



British Institute of
International and
Comparative Law

Investment Treaty Forum

Thirty Second ITF Public Conference State Responsibility in Investment Law

Friday 10 May 2019 | BMA House, Tavistock Square, Bloomsbury, London WC1H 9JP



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CONFERENCE OVERVIEW

The event will bring together arbitrators, leading practitioners and academics working in the area of international investment law.

The conference will cover a range of issues related to State responsibility, including:

- circumstances precluding wrongfulness
- *force majeure*
- distress and necessity
- fundamental change of circumstances
- attribution for the conduct of different branches of government, State entities, provinces and municipalities
- contributory fault
- responsibility for continuous and composite acts and the cumulative effect of a series of acts

The speakers will draw on practical examples from their practice as well as hypothetical scenarios related to Brexit, the Arab Spring, sanctions, military hostilities and other situations.

This conference is a part of the **London International Disputes Week #LIDW19**

PRACTICAL INFORMATION

Venue

BMA House, Tavistock Square, Bloomsbury, London WC1H 9JP

Nearest underground stations

- Euston (Northern and Victoria lines)
- Russell Square (Piccadilly line)
- Euston Square (Circle, Hammersmith and Metropolitan lines)

Nearest main line train stations

- Euston
- Kings Cross St. Pancras

Wi-Fi access

Network: Visitor

Password: BMAHouse1832

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AGENDA

8:30-9:00 | Registration with tea and coffee

9:00-9:15 | Welcome and Introduction

Prof Yarik Kryvoi, Investment Treaty Forum, British Institute of International and Comparative Law

9:15-10:00 | Keynote address

Prof Christoph Schreuer, zeiler.partners

10:00-11:30 | Panel 1: Attribution for the conduct of different branches of government, State entities, provinces and municipalities

Chair: Suzanne Spears, Allen & Overy

- **Dr Anthony Sinclair**, Quinn Emanuel Urquhart & Sullivan
 - **David Pawlak**, David A. Pawlak LLC
 - **Greg Falkof**, Eversheds Sutherland
-

11:30-12:00 | Tea and coffee break

12:00-13:30 | Panel 2: Circumstances precluding wrongfulness, force majeure, distress and necessity, fundamental change of circumstances

Chair: Chanaka Wickremasinghe, Foreign and Commonwealth Office

- **Prof Matthew Happold**, University of Luxembourg
 - **Charles Claypoole**, Latham & Watkins
 - **Sylvia Tnova**, Jones Day
-

13:30-14:30 | Lunch



14:30-16:00 | Panel 3: Contributory fault, responsibility for continuous and composite acts, cumulative effect of a series of acts

Chair: Lord Goldsmith QC, PC, Debevoise & Plimpton

- **Dr Stuart Dutson**, Simmons & Simmons
- **Théobald Naud**, DLA Piper
- **Kate Corby**, Baker McKenzie

16:00-16:30 | Closing remarks

Loretta Malintoppi, 39 Essex Chambers

This programme is subject to change.

SPEAKER BIOGRAPHIES



Charles Claypoole

Latham & Watkins

Charles Claypoole is a partner in the London office of Latham & Watkins and a member of Latham's International Arbitration and Public International Law Practices.

Mr. Claypoole advises on a wide range of public international law and dispute resolution issues, including international investment law, international trade law, investment treaty arbitration (primarily under bilateral investment treaties and the Energy Charter Treaty), international commercial arbitration, UN, EU, and UK international trade sanctions, EU and UK export control laws, State immunity, international humanitarian and human rights law (including Business and Human Rights), land and maritime boundary law, and the Law of the Sea.

Mr. Claypoole has extensive experience in advising and acting for State clients and investors in investment treaty disputes – he has acted as counsel in approximately 20 investment treaty arbitrations conducted under the ICSID, ICSID Additional Facility, SCC, and UNCITRAL Rules. Mr. Claypoole has also acted as counsel in numerous international commercial arbitrations (conducted mainly under the ICC and LCIA Rules), in three major State-to-State cases before the Iran-United States Claims Tribunal, and in major public international disputes involving issues of maritime delimitation, land boundaries, and territorial sovereignty before the International Court of Justice (*Ukraine v. Romania, Indonesia / Malaysia*) and the Permanent Court of Arbitration (*Ethiopia / Eritrea, Yemen / Eritrea*).



Kate Corby

Baker McKenzie

Kate Corby is a Partner in Baker McKenzie's Global Dispute Resolution team, based in London. Kate has over 15 years experience of representing clients in complex disputes, and is a member of the firm's EMEA Dispute Resolution Steering Committee and its Global Dispute Resolution Diversity & Inclusions Working Group.

Kate's main area of focus is international arbitration, in which she represents clients in commercial, construction and investment treaty cases. Her practice is very international, illustrated by her current main cases in which she is acting for clients from China, Lebanon and Saudi Arabia in dispute with parties from Egypt, Qatar and Finland, in cases involving English and local law with arbitral seats in London, Paris and Dubai. She is also currently representing an EU based client in a bilateral investment treaty case against an EU state. Kate also regularly provides project counselling services and advises clients on project and contract management and dispute avoidance, as well as on product liability claims.

Kate has been described in the Legal 500 as "*excellent, smart, focused and very adaptable*" and in Chambers and Partners as having "*great business acumen in addition to great legal knowledge. This was a tremendous help in maintaining and improving our relationships with our strategic partners in a very delicate moment.*"





Dr Stuart Dutson

Latham & Watkins

Dr Stuart Dutson is head of the international arbitration group at Simmons & Simmons. Prior to joining Simmons & Simmons, Stuart practiced in international arbitration and litigation at Herbert Smith, Linklaters and Eversheds. Stuart has conducted international arbitrations in London, China/Hong Kong, Dubai, Stockholm, Africa, Belgium and Switzerland under the ICC, LCIA, UNCITRAL, Swiss, CIETAC, DIAC, IATA and LME arbitration rules, and international litigation in London, China, the Middle East, Continental Europe and Africa. Stuart has conducted arbitrations under both common law and civil law and acted for clients from all around the world including governments. Stuart has also represented clients in many international negotiations and mediations.

Stuart also regular sits as arbitrator under the ICC, LCIA and UNCITRAL arbitration rules with seats in London, Africa and the Middle East.

Stuart has a Doctorate in private international law from Gonville and Caius College, Cambridge University, England, and Bachelor of Laws and Bachelor of Business (both with First Class Honours) from Queensland University, Australia and the University Medal in Law. Stuart has acted as counsel in numerous investment treaty and investment law arbitrations including, most recently, successfully defending Indonesia in a claim under the India Indonesia investment treaty.



Greg Falkof

Eversheds Sutherland LLP

Greg Falkof is a Partner in the international arbitration group of Eversheds Sutherland LLP. He is based in London after spending some years with the international disputes team in the Paris office. Greg specialises in public international law and international investment arbitration, and the resolution of international infrastructure, energy, oil and gas disputes. Greg has extensive experience of acting as counsel and advocate in institutional and ad hoc arbitrations, including under the ICSID, ICC, LCIA, CIETAC, and UNCITRAL Rules.

Greg is co-founder and a former Director of Delos Dispute Resolution, an independent arbitration institution that promotes quality, flexibility, and time and cost efficiency in the resolution of international disputes.

Prior to his legal career, Greg qualified as a construction engineer and worked as a construction project manager in the UK and South Africa.



Lord Goldsmith QC, PC

Debevoise & Plimpton

Lord (Peter) Goldsmith QC, PC, is a Co-Managing Partner and Chair of European and Asian Litigation at Debevoise & Plimpton, working in London.

Lord Goldsmith served as the UK's Attorney General from 2001–2007, prior to which he was in private practice as one of the leading barristers in London.

Lord Goldsmith acts for a variety of clients, alongside his role as Chair of the firm's European and Asian litigation practices, in arbitration and litigation in the United Kingdom and other countries. He is a QC and appears regularly in court as well as in arbitration.

Lord Goldsmith practised from Fountain Court Chambers from 1972–2001, specialising principally in commercial, corporate and international litigation and appellate work. During this time, he was ranked by *Chambers UK* as being in the top tier of leading silks in London for international arbitration and commercial litigation. He became Queen's Counsel in 1987 at the early age of 37 and has judicial experience as a Crown Court Recorder and a Deputy High Court Judge.

He is a graduate in law from Cambridge University with double first-class honours and a master's from University College London. He was admitted to the Bar of England & Wales in 1972 and New South Wales in 2010.



Prof Matthew Happold

University of Luxembourg

Matthew Happold is Professor of Public International Law at the University of Luxembourg, where he teaches public international law, international dispute settlement and international human rights law. He previously taught at the universities of Hull, Nottingham and Sussex, and worked at the British Institute of International and Comparative Law. He has been a Visiting Fellow at the

Human Rights Program, Harvard Law School and a Visiting Professional in the Office of the Prosecutor of the International Criminal Court.

His publications include *The European Union as an Actor in International Economic Law* (T.M.C. Asser Press: forthcoming 2019) (co-editor with Mads Andenas and Luca Pantaleo), *Economic Sanctions and International Law* (Hart Publishing, 2016) (co-editor with Paul Eden), and *Investment Disputes under the Energy Charter Treaty* (Cambridge University Press: 1st edition 2011, 2nd edition under contract) (co-author with Thomas Roe QC).

Matthew also practices as a barrister from 3 Hare Court, London and sits as a Recorder on the North Eastern Circuit. He is a member of the Luxembourg Commission consultative des Droits de l'Homme, Luxembourg's national human rights institution.



Prof Yarik Kryvoi

[British Institute of International and Comparative Law](#)

Professor Yarik Kryvoi is the Senior Research Fellow in International Economic Law and Director of the Investment Treaty Forum.

He is a Professor of Law at the University of West London (part-time) and teaches arbitration at the Chartered Institute of Arbitrators. He has several years of experience practicing international dispute resolution with Freshfields Bruckhaus Deringer in London, Morgan Lewis & Bockius in Washington, DC and Baker & McKenzie in Saint Petersburg. He is the founding editor of the CIS Arbitration Forum and serves on editorial boards of several international legal periodicals.

Professor Kryvoi is a former Co-Chair of the ABA International Courts and Tribunals Committee and has also served as a counsel for the Economic Court of the Commonwealth of Independent States advising on issues of international administrative law. He holds law degrees from Harvard, Moscow, Nottingham, Utrecht and St Petersburg. He is admitted to practice in the State of New York.



Loretta Malintoppi

[39 Essex Chambers](#)

Loretta Malintoppi is an arbitrator with 39 Essex Chambers, based in Singapore. Loretta is dually qualified (Paris and Rome Bars) and specializes in international commercial arbitration, investment arbitration and public international law. She sits as arbitrator in proceedings under a variety of arbitration rules, including ICSID, ICC, UNCITRAL, SIAC, LCIA and DIAC.

Loretta also appears as counsel and advocate in State-to-State disputes before the International Court of Justice and in ad hoc arbitrations. She was a Member for Italy of the ICC International Court of Arbitration from 2000 to 2009 and served as a Vice-President of the ICC Court from 2009 until 30 June 2015. She currently is a member of the Governing Board of ICCA.

Loretta is one of the co-authors of The ICSID Convention – A Commentary published by Cambridge University Press in 2009. She is also a member of the Editorial Board of The Law and Practice of International Courts and Tribunals, editor of the International Litigation in Practice Series, and a member of the editorial advisory board of the Journal of World Investment and Trade.



Théobald Naud

DLA Piper

Théobald Naud is a Partner at DLA Piper, working in Paris. He is a dual-qualified English solicitor and *avocat* at the Paris Bar. He joined DLA Piper in London as a trainee solicitor in 2007 and was promoted to the partnership in 2018.

Théobald advises and represents clients with respect to investment and commercial arbitration disputes, with significant experience in proceedings administered by ICSID, the ICC, the LCIA and the PCA, as well as *ad hoc* arbitrations pursuant to the UNCITRAL Arbitration Rules. He also regularly represents clients in French courts to challenge or enforce international arbitration awards and arbitration clauses.

Théobald has worked on investment disputes for over 10 years, including the long-standing representation of the Republic of Guinea in parallel multi-billion dollar ICSID arbitrations against BSG Resources Limited and affiliated companies relating to a claim of expropriation of a mining concession and related rights. Current mandates include the representation of Belgian investors in a multi-million dollar ICSID arbitration against the Republic of Madagascar relating to expropriation of an investment in the textile manufacturing sector, several proceedings for Hungary, including before ICSID annulment committees, and the representation of the Republic of Kenya also in annulment proceedings.



David Pawlak

David A. Pawlak LLC

After several years with prestigious private- and public-sector law offices in the USA, in 2005 David Pawlak founded an independent law practice and consultancy, David A. Pawlak LLC (“DAP LLC”), providing cost-effective representation and advisory services in international arbitration, with a focus on investment treaty matters.

During the fourteen years since its founding, DAP LLC has established a record of success in providing full-service representation to corporate and State clients in their arbitration matters. Mr. Pawlak’s engagements have included leading roles in the successful defense of treaty claims against Montenegro, the Slovak Republic and Poland, as well as work on matters on behalf of Ukraine and Latvia. DAP LLC has also advised and assisted in-house and external legal teams of both claimants and respondents in connection with numerous other treaty and commercial arbitration disputes.

Mr. Pawlak has represented clients in arbitration matters under the rules of the United Nations Commission on International Trade Law (UNCITRAL); the International Centre for Settlement of Investment Disputes (ICSID); the ICSID Additional Facility; the International Arbitral Center of the Austrian Federal Economic Chamber, Vienna (VIAC); and the International Chamber of Commerce (ICC).

Prior to establishing his independent practice, Mr. Pawlak was a member of the undefeated treaty arbitration team at the US Department of State. He also served as a litigation associate at Milbank in New York and in the US Department of Justice Honors Program.



Prof Christoph Schreuer (*keynote address*)

zeiler.partners

Christoph Schreuer is a graduate of the Universities of Vienna, Cambridge and Yale. Formerly Professor of International Law at the School of Advanced International Studies (SAIS) of the Johns Hopkins University in Washington and Professor of International Law at the University of Vienna, Austria. He is currently of counsel with the law office zeiler.partners, Vienna.

Professor Schreuer is an arbitrator in ICSID and UNCITRAL arbitrations and a member of the ICSID Panel of Conciliators and Arbitrators.

He has published numerous articles and several books in the field of international law including *"The ICSID Convention: A Commentary"*. He has written expert opinions in many cases.



Dr Anthony Sinclair

Quinn Emanuel Urquhart & Sullivan

Dr. Anthony Sinclair specialises in international commercial arbitration, investment treaty arbitration, and public international law. His work spans a broad range of industry sectors, with particular focus on the oil and gas, energy and mining, telecommunications, infrastructure and utilities sectors, especially in emerging markets, as counsel and arbitrator.

His experience includes handling disputes under ICC, LCIA, ICSID and UNCITRAL arbitration rules arising out of concession agreements, licences, production sharing and operating agreements, joint ventures, EPC and other construction agreements, host government and inter-governmental agreements, management and service agreements, distributorships, investment agreements, financing agreements and derivatives and post-M&A matters. He also has extensive experience as counsel for both private investors and States handling disputes under bilateral investment treaties (BITs) and the Energy Charter Treaty (ECT), and has also been counsel in several ICSID annulment proceedings. He has advised States on the negotiation and drafting of treaties, headquarters agreements and intergovernmental agreements.

Anthony is co-author of the second edition of *The ICSID Convention: A Commentary* (Cambridge University Press, 2009), and widely published in the field of international investment law and international arbitration. He has a Ph.D. from the University of Cambridge on the subject of "State Contracts in Investment Treaty Arbitration". *Chambers & Partners* calls Anthony "simply terrific" (International Arbitration, 2012) and "especially acclaimed for his knowledge of investment treaty matters and for his academic prowess" (Public International Law, 2014). *Legal 500* says "Anthony Sinclair has 'fantastic analytic skills and a broad range of PIL knowledge'," (Public International Law, 2012). He is rated by *Who's Who Legal* (Commercial Arbitration) and in 2011 was named one of *Global Arbitration Review's* "45 under 45" leading arbitration practitioners.



Suzanne Spears

Allen & Overy

Suzanne Spears is a partner in the International Arbitration group. She is an experienced public international lawyer who specialises in international dispute resolution and Business and Human Rights (“BHR”).

Her international disputes practice focuses on investment treaty arbitration, international commercial arbitration, State-to-State disputes and transnational tort litigation. She has represented clients in international disputes under all the major arbitration rules (including ICC, UNCITRAL, ICSID and PCA) and before the International Court of Justice. She also has advised clients with respect to transnational litigation before United States courts and the courts of England and Wales. She has particular experience with disputes involving Latin America and Africa, the energy and natural resource industries, human rights and the environment.

Suzanne is recognised globally for her expertise in BHR law and serves as a trusted advisor to clients facing BHR-related regulatory and litigation risks. In her BHR practice, Suzanne advises clients on dispute prevention and resolution, risk management, compliance and governance. Suzanne also advises and represents private clients, governments and international organisations on a wide range of other contentious and non-contentious matters arising under public international law.

Suzanne has held positions with international human rights and foreign relations organisations, including the United Nations, the Inter-American Institute for Human Rights and the Council on Foreign Relations.

She is an Adjunct Associate Professor of Law at University of Notre Dame (U.S.A) in London, where she teaches International Arbitration and Business and Human Rights.



Sylvia Tonova

Jones Day

Sylvia Tonova is an international arbitration lawyer with 15 years of experience representing investors and states in investment treaty and commercial arbitrations. Recognized for her "incredibly impressive work" and her "strong analytical thinking," Sylvia spent seven years with the international arbitration group of a leading international firm in Washington, DC before relocating to London in 2012.

Sylvia has extensive experience with arbitrations under all the major arbitration rules, including the ICSID and the ICSID Additional Facility Rules, and was appointed to the ICSID Panel of Arbitrators. Her practice focuses on investment and commercial disputes arising in Eastern Europe and the CIS, including the successful representation of Bulgaria and Romania in four ICSID arbitrations. Sylvia was also part of the team that recently secured a victory against Uzbekistan on behalf of 12 private equity partners in a leading private equity firm in Kazakhstan.

Sylvia regularly advises clients on sovereign immunity issues, arbitration clauses, and protecting investments against political risk in a range of industries, including oil and gas, mining, telecommunications, and banking. She holds leadership positions in several arbitration organizations, including the Institute for Transnational Arbitration (ITA) and Young ICCA, and is regularly invited to speak at arbitration conferences. Sylvia is recognized in The Legal 500 (2018) and Who's Who Legal (2019) as a future leader in international arbitration.

Chanaka Wickremasinghe

Foreign and Commonwealth Office

Chanaka Wickremasinghe joined the Foreign and Commonwealth Office (FCO) in 2001. He has served at the UK Mission to the UN in New York and at the UK Representation to EU in Brussels. He currently leads the Legal Directorate's Europe and Human Rights Team and is the Government's Agent in cases before the European Court of Human Rights.

INVESTMENT TREATY FORUM

Overview

The Investment Treaty Forum (ITF) was founded in 2004. Its aim is to provide a global centre for serious high level debate in the field of international investment law.

The Forum is a membership-based group, bringing together some of the most expert and experienced lawyers, business managers, policy advisers, academics and government officials working in the field. Like BIICL itself, the Forum has a reputation for independence, even-handedness and academic rigour.

The Forum membership is by invitation only.

People

Patrons

The Patrons of the Forum are: HE Judge Rosalyn Higgins GBE QC and Yves Fortier CC QC.

Forum Director

The Forum Director is Professor Yarik Kryvoi.

The Advisory Board

Since its inception the Investment Treaty Forum's programme has been guided on an informal basis by a small Advisory Board which currently comprises:

- Sir Frank Berman, KCMG QC, Essex Court Chambers;
- Professor Andrea Bjorklund, McGill University;
- Professor A Vaughan Lowe, All Souls College Oxford and Essex Court Chambers;
- Loretta Malintoppi, 39 Essex Chambers, London;
- Audley Sheppard, Clifford Chance LLP, London;
- Robert Volterra, Volterra Fietta, London.

The Public International Law Advisory Panel of the British Institute of International and Comparative Law also provides useful advice and support to the Forum.

Membership

The ITF's strength lies in its membership, which is drawn from as wide a range of backgrounds as possible. Members meet regularly (typically 6-7 times each year) to discuss topical issues and, where appropriate, to develop views on issues of concern to governments and decision-makers. The Forum also has strong links with related institutions (including the UK Foreign and Commonwealth Office, UNCTAD and many others).



Benefits of membership

Key benefits for ITF members include:

- The right to participate in an independently-run Forum, including free entry to all ITF meetings and conferences.
- A direct influence on the agenda of Forum meetings and the opportunity to recommend events, speakers and topics for debate.
- The opportunity to suggest research or other work to be carried out by the Forum staff.
- Access to a members-only section of the website with materials related to investment treaty law.
- BIICL's Individual membership benefits (access to ICLQ, 40% discount on BIICL publications, 20% discount on CUP publications and member rate at BIICL events).

Conditions of membership

Forum membership is limited by invitation only, to ensure the highest quality in its plenary discussions. To guarantee continuity, and manageability of debate, membership is for named individuals only. However, at the time of joining, members may nominate a senior colleague to represent them on those occasions when they are unable to attend meetings.

Membership rates

Membership of the ITF is available at the following annual rates (exclusive of VAT):

- Corporate membership: £2,750
- Individuals: £500

The Forum membership is by invitation only. For more information on ITF membership please visit www.biicl.org/investmenttreatyforum or contact Professor Yarik Kryvoi (Y.Kryvoi@BIICL.ORG).



ILC Articles on State Responsibility

Responsibility of States for Internationally Wrongful Acts 2001 (ILC Articles)

Text adopted by the Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the draft articles, appears in *Yearbook of the International Law Commission, 2001*, vol. II (Part Two). Text reproduced as it appears in the annex to General Assembly resolution 56/83 of 12 December 2001, and corrected by document A/56/49(Vol. I)/Corr.4.

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) specially 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 upon 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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