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Summary record of the 1366th meeting

Topic:
State responsibility

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bility, in the matter of responsibility, of any distinction being made based on the source of the obligation and had no intention of reverting to that question later. He would therefore be interest to know what were the Special Rapporteur's intentions in that regard.

38. Mr. YASSEEN said he agreed with Mr. Calle y Calle that the word "source" should be retained, as its meaning was quite clear and its use was hallowed by international law. Any attempt to replace it by less well-established terms might lead to misunderstanding. It was hard to find an international law treaty which did not refer to "source". The world "source" was used in the Preamble to the Charter of the United Nations. There need, therefore, be no hesitation about retaining the term in article 16.

The meeting rose at 5.50 p.m.

1366th MEETING

Tuesday, 11 May 1976 at 10.20 a.m.

Chairman: Mr. Abdullah EL-ERIAN

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

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

[Item 2 of the agenda]

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

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

1. Sir Francis VALLAT said that the reasoning in the Special Rapporteur's fifth report (A/CN.4/291 and Add.1-2) had convinced him of both the need for and the basic soundness of article 16. He believed that the two ideas contained in paragraph 1 and 2 respectively were a necessary part of the structure of the draft articles. Article 16 itself was not a controversial provision but it paved the way for the more difficult provisions of article 17 and the still more difficult ones of article 18.

2. A number of points of drafting had been raised during the discussion and he himself shared the doubts which had been expressed with regard to the title of the article and most of those relating to the wording of the two paragraphs.

3. With regard to the mention in paragraph 1 of the "source" of the international obligation breached, he found the reference to the provisions of the Preamble to the Charter of the United Nations somewhat misleading. The key to the approach to article 16 was that the article was concerned with obligations rather than with rules. The third paragraph of the Preamble to the Charter called for the establishment of conditions under which "respect for the obligations arising from treaties and other sources of international law can be maintained". If the Commission was going to follow the language of the Charter in article 16, the key word would be "arising" and the article would have to speak of obligations arising from treaties or other sources of international law.

4. All those who, like himself, had been called upon in the course of their academic work to explain the provisions of the Preamble to the Charter knew how much confusion had resulted from the particular passage which he had quoted. It raised the question whether it was intended to refer to the distinction between treaty law and customary international law and thence immediately brought to mind all the statements by the International Court of Justice on the role of treaties as a source of customary international law.

5. The use of the term "source" would involve the difficulty of determining whether it was meant to refer to material sources, formal sources, historic sources or law-making factors. He himself preferred that the term should be avoided and that an effort should be made to find a more neutral one.

6. Mr. QUENTIN-BAXTER said that he shared the anxiety expressed by other members regarding the use of the term "source" but could see no better alternative. Probably the best way of solving the problem was to maintain a proper balance between article 16 and the following articles, especially article 18. He agreed with Mr. Sette Câmara that the emphasis should be placed on content; if that emphasis was maintained, the drafting problems would be easier to solve.

7. He also shared the concern expressed by other members regarding the expression "régime of responsibility" and would have been glad if he could have concluded that paragraph 1 of article 16 was sufficient to express the intention of the article. In his view, however, the presence of paragraph 1 made paragraph 2 necessary. It was one thing to say, in paragraph 1, that an internationally wrongful act would occur whatever the source of the obligation breached; it was another thing to say, in paragraph 2, that the source of the obligation would not in itself determine the legal consequences of the breach.

8. As he understood the Special Rapporteur's intention the expression "régime of responsibility" carried with it not only the idea of legal consequences but also the idea that a distinction should be made among obligations according to a hierarchy: certain obligations affected only States having an interest; others affected the whole community of nations, and obligations under a rule of *jus cogens* stood above both those categories.

9. Mr. HAMBRO said that he was surprised at the criticism of the word "source". The term was so commonly used that he saw no reason for replacing it by another term in the draft. It would be better to try to

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

indicate in the commentary how the term was used, in order to make its meaning absolutely clear. He was certain that the Special Rapporteur would be able to do that.

10. Mr. ROSSIDES said that he himself wished to retain the term "source" in article 16 where it had been very appropriately used by the Special Rapporteur. The term was to be found in a great many instruments, including the Charter of the United Nations.

11. He agreed with those speakers who had stressed that, in the present context, the content of the obligation was of greater importance than its source. Nevertheless, there were cases in which the source of the obligation was material and those cases should not be ruled out. He felt that the language proposed by the Special Rapporteur for article 16 left that question open.

12. Bearing in mind the important remarks by Mr. Tammes at the 1365th meeting, he proposed that the Special Rapporteur's wording for paragraph 1 be retained with the insertion of the proviso: "subject to Article 103 of the Charter of the United Nations". That proviso already appeared in a number of important international instruments. In particular, it constituted the opening proviso of paragraph 1 of article 30 (Application of successive treaties relating to the same subject-matter) of the Vienna Convention on the Law of Treaties.[2] It had been included by the International Law Commission in the corresponding article 26 of its draft articles on the law of treaties and had been retained as article 30 in the final text adopted by the United Nations Conference on the Law of Treaties. He believed there were two good reasons for inserting that proviso: the first was the need to recall the terms of the Charter of the United Nations, on which the whole structure of the world legal order was based; the second was that it would lend greater accuracy to the wording of paragraph 1.

13. Mr. BILGE said that article 16 set forth two principles: that the source of the international obligation breached had no incidence on the characterization of an internationally wrongful act, and that it had no incidence on the régime of responsibility applicable. The Special Rapporteur had asked the question whether international obligations should be distinguished according to their source—custom, treaty, a general principle of law, or even a unilateral act, an arbitral award or a decision of an international organization. That had led him on to deal with two preliminary questions: the existence of a special régime of responsibility and the existence of a contractual responsibility.

14. With regard to the first question, the Special Rapporteur had acknowledged the existence of a special régime of responsibility, but had decided to confine himself to the general régime of responsibility, which did not depend on the source of the obligation. The Special Rapporteur had been aware of the difficulties raised by the second question; indeed, the notion of contractual responsibility was not very clear, since the writers who propounded it sought to establish some kind of relationship between a contract and an international rule, or to create a new legal order lying between the internal legal order and the international legal order. He himself thought that it would be best to leave those ideas aside for the purpose of the draft articles, since he did not see how international law could be modelled on internal law. Like the Special Rapporteur, he believed that contracts did not constitute a separate and independent source of international law and that, as far as international responsibility was concerned, it was best not to make any distinction according to whether the international obligation breached had its source in a contract or in a rule of international law.

15. Having analysed international jurisprudence and State practice, the Special Rapporteur had concluded that neither distinguished between the sources of the international obligation breached for the purposes of the characterization of an internationally wrongful act. He had been considered whether, as progressive development of international law, a distinction might be made between an obligation arising from a treaty-contract and an obligation arising from a treaty-law, or between an obligation arising from a constitutional principle and an obligation established by some other source. He had concluded that the present state of international law did not justify such a distinction, a conclusion which he (Mr. Bilge) shared.

16. It might be asked whether article 16 should remain a separate article or be incorporated in article 3, which had already been adopted. He favoured the first course on the ground that article 16, coming at the beginning of chapter III, could play a very useful role. However, the title of the article was possibly a little long and did not really explain the contents of the article. In his opinion, the Commission should establish a link between article 16 and article 3 by indicating, in paragraph 1 of article 16, that the latter article dealt with only one of the elements of an internationally wrongful act.

17. With regard to the source of the international obligation, he fully subscribed to the principle that it had no incidence on the characterization of an internationally wrongful act and on reflection, thought that the word "source", which was used in the Charter, should be retained.

18. As far as paragraph 2 was concerned, it would be best not to distinguish between multiple régime of responsibility according to the source of the obligation breached; the Commission should defer that question until later, since for the time being it was concerned only with the objective element of the internationally wrongful act.

19. The CHAIRMAN, speaking as a member of the Commission, said that the debate had shown clearly that there was a need for the provisions of article 16 in the draft articles on State responsibility. Any hesitations which he might have felt at first on that point had been dispelled by the discussion. Moreover, it was the Commission's practice to make its drafts as complete as pos-

[2] 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.

sible, even to the point of including provisions of an expository character.

20. He agreed with the suggestion that the title of the article should be improved but was somewhat reluctant to use the term "irrelevance". The title should be reworded so as to make it clear that the source of the international obligation breached did not have any incidence on the existence of an internationally wrongful act. The Drafting Committee would have to find some means of qualifying the word "source" so as to indicate more clearly the purpose of article 16.

21. The underlying purpose of article 16 was to stress that there was only one general régime of responsibility, irrespective of the source from which the obligation arose. The Commission did not wish to embody in the draft articles a fragmentary system of responsibility. In his commentary, the Special Rapporteur had drawn attention to the possibility that in the text of a particular treaty concluded between them, "some States may well provide for a special régime of responsibility for the breach of obligations for which the treaty makes specific provision" (A/CN.4/291 and Add.1-2, para. 14). The Special Rapporteur had emphasized, however, that the existence of such a special régime did not affect the subject-matter of article 16, which was the determination of the régime of State responsibility under the general rules of international law and not under the provisions of a specific treaty. The Charter of the United Nations itself provided examples of specific régimes of responsibility. Thus, Article 6 of the Charter specified that a State Member of the United Nations "which has persistently violated the Principles contained in the present Charter may be expelled from the Organization". Similarly, the Charter provisions dealing with the problem of aggression and the non-use of force specified that a breach of the peace brought into play the machinery of collective security. Those provisions thus laid down a very specific régime of responsibility.

22. The wealth of material provided by the Special Rapporteur in his report on State practice, the writings of learned authors and the previous attempts at codification showed clearly that the diversity of sources of international obligations did not warrant any distinction between régimes of international responsibility according to source.

23. He agreed that it would be useful to include a safeguard regarding the application of Article 103 of the Charter which specified that, in the event of a conflict between the obligations of Member States under the Charter and their obligations under any other international agreement "their obligations under the present Charter shall prevail". The question was more one of validity of treaty provisions than of precedence of obligations. Nor did he believe that any analogy should be drawn from the internal law distinction between constitutional law and ordinary legislation. The Special Rapporteur's conclusion on that point was:

> ... the responsibility entailed by a breach of an international obligation should be more serious not because the obligation has one origin rather than another, or because it is embodied in one document rather than another, but because international society has a greater interest in ensuring that its members act in accordance with the specific requirements of the obligation in question (*ibid.*, para. 32).

24. It was the content or the nature of an obligation rather than its source which was important. In some cases, special obligations could be of the greatest importance while the provisions of law-making treaties of a technical character often dealt with minor matters.

25. With regard to the use of the term "source", he realized the difficulties involved but felt that they did not justify discarding the term. Despite all those difficulties, he would urge that the term "source" should be retained. During the discussion on that point, reference had been made to Article 38, paragraph 1, of the Statute of the International Court of Justice. The purpose of that article, and that of the Statute itself, however, was not to enumerate or to define the sources of international law but rather to indicate to the Court the manner in which it had to deal with cases that came before it. The Article accordingly specified that the Court should first investigate whether there existed any treaty provisions as between the contesting States which were relevant to the case. In the absence of any such provisions, the Court was called upon to apply the rules of international custom and, failing such rules, the general principles of law.

26. In connexion with the discussion on the third paragraph of the preamble of the United Nations Charter, a valuable point had been made by Sir Francis Vallat when he had emphasized the importance of the reference in that paragraph to the *obligations arising* from treaties and other sources of international law. That point should be borne in mind by the Drafting Committee.

27. In his fifth report, the Special Rapporteur had dealt satisfactorily and comprehensively with the problem of contracts entered into by States which were governed by private law and which therefore did not constitute treaties. Those contracts should not be confused with "contractual treaties" (*traités-contrats*), which had been so named to distinguish them from law-making treaties (*traités-lois*) but which were none the less treaties and as such governed by international law. The contracts in question were not governed by international law but by another legal order, which was sometimes a "transnational law", to use Jessup's terminology.

28. With regard to the drafting of paragraph 1 of the article, it should be noted that article 16 referred to an "international obligation" incumbent upon a State. Perhaps the Special Rapporteur had the intention of introducing into the draft articles a definition of an "international obligation". The definition would no doubt give that term the meaning of an obligation incumbent upon a State under international law. The definition would thus exclude such obligations as those entered into by a State under a contract governed by private law; the non-performance of such obligations could then only give rise to State responsibility in the event of a denial of justice.

29. With regard to the wording of paragraph 2 of the article, it should be noted that the words "in itself" were important. Diversity of source could have a bearing

on the régime of responsibility, not because of the source itself but because of the content of the obligation.

30. Mr. ROSSIDES observed that, in the phrase "regardless of the source of the international obligation breached", the Special Rapporteur was referring to the generic source. However, if the phrase "subject to Article 103 of the Charter of the United Nations" was not inserted at the end of paragraph 1, the effect would be to ignore the importance of the Charter, which ranked above all other legal obligations. Some writers clearly stated that the Charter was a source of law even for non-members of the United Nations. Kelsen, for example, held the view that it formed an exception, inasmuch as its provisions were binding on States which were not signatories to it.

31. Consequently, it was essential to consider inserting the phrase in question, more especially since the Commission had already employed it in the Convention on the Law of Treaties, in which article 30 began with the proviso: "Subject to Article 103 of the Charter of the United Nations ...". Again, in the draft articles on succession of States in respect of treaties,[3] article 6 referred to "the principles of international law embodied in the Charter of the United Nations". It was true that the Charter did embody principles of international law; therefore, it had to be taken into account in the article now under discussion. Insertion of the phrase would do no harm and it would be useful as demonstrating the Commission's respect for the Charter.

32. Mr. AGO (Special Rapporteur), replying to the comments of members on article 16, said first that it had never been his intention to take a position on the question of whether contracts concluded between States —including those between a State and a foreign private individual came under the internal legal order of a given State rather than under a "transnational" law or an "international law of contract". That question lay outside the topic of the international responsibility of States. As he had pointed out, it would only come within it if it were established that there was a rule of international law obliging States to fulfil their internal law contracts: a breach of that rule by a State would then entail its international responsibility. In the same context, Mr. Yasseen had spoken of agreements establishing a uniform law.[4] It was obvious that a State which was party to a Convention establishing a uniform law but did not adapt its legislation to that law would breach an obligation and thus become guilty of an internationally wrongful act. Mr. Ustor had pointed out that a State might for example undertake, in a commercial contract, to place a building at the disposal of another State to house the latter's embassy or an official mission.[5] In that case, a commercial contract and an international treaty co-existed in a single instrument and an international obligation would be breached if the building were not made available to the State requiring it. In his view, such anomalies were not uncommon in international law, but it would be best, as Mr. Kearney had suggested,[6] not to mention them in the Commission's report, in order to avoid misunderstanding as to its purpose. To do so might give rise to long and fruitless discussions, particularly as the nature of contracts of that kind was regarded differently in countries which had a Roman law system and in those which had a common law system.

33. The purpose of article 16 was to indicate that rules of international law relating to State responsibility were based, not on the source, but on the content of the international obligations breached, with a view to determining the consequences with regard to the régime of responsibility applicable. Article 16 must accordingly indicate that the manner in which those obligations had arisen and been imposed on States had an incidence on that responsibility. The incidence on responsibility of the content of the international obligations breached would be considered in article 18.[7] With regard to the comments of Mr. Reuter at the previous meeting, and of Mr. Bilge and the Chairman at the present meeting, on the subject of the general régime of international responsibility which the Commission was formulating, he said that States would be prevented from agreeing on different rules of responsibility in a particular treaty only if the general régime of responsibility contained rules of *jus cogens*, which at present was unlikely. That point had been brought out in the commentary to article 16 (A/CN. 4/291 and Add.1-2, para. 14). That did not mean, however, that the régime of responsibility contemplated in a treaty as important as the Charter of the United Nations would have no effect on general international law; it would have to be taken into account as a régime governed by general international law. If, on the other hand, the régime of responsibility established by the treaty was linked to that treaty in particular, it had no general international law. If the constituent instrument of an international organization provided that a member State which breached certain obligations could be expelled, that was a rule of responsibility peculiar to that organization. It could not be extended into a general rule permitting a State to be expelled from the international community, since a State was a member of the international community regardless of the will of other States.

34. There were treaties which provided that a State might be released from certain treaty obligations if another State breached those obligations. He wondered more especially whether that was a question of State responsibility or rather of the validity of the rules established by a treaty. The Vienna Convention on the Law of Treaties seemed to have opted for the second interpretations. The freedom enjoyed by a State to divest itself of treaty obligations which were not respected by another State should be equally valid for customary obligations as well. His conclusion was that, in the general system of international responsibility, there was

[3] *Yearbook... 1974*, vol. II (Part One), p. 174, document A/9610/Rev.1, chap. II, sect. D.

[4] 1364th meeting, para. 23.

[5] 1365th meeting, para. 30.

[6] *Ibid.*, para. 26.

[7] *Ibid.*, para. 36.

no reason to distinguish obligations according to whether they arose from treaty or from custom. If it proved necessary to make a distinction which reflected the internal law distinguishing between contractual responsibility and delictual or quasi-delictual responsibility, it would be best to rely for that purpose on the notion of treaty-contracts and treaty-laws. Treaty-laws, however, should be assimilated to custom, because there could be no difference between an obligation arising from a treaty-law and a customary obligation. In the final analysis, it also seemed impossible to introduce differences based on the distinction between treaty-contracts and treaty-laws into the régime of international responsibility, as Mr. Reuter had pointed out.

35. Mr. Tammes at the previous meeting[8] and Mr. Rossides at the present meeting, had mentioned the desirability of referring to the Charter of the United Nations in article 16. The fact that it was not mentioned was not an oversight; it was because he had thought there was no need to refer to the Charter as a special source of international obligations. In article 18, he had mentioned several obligations which flowed from the Charter. Since the Charter was a treaty, the rules it contained were unquestionably the product of an international agreement. Admittedly, the Charter was a treaty which took precedence over all others, firstly because in adopting it, States had wished to create an international organization of supreme importance and to lay down in its Statute particularly important obligations. But the importance of those obligations did not derive from the fact that they were embodied in a given text, but from the fact that what they required of States was essential for the ordered development of international life. The Charter contained both essential obligations, such as those concerning the safeguarding of peace and the prohibition of the use of force, and less important obligations, such as for example those concerning the payment of contributions and the registration of treaties. It was true that Article 103 stated:

> In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

That clause however, simply meant that any obligation which arose from a particular international agreement and conflicted with an obligation under the Charter would be regarded as invalid. If a State under those conditions complied with its obligation under the Charter, it would not be breaching any other international obligation, since by the terms of Article 103 any conflicting obligation would be deemed invalid. A reference to that provision was justified in the Vienna Convention, precisely because it concerned the validity of treaties and the obligation established by them. On the other hand, it would be out of place in a set of draft articles relating to the breach of international obligations, for obviously must be valid or it could not be breached.

36. Certainly when the Commission came to take up the question of the content of international obligations, it would have to refer especially to the Charter, bearing in mind that not all the obligations the Charter set out had the same importance. For instance, the obligation to maintain peace had pride of place, whereas other important obligations were simply mentioned in the enumeration of the purposes and principles of the United Nations; those obligations had only arisen when other international instruments had been adopted. That was the case with the obligation not to commit genocide and the obligation to abstain from a policy of massive discrimination. In addition, as Mr. Rossides had pointed out,[9] the Charter contained no obligation concerning the exploitation of the resources of the sea and there could be doubt as to the present; and even more, the future importance of such obligations. For the Charter reflected the ideas current at the time of its adoption; the world had changed since then and would continue to change. And the Commission must work for the future.

37. As far as the wording of article 16 was concerned, Mr. Ushakov had suggested including, either before the article or in the article itself, a definition of the notion of breach of an international obligation.[10] In point of fact, chapter III was modelled on chapter II, which contained no corresponding definition of "act of the State". That notion grew out of the provisions of chapter II as a whole, and he thought that the notion of "breach of an international obligation" would grow out of chapter III. Yet he was not against the idea of introducing a definition at the beginning of chapter III. The Chairman had suggested stating that an "international obligation" meant an obligation incumbent on a State under international law. A statement of that kind would have some point. But as regards the provision which Mr. Ushakov suggested adding, its scope was such that it would be better to place it in a special article before article 16 rather than in the article itself. It might perhaps begin with a formulation identical with that of article 5, which headed chapter II, and might for instance be worded as follows:

> For the purposes of the present articles, it is a breach by the State of an international obligation incumbent upon it under international law if an act of that State conflicts with what is required of it by the international obligation in question.

It should be made clear that the obligation required something of the State: some action, omission or specific result. A breach of the obligation resulted precisely from a conflict between the conduct followed by the State and that which was expected of it. If the Commission agreed to an introductory article of that kind and if the Drafting Committee could produce an acceptable text, the new article would need a separate commentary.

38. Ultimately, the discussion of paragraph 1 of article 16 had turned largely on the use of the word "source". Some members of the Commission had proposed other terms, whereas Mr. Calle y Calle had pointed out [11] that the word "source" appeared in several treaties, among them the Charter of the United Nations and the

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

[9] 1361st meeting, para. 14.

[10] 1365th meeting, para. 2.

[11] *Ibid.*, para. 34.

Charter of OAS. Sir Francis Vallat had rightly said at the present meeting that there was a difference between the source of the obligation, which was the point at issue, and the source of the rule of law from which the obligation arose. It was correct to say that the source of a treaty obligation was a "convention" (or if preferred, a "treaty" or "agreement"). But the terms "agreement" or "treaty" were understood to mean both the procedures for establishing certain rules and the instrument containing those rules. Both were referred to as the "source", but the meaning of the term was not the same in both cases. In speaking of the "source" of an international obligation, it was evident that the source of a treaty obligation was a rule established by treaty procedure and that the source of a customary obligation was a customary rule. In that connexion, the importance of what were called "secondary" sources might have been exaggerated. Article 38 of the Statute of the International Court of Justice did not even mention the word "source". It was the writers who had introduced the notion of "secondary sources". The draftsmen of the Statute had envisaged the case in which the Court might fall back on doctrine and judicial decisions as auxiliairy means of establishing the existence of a rule, which remained none the less a customary rule. Consequently, doctrine and jurisprudence seemed to be means of ascertaining the existence of obligations, not separate sources of international obligations. Some members of the Commission had emphasized the ambiguity of the word "source" and had cited in that connexion the fact that the term was sometimes used to designate material rather than formal sources. Nevertheless, even though it was ambiguous, the term "source" was the one which he had considered the most appropriate. Etymologically, it designated the place where water emerged from the ground, and that was the image which jurists employed to indicate how an obligation arose. Mr. Ushakov had suggested the term "character",[12] but that had the disadvantage of being vague and applicable to other notions, such as that of the fundamental or non-fundamental character of the obligation. The term "origin", which he had occasionally used in introducing article 16, was also rather unsatisfactory, because it might be said that some obligations had their origin in common law or in Roman law, and that was obviously unconnected with the formal source of an obligation. Whatever the term chosen, it would perhaps be best for the Commission to say in the commentary what it meant by "source" or in the body of article 16 itself, to describe the source as "customary, contractual or of any other kind".

39. As far as the expression "régime of responsibility", in paragraph 2, was concerned, it denoted generally the consequences of an internationally wrongful act, for the State which committed it. In addition to being obliged to make reparation, it might be required to give a particular kind of satisfaction; it might also incur sanctions, which might vary widely in character. The régime of responsibility therefore also included the determination of the subject of international law entitled to set those consequences in motion—the subject directly injured, other States, the international community as a whole, or international organizations. The Commission might either define the expression "régime of responsibility" or use the expression "legal consequences" proposed by Mr. Ushakov,[13] but the commentary should make it clear that the expression applied also to the determination of the subject of international law authorized to set those consequences in motion.

40. The CHAIRMAN suggested that draft article 16 should be referred to the Drafting Committee for consideration in the light of the comments and suggestions made in the discussion.

It was so decided.

The meeting rose at 1.05 p.m.

[12] *Ibid.*, para. 3.

[13] *Ibid.*, para. 4.

1367th MEETING

Wednesday, 12 May 1976, at 10.10 a.m.

Chairman: Mr. Abdullah EL-ERIAN

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

Organization of work (*continued*)*

1. The CHAIRMAN suggested that item 1 of the agenda, "Filling of casual vacancies in the Commission (article 11 of the Statute)" should be considered on Thursday, 20 May 1976. Meanwhile the secretariat would immediately inform members who had not yet been able to attend the session, including, of course, the two African members, so that they could make any arrangements they thought necessary.

2. If there were no objections he would take it that the Commission agreed to that course.

It was so agreed.

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

[Item 2 of the agenda]

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

ARTICLE 17 (Force of an international obligation)

3. The CHAIRMAN invited the Special Rapporteur to introduce his draft article 17 which read:

* Resumed from the 1361st meeting.