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## Fifty-sixth session

Agenda item 162

### **Report of the International Law Commission on the work of its fifty-third session**

#### **Report of the Sixth Committee**

*Rapporteur:* Mr. Mahmoud Mohmed **Al-Naman** (Saudi Arabia)

#### **I. Introduction**

1. The item entitled “Report of the International Law Commission on the work of its fifty-third session” was included in the provisional agenda of the fifty-sixth session of the General Assembly pursuant to Assembly resolution 55/152 of 12 December 2000.
2. At its 3rd plenary meeting, on 19 September 2001, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.
3. The Sixth Committee considered the item at its 11th to 24th and 27th meetings, on 29 and 31 October and on 1 and 2, from 5 to 9 and on 19 November 2001. The views of the representatives who spoke during the Committee’s consideration of the item are reflected in the relevant summary records (A/C.6/56/SR.11-24 and 27).
4. For its consideration of the item, the Committee had before it the report of the International Law Commission on the work of its fifty-third session.<sup>1</sup>
5. The Chairman of the International Law Commission at its fifty-third session introduced the report of the Commission: chapters I to IV at the 11th meeting, on 29 October; chapter V at the 16th meeting, on 2 November; chapter VI at the 19th meeting, on 5 November; and chapters VII to IX at the 22nd meeting, on 7 November (see A/C.6/55/SR.11, 16, 19 and 22).

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<sup>1</sup> *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 and corrigendum (A/56/10 and Corr.1).*



## **II. Consideration of proposals**

### **A. Draft resolution A/C.6/56/L.17**

6. At the 27th meeting, on 19 November, the representative of Colombia introduced a draft resolution entitled “Report of the International Law Commission on the work of its fifty-third session” (A/C.6/56/L.17).

7. At the same meeting, the Committee adopted draft resolution A/C.6/56/L.17 without a vote (see para. 10, draft resolution I).

### **B. Draft resolution A/C.6/56/L.20**

8. At the 27th meeting on 19 November, the representative of Ecuador introduced a draft resolution entitled “Responsibility of States for internationally wrongful acts” (A/C.6/56/L.20).

9. At the same meeting, the Committee adopted draft resolution A/C.6/56/L.20 without a vote (see para. 10, draft resolution II).

## **III. Recommendations of the Sixth Committee**

10. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

### **Draft resolution I**

#### **Report of the International Law Commission on the work of its fifty-third session**

*The General Assembly,*

*Having considered* the report of the International Law Commission on the work of its fifty-third session,<sup>2</sup>

*Emphasizing* the importance of furthering the codification and progressive development of international law as a means of implementing the purposes and principles set forth in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,<sup>3</sup>

*Recognizing* the desirability of referring legal and drafting questions to the Sixth Committee, including topics that might be submitted to the International Law Commission for closer examination, and of enabling the Sixth Committee and the Commission to further enhance their contribution to the progressive development of international law and its codification,

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<sup>2</sup> *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 10 and corrigendum (A/56/10 and Corr.1).*

<sup>3</sup> Resolution 2625 (XXV), annex.

*Wishing* to enhance further the interaction between the Sixth Committee as a body of governmental representatives and the International Law Commission as a body of independent legal experts, with a view to improving the dialogue between the two organs,

*Recalling* the need to keep under review those topics of international law which, given their new or renewed interest for the international community, may be suitable for the progressive development and codification of international law and therefore may be included in the future programme of work of the International Law Commission,

*Welcoming* the holding of the International Law Seminar, and noting with appreciation the voluntary contributions made to the United Nations Trust Fund for the International Law Seminar,

*Stressing* the usefulness of structuring the debate on the report of the International Law Commission in the Sixth Committee in such a manner that conditions are provided for concentrated attention to each of the main topics dealt with in the report,

1. *Takes note* of the report of the International Law Commission on the work of its fifty-third session;<sup>2</sup>

2. *Expresses its appreciation* to the International Law Commission for the work accomplished at its fifty-third session, in particular for the completion of the final draft articles on “Responsibility of States for internationally wrongful acts” and for the valuable work done on the issue of prevention on the topic of “International liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary harm from hazardous activities)”;

3. *Requests* the Commission, taking into consideration its decision at its forty-ninth session to proceed with its work on the topic of “International liability for injurious consequences arising out of acts not prohibited by international law”, undertaking, as a first step, the issue of prevention,<sup>4</sup> to resume, during its fifty-fourth session, its consideration of the liability aspects of the topic, bearing in mind the interrelationship between prevention and liability, and taking into account the developments in international law and comments by Governments;

4. *Draws the attention* of Governments to the importance for the International Law Commission of having their views on the various aspects involved in the topics on the agenda of the Commission, in particular on all the specific issues identified in chapter III of its report;

5. *Reiterates its invitation* to Governments, within the context of paragraph 3 above, to respond, to the extent possible, in writing by 28 February 2002 to the questionnaire and requests for materials on unilateral acts of States circulated by the Secretariat to all Governments on 31 August 2001;

6. *Also reiterates its invitation* to Governments to submit the most relevant national legislation, decisions of domestic courts and State practice relevant to diplomatic protection in order to assist the International Law Commission in its work on the topic “Diplomatic protection”;

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<sup>4</sup> *Official Records of the General Assembly, Fifty-second Session, Supplement No. 10 (A/52/10)*, para. 168.

7. *Recommends* that the International Law Commission, taking into account the comments and observations of Governments, whether in writing or expressed orally in debates in the General Assembly, continue its work on the topics in its current programme;

8. *Requests* the International Law Commission, taking into account paragraph 259 of its report, to begin its work on the topic “Responsibility of international organizations” and to give further consideration to the remaining topics to be included in its long-term programme of work, having due regard to comments made by Governments;

9. *Invites* the International Law Commission to continue taking measures to enhance its efficiency and productivity;

10. *Takes note* of paragraph 260 of the report with regard to the cost-saving measures taken by the International Law Commission in organizing its programme of work, and encourages the Commission to continue taking such measures at its future sessions;

11. *Also takes note* of paragraph 261 of the report, and decides that the next session of the International Law Commission shall be held at the United Nations Office at Geneva from 29 April to 7 June and from 22 July to 16 August 2002;

12. *Stresses* the desirability of further enhancing the dialogue between the International Law Commission and the Sixth Committee, and in this context encourages, inter alia, the holding of informal discussions between the members of the Sixth Committee and those members of the Commission attending the fifty-seventh session of the General Assembly;

13. *Requests* the International Law Commission to continue to pay special attention to indicating in its annual report, for each topic, any specific issues on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest in providing effective guidance for the Commission in its further work;

14. *Also requests* the International Law Commission to continue the implementation of article 16, paragraph (e), and article 26, paragraphs 1 and 2, of its statute in order to further strengthen cooperation between the Commission and other bodies concerned with international law, having in mind the usefulness of such cooperation;

15. *Notes* that consulting with national organizations and individual experts concerned with international law may assist Governments in considering whether to make comments and observations on drafts submitted by the International Law Commission and in formulating their comments and observations;

16. *Reaffirms* its previous decisions concerning the role of the Codification Division of the Office of Legal Affairs of the Secretariat and those concerning the summary records and other documentation of the International Law Commission;

17. *Expresses the hope* that the International Law Seminar will continue to be held in connection with the sessions of the International Law Commission and that an increasing number of participants, in particular from developing countries, will be given the opportunity to attend the Seminar, and appeals to States to continue to

make urgently needed voluntary contributions to the United Nations Trust Fund for the International Law Seminar;

18. *Requests* the Secretary-General to provide the International Law Seminar with adequate services, including interpretation, as required, and encourages him to continue considering ways to improve the structure and content of the Seminar;

19. *Also requests* the Secretary-General to forward to the International Law Commission, for its attention, the records of the debate on the report of the Commission at the fifty-sixth session of the General Assembly, together with such written statements as delegations may circulate in conjunction with their oral statements, and to prepare and distribute a topical summary of the debate, following established practice;

20. *Requests* the Secretariat to circulate to States, as soon as possible after the conclusion of the session of the International Law Commission, chapter II of its report containing a summary of the work of that session and the draft articles adopted on either first or second reading by the Commission;

21. *Recommends* that the debate on the report of the International Law Commission at the fifty-seventh session of the General Assembly commence on 28 October 2002.

## **Draft resolution II**

### **Responsibility of States for internationally wrongful acts**

*The General Assembly,*

*Having considered* chapter IV of the report of the International Law Commission on the work of its fifty-third session,<sup>5</sup> which contains the draft articles on responsibility of States for internationally wrongful acts,

*Noting* that the International Law Commission decided to recommend to the General Assembly that it take note of the draft articles in a resolution and annex the draft articles to the resolution, and that it consider at a later stage, and in the light of the importance of the topic, the possibility of convening an international conference of plenipotentiaries to examine the draft articles with a view to concluding a convention on the topic,<sup>6</sup>

*Emphasizing* the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (a), of the Charter of the United Nations,

*Noting* that the subject of responsibility of States for internationally wrongful acts is of major importance in the relations of States,

1. *Welcomes* the conclusion of the work of the International Law Commission on responsibility of States for internationally wrongful acts, and its adoption of the draft articles and a detailed commentary on the subject;

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<sup>5</sup> *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 and corrigendum (A/56/10 and Corr.1).*

<sup>6</sup> *Ibid.*, paras. 72 and 73.

2. *Expresses its appreciation* to the International Law Commission for its continuing contribution to the codification and progressive development of international law;

3. *Takes note* of the articles on responsibility of States for internationally wrongful acts, presented by the International Law Commission, the text of which is annexed to the present resolution, and commends them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action;

4. *Decides* to include in the provisional agenda of its fifty-ninth session an item entitled "Responsibility of States for internationally wrongful acts".

## **Annex**

### **Responsibility of States for internationally wrongful acts**

#### **Part One**

#### **The internationally wrongful act of a State**

##### **Chapter I**

##### **General principles**

###### *Article 1*

###### *Responsibility of a State for its internationally wrongful acts*

Every internationally wrongful act of a State entails the international responsibility of that State.

###### *Article 2*

###### *Elements of an internationally wrongful act of a State*

There is an internationally wrongful act of a State when conduct consisting of an action or omission:

- (a) Is attributable to the State under international law; and
- (b) Constitutes a breach of an international obligation of the State.

###### *Article 3*

###### *Characterization of an act of a State as internationally wrongful*

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.

##### **Chapter II**

##### **Attribution of conduct to a State**

###### *Article 4*

###### *Conduct of organs of a State*

1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and

whatever its character as an organ of the central government or of a territorial unit of the State.

2. An organ includes any person or entity which has that status in accordance with the internal law of the State.

*Article 5*

*Conduct of persons or entities exercising elements of governmental authority*

The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.

*Article 6*

*Conduct of organs placed at the disposal of a State by another State*

The conduct of an organ placed at the disposal of a State by another State shall be considered an act of the former State under international law if the organ is acting in the exercise of elements of the governmental authority of the State at whose disposal it is placed.

*Article 7*

*Excess of authority or contravention of instructions*

The conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.

*Article 8*

*Conduct directed or controlled by a State*

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

*Article 9*

*Conduct carried out in the absence or default of the official authorities*

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority.

*Article 10*

*Conduct of an insurrectional or other movement*

1. The conduct of an insurrectional movement which becomes the new government of a State shall be considered an act of that State under international law.

2. The conduct of a movement, insurrectional or other, which succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered an act of the new State under international law.

3. This article is without prejudice to the attribution to a State of any conduct, however related to that of the movement concerned, which is to be considered an act of that State by virtue of articles 4 to 9.

*Article 11*

*Conduct acknowledged and adopted by a State as its own*

Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.

**Chapter III**

**Breach of an international obligation**

*Article 12*

*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 character.

*Article 13*

*International obligation in force for a State*

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

*Article 14*

*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 that obligation.

*Article 15*

*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.

#### **Chapter IV** **Responsibility of a State in connection with the act of another State**

##### *Article 16*

##### *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 17*

##### *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 18*

##### *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
- (b) The coercing State does so with knowledge of the circumstances of the act.

##### *Article 19*

##### *Effect of this chapter*

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

## **Chapter V**

### **Circumstances precluding wrongfulness**

#### *Article 20* *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 21* *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 22* *Countermeasures in respect of an internationally wrongful act*

The wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter State in accordance with chapter II of Part Three.

#### *Article 23* *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 situation of force majeure is due, either alone or in combination with other factors, to the conduct of the State invoking it; or
- (b) The State has assumed the risk of that situation occurring.

#### *Article 24* *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 has 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 is due, either alone or in combination with other factors, to the conduct of the State invoking it; or
- (b) The act in question is likely to create a comparable or greater peril.

*Article 25**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 way 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 excludes the possibility of invoking necessity; or

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

*Article 26**Compliance with peremptory norms*

Nothing in this chapter precludes the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law.

*Article 27**Consequences of invoking a circumstance precluding wrongfulness*

The invocation of a circumstance precluding wrongfulness in accordance with 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 loss caused by the act in question.

**Part Two****Content of the international responsibility of a State****Chapter I****General principles***Article 28**Legal consequences of an internationally wrongful act*

The international responsibility of a State which is entailed by an internationally wrongful act in accordance with the provisions of Part One involves legal consequences as set out in this Part.

*Article 29*

*Continued duty of performance*

The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible State to perform the obligation breached.

*Article 30*

*Cessation and non-repetition*

The State responsible for the internationally wrongful act is under an obligation:

- (a) To cease that act, if it is continuing;
- (b) To offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

*Article 31*

*Reparation*

1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.

*Article 32*

*Irrelevance of internal law*

The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this Part.

*Article 33*

*Scope of international obligations set out in this Part*

1. The obligations of the responsible State set out in this Part may be owed to another State, to several States, or to the international community as a whole, depending in particular on the character and content of the international obligation and on the circumstances of the breach.
2. This Part is without prejudice to any right, arising from the international responsibility of a State, which may accrue directly to any person or entity other than a State.

**Chapter II**

**Reparation for injury**

*Article 34*

*Forms of reparation*

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.

*Article 35*  
*Restitution*

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

- (a) Is not materially impossible;
- (b) Does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

*Article 36*  
*Compensation*

1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

*Article 37*  
*Satisfaction*

1. The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.

2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.

3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State.

*Article 38*  
*Interest*

1. Interest on any principal sum due under this chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.

2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.

*Article 39*  
*Contribution to the injury*

In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or any person or entity in relation to whom reparation is sought.

**Chapter III**  
**Serious breaches of obligations under peremptory norms of general international law**

*Article 40*

*Application of this chapter*

1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law.
2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.

*Article 41*

*Particular consequences of a serious breach of an obligation under this chapter*

1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.
2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.
3. This article is without prejudice to the other consequences referred to in this Part and to such further consequences that a breach to which this chapter applies may entail under international law.

**Part Three**  
**The implementation of the international responsibility of a State**

**Chapter I**  
**Invocation of the responsibility of a State**

*Article 42*

*Invocation of responsibility by an injured State*

A State is entitled as an injured State to invoke the responsibility of another State if the obligation breached is owed to:

- (a) That State individually; or
- (b) A group of States including that State, or the international community as a whole, and the breach of the obligation:
  - (i) Specifically affects that State; or
  - (ii) Is of such a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation.

*Article 43**Notice of claim by an injured State*

1. An injured State which invokes the responsibility of another State shall give notice of its claim to that State.
2. The injured State may specify in particular:
  - (a) The conduct that the responsible State should take in order to cease the wrongful act, if it is continuing;
  - (b) What form reparation should take in accordance with the provisions of Part Two.

*Article 44**Admissibility of claims*

The responsibility of a State may not be invoked if:

- (a) The claim is not brought in accordance with any applicable rule relating to the nationality of claims;
- (b) The claim is one to which the rule of exhaustion of local remedies applies and any available and effective local remedy has not been exhausted.

*Article 45**Loss of the right to invoke responsibility*

The responsibility of a State may not be invoked if:

- (a) The injured State has validly waived the claim;
- (b) The injured State is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim.

*Article 46**Plurality of injured States*

Where several States are injured by the same internationally wrongful act, each injured State may separately invoke the responsibility of the State which has committed the internationally wrongful act.

*Article 47**Plurality of responsible States*

1. Where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act.
2. Paragraph 1:
  - (a) Does not permit any injured State to recover, by way of compensation, more than the damage it has suffered;
  - (b) Is without prejudice to any right of recourse against the other responsible States.

*Article 48*

*Invocation of responsibility by a State other than an injured State*

1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if:

(a) The obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or

(b) The obligation breached is owed to the international community as a whole.

2. Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State:

(a) Cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and

(b) Performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached.

3. The requirements for the invocation of responsibility by an injured State under articles 43, 44 and 45 apply to an invocation of responsibility by a State entitled to do so under paragraph 1.

**Chapter II**

**Countermeasures**

*Article 49*

*Object and limits of countermeasures*

1. An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations under Part Two.

2. Countermeasures are limited to the non-performance for the time being of international obligations of the State taking the measures towards the responsible State.

3. Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question.

*Article 50*

*Obligations not affected by countermeasures*

1. Countermeasures shall not affect:

(a) The obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;

(b) Obligations for the protection of fundamental human rights;

(c) Obligations of a humanitarian character prohibiting reprisals;

(d) Other obligations under peremptory norms of general international law.



2. A State taking countermeasures is not relieved from fulfilling its obligations:

(a) Under any dispute settlement procedure applicable between it and the responsible State;

(b) To respect the inviolability of diplomatic or consular agents, premises, archives and documents.

#### *Article 51*

##### *Proportionality*

Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.

#### *Article 52*

##### *Conditions relating to resort to countermeasures*

1. Before taking countermeasures, an injured State shall:

(a) Call on the responsible State, in accordance with article 43, to fulfil its obligations under Part Two;

(b) Notify the responsible State of any decision to take countermeasures and offer to negotiate with that State.

2. Notwithstanding paragraph 1 (b), the injured State may take such urgent countermeasures as are necessary to preserve its rights.

3. Countermeasures may not be taken, and if already taken must be suspended without undue delay if:

(a) The internationally wrongful act has ceased; and

(b) The dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties.

4. Paragraph 3 does not apply if the responsible State fails to implement the dispute settlement procedures in good faith.

#### *Article 53*

##### *Termination of countermeasures*

Countermeasures shall be terminated as soon as the responsible State has complied with its obligations under Part Two in relation to the internationally wrongful act.

#### *Article 54*

##### *Measures taken by States other than an injured State*

This chapter does not prejudice the right of any State, entitled under article 48, paragraph 1, to invoke the responsibility of another State, to take lawful measures against that State to ensure cessation of the breach and reparation in the interest of the injured State or of the beneficiaries of the obligation breached.

## **Part Four**

### **General provisions**

#### *Article 55*

##### *Lex specialis*

These articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of a State are governed by special rules of international law.

#### *Article 56*

##### *Questions of State responsibility not regulated by these articles*

The applicable rules of international law continue to govern questions concerning the responsibility of a State for an internationally wrongful act to the extent that they are not regulated by these articles.

#### *Article 57*

##### *Responsibility of an international organization*

These articles are without prejudice to any question of the responsibility under international law of an international organization, or of any State for the conduct of an international organization.

#### *Article 58*

##### *Individual responsibility*

These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State.

#### *Article 59*

##### *Charter of the United Nations*

These articles are without prejudice to the Charter of the United Nations.

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