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Summary record of the 1373rd meeting

Topic:
<multiple topics>

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

those forms of responsibility and their relationship to the different categories of internationally wrongful acts. In his view, there need be no hesitation in dividing internationally wrongful acts into two categories, especially as such a division was not new. States accepted it when they accepted the Charter of the United Nations.

46. Mr. TABIBI said that he had no wish to introduce further complications into what was already an extremely complex matter; but he could not agree, not did he think that the countries of the third world would agree, that economic strangulation of a country constituted a minor breach of an international obligation. The effects of such strangulation were sometimes worse than aerial bombardment. They could lead to the destruction not just of a district or region but of an entire country. The question was of the utmost importance.

The meeting rose at 12.50 p.m.

1373rd MEETING

Thursday, 20 May 1976, at 11.00 a.m.

Chairman: Mr. Abdullah EL-ERIAN

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

Filling of casual vacancies of the Commission (article 11 of the Statute) (A/CN.4/289 and Add.1)

[Item 1 of the agenda]

1. The CHAIRMAN announced that, at a private meeting, in conformity with its Statute, the Commission had elected Mr. Frank X. J. C. Njenga, of Kenya, to fill the vacancy caused by the resignation of Mr. Taslim O. Elias.

2. A communication had been sent to Mr. Njenga inviting him to take part in the Commission's proceedings.

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 18 (Content of the international obligation breached) [1] (*continued*)

3. Mr. SETTE CÂMARA said the Special Rapporteur had started from the proposition that, regardless of the content of the obligation, the breach of an obligation constituted an internationally wrongful act. That was beyond dispute and so the text proposed for paragraph 1 presented no difficulties.

4. The problem that now arose was whether different kinds of internationally wrongful acts should be distinguished according to the content of the international obligation breached. That course was favoured by the Special Rapporteur for normative reasons, in other words, because it allowed him to establish different régimes of responsibility for different types of internationally wrongful acts. Earlier views with regard to responsibility, which had not accepted such a categorization of breaches of international rules, had now changed considerably and current thinking was that there should be one type of régime for breaches that injured the international community as a whole and another for the traditional type of wrongful act that was of immediate concern only to the particular State injured. Aggression, genocide, *apartheid*, gross violations of human rights and fundamental freedoms, colonialism and obstruction of the enjoyment of resources common to mankind were offences that affected everyone in the organized community of States, offences that called for something much more than reparation. Indeed, in those instances, it would be impossible to seek redress on the basis of reparation. How could the lives of millions killed in recent times by acts of genocide be replaced and what could be the *restitutio in pristinum* for centuries of enslavement under colonialism? Faced with the indisputable realities of the modern world, and conscious of the feelings of the vast majority of countries, the Special Rapporteur had taken a bold step forward in the progressive development of international law and had proposed a text for article 18 which dealt openly with a category of offences branded as international crimes.

5. The extracts quoted from the judgment of the International Court of Justice in the *Barcelona Traction* case [2] were conclusive evidence of an international decision favouring the idea of distinguishing between the obligations of States towards the international community as a whole, and their obligations towards other individual States. However, the Special Rapporteur had rightly recognized that the jurisprudence of the Court was somewhat inconsistent since, in the *South West Africa* cases, the Court had refused to admit the existence of a kind of right to an *actio popularis* on the part of any member of the community of States in specific types of breach of obligation.

6. In State practice, on the other hand, the Special Rapporteur had emphasized that, from the Second World War onwards, Governments had recognized the existence of breaches of international law that were so grave as to be regarded as crimes *erga omnes*. However, the texts prepared under the impact of war atrocities had not dealt with crimes of the State, but crimes under international law for which individuals would be punishable. That was true of early drafts of the International Law Commission, for example, the Principles of International Law

[1] For text, see 1371st meeting, para. 9.

[2] See A/CN.4/291 and Add.1-2, para. 89.

Recognized in the Charter of the Nürenberg Tribunal and in the Judgment of the Tribunal,[3] and the Draft Code of Offences against the Peace and Security of Mankind.[4] Even the Convention on the Prevention and Punishment of the Crime of Genocide[5] dealt exclusively with crimes under international law, and article IV thereof specified that "Persons committing genocide ... shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals".

7. Obviously. the Commission was now concerned with international crimes for which States were held responsible, in accordance with Article 2, paragraph 4 of the Charter and other international conventions. The Special Rapporteur had not, for the time being, discussed the legal consequences of violation of one of the basic norms involving that type of aggravated responsibility, but it was evident that redress would be sought under the provisions of Chapter VII of the Charter. That would apply not only in the cases provided for in paragraph 2 of article 18, but also in those enumerated in paragraph 3, since offences against the right of self-determination, human rights or the right to free enjoyment of a resource common to mankind would necessarily constitute threats to the peace.

8. With regard to the drafting of article 18, since the Commission had decided to take the bold step urged by the Special Rapporteur, it seemed hardly necessary to put the expression "international crimes" in quotation marks. At the same time, paragraph 4 should be deleted, for it would be better, at the present stage, not to qualify an internationally wrongful act as an "international delict". Earlier, the Special Rapporteur had rejected the expression "international delinquency" in order to avoid misleading analogies with internal criminal law. Moreover, in many legal systems, "delict" was merely a synonym for "crime".

9. With regard to the structure of the article, paragraph 1 should stand alone as article 18, and the title should be replaced by some such formula as "Irrelevance of the content of the international obligation breached". Paragraphs 2 and 3 would form a separate article with the title, suggested by Mr. Tammes,[6] "Violations of peremptory norms of international law". Such a division into two articles would be appropriate because of the differences in treatment that two régimes of responsibility would entail. Whereas ordinary breaches would continue to be dealt with by the traditional remedy of reparation and would constitute a purely legal problem—to be decided by the International Court of Justice, or by arbitration if other means of settlement failed—international crimes would be dealt with by the Security Council, the only political body that could authorize collective action to maintain or restore international peace.

10. He agreed with Mr. Yasseen[7] that the text of the article should reproduce in full the wording used in Article 2, paragraph 4 of the Charter. While he had every sympathy with Mr. Tabibi's proposal,[8] he none the less felt that it would seriously complicate an already very difficult topic. The enumeration of international crimes contained in paragraph 3 was not, in his opinion, by any means exhaustive. The Commission should be guided by the definition of aggression adopted by the General Assembly,[9] article 4 of which stated that the Security Council might determine that acts other than those enumerated in the Definition constituted aggression under the provisions of the Charter. If the economic pressure referred to by Mr. Tabibi was so great as to strangle the life of a country, there was nothing to prevent the Security Council from branding it as an act of aggression.

11. Sir Francis VALLAT said it was apparent from the discussion that members of the Commission accepted a distinction between offences that might be categorized as crimes and lesser breaches of international obligations that might be subject to a different régime of responsibility. In the development of international legal thinking, that distinction had been clearly established and the Commission should proceed accordingly.

12. In his view, the commentary should stress, more than did the Special Rapporteur in his report, another distinction, which was the distinction between the criminal responsibility of individuals and responsibility for a crime attributable to the State, irrespective of the question whether or not an individual might also be punishable for an "international crime". A mere classification of certain acts as international crimes could perhaps lead to some confusion, in which efforts might be made to use it as a shield for individuals who might be held accountable. Indeed, it would be better if that point were emphasized not only in the commentary but also in the article itself.

13. He hoped that, as indicated by the Special Rapporteur, paragraph 3 would be more closely modelled on article 53 of the Convention of the Law of Treaties,[10] which was the generally accepted definition of *jus cogens*, as now understood in international law. If a peremptory norm was one from which there could be no derogation by agreement, it was because the norm was so regarded by the international community as a whole. Consequently, he wondered whether the breach of such a norm was not a breach of an obligation towards the international community as a whole and, if so, whether a breach of such a peremptory norm must not constitute an international crime. The problem could be considered from another angle: if two States were free, by agreement, to derogate from a particular rule, in other words, a rule that was not a peremptory rule of *jus cogens*, such a

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[3] *Yearbook... 1950*, vol. II, p. 374, document A/1316.

[4] *Yearbook... 1954*, vol. II, p. 149, document A/2693.

[5] United Nations, *Treaty Series*, vol. 78, p. 277.

[6] See 1372nd meeting, para. 24.

[7] *Ibid.*, para. 18.

[8] *Ibid.*, para. 11.

[9] General Assembly resolution 3314 (XIX), annex.

[10] For the text of the Convention, 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.

derogation could not reasonably be qualified as a crime if the act was performed by one State alone? Obviously, there must be a very close identity between the concept of *jus cogens* and the concept of an international crime, for it was difficult to conceive of an act which, if not a breach of a peremptory norm, could at the same time be considered as an "international crime", at least in the sense in which the Commission was using that term. That matter should be more clearly reflected in the text of the article.

14. Paragraph 2 related to the principle of the maintenance of international peace and security, but the crimes enumerated in paragraph 3 could also very well lead to threats to international peace and security. However, the breaches listed in paragraph 3 were described as "serious", and he doubted whether States could be called upon to distinguish between breaches that were serious and breaches that were not serious. In categorizing an act as a crime, the pertinent factor was the nature of the particular obligation. A breach of a bilateral treaty might not necessarily amount to an international crime, but if it threatened international peace and security, the breach entered the field of criminal responsibility. Thus, the concept of a threat to international peace and security lay at the root of the categorization of acts as crimes. At the same time, the Commission was concerned with breaches of obligations towards the international community as a whole. In many systems of internal law, a crime was an act regarded as contrary to the public interest and, consequently, punishable by public process. In his opinion, paragraph 3 should be expanded in order to reflect more fully the concept of the interests of the international community as a whole.

15. With regard to the purpose and consequences of the distinction to be drawn between different acts, in other words, the régimes of responsibility and the forum for application of the rules, threats to international peace and security would fall under the terms of Article 39 of the Charter, which specified that the Security Council would determine the existence of any threat to the peace or breach of the peace. On the basis of its determination, the Council was then entitled to take the necessary steps, either by recommendation or by action under Chapter VII of the Charter. The fact that Chapter VII was concerned with the maintenance or restoration of peace and security and did not provide for punishment of the wrongdoer did not mean that the Commission had to refrain from describing acts that were covered by Article 39 as international crimes if it thought such a course appropriate. With regard to *jus cogens*, the characterization of a peremptory norm was, in the event of a dispute, a matter to be referred in principle to the International Court of Justice, as was only appropriate, since it was difficult to envisage how legal findings of that kind could be made other than by the judicial organ of the United Nations.

16. He agreed with those members who considered that paragraph 2 should incorporate in full the language employed in Article 2, paragraph 4 of the Charter. Lastly, it should be made very clear that the list of international crimes given in paragraph 3 was in no sense exhaustive.

17. Mr. ŠAHOVIĆ said he entirely approved the principles on which article 18 was based and endorsed the views expressed by the Special Rapporteur in his written and oral introductions. The Special Rapporteur had succeeded in bringing out the recent trends in international law and in showing that the Commission should take them into account in its attempts to codify and promote the progressive development of the rules concerning State responsibility. In that respect, article 18 was a keystone of the draft.

18. If the Commission had been slow to codify the law of State responsibility, it was precisely because it had been impossible for it to consider proposals of the type contained in article 18 so long as international law had not evolved in a certain way. Particular mention should be made in that respect of the growing importance of the United Nations Charter and the entire body of legal rules to which its application had given rise. In adopting article 18, the Commission would put an end to a controversy which had begun with the establishment of the United Nations, over the place of the Charter and United Nations law in relation to general international law. As the organ responsible for the codification and progressive development of international law, the Commission was well placed to proclaim that that United Nations law could now be identified with general international law. The General Assembly had already taken a step in that direction in 1970, when it had adopted by consensus the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.[11] That Declaration contained a provision to the effect that the principles of the Charter which it embodied constituted basic principles of international law by which all States should be guided in their international conduct and which they should observe strictly in their mutual relations. Doctrine, on the other hand, had not always been as innovative; very few authors had shown the boldness which had led States to develop international law in that direction.

19. There could be no doubt that the principle set out in article 18, paragraph 1, was firmly established in international law. At first, he had wondered, like Mr. Sette Câmara, whether the rules set out in the other paragraphs should not form a separate article, but he had come to the conclusion that it was better to deal in a single provision with all the questions concerning the content of the international obligation breached. However, it could be seen from the plan of the draft articles which the Special Rapporteur had submitted to the Commission at its twenty-seventh session that he intended to devote a special article to international obligations of which the breach was particularly serious for the international community. The distinction which the Special Rapporteur was now proposing to make in article 18, based on the content of the international obligation breached, was entirely acceptable, for it was in keeping with the recent trend in international law.

[11] General Assembly resolution 2525 (XXV), annex.

20. None the less, like Sir Francis Vallat, he felt that the ideas contained in paragraphs 2 and 3 could be expressed differently. In particular, he wondered whether it was necessary to distinguish between the international crimes referred to in the two paragraphs. Again, the criterion of seriousness of the breach proposed in paragraph 3 for determining which were international crimes, as opposed to international delicts, did not seem to him to be the best. It would be better to analyse, in each individual case, the nature of the obligation breached. All the principles which the peremptory rules of international law sought to safeguard were interdependent. The question of the precedence of certain principles over others, particularly of the principle of the equal rights of peoples and their right to self-determination over the principle of the prohibition of the use of force, had been keenly debated. Consequently, he felt it would be preferable to draft a single paragraph stressing the importance of peremptory rules of international law, and basing the distinction between international delicts and international crimes on the concept of the community of interests of all States.

21. The phrase "or in any other manner inconsistent with the Purposes of the United Nations", which was contained in Article 2, paragraph 4, of the Charter and which some members of the Commission had suggested should be reproduced in paragraph 2 of article 18, in fact referred to the crimes which were the subject of paragraph 3 of that article.

22. Finally, he was glad to see that the Special Rapporteur had mentioned, in paragraph 3 (*c*), "the conservation and the free enjoyment for everyone of a resource common to all mankind". That provision reflected a recent trend in international law and met the needs of the entire international community.

23. Mr. MARTÍNEZ MORENO said that he was in full agreement with both the contents and the underlying ideas of article 18. Those ideas were in conformity with the rulings of international tribunals, with the practice of States and with the writings of the most eminent authors, all of which accepted the distinction between violations of peremptory norms of international law and breaches of ordinary rules of international law from which derogation was possible by agreement among States.

24. He therefore approved the basic rule of the article, contained in paragraph 1. At a later stage, however, a separate article should be included in the draft setting out as an exception to that rule, the case where a different conclusion had been provided for in a specific treaty by agreement between the States concerned; it should of course be made clear that that exception did not apply to a rule of *jus cogens*, since no derogation from such a rule was possible.

25. The Special Rapporteur's excellent report showed clearly that there had been an evolution in international legal thinking, marked in the first place by the emergence of rules of *jus cogens*. Another significant development had been the acceptance of the concept of the punishment of individuals for acts committed by them in their capacity as organs of the State, without thereby in any way exonerating the State from international responsibility. The United Nations Charter strongly condemned certain violations of international law, in particular armed aggression. United Nations law regarded the threat or use of force, colonialism, racial discrimination and the oppression of minorities as grave international crimes, while it strongly affirmed the obligation to respect human rights. The traditional notion of international responsibility as giving rise only to the duty to make reparation had been replaced by a wider concept. It was now possible to apply to the State committing the breach such sanctions as the severance of diplomatic and consular relations, total or partial severance of economic relations and of communications by rail, sea and air, and even—in the event of aggression—the use of armed force.

26. All those new developments had to be taken into account and the Special Rapporteur had therefore acted wisely in making provision in article 18 for international crimes and in particular for aggression, which constituted the international crime *par excellence*. It was essential, however, to mention the exception, embodied in Article 51 of the United Nations Charter, which safeguarded "the inherent right of individual or collective self-defence" against an armed attack.

27. In paragraph 2, he favoured, like several other speakers, the insertion of the concluding words of Article 2, paragraph 4 of the Charter: "or in any other manner inconsistent with the Purposes of the United Nations". Inclusion of that reference to the Purposes of the Charter was particularly important because of the existence of other international instruments prohibiting the use of force.

28. For instance, article 1 of the Inter-American Treaty of Reciprocal Assistance signed at Rio de Janeiro on 2 September 1947 stated:

> The High Contracting Parties formally condemn war and undertake in their international relations not to resort to the threat or the use of force in any manner inconsistent with the provisions of the Charter of the United Nations or of this Treaty.[12]

Article 10 of that same treaty, moreover, specified:

> None of the provisions of this Treaty shall be construed as impairing the rights and obligations of the High Contracting Parties under the Charter of the United Nations.[13]

The Treaty of Rio de Janeiro was particularly important because it had been ratified by all the States of America. Articles 3 and 11 of the Treaty provided that, in the event of an armed attack, consultations should immediately take place by means of a meeting of Ministers for Foreign Affairs which constituted the Organ of Consultation. That body was empowered to recommend sanctions against the aggressor State, including the use of armed force; the use of such force, however, was subject to the observance of the constitutional provisions in force in each State concerned.

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[12] United Nations, *Treaty Series*, vol. 21, p. 95.

[13] *Ibid.*, p. 101.

29. There had been considerable discussion among writers on the question of priority of the United Nations Charter over the Inter-American System embodied in the Treaty of Rio de Janeiro and in the Charter of OAS signed at Bogotá on 30 April 1948, both of which stated that they had been concluded in the framework of the United Nations Charter. Article 2 of the Treaty of Rio de Janeiro, however, specified that the Parties to it undertook to endeavour to settle any dispute among themselves "by means of procedures in force in the Inter-American System before referring it to the General Assembly or the Security Council of the United Nations.[14] Article 20 of the Charter of Bogotá, in turn, stated that:

> All international disputes that may arise between American States shall be submitted to the peaceful procedures set forth in this Charter, before being referred to the Security Council of the United Nations.[15]

30. In that discussion on the question whether priority should be given to the Inter-American system or to the United Nations system, many writers such as Jiménez de Aréchaga had held the view that the provisions of the United Nations Charter prevailed over those of the OAS Charter. A number of other writers, such as Caicedo Castilla, considered on the contrary that the dispute should first be submitted to the competent organs of the Inter-American system before being referred to the Security Council of the United Nations. In view of that controversy, it was essential to include in paragraph 2 of article 18 the full text of Article 2, paragraph 4 of the Charter of the United Nations, so as to leave no doubt regarding the priority of that Charter over any regional charter.

31. He agreed with Mr. Yasseen that the list of international crimes contained in paragraphs 2 and 3 was not exhaustive and left the door open to the progressive development of international law in the matter. Thus, paragraph 2 did not cover specifically the case of the denial by a State to the people of a dependent territory of the right of that people to a government of its own. Very grave international crimes could be committed by denying the right to independence to the inhabitants of a non-self-governing territory. The case of Namibia was an obvious example. A crime of that kind would not constitute an attack against the "territorial integrity or political independence of another State" because the dependent people concerned did not yet constitute a State of their own.

32. Mention should also be made of war crimes, defined by the International Law Commission itself in its 1950 Codification of the Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal as "violations of the laws or customs of war which include ... wanton destruction, of cities, towns, or villages, or devastation not justified by military necessity".[16] Article 2, para. 12 of the Draft Code of Offences against the Peace and Security of Mankind adopted by the Commission in 1954 also listed as such offences: "Acts in violation of the laws or customs of war".[17]

33. He fully agreed with Sir Francis Vallat regarding the criterion of international peace and security. There were indeed breaches of international obligations which affected the international community but not international peace and security. He would take the case of the sea bed and its sub-soil beyond the limits of national jurisdiction, the resources of which had been acknowledged to be the common heritage of mankind. If international machinery were set up to control the exploitation of those resources, the act of a State which sent one of its ships to exploit those resources contrary to international regulations would constitute a grave breach of that State's international obligations but would not imperil the peace and security of mankind. That example demonstrated the soundness of the view put forward by Sir Francis Vallat.

34. As for paragraph 4, he was not in favour of deleting it, although he agreed that the expression "international delict" raised a problem of terminology, a problem far more serious in Spanish than in English and French, since the Spanish text of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and the Commission's 1954 Draft Code of Offences against the Peace and Security of Mankind used the Spanish term "delito" to render the English (and French) term "crime". It would be better to avoid the expression "international delict" and to refer simply, in paragraph 4, to the breach by a State of an ordinary international obligation.

35. In conclusion, he expressed his thanks to the Special Rapporteur for his masterly contribution to the development for international law.

36. Mr. USHAKOV said that he approved entirely of the underlying idea of article 18 and the commentary, but he had some comments to make on certain points. In his opinion, whereas an international crime always constituted a breach of an obligation *erga omnes*, it could not be said that the breach of an obligation *erga omnes* always constituted an international crime. For example, the current rules of the law of the sea were obligations *erga omnes*, but a breach of those obligations was not necessarily an international crime. The same was true of peremptory rules: whereas an international crime was always a breach of a peremptory rule, the breach of such a rule was not necessarily an international crime.

37. What, then, was the criterion for determining whether the breach of an international obligation constituted an international crime? In his view, it was the importance for mankind of the right safeguarded by the obligation. If violation of the obligation to maintain international peace and security was considered as an international crime, it was because of the importance of that obligation for the international community. On the other hand, there were less important peremptory rules,

[14] *Ibid.*, p. 95.

[15] *Ibid.*, vol. 119, p. 58.

[16] *Yearbook... 1950*, vol. II, p. 377, document A/1316.

[17] *Yearbook... 1954*, p. 152, document A/2693.

the breach of which did not always constitute an international crime.

38. He wondered whether article 18, paragraph 1, added anything to article 3. Article 3 already said that there was an internationally wrongful act of a State when that Act "constitutes a breach of an international obligation of the State".[18] By "an international obligation of the State" was to be understood "every international obligation of the State". The word "content" to be found in article 18 added nothing to what was said in article 3, since it was obvious that every obligation had content. In fact, what counted was not the content, but the importance, the scope of the obligation breached. Consequently, either article 18, paragraph 1, was pointless, or it meant that article 3 was incomplete and the reference in it was not to "any international obligation whatsoever of the State".

39. With regard to paragraph 2, he said it was not the breach of an international obligation which constituted an international crime, but the internationally wrongful act resulting from the breach. What was the significance of paragraph 2? Paragraph 2 stated the general rule that the breach by a State of an international obligation established for the purpose of maintaining international peace and security was an international crime. But, in the final analysis, all the rules of contemporary international law had been established for the purpose of maintaining international peace and security. Should it then be concluded that any violation whatsoever of a rule of international law was an international crime? That was what the general rule set out in the first part of the paragraph seemed to imply. In fact, it was only "the breach by a State of the prohibition of any resort to the threat or use of force against the territorial integrity or political independence of another State", mentioned by way of example in the second part of the paragraph, which constituted an international crime.

40. He accordingly proposed that, in order to avoid any problems of interpretation, paragraph 2 should be reworded to read, much like Article 2, paragraph 4, of the Charter:

> The internationally wrongful act arising from a breach of the obligation upon all States to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, constitutes an international crime.

41. In the context of paragraph 3, the expression "accepted by the international community as a whole", was extremely ambiguous. Should it be taken to mean that the three rules which followed had already been accepted by the international community as a whole, or, on the contrary, that those rules had not yet been accepted and that their breach would not constitute an international crime until they had been universally recognized?

The meeting rose at 1 p.m.

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

1374th MEETING

Friday, 21 May 1976, at 10.10 a.m.

Chairman: Mr. Abdullah EL-ERIAN
later: Mr. Juan José CALLE Y CALLE

Members present: Mr. Ago, Mr. Bilge, Mr. Hambro, Mr. Kearney, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Rossides, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.

APPOINTMENT OF THE DRAFTING COMMITTEE

1. The CHAIRMAN said that, following consultations in accordance with the Commission's usual practice, he proposed that the Commission appoint a drafting committee consisting of the following twelve members: Mr. Šahović as Chairman, Mr. Ago, Mr. Calle y Calle, Mr. Kearney, Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Rossides, Mr. Ushakov, Sir Francis Vallat and Mr. Tsuruoka, the Commission's Rapporteur.

It was so agreed.

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 18 (Content of the international obligation breached) [1] (*continued*)

2. Mr. USHAKOV, resuming the statement he had begun at the previous meeting, said that the expression "serious breach by a State of an international obligation", in paragraph 3 of article 18, raised the question of the weight to be attached to the seriousness of the breach. Admittedly there were more serious and less serious breaches, but he questioned whether the seriousness of the breach warranted an internationally wrongful act being characterized as an "international crime"? In his opinion, the characterization of an internationally wrongful act depended, not on the seriousness of the breach, but on the importance of the obligation breached, in other words, the interests protected by the obligation. In internal law, it was not the seriousness of the breach but the importance of the obligation breached which determined the crime. For example there might be a serious breach of an obligation to refrain from defamation, but that did not make the act of defamation a crime. Conversely, manslaughter was not a serious breach of the obligation to respect human life, but it was nonetheless a crime, because respect for human life was an important obligation.

[1] For text, see 1371st meeting, para. 9.