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**Summary record of the 1513th meeting**

Topic:  
**State responsibility**

Extract from the Yearbook of the International Law Commission:-  
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opinion of the International Court of Justice in the *Reparation for injuries suffered in the service of the United Nations* case,<sup>7</sup> in which international organizations had been treated as having rights and obligations under customary international law, and the application of elements of the customary law of war to the United Nations peace-keeping forces.

72. Mr. VEROSTA had no hesitation in recommending the approval of the article which, in his view, was perfectly straightforward. It was also very necessary, since some of the customary law that came into existence after an international organization became a party to a treaty might well be applicable to that organization, and such a possibility should not be excluded. He thought there was no need to go into the question of the conduct of international organizations, since nothing had been said about the conduct of States.

73. The CHAIRMAN, noting that there were no further comments, proposed that the Commission should approve article 38.

*It was so agreed.*

*The meeting rose at 1.05 p.m.*

<sup>7</sup> *I.C.J. Reports 1949*, p. 174.

## 1513th MEETING

*Thursday, 6 July 1978, at 10 a.m.*

*Chairman* : Mr. José SETTE CÂMARA

*Members present* : Mr. Ago, Mr. Calle y Calle, Mr. Castañeda, Mr. Dadzie, Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

### State responsibility (*continued*)\* (A/CN.4/307 and Add.1, A/CN.4/L.271)

[Item 2 of the agenda]

#### DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce articles 23-26 as adopted by the Drafting Committee (A/CN.4/L.271). The articles read:

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

When the result required of a State by an international obligation is the prevention, by means of its own choice, of the occurrence of

a given event, there is a breach of that obligation only if, by the conduct adopted, the State does not achieve that result.

##### *Article 24. Breach of an international obligation by an act of the State not extending in time*

The breach of an international obligation by an act of the State not extending in time occurs at the moment when that act is performed. The time of commission of the breach does not extend beyond that moment, independently of the fact that the effects of the act of the State may continue subsequently.

##### *Article 25. Breach of an international obligation by an act of the State extending in time*

1. The breach of an international obligation by an act of the State having a continuing character occurs at the moment when that act begins. Nevertheless, the time of commission of the breach extends over the entire period during which the act continues and remains not in conformity with the international obligation.

2. The breach of an international obligation by an act of the State, composed of a series of actions or omissions in respect of separate cases, occurs at the moment when that action or omission of the series is accomplished which establishes the existence of the composite act. Nevertheless, the time of commission of the breach extends over the entire period from the first of the actions or omissions constituting the composite act not in conformity with the international obligation and so long as such actions or omissions are repeated.

3. The breach of an international obligation by a complex act of the State, consisting of a succession of actions or omissions by the same or different organs of the State in respect of the same case, occurs at the moment when the last constituent element of that complex act is accomplished. Nevertheless, the time of commission of the breach extends over the entire period between the action or omission which initiated the breach and that which completed it.

##### *Article 26. Time of the breach of an international obligation to prevent a given event*

The breach of an international obligation requiring a State to prevent a given event occurs when the event begins. Nevertheless, the time of commission of the breach extends over the entire period during which the event continues.

2. Mr. SCHWEBEL (Chairman of the Drafting Committee) said that articles 23, 24, 25 and 26 as adopted by the Drafting Committee were based on articles 23 and 24 proposed by the Special Rapporteur in his seventh report (A/CN.4/307 and Add.1, paras. 19 and 50), and subsequently referred to the Drafting Committee for consideration.

3. In wording article 23, the Drafting Committee had taken particular account of the relationship of the article to articles 20 and 21,<sup>1</sup> which dealt respectively with obligations requiring the adoption of a particular course of conduct and with obligations requiring the achievement of a specified result. The purpose of the new formulation was to make it clear that article 23 constituted an application of article 21 to the case of a particular class of obligations of result that was dealt with in general terms in article 21. Thus, whereas the original text had provided that there was no breach unless "the event in question

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

\* Resumed from the 1482nd meeting.

occurs”, the proposed text, using wording from article 21, indicated that it was the combination of the “result required” of a State by an international obligation and the failure of the State to “achieve that result” that gave rise to the breach of the international obligation. The change in emphasis was further underlined by certain drafting alterations, including the use of the word “when” at the beginning of the article and the replacement, in the English text, of the phrase “there is no breach” by the words “there is a breach”. Those amendments, together with the introduction of the words “only if”, also served to align the text of article 23 with paragraph 2 of article 21 and with article 22. The phrase “by means of its own choice” had been added in order to emphasize more strongly the fact that the article represented a particular instance of article 21.

4. In addition, the nature of the particular kind of obligation of result envisaged in article 23 had been clarified. Some misgivings had been expressed in the Commission about an article that seemingly laid down an absolute rule whereby States would be held responsible if the given event in fact took place, regardless of any action or inaction on their part. It had also been suggested that, in the original text, the phrase “following a lack of prevention on the part of the State” placed undue emphasis on the actual occurrence of the event instead of focusing attention on the result required by the international obligation—i.e. on the primary rule—the content of which would determine the level of vigilance or the steps required of the State to prevent such an occurrence. The proposed text therefore referred to “prevention ... of the occurrence of a given event”, while the qualifying clause reading “unless, following a lack of prevention on the part of the State, the event in question occurs” had been replaced by the words “if, by the conduct adopted, the State does not achieve that result”. Thus the “conduct” of the State, which in the cases covered by the article was normally constituted by an omission, would include possible action by the State that prevented it from achieving the required result, namely, the non-occurrence of the given event. Viewed in that context, the Drafting Committee had thought that the article was in its natural place after articles 21 and 22.

5. Articles 24, 25 and 26 as proposed by the Drafting Committee were based on the former article 24 and took account of a suggestion made in the Commission that the five paragraphs of that article should become separate articles.<sup>2</sup> The three proposed articles, which dealt with the *tempus commissi delicti*, were to be distinguished from article 18, which expressed the basic principle that the time the obligation was in force and the time of the conduct of the State must be contemporaneous for such conduct to be considered as constituting a breach of the obligation. Articles 24, 25 and 26, on the other hand, dealt with the time and duration of the breach itself.

6. Article 24 was based on paragraph 1 of the original article and related to the breach of an international obligation by an act of the State not extending in time. The expression “instantaneous act” had been replaced by the words “act ... not extending in time”, in order to take account of the observations made in the Commission. Article 25, which was based on paragraphs 2, 4 and 5 of the original article 24, dealt with three situations, namely, the various cases of the breach of an international obligation by an act of the State extending in time—an act having a continuing character, an act composed of a series of actions or omissions, and a complex act. Article 26 was based on paragraph 3 of the original article and concerned the time of the breach of an international obligation to prevent a given event.

7. In the light of the views expressed in the Commission, articles 24, 25 and 26 had been drafted with a view to making it clear that they dealt with the *tempus commissi delicti* from two standpoints: first, the time when the breach occurred and, secondly, the extent of the time of commission of the breach.

8. Lastly, the Drafting Committee had decided not to recommend that articles 24, 25 and 26 should form a separate chapter, at that stage at least, since it had taken the view that the time element should not be separated from the question of the breach of an international obligation in general, which was the subject of chapter III of the draft articles.

9. The CHAIRMAN invited members to consider, one by one, the articles proposed by the Drafting Committee.

ARTICLE 23<sup>3</sup> (Breach of an international obligation to prevent a given event)<sup>4</sup>

10. Mr. VEROSTA said that the words “prevent a given event” in the title of article 23, and even more the words “prevention ... of the occurrence of a given event” in the text of the article, were not very felicitous, at least in the French version.

11. Mr. REUTER considered the words quite correct in French. For the sake of simplification, the words “prevention ... of the occurrence of a given event” might be replaced by “prevention ... of an event”, but that would be more than a mere drafting change.

12. Mr. AGO (Special Rapporteur) pointed out that the French word “donné” was the exact equivalent of the English word “given”. He would like to retain the word “occurrence” in view of the nuance which it introduced.

13. Sir Francis VALLAT pointed out that the question had already been discussed at length in the Drafting Committee, and suggested that it should be left for the second reading of the draft articles.

<sup>3</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1476th to 1478th meetings.

<sup>4</sup> For text, see para. 1 above.

<sup>2</sup> See 1481st meeting, para. 29.

14. Mr. USHAKOV said that a "given" event was the event covered by the international obligation in question.

15. Mr. TSURUOKA, referring to the closing words of article 23, suggested that the words "the State does not achieve" should perhaps be replaced by the words "the State has not achieved".

16. Mr. AGO (Special Rapporteur) proposed that Mr. Tsuruoka's comment be held over for consideration on the second reading.

17. Mr. CASTAÑEDA observed that there was no equivalent for the word "occurrence" in the Spanish version of article 23. He suggested that the omission should be made good by the insertion of the words "que surja" after the words "por el medio que elija".

18. The CHAIRMAN said that, if there were no objection, he would take it that the Commission decided to adopt the title and text of article 23 referred to it by the Drafting Committee, subject to the amendment proposed by Mr. Castañeda to the Spanish version of the text.

*It was so agreed.*

ARTICLE 24<sup>5</sup> (Breach of an international obligation by an act of the State not extending in time)<sup>6</sup>

19. Mr. REUTER, referring to the French version of article 24, suggested that the somewhat inelegant words "indépendamment du fait que les effets du fait de l'Etat" should be replaced by the words "indépendamment de ce que les effets du fait de l'Etat".

20. Mr. USHAKOV would prefer those words to be replaced by the words "even if the effects of the act of the State [may continue subsequently]".

21. Mr. QUENTIN-BAXTER thought that the wording proposed by Mr. Ushakov would be clearer. The wording used by the Drafting Committee was so abstract that it was difficult to grasp its meaning. Moreover, the words "even if" appeared in the former wording of article 24 and in article 18, paragraph 5, in a very similar context.

22. Mr. AGO (Special Rapporteur) failed to see the difference between the formula "independently of the fact that" and the formula "even if", but could agree that the second should be substituted for the first.

23. Mr. VEROSTA and Sir Francis VALLAT favoured the substitution.

24. The CHAIRMAN said that, if there were no objections, he would take it that the Commission decided to adopt the title and text of article 24 referred to it by the Drafting Committee, subject to the words "even if the effects of the act of the State continue subsequently" being substituted for the words "inde-

pendently of the fact that the effects of the act of the State may continue subsequently".

*It was so agreed.*

ARTICLE 25<sup>7</sup> (Breach of an international obligation by an act of the State extending in time)<sup>8</sup>

25. Mr. USHAKOV, referring to the first sentence of paragraph 1 of the article, suggested that the French and Spanish versions should be brought into line with the English version, and that the words "à exister" and "a existir" should accordingly be deleted.

26. Mr. TSURUOKA asked whether the Drafting Committee had sought in article 25 to bring out the continuing character spoken of in the provision.

27. Mr. AGO (Special Rapporteur) said that the Drafting Committee had discussed the matter at length but had eventually adhered to the words used in article 18.

28. Mr. VEROSTA said that if the amendment suggested by Mr. Ushakov were made to the first sentence of paragraph 1, the word "existence" might be deleted from the first sentence of paragraph 2 as well.

29. Mr. AGO (Special Rapporteur) pointed out that it was essential in that provision to emphasize the existence of the composite act; the existence of the composite act was in fact established when, for example, a succession of discriminatory acts was found to constitute a discriminatory practice.

30. The CHAIRMAN said that, if there were no objection, he would take it that the Commission decided to adopt the title and text of article 25 referred to it by the Drafting Committee, with the drafting change suggested by Mr. Ushakov.

*It was so agreed.*

ARTICLE 26<sup>9</sup> (Time of the breach of an international obligation to prevent a given event)<sup>10</sup>

31. Mr. USHAKOV, referring to the first sentence of the article, observed that the breach of an international obligation did not necessarily occur when the event began; it could occur during the occurrence of the event or even afterwards. However, that question could be left for the second reading of the draft.

32. The word "time" in the title of the article gave rise to translation difficulties in Russian. It might be necessary to seek another term in French.

33. Mr. AGO (Special Rapporteur) suggested that the word "time" should be replaced by the words "moment and duration", which would refer to the first and second sentences of article 26 respectively.

34. Mr. CALLE y CALLE, referring to the Spanish version of the text, proposed that for the sake of uni-

<sup>5</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1479th to 1482nd meetings.

<sup>6</sup> For text, see para. 1 above.

<sup>7</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1479th to 1482nd meetings (article 24).

<sup>8</sup> For text, see para. 1 above.

<sup>9</sup> For consideration of the text initially submitted by the Special Rapporteur, see 1479th to 1482nd meetings (article 24).

<sup>10</sup> For text, see para. 1 above.

formity the words “se inicie” should be replaced by the word “comience”.

35. Sir Francis VALLAT suggested that, in review of the amendment proposed to the title of the article, the word “time”, in the second sentence should be replaced by the word “duration”.

36. Mr. USHAKOV thought that only the title of the article should be so amended.

37. Mr. AGO (Special Rapporteur) said that the word “time” in the body of the article was to be read in the context of the expression “time of commission”, which appeared repeatedly throughout the draft articles. It would therefore be better not to alter it.

38. Mr. YANKOV also considered that the word “time” should be retained. In any case, the idea of duration was conveyed by the phrase “extends over the entire period”.

39. Sir Francis VALLAT said that the title and content of an article could normally be expected to correspond. He could accept the amendment to the title for the time being, but thought that the matter should receive closer consideration on the second reading.

40. The CHAIRMAN said that, if there were no objections, he would take it that the Commission decided to adopt the title and text of article 26 referred to it by the Drafting Committee, subject to the amendment proposed by the Special Rapporteur to the title of the article and by Mr. Calle y Calle to the Spanish version of the text.

*It was so agreed.*

*The meeting rose at 11 a.m.*

## 1514th MEETING

*Monday, 10 July 1978, at 3.10 p.m.*

*Chairman:* Mr. José SETTE CÂMARA

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

**Succession of States in respect of matters other than treaties (*continued*)\* (A/CN.4/301 and Add.1,<sup>1</sup> A/CN.4/313, A/CN.4/L.272)**

[Item 3 of the agenda]

\* Resumed from the 1505th meeting.

<sup>1</sup> *Yearbook... 1977*, vol. II (Part One), p. 45.

## DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

### ARTICLES 23, 24 AND 25

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the texts adopted by the Drafting Committee for articles 23, 24 and 25 (A/CN.4/L.272).

2. Mr. SCHWEBEL (Chairman of the Drafting Committee) said that articles 23, 24 and 25 proposed by the Drafting Committee were intended to complete part II, section 2, of the draft articles. In working on the articles, the Drafting Committee had borne in mind the main trend of opinion expressed during the Commission's discussion of the texts submitted by the Special Rapporteur, and had attempted, in particular, to preserve as much parallelism as practicable with the corresponding articles adopted by the Commission on the passing of State property (articles 14, 15 and 16).<sup>2</sup>

3. Article 23 was based on article W, proposed by the Special Rapporteur in his ninth report (A/CN.4/301 and Add.1, para. 456), although the Drafting Committee had reverted to the form used in article 14 by dividing the text into two paragraphs. The first of those paragraphs stated the basic rule in positive form and in wording closely resembling that employed in article 14. It placed the emphasis on the passing of the State debt. With regard to paragraph 2 of the article, the Committee had decided, in the light of the Commission's discussion, not to retain the two cases set out in paragraphs (a) and (b) of article W, but to include a second paragraph on the lines of paragraph 2 of article 14. In drafting that paragraph, it had borne in mind the doubts expressed in the Commission concerning the appropriateness of referring to the internal law of a State, as in article 14, paragraph 2. In discussing article 14, the Commission had been unable to reach agreement on a reference to internal law, and had therefore left the article in square brackets.<sup>3</sup> The Committee believed that the wording it had proposed for article 23, paragraph 2, was a more appropriate solution to the problem of such a reference. Unlike article 14, where the rule stated in paragraph 1 was made “subject to paragraph 2”, article 23 provided that the rule stated in paragraph 1 was “without prejudice” to the provisions of paragraph 2. In addition, the reference in article 14, paragraph 2, to the “allocation of the State property... as belonging to the successor State or, as the case may be, to its component parts” had been amended to read, in the context of State debt, “the attribution... of the State debt... to the component parts of the successor State”. And whereas article 14 provided that the allocation of State property “shall

<sup>2</sup> For the text of the articles adopted so far by the Commission, see *Yearbook... 1977*, vol. II (Part Two), pp. 56 *et seq.*, doc. A/32/10, chap. III, sect. B, 1.

<sup>3</sup> See *Yearbook... 1976*, vol. I, pp. 217 *et seq.*, 1398th meeting, and pp. 265 and 266, 1405th meeting, paras. 43-53.