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Summary record of the 1476th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1978, vol. I

the League to the United Nations concerning the recently established Arab Commission for International Law. The message read:

I have the honour to inform you that the Council of Ministers of the League of Arab States, in its resolution 3655 of 8 September 1977, has agreed on the establishment of a Commission for International Law on the Arab level. The Council has likewise endorsed the statutes of this Commission.

In the same resolution, the Council decided that the League of Arab States be represented in the meetings of the United Nations International Law Commission, in a similar capacity as regional organizations such as the Organization of American States and the Council of Europe are represented, in order to co-ordinate the work regarding the development and consolidation of the rules of international law on the Arab and international levels.

It would be much appreciated if you would take the necessary measures and likewise contact the Chairman of the International Law Commission to ensure the permanent presence of the League of Arab States as an observer in the meetings of the International Law Commission, commencing with the thirtieth session of the Commission to be held in Geneva on May 1978.

11. The Enlarged Bureau had considered that request and had decided to recommend to the Commission that, in accordance with article 26 of its Statute, it agree to establish relations of co-operation with the Arab Commission for International Law and to receive an observer from that Commission.

12. If he heard no objection, he would take it that the Commission agreed to follow the Enlarged Bureau's recommendation.

It was so agreed.

The meeting rose at 12.10 p.m.

1476th MEETING

Wednesday, 10 May 1978, at 10.10 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Castañeda, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Yankov.

Tribute to the memory of Aldo Moro

At the invitation of the Chairman, the members of the Commission observed one minute's silence in tribute to the memory of Aldo Moro.

1. Mr. AGO thanked the members of the Commission for their expression of sympathy, which he would convey to the Italian Government.

State responsibility (A/CN.4/307 and Add.1)
[Item 2 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 23 (Breach of an international obligation to prevent a given event)

2. The CHAIRMAN invited the Special Rapporteur to introduce the part of his seventh report on State responsibility (A/CN.4/307 and Add.2) dealing with the breach of an international obligation to prevent a given event, and specifically article 23, which read:

Article 23. Breach of an international obligation to prevent a given event

There is no breach by a State of an international obligation requiring it to prevent a given event unless, following a lack of prevention on the part of the State, the event in question occurs.

3. Mr. AGO (Special Rapporteur) suggested that, during the first two weeks it was to devote to the topic of State responsibility, the Commission should supplement chapter III of the draft on State responsibility[1] by adopting articles 23 and 24 which he had submitted in his seventh report (A/CN.4/307 and Add.1). The Commission had laid down some general rules in chapter I and had dealt in chapter II with the subjective element of the internationally wrongful act; it had then gone on in chapter III—perhaps the most delicate of the entire draft—to deal with the objective element of the internationally wrongful act, namely, the determination of the existence of a breach of an international obligation owed by the State.

5. Having established in article 16 the general principle concerning the existence of a breach of an international obligation, the Commission had attempted to deal in article 17 with the question whether the origin of the obligation might have an influence on the existence of a breach of the obligation—in other words, of an internationally wrongful act—a question which it had answered in the negative. In article 18 it had laid down the fundamental rule that an act of the State constituted a breach of an international obligation only if the act was committed at the time when the obligation was in force for that State. In the same article it had also dealt with the case where the breach continued over a period of time and the obligation was in force for only part of that period.

6. The Commission had then proceeded to consider whether a distinction should be drawn, as far as the existence of a breach of the obligation was concerned, according to the content or according to the nature of the obligation in question. With regard to the content of the obligation, it had considered in article 19 the question whether normal obligations in the traditional context of international law should be dis-

[1] For the text of the articles adopted so far by the Commission, see *Yearbook... 1977*, vol. II (Part Two), pp. 9 *et seq.*, document A/32/10, chap. II, sect. B, 1.

tinguished from obligations of exceptional importance intended to safeguard certain fundamental interests of the international community, and in the light of that consideration it had very tentatively differentiated two classes of internationally wrongful acts: international crimes and international delicts.

7. A further question considered by the Commission was whether the conditions for the existence of a breach of an international obligation were distinguishable according to the nature of the obligation breached. It had, for example, distinguished the conditions that constituted a breach of obligations requiring the State to adopt a particular course of conduct (article 20) from those of a breach of obligations requiring the State to achieve a specific result, leaving the State free to choose the means for achieving that result (article 21). It had also dealt, in article 21, with the question of the conditions that must be met in order for there to be a breach of an obligation of result when the obligation in question permitted the situation not in conformity with the result required by the international obligation, created by earlier conduct of the State, to be rectified by subsequent conduct. In article 22, it had dealt with the particular aspects of that case in the context of an international obligation regarding the treatment of aliens. It had then considered whether an additional condition must be fulfilled in order to establish the existence of a breach of an international obligation and had reached the conclusion that the obligation was breached only if the aliens concerned had, without success, exhausted the local remedies available.

8. The Commission must now consider a further type of obligations: those requiring the State to prevent a given event. That was the type of obligations dealt with at the beginning of his seventh report.

9. For a breach of an obligation of that type to occur, the event that should have been prevented must have taken place as a result of the State's negligence. There might sometimes be a direct causal link between the event and the act of the State, but in most cases the causal link was only indirect. The event might, of course, have been brought about directly by the action of certain State organs. Normally, however, the event was not the direct result of action by State organs but the indirect result of their inaction, as where an insufficiently protected embassy was attacked by private persons, or where flooding took place owing to inadequate precautions. In such cases the State's conduct was not the direct cause of the event but provided the conditions under which it was possible for the event to occur. Thus, two conditions had to be fulfilled in order that there should be a breach of an obligation: first, the event to be prevented must have occurred, and secondly, it must have occurred owing to the State's failure to prevent it. Neither of those conditions alone sufficed to prove the existence of a breach; in other words, it was not enough that there should have been negligence on the part of the State, or that the event had occurred: both conditions must have been fulfilled.

10. The Commission had considered the problem earlier, in connexion with article 3, which defined the elements of an internationally wrongful act. Having declared that the existence of conduct attributable to the State under international law and the breach by that conduct of an international obligation owed by the State were the two essential constituent elements of an internationally wrongful act, the Commission had considered whether a third distinct constituent element should not sometimes be added to the two others, namely, the occurrence of damage or of an injurious event. It had decided in the negative for obviously cases occurred where there was a breach of an obligation without its necessarily leading to any damage or injurious event. What was true was that, in many cases, the State's conduct itself did not suffice to constitute a breach of the international obligation; some external event must also occur, and that event often led to injury. The Commission had thus stressed that in cases where the very object of the international obligation was to avoid the occurrence of an injurious event, "negligent conduct of the organs of the State does not become an actual breach of the international obligation unless the conduct itself is combined with a supplementary element, an external event, one of those events which the State should specifically have endeavoured to prevent.[2] However, in order to remove all ambiguity regarding the weight to be attached to that event in relation to the elements consituting the internationally wrongful act, the Commission had pointed out that, if there was no internationally wrongful act as long as no external event had occurred, it was because "the occurrence of an external event is a condition for the breach of an international obligation, and not a new element which has to be combined with the breach for there to be a wrongful act".[3]

11. The Commission had considered the problem again in connexion with article 11, where the question was whether the conduct of private persons could be attributed to the State. It had answered that question too in the negative, but had pointed out that its answer did not imply that the conduct of private persons could never provide an occasion for the State to commit a breach of an international obligation. The reasoning was that, while the conduct of private persons did not *per se* constitute a breach by the State of an international obligation, it might provide the occasion for such a breach if the State failed to take the necessary precautions to prevent it.

12. That was the approach also adopted by the Preparatory Committee of the Conference for the Codification of International Law (The Hague, 1930), by taking it as agreed, in the questionnaire circulated to States, that the event represented by the act committed by private persons to the detriment of aliens must actually have taken place for the State's responsibility for failure on the part of its organs to forestall

[2] *Yearbook... 1973*, vol. II, p. 182, doc. A/9010/Rev.1, chap. II, sect. B, article 3, para. 11 of the commentary.

[3] *Ibid.*

it to be entailed. That approach was confirmed by the answers of States to the questionnaire: failure on the part of State organs to prevent the occurrence could not give rise to international responsibility except in connexion with an act committed by a private person which harmed an alien. The Austrian Government had commented that, even in the case of persons enjoying special protection, such as diplomatic staff, foreign heads of State and the like, the failure to protect was not sufficient to involve the State's responsibility: some injurious act committed by private persons must actually have taken place because of that failure before the State's conduct could constitute a breach of the international obligation.

13. International case law and diplomatic practice confirmed that conclusion; States did not complain to international judicial or arbitral tribunals, nor did they intervene diplomatically, unless some injurious event had occurred, as was shown by the cases cited in the seventh report (A/CN.4/307 and Add.1, footnote 18).

14. Apart from the obligations he had mentioned, the direct object of which was to prevent a certain event, there were of course other obligations—obligations of conduct and not of result— whose direct object was the performance of some specific act by the State, and the breach of which was therefore constituted by the mere failure to take action, independently of the indirect object, which was to help to prevent the occurrence of certain events. An example was the obligation of the State not to tolerate in its territory terrorist organizations whose activities were aimed at another State. For a breach of that obligation to occur, it was not necessary that the terrorist organizations should have committed acts of violence in the territory of another State; it was enough that the State should have tolerated the organization in its territory.

15. Mr. CALLE y CALLE expressed his delight in finding the outstanding abilities of the Special Rapporteur reflected in the report under consideration. Following the adoption at the previous session of articles 20 to 22, which had commanded wide support in the Sixth Committee, the Commission was now dealing in draft article 23 with what might be termed the category of preventive obligations. In other words, the act attributable to the State was not the injurious act itself but the fact that, because of a lack of prevention or vigilance on the part of the State, the act had occurred. It was essential to distinguish between the primary responsibility of the State, namely, cases where the damage had been caused by organs of the State, and the secondary responsibility of the State, namely, cases where the State had failed to take the necessary preventive or protective measures at the right time and had thus created conditions in which the injurious act could take place. In the instance under consideration, the act was not committed by organs of the State or entities or persons acting in fact on behalf of the State, but by individuals acting in a private capacity. Those individuals might be nationals of the State or aliens, but the act must be one taking place in a territory where it had been possible for the State to take appropriate preventive measures.

16. In his fourth report, the Special Rapporteur had proposed a draft article 11, on the conduct of private individuals, which stated that the conduct of a private individual or group of individuals, acting in that capacity, was not considered to be an act of the State in international law.[4] Obviously, the State was not in principle responsible for the conduct of a private individual or of private individuals acting in that capacity. However, the article had gone on to say that the rule was without prejudice to the attribution to the State of any omission on the part of its organs, where the latter ought to have acted to prevent or punish the conduct of the individual or group of individuals and had failed to do so. Article 11 in its original form had been supported by a brilliant and exhaustive study of legal precedents.

17. After discussion of the proposed article, however, the Commission had adopted one that no longer spoke of omission on the part of State organs or punishment of the conduct of individuals acting in a private capacity. It simply stated that the conduct of a person or group of persons not acting on behalf of the State was not to be considered as an act of the State under international law, but that that rule was without prejudice to the attribution to the State of any other conduct related to that of the persons or groups of persons in question and to be considered as an act of the State by virtue of articles 5 to 10. An example of such other conduct was that of persons or groups of persons acting in fact on behalf of the State. Naturally, if there was some degree of complicity between the private individual and the State, the responsibility of the State would be engaged.

18. The acts of individuals, in connexion with which many exaggerated claims had been submitted in the past, constituted an extremely delicate sphere. Even when States had exercised proper diligence to protect individuals, the slightest damage or harm to a foreign individual had been dramatized into a catastrophe and wildly exaggerated compensation had been claimed. At one time, the countries of Latin America, for example, had been the victims of a veritable "claims industry". Weak countries had been compelled to yield and to pay compensation for virtually unavoidable damage.

19. Consequently, it would be advisable to specify in article 23 that the preventive measures must be reasonable; otherwise, the obligation on the State to anticipate the future might prove too broad in character and the article would be opening a door that had been carefully closed in article 11. As early as 1930, the Preparatory Committee of the Codification Conference of The Hague had spoken of "reason-

[4] *Yearbook... 1972*, vol. II, p. 126, doc. A/CN.4/264 and Add.1, para. 146.

able" protection.[5] Similarly, in his seventh report, the Special Rapporteur spoke of the obligation to prevent the occurrence of the event "to the extent possible" (A/CN.5/307 and Add.1, para. 15), and mentioned measures "normally likely to prevent" private persons from committing injurious acts (*ibid,* para. 16). Accordingly, the measures taken in every case had to be in keeping with what was being protected or prevented from occurring. Every State needed certain legal judicial and police organizations to enable it to fulfil its duties to protect both nationals and aliens and, *a fortiori,* the interests or rights of other States in its territory.

20. At the same time, it was necessary to be realistic, and realism demanded that the responsibility of the State should be engaged only when there was a manifest failure to take suitable preventive measures in the case in question. The world was now witnessing appalling acts committed by international wrongdoers, who had means available that kept them beyond the reach of many advanced States, notwithstanding the highly organized legal systems and police forces of those States. Consequently, he hoped that in the course of the discussion it would prove possible to introduce into the article the notion of manifest lack of prevention or of failure to take reasonable measures to prevent the occurrence of a particular event.

21. Mr. REUTER said that, by making the occurrence of the event one of the two essential conditions for the existence of a breach of an international obligation, article 23 introduced the notion of damage, although the Special Rapporteur had shown that it was not one of the constituent elements of responsibility. He realized that the article was based on a very thorough study of international jurisprudence, State practice and legal literature, but he wondered whether there must really have been an injurious event for a breach of the obligation to occur. For example, if an ambassador succeeded by his own means in escaping an attempt that had been made on his life owing to lack of protection, was it to be concluded that the State concerned was not responsible because there had been no damage? In his views, responsibility should not be limited to cases in which there was damage. To take the case of pollution, for example, was it necessary to wait until a disaster had occurred before it could be said that there was responsibility on the part of the State that had not taken the necessary precautions to prevent it?

22. Admittedly, the Special Rapporteur had said that in certain cases it was not necessary for damage to occur for there to be a breach of an international obligation (A/CN.4/307 and Add.1, para. 15). If that were so, however, how was article 23 to be understood? It might be taken as stating a general rule that would apply only in the absence of a rule to the contrary. But he was not sure that that was what the Special Rapporteur intended, or that it was reasonable to adopt that interpretation, for, even in the classic cases, the rule stated might not be correct.

23. Personally, he would prefer an interpretation based on the idea that, when the risk could not be calculated in advance, it could be judged only by its effect in the light of the material damage caused. In such a case, since the risk would not have been apparent before the material damage occurred, the obligation to prevent the risk would not have been apparent either. On the other hand, when the risk could be precisely defined in advance, the State ought to take preventive measures in proportion to it. In such a case, any default on that obligation would of itself constitute a breach.

24. Mr. USHAKOV said that, while the Special Rapporteur was to be congratulated on his masterly introduction of article 23, there were a number of points that he would like to have clarified.

25. The Commission had so far considered that there were only two kinds of international obligations incumbent upon States: obligations of means and obligations of result. The proposed new article raised the question whether there was not perhaps also a third kind, namely, international obligations to prevent the occurrence of an event. If there were, it would often be very difficult to distinguish the second kind of obligation from the third. Referring to the 1961 Vienna Convention on Diplomatic Relations,[6] and particularly to article 22, para. 2, he wondered whether the special duty of the receiving State "to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity" was to be seen as an obligation of result or an obligation of prevention. It could be considered an obligation of result, under which the receiving State was free to take any steps it liked, providing they led to the desired result, or an obligation to prevent an event, within the meaning of the article under consideration.

26. Instead of an "event", it might be better to speak of an "act in law", but without attributing to the word "act" the meaning it had in article 1 of the draft, According to the general theory of law, the term "act in law" denoted an event that involved the application of a rule of law. For example, the birth of a child, which was unquestionably an event, was considered an act in law inasmuch as it might lead to an increase in the father's salary or a reduction in his taxes. To speak of an event when what was really meant was an act in law could give rise to confusion.

27. Furthermore, the Special Rapporteur mentioned only events occurring within the jurisdiction of the State, such as attacks on embassies or consulates; he

[5] League of Nations, *Conference for the Codification of International Law, Bases of Discussion for the Conference drawn up by the Preparatory Committee, vol. III, Responsibility of States for Damage Caused in their Territory to the Person or Property of Foreigners* (C.75.M.69.1929.V), p. 93, point VII, *a*.

[6] United Nations, *Treaty Series,* vol. 500, p. 95.

wondered whether article 23 ought not to cover international relations in general.

28. Finally, article 23 took into account only obligations to prevent an event, although obligations to cause an event were also possible. For example, a State might undertake to oblige its trading establishments to sell certain products to foreign establishments. There was no apparent justification for omitting obligations of that kind from the article.

29. Sir Francis VALLAT said that Mr. Ushakov had raised some of the same questions he himself had wished to ask the Special Rapporteur. The question of the relationship between articles 20 and 21 and article 23 was of particular interest to him. He was also unsure about the relationship between article 22 and article 23 since, if article 23 followed article 22, there might be some doubts about the applicability of the latter in cases falling within the scope of article 23.

30. Mr. NJENGA said that he, too, was somewhat uncertain about the relationship between article 20 and 21 and article 23. It was his impression, however, that the doubts that had arisen in the minds of some members of the Commission might be the result of the slightly ambiguous wording of article 23. It was not entirely clear whether the obligation provided for in that article was an obligation to provide protection or an obligation to prevent the occurrence of an event. In his opinion, it was an obligation to provide protection, and the State breached that obligation when it failed to provide such protection.

31. The practice of States was particularly relevant in that connexion. For example, when an embassy, for one reason or another, was exposed to attacks by local dissidents or other private individuals, in practice the host State usually took precautionary measures in advance because of its obligation to provide the embassy with protection. However, as the Special Rapporteur had stated in his report (A/CN.4/307 and Add.1, para. 13 and footnote 17), there were cases where the embassy might be aware that an attack or hostile demonstration was being planned and the host State failed to take adequate precautionary measures. In such cases, it could be said that there had been a breach of the State's obligation to provide the embassy with protection.

32. He was therefore of the opinion that, in order to make it clear that the State had an absolute obligation to provide reasonable protection, article 23 should be worded positively, perhaps along the following lines:

> "There is a breach by a State of an international obligation requiring it to prevent a given event if there is a lack of prevention on its part and if the event in question occurs."

33. Mr. QUENTIN-BAXTER, said that the Special Rapporteur's seventh report gave the Commission an opportunity once again to reflect on many of the vital distinctions drawn and many of the important decisions reached during the formulation of the draft articles on State responsibility. He had in mind particularly the Commission's decision that the question of damage should not be considered as an element of responsibility. He was concerned that that decision, which had determined the structure of the draft, might have been forgotten and that it might therefore not be possible to rule out the question of damage as absolutely as the Special Rapporteur would have liked. He was also concerned that the Commission might not be able fully to implement its decision to deal with acts and omissions together in all parts of the draft. It had always seemed to him that not the least excellent feature of the draft was that it made it possible to speak of acts and omissions in every context in terms that were not inappropriate to either, and, by the very spareness of the words used, to stress the fact that omissions could be just as serious as acts.

34. Was article 23 one that would prevent the Commission from dealing with acts and omissions together and that would consequently oblige it to deal only with omissions, or even with a sub-category of omissions? Did the word "prevention" introduce a new criterion that would be difficult to apply? For example, in the *Corfu Channel* case,[7] an obligation had been breached not so much because there had been failure to prevent an incident causing loss of life and property as because there had been failure to give notice of danger. It was not easy to categorize that type of omission as an obligation to prevent an event. It had the characteristics of all omissions, but the result must also follow for the legal criteria to be satisfied.

35. Was the obligation provided for in article 23 perhaps a sub-category of an obligation of result? If so, concern of the kind expressed by Mr. Calle y Calle was quite justified. Or was the obligation in a separate category of its own, as suggested by Mr. Ushakov? If so, the structure of the draft might be in considerable danger.

36. In the light of those considerations, he drew the Commission's attention to the wording of article 21, paragraph 1, and ventured to suggest that the simple message of article 23 was, in fact, covered rather well by the wording of that paragraph, which read:

> There is a breach by a State of an international obligation requiring it to achieve, by means of its own choice, a specified result if, by the conduct adopted, the State does not achieve the result required of it by that obligation.

The non-achievement of the result required of the State appeared from the wording of that paragraph to be essential, and yet it was not given a prominence that detracted from the objective element of the obligation. He was therefore of the opinion that the problems to which article 23 gave rise could be resolved simply by strengthening the commentary to article 21, paragraph 1.

37. Mr. FRANCIS said that the basic premise of draft article 23 was that the obligation of the State to

[7] Judgment of 9 April 1949, *I.C.J. Reports 1949*, p. 4.

prevent an event was not breached unless and until the preventive measures which the State was obliged to take had actually failed to prevent the event from occurring. Mr. Calle y Calle had rightly drawn a distinction between a wrongful act committed by a State organ and a wrongful act committed by a private individual following a lack of prevention on the part of the State. Politically, that was an important distinction because, when a State organ committed a wrongful act, the State was even more directly responsible than if the wrongful act had been committed by a private individual. Legally, the distinction was also important since, if a State organ was instrumental in breaching an obligation, the basis of responsibility was not the absence of preventive measures. Mr. Reuter had made a similar point when he had said that, if the risk was not apparent before the damage was done, then the obligation to prevent the risk was not apparent either and could hardly be invoked.

38. The questions raised by Mr. Calle y Calle and Mr. Reuter might be the direct result of the shortcomings of the wording of article 23, which made the breach of an obligation of a State to prevent an event dependent on the occurrence of the event following a lack of prevention on its part. The wording of the article also failed to take account of an essential element referred to in the penultimate sentence of paragraph 14 of the Special Rapporteur's seventh report, namely, "the necessary link between the actual conduct of the State and the event". The observations made by Mr. Njenga were particularly relevant. What article 23 should reflect was that the event in question must have been caused by a lack of prevention on the part of the State. He hoped that the Special Rapporteur would find some way of bringing out that point more clearly. Otherwise, the idea expressed by Mr. Quentin-Baxter concerning the relationship between article 3 and article 21, paragraph 1, would have to be studied in greater detail.

39. Mr. YANKOV wished to ask the Special Rapporteur whether he had considered the possibility of wording article 23 positively.

39. He also hoped the Special Rapporteur would define more clearly the relationship between article 23 and article 21.

The meeting rose at 12.50 p.m.

1477th MEETING

Thursday, 11 May 1978, at 10.10 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat.

State responsibility (*continued*)
(A/CN.4/307 and Add.1)
[Item 2 of the agenda]

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

ARTICLE 23 (Breach of an international obligation to prevent a given event)[1] (*continued*)

1. Mr. DÍAZ GONZÁLEZ said that the wording of article 23 as it now stood had left him in doubt as to whether there were any limitations on the obligation of the State to prevent a given event from occurring. In order to be able to prevent an event from occurring, the State had to assess the risks involved, but even when it had done so it might not always be able to prevent a private individual from committing a wrongful act. Under article 23, the State could not be held responsible for the commission of a wrongful act by a private individual, but it could incur responsibility for failing to fulfil its obligation to prevent that act from being committed. As Mr. Reuter had stated at the previous meeting, the preventive measures which the State was required to take depended on whether or not the risks involved were apparent. The State's responsibility was consequently limited by the nature of the risks involved in the occurrence of a particular event.

2. To take as an example the case of pollution of the sea, it was quite obvious that the responsibility of a State to prevent ships flying its flag from polluting the sea existed even before pollution occurred. The State's obligation was to take the necessary precautions to ensure that its flagships observed the international rules designed to prevent such pollution. Another example that came to mind was that of a State that took all the necessary measures to protect a visiting head of State, but was unable to prevent the visitor from being attacked by a private individual. In such a case, the State's obligation was to apprehend and prosecute the person who had committed the wrongful act, but it could not be held responsible for the act itself.

3. Since a State could be held responsible for lack of prevention, but not necessarily for the unforeseeable, certain limitations on the obligation of the State to prevent a given event from occurring should be provided for in article 23. He agreed with Mr. Calle y Calle (1476th meeting) that the article should also contain a reference to the idea of "reasonable prevention", which had been described by the Special Rapporteur in the last sentence of paragraph 2 of his seventh report (A/CN.4/307 and Add.1).

4. Mr. AGO (Special Rapporteur), in reply to the questions to which article 23 had given rise, said first that the international obligations referred to in that article were not normally absolute obligations, and that the rule he had proposed for adoption was by no means aimed at tranforming them into absolute ob-

[1] For text, see 1476th meeting, para. 2.