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**A/CN.4/SR.1401**

**Summary record of the 1401st meeting**

Topic:  
**State responsibility**

Extract from the Yearbook of the International Law Commission:-  
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difficulty of sharing certain types of property.<sup>29</sup> On that point, he wished to explain that the notion of equitable apportionment in no way ruled out compensatory equalization payments of a financial or other character.

37. Several members of the Commission had spoken on article 17 as a whole and had compared it to other provisions of the draft articles. Mr. Quentin-Baxter, for instance, had observed that the notion of a contributory share expressed in paragraph (b) of article 15 did not appear in article 17.<sup>30</sup> In actual fact, it was not excluded by article 17. In the case contemplated in article 15, there was only one successor State, namely, the newly independent State. In the case covered by article 17, there were several successor States and the principle underlying the idea of contribution was replaced by the principle of equitable distribution among all the successor States in proportion to their respective contributions.

38. Comparisons made between article 17 and the previous articles had also led members to raise the problem of presumption and burden of proof. The application of the principle of self-determination could lead either to the situation provided for in articles 14 and 15—namely, the creation of a newly independent State, or to the situation provided for in article 17—namely, that of the separation of one or more parts of a State. At the 1399th meeting, Mr. Kearney and Mr. Tammes had more or less explicitly declared themselves in favour of aligning article 17 on articles 14 and 15. In accordance with article 14, movable property passed to the newly independent State unless there was no direct link between that property and the territory of that State. The burden of proof thus fell on the predecessor State. In the case covered by article 17, it would be difficult to place the burden of proof on the shoulders of the predecessor State, since that might disappear. Besides, paragraph 2 of article 17 was a neutral provision: it did not specify the State on which the burden of proof rested. One member of the Commission had suggested a solution half way between that of articles 14 and 15 and that of article 17, in the form of a presumption in favour of the successor State based on the fact that the property was situated in its territory. In actual fact, that was exactly what paragraph 2 proposed. The test of the direct and necessary link would be decisive precisely because the property was situated in the territory of the successor State.

39. The comparisons between article 17 of the present draft and article 33, paragraph 3, of the 1974 draft articles on succession of States in respect of treaties had raised the problem of a separation which occurred in circumstances essentially the same as those existing in the case of the formation of a newly independent State. Several members of the Commission had suggested that it might be advisable to deal with that case separately. Mr. Ushakov had rightly pointed out that the case in question could not be dealt with in isolation because, where State property was concerned, the circumstances

in which the separation had occurred were scarcely material.<sup>31</sup>

40. Several members of the Commission had also made comparisons between the various provisions of article 17 itself. They had suggested that a clearer distinction should be drawn between the cases of separation and dissolution and that slightly different treatment should be specified for each. In particular, Mr. Njenga had stressed that cases of separating invariably led to an unhappy situation.<sup>32</sup> In point of fact, it was not easy to deal in one and the same provision with the cases in which the predecessor State disappeared as a result of dissolution and the cases in which it survived after separation. In his own view, the Drafting Committee should endeavour to draw a distinction between those two categories of cases but should not treat them differently. The wording of article 17 would in any case depend on how article 16 was finally drafted.

41. Lastly, Mr. Ushakov had referred to property belonging to the various component States of a federation such as the United Arab Republic.<sup>33</sup> The question arose whether, in the event of the dissolution of a federation of that kind, works of art which had previously belonged to one of the component States but which had subsequently become the property of the federation should be shared among the successor States. Neither the principle of equity nor that of the direct and necessary link, or of the origin of the property, dictated such a result. If the point could not be clarified in the text of article 17, it should at least appear in the commentary to it. Whatever the position, there was no doubt that the principle of equity referred to in article 17 required the origin of the property to be taken into account.

42. The CHAIRMAN said that, if there were no other comments, he would take it that the Commission decided to refer article 17 to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*<sup>34</sup>

*The meeting rose at 11.05 a.m.*

<sup>31</sup> *Ibid.*, para. 33.

<sup>32</sup> See para. 5 above.

<sup>33</sup> See 1399th meeting, para. 34.

<sup>34</sup> For consideration of the texts proposed by the Drafting Committee, see 1405th meeting, paras. 54-62.

## 1401st MEETING

*Thursday, 1 July 1976, at 10.10 a.m.*

*Chairman:* Mr. Abdullah EL-ERIAN

*Members present:* Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. Castañeda, Mr. Kearney, Mr. Martínez Moreno, Mr. Njenda, Mr. Quentin-Baxter, Mr. Raman-gasoavina, Mr. Reuter, Mr. Šahović, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

<sup>29</sup> *Ibid.*, para. 35.

<sup>30</sup> *Ibid.*, para. 50.

**State responsibility (*continued*) \* (A/CN.4/291 and Add.1-2; A/CN.4/L.243 and Add.1)**

[Item 2 of the agenda]

**DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE**

1. The CHAIRMAN invited the Commission to consider the title of chapter III and the titles and texts of articles 15*bis*, 16 and 17, proposed by the Drafting Committee (A/CN.4/L.243).

**TITLE OF CHAPTER III**

2. Mr. ŠAHOVIĆ (Chairman of the Drafting Committee) had noted that the title of chapter III proposed by the Special Rapporteur in his fifth report (A/CN.4/291 and Add.1-2) had met with the general approval of the members of the Commission. The Committee had therefore adopted that title, which read: "The breach of an international obligation". The definite article had been inserted in order to bring it into line with the title of chapter II of the draft, "The act of the State under international law".

3. The CHAIRMAN said that, if there were no comments, he would take it that the Commission agreed to approve the title of chapter III proposed by the Drafting Committee.

*It was so agreed.*

**ARTICLE 15*bis*** (Existence of a breach of an international obligation)

4. Mr. ŠAHOVIĆ (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following new article 15*bis*:

***Article 15*bis*. Existence of a breach of an international obligation***

**There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation.**

5. The members of the Commission would recall that, during the discussion of article 16, submitted by the Special Rapporteur in his fifth report, for reasons of logic and economy in the drafting of other articles, it had been suggested that a new article in the nature of a definition should be inserted at the beginning of the chapter, dealing with the notion of breach of an international obligation. The new article would specify the conditions under which the breach by a State of an international obligation incumbent upon it occurred or, more precisely, when there was a breach of an international obligation. The Drafting Committee and the Special Rapporteur had agreed that such a provision would be useful and the Committee had therefore adopted the new article 15*bis*, entitled "Existence of a breach of an international obligation", which provided that there was a breach of an international obligation by a State when an act of that State was not in conformity with what was required of it by that obligation. The phrase

"is not in conformity with" had been preferred to other wordings such as "conflicts with" or "is contrary to" in order to indicate that a breach might still exist, even if a State claimed that its act conflicted only partially with an international obligation incumbent upon it. Hence, for a breach to exist, it was not necessary for the act of the State to be completely and totally in conflict with what was required of it by an international obligation; a breach of an international obligation existed when the act of a State was not in conformity with what was required of it by that obligation.

6. Mr. YASSEEN said that article 15*bis* was not really necessary, but he would not oppose its adoption.

7. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to approve article 15*bis*, as proposed by the Drafting Committee.

*It was so agreed.*

**ARTICLE 16<sup>1</sup>** (Irrelevance of the origin of the international obligation breached)

8. Mr. ŠAHOVIĆ (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following wording for article 16:

***Article 16. Irrelevance of the origin of the international obligation breached***

**1. An act of a State which constitutes a breach of an international obligation is an internationally wrongful act regardless of the origin, whether customary, conventional or other, of that obligation.**

**2. The origin of the international obligation breached by a State does not affect the international responsibility arising from the internationally wrongful act of that State.**

9. Article 16, as originally submitted by the Special Rapporteur in his fifth report, had been entitled "Source of the international obligation breached". The members of the Commission would note that, both in the title and in the text of article 16, as adopted by the Drafting Committee, the word "origin" was used instead of the word "source". Although some members of the Committee had believed that the word "source" was appropriate, the Committee had decided that the word "origin", qualified by the phrase "whether customary, conventional or other", conveyed the intended meaning better and was not liable to cause the confusion or concern to which the use of a term such as "source" might give rise.

10. The provision contained in the article centred on the obligation breached, rather than on the international legal rule which established that obligation. Besides, in international legal theory, the term "source" was commonly used to denote not only "formal sources", but also "material sources" of law. Furthermore, the article was not intended to deal with the general theory of the sources of international law or to identify such sources, but simply to draw the necessary inferences for the purposes of the responsibility of States. As the title indicated, the

\* Resumed from the 1376th meeting.

<sup>1</sup> For consideration of the text originally submitted by the Special Rapporteur, see 1364th-1366th meetings.

purpose of the article was simply to affirm the irrelevance of the origin of the international obligation breached, whether customary, conventional or other, so far as it related to the international wrongfulness of an act of a State which constituted a breach of an international obligation. As suggested in the Commission, the title of the article followed, with the necessary changes, the wording originally suggested in the Commission's report on its twenty-seventh session.<sup>2</sup>

11. Paragraphs 1 and 2 of the article had been redrafted in the light of the text of the new article 15*bis* adopted by the Drafting Committee, in order to achieve greater precision and clarity. For example, in paragraph 2, the expression "régime of responsibility" had been replaced by a reference to "international responsibility".

12. Mr. YASSEEN said that article 16 was well drafted, except for the use of the word "origin", which had no precise technical meaning in international law. In his opinion, the word "source" would be much more precise and much more correct. The article did not refer to the source of a rule of law, but to the source of an obligation deriving from a rule of law. There was no danger of confusion with the material sources of international law, for the reference to a "customary, conventional or other" source, made it clear that only the formal sources were involved. He therefore considered that the Drafting Committee had not improved article 16 by replacing the word "source" by the word "origin".

13. Mr. CALLE Y CALLE said that the Drafting Committee sought to reflect in its texts the view expressed by the majority of the Commission. Like Mr. Yasseen, he had considered "source" to be the appropriate legal term. The word "origin" was not imprecise, however, for it referred to the time and place at which something came into being—in the present case, the international obligation. Moreover, the qualifying phrase "whether customary, conventional or other" would make the rule clearer for foreign ministries, which, as had already been pointed out on a number of occasions, were not necessarily staffed by lawyers. Consequently, although he had initially favoured the word "source", he none the less believed that the use of the term "origin", both in the title and in the body of the article, fulfilled the purposes of the draft.

14. The CHAIRMAN, speaking as a member of the Commission, thanked the Drafting Committee for its endeavours. He had been among those who had called for the use of the word "Irrelevance" in the title of the article and it was gratifying to note that that change had been made.

15. Mr. AGO (Special Rapporteur) said he was grateful to Mr. Yasseen for defending a term which he (Mr. Ago) had adopted from the outset, but he also wished to thank Mr. Calle y Calle for endorsing the term "origin". The real purpose of the article was to indicate that the provenance of the obligation breached was irrelevant. Whether the word used was "source" or "origin", no doubts

could arise once the qualification "customary, conventional or other" was added. He therefore willingly accepted the word "origin".

16. Mr. QUENTIN-BAXTER said he entirely agreed with Mr. Yasseen. The term "source" was readily understood and a great deal could be said in favour of retaining it, particularly in the context of paragraph 2, which emphasized that the source of an international obligation was immaterial and that it did not affect the responsibility arising from the internationally wrongful act. However, the Drafting Committee had, as always, striven to accommodate the view of the majority of the members of the Commission, who had appeared to favour the use of the word "origin".

17. Mr. KEARNEY said that he too would have preferred the traditional term, which was "source".

18. Mr. TSURUOKA said he shared the reservations expressed regarding the word "origin", and preferred the term "source".

19. Mr. REUTER said that, apart from the question of the term "origin", he was not certain that the statement in paragraph 2 was correct. He therefore reserved his position on it.

20. Mr. USHAKOV observed that the Commission was adopting the draft articles on State responsibility on a provisional basis; he thought that formal reservations could be entered when the final text was adopted.

21. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to approve article 16 as proposed by the Drafting Committee.

*It was so agreed.*

ARTICLE 17<sup>3</sup> (Requirement that the international obligation be in force for the State)

22. Mr. ŠAHOVIĆ (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following wording for article 17:

*Article 17. Requirement that the international obligation be in force for the State*

1. An act of the State which is not in conformity with what is required of it by an international obligation constitutes a breach of that obligation only if the act was performed at the time when the obligation was in force for that State.

2. However, an act of the State which at the time when it was performed, was not in conformity with what was required of it by an international obligation in force for that State, ceases to be considered an internationally wrongful act if, subsequently, such an act has become compulsory by virtue of a peremptory rule of international law.

3. If an act of the State which is not in conformity with what is required of it by an international obligation has a continuing character, there is a breach of that obligation only in respect of the period during which the act continues while the obligation is in force for that State.

<sup>2</sup> See *Yearbook... 1975*, vol. II, p. 57, document A/10010/Rev.1, para. 45.

<sup>3</sup> For consideration of the text originally submitted by the Special Rapporteur, see 1367th to 1371st meetings.

4. If an act of the State which is not in conformity with what is required of it by an international obligation is composed of a series of actions or omissions in respect of separate cases, there is a breach of that obligation if such an act may be considered to be constituted by the actions or omissions occurring within the period during which the obligation is in force for that State.

5. If an act of the State which is not in conformity with what is required of it by an international obligation is a complex act constituted by actions or omissions by the same or different organs of the State in respect of the same case, there is a breach of that obligation if the complex act not in conformity with it begins with an action or omission occurring within the period during which the obligation is in force for that State, even if that act is completed after that period.

23. Article 17, as adopted by the Drafting Committee, had been redrafted to some extent, to make it conform with the language and structure adopted for the previous articles. For example, the Drafting Committee had used the phrase “not in conformity with” rather than “contrary to”, as in article 15*bis*. The article originally submitted by the Special Rapporteur had consisted of three paragraphs, with the final paragraph subdivided into three subparagraphs. The Drafting Committee had decided to make the three subparagraphs of paragraph 3 into three full paragraphs, so as to make a clearer distinction between the three kinds of wrongful act covered.

24. As the new title indicated, the purpose of the article was to establish the requirement that the international obligation must have been in force for the State at the time of commission of the act of the State which was not in conformity with what was required of it by that obligation. Paragraphs 1 and 2 stated that general rule in precise terms: an act of the State which was not in conformity with what was required of it by an international obligation constituted a breach of that obligation only if the act was performed at a time when the obligation was in force for that State. However, if subsequently such an act became compulsory by virtue of a peremptory norm of international law, it ceased to be considered an internationally wrongful act. In that connexion, he drew the attention of the Commission to the fact that, in the English and French versions of paragraph 2, the word “rule” should be replaced by “norm” (*norme*), the term used in article 53 of the Vienna Convention on the Law of Treaties.<sup>4</sup>

25. Paragraphs 3 to 5 of article 17 stated the general rule for three particular kinds of wrongful act which necessarily extended over a period of time. Paragraph 3 concerned an act of the State having “a continuing character”, paragraph 4 dealt with an act of the State “composed of a series of actions or omissions in respect of separate cases”, and paragraph 5 related to an act of the State which was “a complex act constituted by actions or omissions by the same or different organs of the States in respect of the same case”.

26. Mr. AGO (Special Rapporteur) said that article 17 was very important. He thanked the Commission and,

<sup>4</sup> 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.

in particular, the members of the Drafting Committee for having adhered to his views in paragraph 2, which was a step forward in the progressive development of international law, by introducing an element of flexibility into a rule that would have been too rigid if it had been applied even to the case in question.

27. Paragraphs 3, 4 and 5 of the new text proposed by the Drafting Committee were an improvement on the text he had originally submitted, since the three kinds of act of the State, a continuing act, a composite act and a complex act—were clearly identified in each instance. The wording of paragraph 5 had been worked out, in particular, in the light of the comments made by Mr. Yasseen and Sir Francis Vallat. It was the first time those three categories of act of the State had appeared in the draft articles, but it would not be the last, because the Commission would still have to take their specific aspects into account when it came to establish the notion of *tempus commissi delicti*, which was very important in determining the responsibility of the State.

28. Mr. USHAKOV said that he readily accepted article 17 as proposed by the Drafting Committee.

29. Mr. USTOR said that, if the word “rule” in paragraph 2 was to be replaced by “norm”, in order to bring the wording into line with article 53 of the Vienna Convention on the Law of Treaties, it would be advisable to refer, as did that Convention, to “a peremptory norm of general international law”.

30. He could accept paragraph 2 as it stood, although it could well have been drafted in a different way. Nevertheless, the commentary should explain why the new norm, which required a certain attitude on the part of the State to be compulsory, must necessarily be a peremptory norm of general international law.

31. Mr. AGO agreed that the text should follow the wording of the Vienna Convention, for a peremptory norm could only be a peremptory norm of general international law. The commentary would, of course, take Mr. Ustor’s comment into account in connexion with paragraph 2.

32. Mr. YASSEEN said that he could agree to article 17, as proposed by the Drafting Committee, for he found the new text better than the one discussed by the Commission. However, the criterion adopted in paragraph 2 was perhaps not sufficiently clear and the paragraph might well have been brought into line with article 71, paragraph 2 (*b*) of the Vienna Convention. It would be better to say that, if a peremptory rule of general international law supervened, a State which had committed an act conflicting with an earlier rule could be relieved of its responsibility only if the very fact of holding it responsible conflicted with the new peremptory rule. The Special Rapporteur had chosen a different criterion, but the provision in article 71 of the Vienna Convention would perhaps be more comprehensive and more subtle. He was, however, quite willing to respond to the Special Rapporteur’s appeal.

33. Mr. RAMANGASOAVINA said he gladly supported the text proposed by the Drafting Committee, which was an improvement on the former text. The

meaning of paragraph 2 seemed very clear, but he wondered the drafting could not be improved by replacing the words "*devenu dû*", in the French text, by a more euphonious expression.

34. Mr. AGO (Special Rapporteur) thanked Mr. Yasseen for his comment which he had already made during the Commission's consideration of article 17. The Drafting Committee had borne it in mind, but had finally taken the view that to use the language of article 71 of the Vienna Convention, would produce a looser rule and that, since the Commission accepted the principle stated in paragraph 2 of article 17 only if it was formulated in the strictest fashion, it would be better to keep to the initial text. The aim was not to go so far as to affirm that the mere fact that an act had become lawful by virtue of a later peremptory rule meant that an act which had been wrongful when it was committed ceased to be considered wrongful. For an internationally wrongful act no longer to be considered as such, it must become not only lawful, but also compulsory, by virtue of a peremptory norm of international law. That was a much more restrictive rule.

35. Mr. KEARNEY said that, as he interpreted it, paragraph 2 did not conflict with, or differ from, the principles embodied in article 71 of the Vienna Convention, which dealt with the same problem in a somewhat different manner. Indeed, he would not be able to accept paragraph 2 if he thought that it would affect or overrule article 71 of the Vienna Convention.

36. Mr. QUENTIN-BAXTER observed that paragraph 4 was concerned with situations in which a wrongful act was not an isolated occurrence, but one of a series of incidents which proved the existence of a wrongful policy. Such situations were familiar to the members of, for example, the Committee on the Elimination of Racial Discrimination or the Commission on Human Rights and subsidiary organs thereof, which investigated complaints in the field of human rights. From 1967 to 1975, the Economic and Social Council had adopted a number of resolutions, for instance resolution 1919 (LVIII), on the study of situations that revealed a consistent pattern of gross violations of human rights. The language of paragraph 4 might seem abstract until it was related to a particular situation. Consequently, the Special Rapporteur might consider the advisability of including in his report a reference to the form of language consistently used by the Economic and Social Council and approved, in general terms, by the General Assembly.

37. Mr. CASTAÑEDA said that it was difficult to grasp the meaning of the phrase *un tel fait est devenu dû* in the French version of paragraph 2. In the English version, the phrase "such an act has become compulsory" presented no difficulties. Surely, the object of the paragraph was to refer to a particular conduct or behaviour. It might be preferable, in French, to use a phrase such as: *l'accomplissement d'un tel fait*.

38. Again, he had some misgivings about the restricted scope of the rule in paragraph 2. The assistance that could be given, and was given, to national liberation movements which sought to liberate peoples by force, constituted the most pertinent example, at the present

time, of a change in thinking whereby action previously considered wrongful was subsequently regarded as lawful. For instance, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,<sup>5</sup> recognized the right to render such assistance. However, paragraph 2 spoke of something that was compulsory, in other words, an obligation and not simply a right. Presumably, the right he had mentioned would not be covered by the rule embodied in that paragraph. The Special Rapporteur had pointed out, however, that, generally speaking, the Commission would prefer to restrict the scope of the rule and ascertain the views of the General Assembly on the matter.

39. Mr. AGO (Special Rapporteur) said that, if an act like the granting of military aid to peoples struggling for their independence became lawful, it did not follow that military intervention by a State on behalf of an oppressed people, which was wrongful when it took place, would automatically cease to be wrongful. An international court hearing a case of that kind would necessarily judge it in the light of the law in force when the military intervention took place. On the other hand, if a State had undertaken to supply arms to a particular country and, in the end, had refused to do so because for example, it knew they would be used to apply by force a policy of *apartheid*—and had refused even before that policy had been condemned and all military aid to that country had been prohibited—the wrongful act it had committed by refusing to deliver the promised weapons could no longer be considered an internationally wrongful act, since it became not only lawful, but also compulsory by virtue of a peremptory rule of international law. It was then obvious that that State could no longer be held responsible.

40. As to the terminology employed in article 17, he pointed out that the Commission had decided to use the expression "act of the State". He proposed that the question should not be reopened, since it had already been sufficiently discussed. In his opinion, the expression was clear enough, and there was no need to amend the text.

41. Mr. REUTER said that if some members found the expression *devenu dû* clumsy, the word *dû* could be replaced by the word *exigible*.

42. Mr. RAMANGASOAVINA said that he would prefer that solution.

43. Mr. AGO (Special Rapporteur) said that there was a whole theory about the *acte dû*. Nevertheless, he was quite willing to have the word *dû* replaced, but he would prefer the word *obligatoire*.

44. Mr. ŠAHOVIĆ (Chairman of the Drafting Committee) and Mr. USHAKOV said they could agree to the word *obligatoire*, which was a better rendering of the English word "compulsory".

45. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed

<sup>5</sup> General Assembly resolution 2625 (XXV), annex.

to approve article 17 as proposed by the Drafting Committee, with the following amendments to paragraph 2: the word “rule” to be replaced by the word “norm”, as proposed by the Chairman of the Drafting Committee; the word “general” to be added before the words “international law”, as proposed by Mr. Ustor; and, in the French text, the word *dû* to be replaced by the word *obligatoire*.

*It was so agreed.*

*The meeting rose at 11.30 a.m.*

## 1402nd MEETING

*Monday, 5 July 1976, at 3.05 p.m.*

*Chairman:* Mr. Abdullah EL-ERIAN

*Members present:* Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. Castañeda, Mr. Kearney, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Yasseen.

### State responsibility (*continued*) (A/CN.4/291 and Add.1-2; A/CN.4/L.243 and Add.1)

[Item 2 of the agenda]

#### DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

ARTICLE 18<sup>1</sup> (International crimes and international delicts [wrongs])

1. The CHAIRMAN said that, before inviting the Chairman of the Drafting Committee to introduce the title and text of article 18 as adopted by the Drafting Committee (A/CN.4/L.243/Add.1), he wished to congratulate Mr. Kearney on behalf of all the members of the Commission, on the bicentenary of the signing of the Declaration of Independence of the United States of America. He had recently been reading a work on the Declaration of Independence in which he had been struck by two illustrations of the perennial problems of drafting. The first concerned the reference to the unalienable rights to “life, liberty and the pursuit of happiness”, words which Thomas Jefferson had borrowed from John Locke, but with the expression “pursuit of happiness” substituted for the word “property”; Locke, however, when speaking of “property”, had intended to refer to the whole estate of man and not just to his material possessions.

2. The second point was that Thomas Jefferson had accepted no less than 86 proposals for changes in his draft but had remained adamant with regard to the use of the term “unalienable”. He himself had been reminded

of that when thinking of the effort which the Drafting Committee had devoted to the preparation of the new version of article 18. He wished to congratulate the Committee and the Special Rapporteur for their labours and for the mutual co-operation and understanding which they had displayed.

3. Mr. ŠAHOVIĆ (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following wording for article 18:

#### *Article 18. International crimes and international delicts [wrongs]*

1. An act of a State which constitutes a breach of an international obligation is an internationally wrongful act, regardless of the subject-matter of the obligation breached.

2. An internationally wrongful act which results from the breach by a State of an international obligation so essential for the protection of fundamental interests of the international community that its breach is recognized as a crime by that community as a whole, constitutes an international crime.

3. Subject to paragraph 2, and on the basis of the rules of international law in force, an international crime may result, *inter alia*, from:

(a) a serious breach of an international obligation of essential importance for maintenance of international peace and security, such as that prohibiting aggression;

(b) a serious breach of an international obligation of essential importance for safeguarding the right of self-determination of peoples, such as that prohibiting the establishment or maintenance by force of colonial domination;

(c) a serious breach on widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide, *apartheid*;

(d) a serious breach of an international obligation of essential importance for safeguarding the preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the seas.

4. Any internationally wrongful act which is not an international crime in accordance with paragraph 2, constitutes an international delict [wrong].

4. The article embodied the basic principle enunciated in the text originally proposed by the Special Rapporteur in his fifth report (A/CN.4/291 and Add.1-2), namely that the subject-matter of the international obligation breached was irrelevant in characterizing as internationally wrongful an act of a State which constituted a breach of an international obligation. The structure and wording of the article had nevertheless been altered in the light of the observations and suggestions made in the Commission's debate, with a view to giving greater clarity and precision to the categorization of internationally wrongful acts of the State as international crimes and international delicts.

5. The present text of article 18, like the original text, consisted of four paragraphs. The first and the fourth paragraphs remained essentially the same, with the first paragraph setting forth the general principle which he had mentioned and the fourth paragraph defining an international delict as any internationally wrongful act which was not an international crime in accordance with paragraph 2. In paragraph 1, the word “content” had been replaced by “subject-matter”, which was clearer from the juridical point of view.

<sup>1</sup> For the consideration of the text originally submitted by the Special Rapporteur, see 1371st to 1376th meetings.