ranked above treaty rules, while others took the opposite view. Some made a distinction between the breach of an obligation established by a normative treaty or treaty-law, and the breach of an obligation established by a treaty-contract. The category of treaty-contract would include those treaties which gave rise only to specific relationships between given subjects, whereas the category of normative treaties would comprise multilateral treaties concluded for the purpose of establishing rules of objective law. The responsibility entailed by the breach of an obligation arising from a normative treaty—like the responsibility entailed by the breach of an obligation arising from custom—would thus be characterized as delictual responsibility, while the responsibility entailed by the breach of an obligation created by a treaty-contract would be defined as contractual responsibility. Mr. Reuter, who was one of the writers in favour of the distinction between the treaty-law and the treaty-contract, had nevertheless, rightly observed that it "was impossible to derive from it any difference with respect to the régime of international responsibility".[4] Moreover, in practice it was difficult to establish a clear distinction between a treaty-law and a treaty-contract, as the same instrument might contain both normative provisions and contractual provisions. There was no statement to the effects that normative treaties always created obligations of higher rank than treaty-contracts.

18. Some writers distinguished between the constitutional principles of the international legal order and other "sources" of international law, and saw in those principles a higher source of legal obligations, more important than customary or contractual rules. Should a distinction be made, therefore, between the breach of an obligation arising from a constitutional principle and the breach of an obligation arising from some other source, and a stricter régime of responsibility be laid down for the former than for the latter? Once again such a distinction appeared to be based on arbitrary equation of the situation under international law with that under internal law, where constitutional principles often had a place apart. In international law, constitutional principles were not in themselves a "source", but were rules deriving from the same sources as other rules, since they themselves arose out of custom or treaties, or even the decisions of international organizations. Closer examination revealed that the principles which writers called "constitutional" were in fact those which they considered more important than others for the vital interests of their international community. Their determination was based on their content, not on their origin. Consequently, the pre-eminence of the obligations imposed by those principles and the seriousness attributed to a breach of such obligations were determined by the content and not by the origin of the obligations.

19. Thus, any distinction between international obligations and the applicable régimes of responsibility for breaches of those obligations, should be based, not on the source, but on the content of the obligation.

20. Article 16 consequently stated that the source, or if it were preferred, origin, of the international obligation breached had no bearing on the characterization of the breach as an internationally wrongful act, or on the régime of responsibility applying to that breach. He was prepared to clarify the meaning of the term "régime of responsibility" or, if necessary, to replace it by some other term such as "kind of responsibility" or "form of responsibility", if members of the Commission so wished.

21. The CHAIRMAN said that the comprehensive and lucid presentation by the Special Rapporteur had thrown light on a number of points contained in his very rich commentary, as well as on the drafting of article 16. He noted with interest the Special Rapporteur's remark on the possibility of using the term "origin" instead of the term "source" or perhaps using both terms together. With regard to the text of the article, the Special Rapporteur had explained the importance of the words "in itself" in paragraph 2. He had also put forward the interesting idea of including in the draft at a later stage a definition of the term "régime of responsibility".

22. Mr. YASSEEN, congratulating the Special Rapporteur on his brilliant introduction of draft article 16, said that it was a fully justifiable provision and that he approved the rules which it set out. He wished never-

[4] P. Reuter, "La responsabilité internationale", *Droit international public* (cours) (Paris, Les Nouvelles Institutes, 1955-1956), p. 55.

theless to express his views on certain questions raised by the Special Rapporteur.

23. With regard to the international responsibility which States might assume contractually, the Special Rapporteur had observed that contracts concluded between States or between a State and foreign private individuals were extraneous to the subject and governed by private international law; they therefore came under internal law, or possibly transnational law, but in no way under public international law. The Special Rapporteur had accordingly excluded that class of contract from his study of the topic of the international responsibility of States. Yet the question might be asked whether the conflictual rules applicable to contracts of that kind were rules of internal law or of international law, and the conclusion might be that some of those contracts were in fact governed directly by international law. For it was conceivable that some contracts concluded between States might be subject to an international agreement establishing a uniform law. UNCTAD was at present studying the question of the conclusion of international commodity agreements and might draw up agreements establishing a uniform law. If it did, the non-performance of a contract governed by such an agreement might constitute a breach of an international obligation, in other words, an internationally wrongful act. The question should be studied, with a view to ascertaining whether the non-performance of contracts of that nature governed by international law could engage international responsibility or if it should give rise to some special form of responsibility.

24. Like the Special Rapporteur, he did not think that the source of the breached international obligation had to be taken into account in characterizing an act as internationally wrongful. International jurisprudence, State practice and doctrine were unanimous on that point. The Commission must certainly not repeat, on this occasion, the mistake made by other bodies, which had tried to construct a theory of the sources of international law. It was not called upon to settle the various problems connected with the sources of international law—for example, to define the constituent elements of custom or to decide the question whether an international obligation could flow, not directly from an international rule, but from a process of application by analogy. Some took the view that such a process belonged to the realm of free scientific enquiry and was connected with the creation of law, while others considered that it was a matter of interpretation.

25. The Special Rapporteur had also raised the question whether provision should be made for different régimes or forms of responsibility according to the various possible sources of the obligation breached. In his (Mr. Yasseen's) opinion, it would be wrong to rely on internal law and argue that the international responsibility of the State was contractual where the breached obligation flowed from a conventional rule, but extra-contractual or delictual where it flowed from international custom. Besides, the notion of international convention hardly corresponded to the notion of a contract in internal law; in international law, treaty law corresponded to written law.

26. As far as the distinction between treaty-contracts and treaty-laws was concerned, although it definitely existed in the doctrine, there was no trace of it in the law of treaties codified by the Commission. As a technical process for the formation of rules of international law, a treaty could obviously have as its object either the performance of an act or a rule to be observed. Generally speaking, there was no great difference in practice. It had not even been necessary to distinguish between treaty-contracts and treaty-laws in the interpretation of treaties, although some writers still quoted maxims more appropriate to the interpretation of the former than to that of the latter. In any event, the distinction would not justify two separate régimes of responsibility.

27. With regard to the constitutionality of the norm which generated the international obligation, the Special Rapporteur had envisaged the existence of a hierarchy of rules in the international legal order. That such a hierarchy undoubtedly existed was evident from the fact that some rules had been regarded as peremptory, and thus at the apex of the hierarchy. In internal law, the criterion for ranking rules of law in the hierarchy was in many countries one of form: rules emanating from a constituent assembly were constitutional rules, rules emanating from a legislative assembly were legislative rules and rules emanating from a government took the form of regulations. In international law there could be no formal criterion: all sources of international law, whether customary, conventional or of other kinds, could generate constitutional rules. In distinguishing among international rules from the standpoint of their constitutionality, therefore, it was the content and not the source of the rule that had to be considered.

28. The two paragraphs which made up article 16 were perfectly justified, since it was fully established in contemporary international law that the source of an international obligation had no incidence either on the characterization of a breach of the obligation or on the form of the responsibility which the breach entailed. Although not perhaps essential, it was certainly useful to state that principle in the draft. Article 16 should therefore be retained, subject to possible drafting changes. The word "*déplorée*" in paragraph 2 of the French version, for instance, sounded too literary and should be replaced by the word "*perpétrée*" or "*commise*".

29. The CHAIRMAN, referring to the last speaker's remarks on the use of the word "*déplorée*" in the French version, said he noted that the English version spoke of "the breach complained of".

30. Mr. TABIBI said that, in the light of the excellent explanations given by the Special Rapporteur, he was inclined to favour the inclusion of article 16 in the draft. One good reason for doing so was that the text of the article was in harmony with the contents of articles 1 to 15,[5] which had been warmly received by the Sixth Committee of the General Assembly.

31. Another important reason for supporting the article was that it expressed a fundamental principle of chapter III,

[5] See *Yearbook... 1975*, vol. II, p. 59, document A/10010/Rev.1, chap. II, sect. B.

entitled "Breach of an international obligation". In the report on the work of its twenty-seventh session, the Commission had promised to the General Assembly that it would take up at the present session a series of important articles dealing with the breach of an international obligation.[6] Chapter III of the draft articles on State responsibility was therefore eagerly awaited.

32. In his view, the contents of chapter III were of the greatest importance for smaller nations which, unlike the powerful ones, could not afford to breach their obligations. It was therefore natural that small nations should wish to examine carefully the contents of chapter III before considering acceptance of the whole draft.

33. The wording of the article could, of course, be improved. The Special Rapporteur himself had mentioned the possibility of replacing the term "source" by the term "origin" and the concept of "régimes of responsibility" by that of "types" or "forms" of responsibility. Drafting changes of that kind would serve to allay certain fears; the same was true of the definition of "régime of responsibility" which the Special Rapporteur had said he was prepared to introduce at a later stage if required.

34. In conclusion, he accepted the substance of article 16, which dealt with the specific notion of breach and which did not overstep the boundaries of the subject under discussion.

35. Mr. TSURUOKA said he wished to thank the Special Rapporteur for having introduced article 16 with his customary clarity. The article would manifestly be very useful, as it would dispel any doubt which might linger, if not in State practice and international jurisprudence at least in the doctrine, concerning the source of the international obligation breached. The two principles stated in article 16 simply reflected a usage. They were well established and as such in the right place at the beginning of chapter III. The question was not one which called for any progressive development of international law.

36. In order to make the idea expressed in paragraph 1 clearer, he would suggest the insertion of the words "kind of" between the words "regardless of the" and the word "source". Paragraph 2 might be worded in the terms which the Special Rapporteur had used in introducing it, namely: "The origin of the international obligation breached has no incidence on the régime of responsibility applicable". In addition, the commentary should state that the régime of responsibility applicable did not vary according to the source of the international obligation breached but according to the content of the obligation.

37. Mr. CALLE Y CALLE said that, with his customary lucidity, the Special Rapporteur had explained that the task before the Commission was to determine whether or not the source of an international obligation had an incidence on the characterization of the internationally wrongful act and the kind of responsibility and had indicated that, although different sources were mentioned in the Statute of the International Court of Justice and in certain conventions, it would not be advisable for the Commission to follow a similar course. It was true that no distinction was to be found in the jurisprudence, but it did refer sometimes to general rules of law or sometimes to norms recognized by civilized nations. Consequently, it was essential to employ a term that was sufficiently comprehensive to embrace references of that kind. In the present attempt at codification, the Commission should be careful not to introduce distinctions such as those employed in the work of the 1930 Hague Conference for example.

38. However, it was imperative to make distinctions according to the content of the obligation, for there was undeniably a hierarchy of importance among the rules. Unfortunately, States which breached their international obligations took no account of the character of the obligation. He was therefore convinced of the necessity for a rule which stated clearly that the non-observance of an international obligation, regardless of the origin or source of the obligation, entailed responsibility, and which specified, as a general rule of law, that difference of sources did not, in itself, justify the application of a different régime with regard to the obligation to make reparation. Such a rule was necessary as an introduction to the articles which would deal with the content of obligations, for the existence of a legal order was the essential basis of State responsibility. A precise definition of legal obligations would avoid the present confusion with regard to "duties" and vague "commitments", which were regarded by some nations as obligatory but by others as having no binding force.

The meeting rose at 1 p.m.

1365th MEETING

Monday, 10 May 1976 at 3.15 p.m.

Chairman: Mr. Abdullah EL-ERIAN

Members present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Reuter, Mr. Rossides, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

State responsibility (*continued*) (A/CN.4/291 and Add.1-2)

[Item 2 of the agenda]

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

ARTICLE 16 (Source of the international obligation breached)[1] (*continued*)

1. Mr. HAMBRO said that, while he entirely agreed with the underlying basis of article 16, he felt that para-

[6] *Ibid.*, p. 58, document A/10010/Rev.1, para. 49.

[1] For text, see 1364th meeting, para. 1.