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STATE RESPONSIBILITY

Titles and texts of draft articles adopted
by the Drafting Committee

CHAPTER III

BREACH OF AN INTERNATIONAL OBLIGATION

Article 16

Existence of a breach of an international obligation

There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or the character.

Article 17

[Deleted]

Article 18

International obligation in force for the State

An act of a State shall not be considered a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs.

Article 19 ^{1/}

1. [Deleted]
- . . .

Article 20

[Deleted]

Article 21

[Deleted]

Article 22

[See article 26 bis]

Article 23

[Deleted]

Article 24

Extension in time of the breach of an international obligation

1. The breach of an international obligation by an act of a State not having a continuing character occurs at the moment when the act is performed, even if its effects continue.
2. The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.
3. The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with what is required by that obligation.

Article 25

Breach consisting of a composite act

1. The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful, occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.
2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

^{1/} The Drafting Committee will consider the remaining paragraphs of article 19 at a later stage.

Article 26

[Deleted]

Article 26 bis 2/

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CHAPTER IV

RESPONSIBILITY OF A STATE IN RESPECT OF THE ACT OF ANOTHER STATE

Article 27

Aid or assistance in the commission of
an internationally wrongful act

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that State.

Article 27 bis

Direction and control exercised over the commission
of an internationally wrongful act

A State which directs and controls another State in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

- (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that State.

Article 28

Coercion of another State

A State which coerces another State to commit an act is internationally responsible for that act if:

- (a) the act would, but for the coercion, be an internationally wrongful act of the coerced State; and

2/ The drafting Committee reserved discussion on article 22 (Exhaustion of local remedies), pending consideration of its placement in Chapter III or in a new projected Part Three on implementation (mise-en-oeuvre) of responsibility.

(b) the coercing State does so with knowledge of the circumstances of the act.

Article 28 bis

Effect of this Chapter

This Chapter is without prejudice to the international responsibility, under other provisions of the present articles, of the State which commits the act in question, or of any other State.

CHAPTER V

CIRCUMSTANCES PRECLUDING WRONGFULNESS

Article 29

Consent

Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent.

Article 29 bis

Compliance with peremptory norms

The wrongfulness of an act of a State is precluded if the act is required in the circumstances by a peremptory norm of general international law.

Article 29 ter

Self-defence

The wrongfulness of an act of a State is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations.

Article 30 3/

[Counter measures in respect of an internationally wrongful act]

. . .

3/ The Commission decided to retain an article 30 on countermeasures in respect of an internationally wrongful act. The content of that article, however, will be discussed by the plenary after having considered Chapter III of Part Two. The text of article 30, as adopted on first reading, reads as follows:

"The wrongfulness of an act of a State not in conformity with an obligation of that State towards another State is precluded if the act constitutes a measure legitimate under international law against that other State, in consequence of an internationally wrongful act of that other State." (see A/CN.4/498/Add.2, p. 57).

Article 31

Force majeure

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the act is due to force majeure, that is the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation.

2. Paragraph 1 does not apply if:

- (a) The occurrence of force majeure results, either alone or in combination with other factors, from the conduct of the State invoking it; or
- (b) The State has assumed the risk of that occurrence.

Article 32

Distress

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the author of the act in question had no other reasonable way, in a situation of distress, of saving the author's life or the lives of other persons entrusted to the author's care.

2. Paragraph 1 does not apply if:

- (a) The situation of distress results, either alone or in combination with other factors, from the conduct of the State invoking it; or
- (b) The act in question was likely to create a comparable or greater peril.

Article 33

State of necessity

1. Necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that State unless the act:

- (a) Is the only means for the State to safeguard an essential interest against a grave and imminent peril; and
- (b) Does not seriously impair an essential interest of the State or States towards which the obligation exists, or of the international community as a whole.

2. In any case, necessity may not be invoked by a State as a ground for precluding wrongfulness if:

(a) The international obligation in question arises from a peremptory norm of general international law;

(b) The international obligation in question excludes the possibility of invoking necessity; or

(c) The State invoking necessity has contributed to the situation of necessity.

Article 34

[See article 29 ter]

Article 34 bis 4/

. . .

Article 35

Consequences of invoking a circumstance precluding wrongfulness

The invocation of a circumstance precluding wrongfulness under this Chapter is without prejudice to:

(a) Compliance with the obligation in question, if and to the extent that the circumstance precluding wrongfulness no longer exists;

(b) The question of compensation for any material harm or loss caused by the act in question.

4/ The Drafting Committee will revert to this article after the Commission's consideration of the question of countermeasures in Part 2, as well as dispute settlement in Part 3. The text of paragraph 1 of the article, as proposed by the Special Rapporteur, reads as follows:

1. A State invoking a circumstance precluding wrongfulness under this Chapter should, as soon as possible after it has notice of the circumstance, inform the other State or States concerned in writing of it and of its consequences for the performance of the obligation. (A/CN.4/498/Add.2, p. 62).

Paragraph 2 was not referred to the Drafting Committee.

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