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administrative authority, but that this occurred before the international obligation concerning the practice of that profession was laid upon the State. In that case, what was done before the obligation existed obviously cannot be regarded as even the beginning of a breach of the obligation in question. If, subsequently, after that obligation has entered into force for the State, the foreigner concerned appeals to a higher authority, that authority will in no sense be called upon to censure or rescind the decision taken previously by the local authority, since that decision was perfectly legitimate at the time. The fact that it is not retrospectively rescinded after the obligation comes into effect is not such as to constitute, in itself, an internationally wrongful act, or to complete an act which has not even begun to exist. It is, however, possible that, on approaching the higher authority, the foreigner may renew his application for admission to the profession he wishes to practise. In that case, if the higher authority is itself competent to deal with the application, it must grant the desired permission, so that its decision may conform to the result required by the international obligation which has now entered into force; otherwise it will have to send the applicant back to the lower competent authority, which will then have to take a decision different from the one it took on the first application. A fresh refusal by either of these authorities would set in train the process of a new complex act, which would then be carried out from the beginning within the scope of the international obligation and would therefore probably constitute an internationally wrongful act in so far as it was confirmed and not set aside by the decision of another State authority—for example, a judicial authority—which took up the case later.

(25) Conversely, however, the international obligation may have been in force for the State when the decision of the first State organ acting in the case was taken, and have ceased to exist before the organs, or at least the last organs, competent to rectify the initial decision have had an opportunity to act. In that case it seems undeniable that the process of a complex breach of the international obligation has been started, and if no action is taken to stop it, either before or after the obligation ceases to exist for the State, the mere cessation of the obligation cannot eliminate the fact that the previous action of the State has made it impossible to achieve the result required by the obligation when it was in force. In other words, the extinction of the obligation—for example, as a result of denunciation of a treaty in the meantime—may have the effect of precluding any future breach, but it cannot eliminate the breach which has been started. If the other organs which act in the matter later should wish to prevent the breach from hardening, becoming definitive and thus producing its effects in terms of international responsibility, they will have to act in such a way as to make the situation conform *ab initio* to the result required by the obligation, and must not be deterred by the fact that, in the meantime, the obligation has ceased to be incumbent on the State. For example, if an international obligation of conventional origin requires the State to refrain unconditionally from expropriating certain foreign property, and an expropriation measure is nevertheless taken while the obligation is in force, the higher State authorities to which the dispossessed foreigner applies after the extinction of the obligation will be required to rescind the measure taken and to make good the damage.[439] If they fail to do so, the breach of the international obligation will be definitively completed.

(26) In order to take into account the different aspects of the possible influence of the intertemporal factor on a complex act of the State, the Commission has accordingly formulated, in paragraph 5 of article 18, the rule that there is a breach of an international obligation only if the complex act not in conformity with it begins with an action or omission occurring within the period during which the obligation is in force for the State, and then even if that act is not completed until after that period.

Article 19

International crimes and international delicts

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

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

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

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

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

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[439] This does not mean, of course, that a new expropriation measure—possibly accompanied by adequate compensation—cannot be taken later, when the conventional obligation to refrain from expropriation has ceased to be incumbent on the State.

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

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

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

*Commentary**/

(1) Article 19 is concerned with the question of the possible bearing of the subject-matter of the international obligation breached on the characterization as internationally wrongful of the act of the State committing such a breach, as well as on the régime of responsibility applicable to that act if its wrongfulness should be established. The question presents certain analogies with that examined in article 17, but in the present article the criterion for the distinction is no longer, as in article 17, a purely formal one, namely the origin or the source of the international obligation breached, but a substantive one: the content or subject-matter of the obligation in question, the matter to which the conduct required of the State by the obligation relates.

(2) The purpose of the present article is therefore to establish: (*a*) whether it should be recognized that, regardless of the subject-matter of an international obligation incumbent upon a State, a breach of that obligation always constitutes an internationally wrongful act; and (*b*) whether it must be concluded that, regardless of the subject-matter of an international obligation incumbent upon a State and of how essential the obligation is to the international community, a breach of that obligation always gives rise to one and the same category of internationally wrongful acts and, consequently, justifies the application of a single régime of international responsibility, or whether, on the contrary, a distinction should be made on the above basis between different types of internationally wrongful acts and different régimes of international responsibility.

(3) No long exposition is needed to show what the answer must be to the first of these two questions. The breach by a State of an international obligation incumbent upon it is an internationally wrongful act regardless of the subject-matter of the international obligation breached. There can be no restriction in that regard. This conclusion, which derives implicitly from the wording of article 3, sub-paragraph (*b*)—and which cannot give rise to any doubt even on a purely logical basis, for reasons similar to those already indicated[440]—is unanimously confirmed by international jurisprudence, State practice and the opinions of learned writers. In specific cases, the exact content of an obligation imposed on a State by international law is often discussed in order to determine whether, in the particular instance concerned, there has been a breach of the obligation; it has never been contended, however, that only breaches of international obligations relating to a given field, or requiring the State to behave in some particular way, entail international responsibility.

(4) There is not a single judgment of the Permanent Court of International Justice or of the International Court of Justice, or a single international arbitral award, that recognizes either explicitly or implicitly the existence of international obligations the breach of which would not be a wrongful act and would not entail international responsibility. Furthermore, the international awards specifying in general terms the conditions for the existence of an internationally wrongful act and the creation of international responsibility speak of the breach of an international obligation without placing any restriction on the subject-matter of the obligation breached,[441] despite the fact that, in the different cases in question, the judges and arbitrators were concerned with obligations having the most widely different content. The same conclusions are reached when considering the positions taken by States. It is true that the work of codification of State responsibility done under the auspices of the League of Nations, and the first work done by the United Nations, was confined to responsibility entailed by the breach of obligations relating to the treatment of foreigners. But this was because interest at the time centred mainly on that particular subject, and not because it was ever considered that only the breach of obligations relating to that matter constituted an internationally wrongful act which was a source of responsibility. The replies by States to the request for information addressed to them by the Preparatory Committee of the 1930 Conference[442] and the positions taken by the representatives of Governments at the Conference itself[443] show that, in their opinion, a breach of an international obligation, whatever its content, was an internationally wrongful act and engaged the responsibility of the State. The same conviction is evident in the views expressed by the representatives of States in the Sixth Committee of the United Nations General Assembly during the

*/ Yearbook ... 1976, vol. II (Part Two), pp. 95-122.

[440] See above, para. (7) of the commentary to article 17.

[441] See, for example, the judgments of the Permanent Court of International Justice in the *Chorzów Factory* case (26 July 1927 (Jurisdiction) (*P.C.I.J.*, Series A, No. 9, p. 21) and 13 September 1928 (Merits) (*ibid.*, No. 17, p. 29)); and the advisory opinion of the International Court of Justice concerning *Reparation for injuries suffered in the service of the United Nations* (*I.C.J. Reports 1949*, p. 184). In these decisions it is stated that "any breach of an international engagement" entails international responsibility. See also the advisory opinion of the International Court of Justice concerning the *Interpretation of peace treaties with Bulgaria, Hungary and Romania* (second phase) (*I.C.J. Reports 1950*, p. 228), and the judgments and arbitral awards mentioned in paragraph (9) of the commentary to article 17.

[442] See, in particular, the replies to point II of the request for information (League of Nations, *Bases of Discussion...* (*op. cit.*), pp. 20 *et seq.*; and *Supplement to vol. III* (*op. cit.*), pp. 2 and 6).

[443] See League of Nations, *Acts of the Conference...* (*op. cit.*), pp. 26–59 and pp. 159–161.