Appendix-I

1996 ILC Draft Articles on State Responsibility

PART ONE
ORIGIN OF INTERNATIONAL RESPONSIBILITY

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
Possibility that every State may be held to have committed an internationally wrongful act
Every State is subject to the possibility of being held to have committed an internationally wrongful act entailing its international responsibility.

Article 3
Elements of an internationally wrongful act of a State
There is an internationally wrongful act of a State when:
(a) conduct consisting of an action or omission is attributable to the State under international law; and
(b) that conduct constitutes a breach of an international obligation of the State.

Article 4
Characterization of an act of a State as internationally wrongful
An act of a State may only be characterized as internationally wrongful by international law. Such characterization cannot be affected by the characterization of the same act as lawful by internal law.

CHAPTER II
The "Act of the State" under international law

Article 5
Attribution to the State of the conduct of its organs
For the purposes of the present articles, conduct of any state organ having that status under the internal law of that State shall be considered as an act of the State concerned under international law, provided that organ was acting in that capacity in the case in question.
Appendix-II

Article 6
Irrelevance of the position of the organ in the organization of the State
The conduct of an organ of the State shall be considered as an act of that State under international law, whether that organ belongs to the constituent, legislative, executive, judicial or other power, whether its functions are of an international or an internal character, and whether it holds a superior or a subordinate position in the organization of the State.

Article 7
Attribution to the State of the conduct of other entities empowered to exercise elements of the government authority
1. The conduct of an organ of a territorial governmental entity within a State shall also be considered as an act of that State under international law, provided that organ was acting in that capacity in the case in question.
2. The conduct of an organ of an entity which is not part of the formal structure of the State or of a territorial governmental entity, but which is empowered by the internal law of that State to exercise elements of the governmental authority, shall also be considered as an act of the State under international law, provided that organ was acting in that capacity in the case in question.

Article 8
Attribution to the State of the conduct of persons acting in fact on behalf of the State
The conduct of a person or group of persons shall also be considered as an act of the State under international law if:
(a) it is established that such person or group of persons was in fact acting on behalf of that State; or
(b) such person or group of persons was in fact exercising elements of the governmental authority in the absence of the official authorities and in circumstances which justified the exercise of those elements of authority.

Article 9
Attribution to the State of the conduct of organs placed at its disposal by another State or by an international organization
The conduct of an organ which has been placed at the disposal of a State by another State or by an international organization shall be considered as an act of the former State under international law, if that organ was acting in the exercise of elements of the governmental authority of the State at whose disposal it has been placed.

Article 10
Attribution to the State of conduct of organs acting outside their competence or contrary to instructions concerning their activity
The conduct of an organ of a State, of a territorial governmental entity or of an entity empowered to exercise elements of the governmental authority, such organ having acted in that capacity, shall be considered as an act of the State under international law even if, in the particular case, the organ exceeded its competence according to internal law or contravened instructions concerning its activity.
Article 11
Conduct of persons not acting on behalf of the State
1. The conduct of a person or a group of persons not acting on behalf of the State shall not be considered as an act of the State under international law.
2. Paragraph 1 is without prejudice to the attribution to the State of any other conduct which is related to that of the persons or groups of persons referred to in that paragraph and which is to be considered as an act of the State by virtue of articles 5 to 10.

Article 12
Conduct of organs of another State
1. The conduct of an organ of a State acting in that capacity which takes place in the territory of another State or in any other territory under its jurisdiction shall not be considered as an act of the latter State under international law.
2. Paragraph 1 is without prejudice to the attribution to a State of any other conduct which is related to that referred to in that paragraph and which is to be considered as an act of that State by virtue of articles 5 to 10.

Article 13
Conduct of organs of an international organization
The conduct of an organ of international organization acting in that capacity shall not be considered as an act of a State under international law by reason only of the fact that such conduct has taken place in the territory of that State or in any other territory under its jurisdiction.

Article 14
Conduct of organs of an insurrectional movement
1. The conduct of an organ of an insurrectional movement which is established in the territory of a State or in any other territory under its administration shall not be considered as an act of that State under international law.
2. Paragraph 1 is without prejudice to the attribution to a State of any other conduct which is related to that of the organ of the insurrectional movement and which is to be considered as an act of that State by virtue of articles 5 to 10.
3. Similarly, paragraph 1 is without prejudice to the attribution of the conduct of the organ of the insurrectional movement to that movement in any case in which such attribution may be made under international law.

Article 15
Attribution to the State of the act of an insurrectional movement which becomes the new government of a State or which results in the formation of a new State
1. The act of an insurrectional movement which becomes the new government of a State shall be considered as an act of that State. However, such attribution shall be without prejudice to the attribution to that State of conduct which would have been previously considered as an act of the State by virtue of articles 5 to 10.
2. The act of an insurrectional movement whose action results in the formation of a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered as an act of the new State.
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.

Article 17
Irrelevance of the origin of the international obligation breached
1. An act of a State which constitutes a breach of an international obligation is an internationally wrongful act regardless of the origin, whether customary, conventional or other, of that obligation.
2. The origin of the international obligation breached by a State does not affect the international responsibility arising from the internationally wrongful act of that State.

Article 18
Requirement that the international obligation be in force for the State
1. An act of the State which is not in conformity with what is required of it by an international obligation constitutes a breach of that obligation only if the act was performed at the time when the obligation was in force for that State.
2. However, an act of the State which, at the time when it was performed, was not in conformity with what was required of it by an international obligation in force for that State, ceases to be considered an internationally wrongful act if, subsequently, such an act has become compulsory by virtue of a peremptory norm of general international law.
3. If an act of the State which is not in conformity with what is required of it by an international obligation has a continuing character, there is a breach of that obligation only in respect of the period during which the act continues while the obligation is in force for that State.
4. If an act of the State which is not in conformity with what is required of it by an international obligation is composed of a series of actions or omissions in respect of separate cases, there is a breach of that obligation if such an act may be considered to be constituted by the actions or omissions occurring within the period during which the obligation is in force for that State.
5. If an act of the State which is not in conformity with what is required of it by an international obligation is a complex act constituted by actions or omissions by the same or different organs of the State in respect of the same case, there is a breach of that obligation if the complex act not in conformity with it begins with an action or omission occurring within the period during which the obligation is in force for that State, even if that act is completed after that period.

Article 19
International crimes and international delicts
1. An act of a State which constitutes a breach of an international obligation is an internationally wrongful act, regardless of the subject-matter of the obligation breached.
2. An internationally wrongful act which results from the breach by a State of an international obligation so essential for the protection of fundamental interests of
the international community that its breach is recognized as a crime by the community as a whole constitutes an international crime.

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

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

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

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

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

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

**Article 20**

**Breach of an international obligation requiring the adoption of a particular course of conduct**

There is a breach by a State of an international obligation requiring it to adopt a particular course of conduct when the conduct of that State is not in conformity with that required of it by that obligation.

**Article 21**

**Breach of an international obligation requiring the achievement of a specified result**

1. There is a breach by a State of an international obligation requiring it to achieve, by means of its own choice, a specified result if, by the conduct adopted, the State does not achieve the result required of it by that obligation.

2. When the conduct of the State has created a situation not in conformity with the result required of it by an international obligation, but the obligation allows that this or an equivalent result may nevertheless be achieved by subsequent conduct of the State, there is a breach of the obligation only if the State also fails by its subsequent conduct to achieve the result required of it by that obligation.

**Article 22**

**Exhaustion of local remedies**

When the conduct of a State has created a situation not in conformity with the result required of it by an international obligation concerning the treatment to be accorded to aliens, whether natural or juridical persons, but the obligation allows that this or an equivalent result may nevertheless be achieved by subsequent conduct of the State, there is a breach of the obligation only if the aliens concerned have exhausted the effective local remedies available to them without obtaining the treatment called for by the obligation or, where that is not possible, an equivalent treatment.
Article 23
Breach of an international obligation to prevent a given event
When the result required of a State by an international obligation is the prevention, by means of its own choice, of the occurrence of a given event, there is a breach of that obligation only if, by the conduct adopted, the State does not achieve that result.

Article 24
Moment and duration of an international obligation by an act of the State not extending in time
The breach of an international obligation by an act of the State not extending in time occurs at the moment when that act is performed. The time of commission of the breach does not extend beyond that moment, even if the effects of the act of the State continue subsequently.

Article 25
Moment and duration of the breach of an international obligation by an act of the State extending in time
1. The breach of an international obligation by an act of the State having a continuing character occurs at the moment when that act begins. Nevertheless, the time of commission of the breach extends over the entire period during which the act continues and remains not in conformity with the international obligation.
2. The breach of an international obligation by an act of the State, composed of a series of actions or omissions in respect of separate cases, occurs at the moment when that action or omission of the series is accomplished which establishes the existence of the composite act. Nevertheless, the time of commission of the breach extends over the entire period from the first of the actions or omissions constituting the composite act not in conformity with the international obligation and so long as such actions or omissions are repeated.
3. The breach of an international obligation by a complex act of the State, consisting of a succession of actions or omissions by the same or different organs of the State in respect of the same case, occurs at the moment when the last constituent element of that complex act is accomplished. Nevertheless, the time of commission of the breach extends over the entire period between the action or omission which initiated the breach and that which completed it.

Article 26
Moment and duration of the breach of an international obligation to prevent a given event
The breach of an international obligation requiring a State to prevent a given event occurs when the event begins. Nevertheless, the time of commission of the breach extends over the entire period during which the event continues.

CHAPTER IV
Implication of a state in the internationally wrongful act of another state

Article 27
Aid or assistance by a State to another State for the commission of an internationally wrongful act
Aid or assistance by a State to another State, if it is established that it is rendered for the commission of an internationally wrongful act carried out by the latter, itself
constitutes an internationally wrongful act, even if, taken alone, such aid or assistance would not constitute the breach of an international obligation.

Article 28
Responsibility of a State for an internationally wrongful act of another State
1. An internationally wrongful act committed by a State in a field of activity in which that State is subject to the power of direction or control of another State entails the international responsibility of that other State.
2. An internationally wrongful act committed by a State as the result of coercion exerted by another State to secure the commission of that act entails the international responsibility of that other State.
3. Paragraphs 1 and 2 are without prejudice to the international responsibility, under the other provisions of the present articles, of the State which has committed the internationally wrongful act.

CHAPTER V
Circumstances precluding wrongfulness

Article 29
Consent
1. The consent validly given by a State to the commission by another State of a specified act not in conformity with an obligation of the latter State towards the former State precludes the wrongfulness of the act in relation to that State to the extent that the act remains within the limits of that consent.
2. Paragraph 1 does not apply if the obligation arises out of a peremptory norm of general international law. For the purposes of the present articles, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

Article 30
Countermeasures in respect of an internationally wrongful act
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.

Article 31
Force majeure and fortuitous event
1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the act was due to an irresistible force or to an unforeseen external event beyond its control which made it materially impossible for the State to act in conformity with that obligation or to know that its conduct was not in conformity with that obligation.
2. Paragraph 1 shall not apply if the State in question has contributed to the occurrence of the situation of material impossibility.
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 conduct which constitutes the act of that State had no other means, in a situation of extreme distress, of saving his life or that of persons entrusted to his care.
2. Paragraph 1 shall not apply if the State in question has contributed to the occurrence of the situation of extreme distress or if the conduct in question was likely to create a comparable or greater peril.

Article 33
State of necessity
1. A state of necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act of that State not in conformity with an international obligation of the State unless:
   (a) the act was the only means of safeguarding an essential interest of the State against a grave and imminent peril; and
   (b) the act did not seriously impair an essential interest of the State towards which the obligation existed.
2. In any case, a state of necessity may not be invoked by a State as a ground for precluding wrongfulness:
   (a) if the international obligation with which the act of the State is not in conformity arises out of a peremptory norm of general international law; or
   (b) if the international obligation with which the act of the State is not in conformity is laid down by a treaty which, explicitly or implicitly, excludes the possibility of invoking the state of necessity with respect to that obligation; or
   (c) if the State in question has contributed to the occurrence of the state of necessity.

Article 34
Self-defence
The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations.

Article 35
Reservation as to compensation for damages
Preclusion of the wrongfulness of an act of a State by virtue of the provisions of articles 29, 31, 32 or 33 does not prejudice any question that may arise in regard to compensation for damage caused by that act.
PART TWO
CONTENT, FORMS AND DEGREES OF INTERNATIONAL RESPONSIBILITY

CHAPTER I
General principles

Article 36
Consequences of an internationally wrongful act
1. The international responsibility of a State which, in accordance with the provisions of Part One, arises from an internationally wrongful act committed by that State entails legal consequences as set out in this Part.
2. The legal consequences referred to in paragraph 1 are without prejudice to the continued duty of the State which has committed the internationally wrongful act to perform the obligation it has breached.

Article 37
Lex specialis
The provisions of this Part do not apply where and to the extent that the legal consequences of an internationally wrongful act of a State have been determined by other rules of international law relating specifically to that act.

Article 38
Customary international law
The rules of customary international law shall continue to govern the legal consequences of an internationally wrongful act of a State not set out in the provisions of this Part.

Article 39
Relationship to the Charter of the United Nations
The legal consequences of an internationally wrongful act of a State set out in the provisions of this Part are subject, as appropriate, to the provisions and procedure of the Charter of the United Nations relating to the maintenance of international peace and security.

Article 40
Meaning of injured State
1. For the purposes of the present articles, "injured State" means any State a right of which is infringed by the act of another State, if that act constitutes, in accordance with Part One, an internationally wrongful act of that State.
2. In particular, "injured State" means:
   (a) if the right infringed by the act of a State arises from a bilateral treaty, the other State party to the treaty;
   (b) if the right infringed by the act of a State arises from a judgement or other binding dispute settlement decision of an international court or tribunal, the other State or States parties to the dispute and entitled to the benefit of that right;
   (c) if the right infringed by the act of a State arises from a binding decision of an international organ other than an international court or tribunal, the State or
States which, in accordance with the constituent instrument of the international organization concerned, are entitled to the benefit of that right;
(d) if the right infringed by the act of a State arises from a treaty provision for a third State, that third State;
(e) if the right infringed by the act of a State arises from a multilateral treaty or from a rule of customary international law, any other State party to the multilateral treaty or bound by the relevant rule of customary international law, if it is established that:
   (i) the right has been created or is established in its favour;
   (ii) the infringement of the right by the act of a State necessarily affects the enjoyment of the rights or the performance of the obligations of the other States parties to the multilateral treaty or bound by the rule of customary international law; or
   (iii) the right has been created or is established for the protection of human rights and fundamental freedoms;
(f) if the right infringed by the act of a State arises from a multilateral treaty, any other State party to the multilateral treaty, if it is established that the right has been expressly stipulated in that treaty for the protection of the collective interests of the States parties thereto.
3. In addition, "injured State" means, if the internationally wrongful act constitutes an international crime*, all other States.

CHAPTER II
Rights of the injured state and obligations of the state which has committed an internationally wrongful act

Article 41
Cessation of wrongful conduct
A State whose conduct constitutes an internationally wrongful act having a continuing character is under the obligation to cease that conduct, without prejudice to the responsibility it has already incurred.

Article 42
Reparation
1. The injured State is entitled to obtain from the State which has committed an internationally wrongful act full reparation in the form of restitution in kind, compensation, satisfaction and assurances and guarantees of non-repetition, either singly or in combination.
2. In the determination of reparation, account shall be taken of the negligence or the wilful act or omission of:
   (a) the injured State; or
   (b) a national of that State on whose behalf the claim is brought; which contributed to the damage.
3. In no case shall reparation result in depriving the population of a State of its own means of subsistence.
4. The State which has committed the internationally wrongful act may not invoke the provisions of its internal law as justification for the failure to provide full reparation.
Article 43
Restitution in kind
The injured State is entitled to obtain from the State which has committed an internationally wrongful act restitution in kind, that is, the re-establishment of the situation which existed before the wrongful act was committed, provided and to the extent that restitution in kind:
(a) is not materially impossible;
(b) would not involve a broach of an obligation arising from a peremptory norm of general international law;
(c) would not involve a burden out of all proportion to the benefit which the injured State would gain from obtaining restitution in kind instead of compensation; or
(d) would not seriously jeopardize the political independence or economic stability of the State which has committed the internationally wrongful act whereas the injured State would not be similarly affected if it did not obtain restitution in kind.

Article 44
Compensation
1. The injured State is entitled to obtain from the State which has committed an internationally wrongful act compensation for the damage caused by that act, if and to the extent that the damage is not made good by restitution in kind.
2. For the purposes of the present article, compensation covers any economically assessable damage sustained by the injured State, and may include interest and, where appropriate, loss of profits.

Article 45
Satisfaction
1. The injured State is entitled to obtain from the State which has committed an internationally wrongful act satisfaction for the damage, in particular moral damage, caused by that act, if and to the extent necessary to provide full reparation.
2. Satisfaction may take the form of one or more of the following:
   (a) an apology;
   (b) nominal damages;
   (c) in cases of gross infringement of the rights of the injured State, damages reflecting the gravity of the infringement;
   (d) in cases where the internationally wrongful act arose from the serious misconduct of officials or from criminal conduct of officials or private parties, disciplinary action against, or punishment of, those responsible.
3. The right of the injured State to obtain satisfaction does not justify demands which would impair the dignity of the State which has committed the internationally wrongful act.

Article 46
Assurances and guarantees of non-repetition
The injured State is entitled, where appropriate, to obtain from the State which has committed an internationally wrongful act assurances or guarantees of non-repetition of the wrongful act.
CHAPTER III
Countermeasures

Article 47
Countermeasures by an injured State
1. For the purposes of the present articles, the taking of countermeasures means that an injured State does not comply with one or more of its obligations towards a State which has committed an internationally wrongful act in order to induce it to comply with its obligations under articles 41 to 46, as long as it has not complied with those obligations and as necessary in the light of its response to the demands of the injured State that it do so.
2. The taking of countermeasures is subject to the conditions and restrictions set out in articles 48 to 50.
3. Where a countermeasure against a State which has committed an internationally wrongful act involves a breach of an obligation towards a third State, such a breach cannot be justified under this chapter as against the third State.

Article 48
Conditions relating to resort to countermeasures
1. Prior to taking countermeasures, an injured State shall fulfill its obligation to negotiate provided for in article 54. This obligation is without prejudice to the taking by that State of interim measures of protection which are necessary to preserve its rights and which otherwise comply with the requirements of this Chapter.
2. An injured State taking countermeasures shall fulfill the obligations in relation to dispute settlement arising under Part Three or any other binding dispute settlement procedure in force between the injured State and the State which has committed the internationally wrongful act.
3. Provided that the internationally wrongful act has ceased, the injured State shall suspend countermeasures when and to the extent that the dispute settlement procedure referred to in paragraph 2 is being implemented in good faith by the State which has committed the internationally wrongful act and the dispute is submitted to a tribunal which has the authority to issue orders binding on the parties.
4. The obligation to suspend countermeasures ends in case of failure by the State which has committed the internationally wrongful act to honour a request or order emanating from the dispute settlement procedure.

Article 49
Proportionality
Countermeasures taken by an injured State shall not be out of proportion to the degree of gravity of the internationally wrongful act and the effects thereof on the injured State.

Articles 50
Prohibited countermeasures
An injured State shall not resort by way of countermeasures to:
(a) the threat or use of force as prohibited by the Charter of the United Nations;
(b) extreme economic or political coercion designed to endanger the territorial integrity or political independence of the State which has committed the internationally wrongful act;
(c) any conduct which infringes the inviolability of diplomatic or consular agents, premises, archives and documents;
(d) any conduct which derogates from basic human rights; or
(e) any other conduct in contravention of a peremptory norm of general international law.

CHAPTER IV
International crimes

Article 51
Consequences of an international crime
An international crime entails all the legal consequences of any other internationally wrongful act and, in addition, such further consequences as are set out in articles 52 and 53.

Article 52
Specific consequences
Where an internationally wrongful act of a State is an international crime:
(a) an injured State's entitlement to obtain restitution in kind is not subject to the limitations set out in subparagraphs (c) and (d) of article 43;
(b) an injured State's entitlement to obtain satisfaction is not subject to the restriction in paragraph 3 of article 45.

Article 53
Obligations for all States
An international crime committed by a State entails an obligation for every other State:
(a) not to recognize as lawful the situation created by the crime;
(b) not to render aid or assistance to the State which has committed the crime in maintaining the situation so created;
(c) to cooperate with other States in carrying out the obligations under subparagraphs (a) and (b); and
(d) to cooperate with other States in the application of measures designed to eliminate the consequences of the crime.

PART THREE
SETTLEMENT OF DISPUTES

Article 54
Negotiation
If a dispute regarding the interpretation or application of the present articles arises between two or more States Parties to the present articles, they shall, upon the request of any of them, seek to settle it amicably by negotiation.
Article 55
Good offices and mediation
Any State Party to the present articles, not being a party to the dispute may, at the request of any party to the dispute or upon its own initiative, tender its good offices or offer to mediate with a view to facilitating an amicable settlement of the dispute.

Article 56
Conciliation
If, three months after the first request for negotiations, the dispute has not been settled by agreement and no mode of binding third party settlement has been instituted, any party to the dispute may submit it to conciliation in conformity with the procedure set out in annex I to the present articles.

Article 57
Task of the Conciliation Commission
1. The task of the Conciliation Commission shall be to elucidate the questions in dispute, to collect with that object all necessary information by means of inquiry or otherwise and to endeavor to bring the parties to the dispute to a settlement.
2. To that end, the parties shall provide the Commission with a statement of their position regarding the dispute and of the facts upon which their position is based. In addition, they shall provide the Commission with any further information or evidence as the Commission may request and shall assist the Commission in any independent fact-finding it may wish to undertake, including fact-finding within the territory of any party to the dispute, except where exceptional reasons make this impractical. In that event, the party shall give the Commission an explanation of those exceptional reasons.
3. The Commission may, at its discretion, make preliminary proposals to any or all of the parties, without prejudice to its later recommendations.
4. The recommendations to the parties shall be embodied in a report to be presented not later than three months from the formal constitution of the Commission, and the Commission may specify the period within which the parties are to respond to those recommendations.
5. If the response by the parties to the Commission's recommendations does not lead to the settlement of the dispute, the Commission may submit to them a final report containing its own evaluation of the dispute and its recommendation for settlement.

Article 58
Arbitration
1. Failing a reference of the dispute to the Conciliation Commission provided for in article 56 or failing an agreed settlement within six months following the report of the Commission, the parties to the dispute may, by agreement, submit the dispute to an arbitral tribunal to be constituted in conformity with annex II to the present articles.
2. In cases, however, where the dispute arises between States Parties to the present articles, one of which has taken countermeasures against the other, the State against which they are taken is entitled at any time unilaterally to submit the dispute to an arbitral tribunal to be constituted in conformity with annex II to the present articles.
Article 59
Terms of reference of the Arbitral Tribunal
1. The Arbitral Tribunal, which shall decide with binding affect any issues of fact or law which may be in dispute between the parties and are relevant under any of the provisions of the present articles, shall operate under the rules laid down or referred to in annex II to the present articles and shall submit its decision to the parties within six months from the date of completion of the parties' written and oral pleadings and submission.
2. The Tribunal shall be entitled to resort to any fact-finding it deems necessary for the determination of the facts of the case.

Article 60
Validity of an arbitral award
1. If the validity of an arbitral award is challenged by either party to the dispute, and if within three months of the date of the challenge the parties have not agreed on another tribunal, the International Court of Justice shall be competent, upon the timely request of any party, to confirm the validity of the award or declare its total or partial nullity.
2. Any issue in dispute left unresolved by the nullification of the award may, at the request of any party, be submitted to a new arbitration before an arbitral tribunal to be constituted in conformity with annex II to the present articles.
Responsibility of States for Internationally Wrongful Acts (UN 2001)

PART ONE
THE INTERNATIONALLY WRONGFUL ACT OF A STATE

CHAPTER I
General principles

Article 1
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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:

- Compliance with the obligation in question, if and to the extent that the circumstance precluding wrongfulness no longer exists;
- 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 willful 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.