
The ILC's Articles on Responsibility of States for Internationally Wrongful Acts: Completion of the Second Reading

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Abstract

In 2001 the International Law Commission finally adopted on second reading the Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries, bringing to an end nearly 50 years of ILC work on the subject. This article reviews the final group of changes to the text, focusing on the definitions of 'injury' and 'damage', assurances of non-repetition in the light of the LaGrand case, procedural aspects of countermeasures and the controversy over measures taken in response to a breach by states which are not individually injured. The focus of debate now turns to the UNGA Sixth Committee, which will have to decide what to make of the Draft Articles. The ILC itself recommended an initial resolution taking note of the Articles, with subsequent consideration (after a period of years) of a possible diplomatic conference with a view to concluding a convention. This modest proposal allows for further reflection on the text and may help to avoid possibly divisive and inconclusive debate in the Sixth Committee. At the same time it allows time for better understanding of the many changes made as compared with the first reading text (1996).

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1 Introduction

At its fifty-third session (2001), the International Law Commission adopted on second reading a complete text of the Articles on Responsibility of States for Internationally Wrongful Acts, together with accompanying commentaries.¹ The Articles on State Responsibility (as they will be called here) were referred to the General Assembly for consideration.

The adoption of the text and commentaries of the Articles comes some 45 years after the Commission first began its consideration of the topic of state responsibility under Special Rapporteur García Amador. The first reading text of the Articles, adopted in 1996 by the Commission,² was formulated under the leadership successively of Special Rapporteurs Ago (1962–1979), Riphagen (1980–1986) and Arangio-Ruiz (1987–1996). The second reading began in 1998 with the aim of completion by 2001.³ In 1998 and 1999, the Commission undertook a thorough revision of Part One of the Draft Articles.⁴ In 2000, the Drafting Committee provisionally adopted a complete text of the substantive Draft Articles in three further Parts.⁵ The Draft Articles of 2000 were not debated in plenary but were included, as a provisional text, in the Commission's report to the General Assembly in order to allow a further opportunity for comment.⁶ The Drafting Committee's text of 2000 was the subject of substantial discussion in the Sixth Committee⁷ and of further written comments by a number of governments,⁸ as well as by a study group of the International Law Association.⁹ In 2001 the Commission reconsidered the Drafting

¹ For the text of the Articles and commentaries see *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10)*, Ch. V. These are reproduced with a critical apparatus in J. Crawford, *The ILC's Articles on State Responsibility: Introduction, Text and Commentaries* (forthcoming). A list of the numbers and titles of the articles, together with their equivalents in the provisional text (2000) and the first reading text (1996), appears in the Annex to this article. References to articles provisionally adopted in 2000 are indicated in this paper by the use of brackets, e.g. Article {49}; first reading Article numbers are given square brackets, e.g. Article [40].

² *Yearbook of the ILC*, vol. II (Part Two) (1996), at 58–65.

³ *Yearbook of the ILC*, vol. II (Part Two) (1997), at para. 161.

⁴ See generally the symposium in 10 *EJIL* (1999) 339.

⁵ See A/CN.4/L.600, and for the statement of the Chairman of the Drafting Committee, Mr Giorgio Gaja, see A/CN.4/SR.2662. For a review of the progress made during the 2000 session see Crawford, Bodeau and Peel, 'The ILC's Draft Articles on State Responsibility: Toward Completion of a Second Reading', 94 *AJIL* (2000) 660.

⁶ *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 10 (A/55/10)*, chap. IV, appendix.

⁷ See the Topical Summary of the Discussion held in the Sixth Committee during the fifty-fourth session of the General Assembly, prepared by the Secretariat (A/CN.4/513, sect. A).

⁸ See 'State Responsibility: Comments and Observations Received from Governments' (A/CN.4/515 and Add.1). References to 'Comments and observations ...' are to the excerpts from the written comments of governments under the relevant article.

⁹ The Study Group's first report was submitted on 8 June 2000: for text see www.ila-hq.org. The Study Group consists of Peter Malanczuk (Netherlands, chair and convener), Koorosh Ameli (Islamic Republic of Iran); David Caron (United States), Pierre-Marie Dupuy (France), Malgosia Fitzmaurice (United Kingdom), Vera Gowlland-Debbas (Switzerland), Werner Meng (Germany), Shinya Murase (Japan), Marina Spinetti (Italy), Guido Soares (Brazil), Zhaojie Li (China) and Tiyanjana Maluwa (Malawi).

Committee's text in light of these comments and adopted the final text without a vote.¹⁰

2 An Overview of the Key Issues

The comments made by governments on the provisional text suggested that, overall, its basic structure and most of its individual provisions were acceptable. This included many of the articles first proposed and adopted in 2000. For example, the distinction between the secondary obligations of the responsible state and the right of other states to invoke that responsibility was widely endorsed. Likewise the distinction in principle between 'injured states' and other states with a legal interest in the obligation breached received general support, even if the formulation of certain articles was thought to require further attention. The same applied for articles omitted from the first reading text:¹¹ there were few calls for their reinsertion, even for former Article 19 dealing with 'international crimes' of states.¹² However a number of substantive issues remained unresolved, including:

- The definition of 'damage' and 'injury' and its role in the Articles, in conjunction with the articles specifying the states entitled to invoke responsibility;
- The retention of Part Two, Chapter III dealing with the consequences of 'serious breaches' of certain obligations, and possible changes to it;
- Whether a separate chapter dealing with countermeasures was necessary or whether it was sufficient to expand the treatment of countermeasures as a circumstance precluding wrongfulness in Chapter V of Part One;
- If a separate chapter on countermeasures was to be retained, what changes were required to the three controversial articles concerning obligations not subject to countermeasures, procedural conditions on resort to countermeasures and countermeasures by states other than the injured state (Articles {51}, {53}, {54}).

In addition, the *LaGrand* case¹³ decided by the International Court of Justice during the course of the Commission's fifty-third session, raised the question of assurances and guarantees of non-repetition as a central issue, necessitating a review of the principle of cessation and related articles in Part Two.

Two general issues also remained for consideration. They were (a) dispute resolution, which was the subject of Part Three adopted on first reading;¹⁴ and (b) the eventual form of the Articles. The two were closely related: only if the Articles were

¹⁰ See the Report of the Chairman of the Drafting Committee (P. Tomka), in A/CN.4/SR.2681, 29 May 2001, A/CN.4/SR.2682, 30 May 2001, A/CN.4/SR.2683, 31 May 2001, A/CN.4/SR.2701, 3 August 2001.

¹¹ The following first reading articles have been omitted altogether or have no direct equivalent on second reading: Articles [2], [11], [13], [18 (3)-(5)], [19], [20], [21], [26] and [51].

¹² See Topical Summary, *supra* note 7, at paras 89–91.

¹³ *LaGrand (Germany v. United States of America)*, Merits, judgment of 27 June 2001.

¹⁴ This part was set to one side by the ILC in 2000, pending a decision on the eventual form of the Draft Articles (*Report, supra* note 6, at para. 69).

envisaged as an international convention could there be any scope for a Part dealing with third-party settlement of disputes.

3 Dispute Settlement and the Eventual Form of the Articles

A Dispute Settlement

As adopted on first reading, the Draft Articles made detailed provision for the settlement of disputes. Specifically in relation to countermeasures, Article [48](2) linked the taking of countermeasures to binding dispute settlement procedures. If no other such procedures were in force for the parties, those under Part [Three] were made applicable. The effect of the linkage was that a state resorting to countermeasures could be required by the ‘target’ state to justify its action before an arbitral tribunal. More generally, Part [Three] dealt with the resolution of disputes ‘regarding the interpretation or application of the present articles’. The parties to such a dispute had first, upon request, to seek to settle it by negotiation (Article [54]). Other states parties could tender their good offices or offer to mediate in the dispute (Article [55]). If the dispute was not settled within three months, any disputing party could submit it to conciliation (Article [56] and [annex I]). The task of the Conciliation Commission was not to adjudicate but ‘to elucidate the questions in dispute . . . by means of inquiry or otherwise and to endeavour to bring the parties to the dispute to a settlement’ (Article [57](1)). All the Conciliation Commission could do, if the parties did not agree to a settlement, was to issue a final report embodying its ‘evaluation of the dispute and . . . recommendations for settlement’ (Article [57](4)). The Draft Articles also provided for optional arbitration in accordance with annex II, either in lieu of or subsequent to conciliation (Article [58](1)). In case of arbitration under Article [58], the International Court of Justice was given jurisdiction to confirm or set aside the arbitral award (Article [60]).

The only form of compulsory and binding third-party dispute settlement contemplated by Part [Three], however, was arbitration at the instance of any state subjected to countermeasures (Article [58](2)). The essential difficulty with this provision was that it privileged the state which had committed an internationally wrongful act. By definition, that state, as the target or object of countermeasures, would have committed an internationally wrongful act: the essence of countermeasures is that they are taken in response to such an act. Thus the effect of Article [58](2) was to give a unilateral right to arbitrate not to the injured but to the responsible state. Such inequality as between the two states concerned could not be justified in principle, and could even give an injured state an incentive to take countermeasures in order to induce the responsible state to resort to arbitration.¹⁵

Initial consideration of the linkage between dispute settlement and countermeasures by the Commission in 1999 led to two conclusions: first, that the specific form of unilateral arbitration proposed in Article [58](2) presented serious difficulties,

¹⁵ See Crawford, Second Report, A/CN.4/498, Add. 4, para. 387.

and secondly, that the desirability of compulsory dispute settlement had to be considered both for the injured state and for the allegedly responsible state.¹⁶ Both before and since 1999, the balance of government comments has been against the linkage of countermeasures with compulsory dispute settlement.¹⁷

In 2001 the central question was whether, assuming the Articles would be adopted in the form of a convention, provision should be made for compulsory dispute settlement, open both to the injured state/s and the allegedly responsible state. Optional arbitration and non-binding forms of dispute settlement could be discounted. It was unnecessary for the Articles to provide yet another optional mechanism for the judicial settlement of disputes.¹⁸ As for other forms of dispute settlement, such as conciliation and inquiry, the fact remains that, outside the context of maritime incidents, there has been little recourse to these methods in resolving disputes over state responsibility.¹⁹ Indeed, in the light of the development of compulsory third-party dispute settlement in such major standard-setting treaties as the United Nations Convention on the Law of the Sea and its associated implementation agreements, the Marrakesh Agreement of the World Trade Organization (WTO), and Protocol 11 to the European Convention on Human Rights, providing only a 'soft' form of dispute settlement in the Articles might be a regressive step.

In considering compulsory judicial settlement of disputes under the Articles, an initial question was one of scope. [Part Three] had used the standard formula of a 'dispute regarding the interpretation or application of the present articles'. But this potentially covered any and every dispute concerning the responsibility of a state for internationally wrongful conduct at the instance of any state entitled to invoke responsibility under the Articles, whether the conduct involved breach of a treaty or of any other international obligation. Such a provision could probably not be limited to disputes as to the interpretation or application of particular provisions of the Articles in themselves (e.g., those concerning attribution or the circumstances precluding wrongfulness). It would extend to the application and interpretation of the primary rules, i.e., those laying down obligations for states breach of which entails their responsibility. In short, any dispute between states concerning the responsibility of

¹⁶ Report of the International Law Commission on the Work of its Fifty-first Session, 1999, A/54/10, paras 441–447.

¹⁷ See, e.g., the comments in A/CN.4/488, at 142–146 (on the Draft Articles as adopted in 1996) and the more recent views reproduced in the Topical Summary, *supra* note 7, at paras 19–21, and Comments and Observations, *supra* note 8.

¹⁸ Apart from the Optional Clause and multilateral treaties providing for general recourse to judicial settlement (e.g., American Treaty on Pacific Settlement, Bogotá, 30 April 1948; European Convention for the Peaceful Settlement of Disputes, 29 April 1957), reference may be made to the Permanent Court of Arbitration's Optional Rules for Arbitrating Disputes between Two States. No state lacks access to one or more means of optional judicial settlement of disputes.

¹⁹ For the experience of commissions of inquiry, see J. G. Merrills, *International Dispute Settlement* (1998), Ch. 3.

one of them for an alleged breach of an international obligation, whatever its origin, would appear to involve the application, if not the interpretation, of the Articles.²⁰

Even if a narrower view were to be taken of the scope of the phrase ‘interpretation or application’, a huge swath of state responsibility disputes would still be covered.²¹ The core of a dispute might be the interpretation or application of a particular primary rule or obligation rather than the secondary obligations covered by the Articles, but it would be easy to present an international dispute so as to implicate the latter. On either view, compulsory dispute settlement would extend to all or virtually all matters of state responsibility. Indeed, the intertwining of primary and secondary obligations and the interconnectedness of the different ‘compartments’ of international law would make it difficult to isolate a domain of obligations of state responsibility as such, distinct from other fields.²² A system of residual compulsory third-party dispute settlement would thus have the effect, for most purposes, of instituting third-party dispute settlement for the whole domain of international law, which is in so many ways concerned with the performance by a state of its international obligations.

So far as government comments on [Part Three] were concerned, while the importance of peaceful settlement of disputes was stressed, few governments sought to go further. Most took the view that general provisions for compulsory dispute settlement could not realistically be included in the Articles. Most members of the Commission agreed with this view, and it was agreed that there would be no provision in the Articles for dispute settlement machinery.²³ As a consequence, [Part Three] was deleted.²⁴ However, in its report to the General Assembly, the Commission drew

²⁰ The phrase ‘dispute concerning the interpretation or application’ of a treaty has been given a broad interpretation. See, e.g., *Mavrommatis Palestine Concessions*, PCIJ, Series A, No. 2 (1924), at 16, 29; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Jurisdiction and Admissibility*, ICJ Reports (1984) 390, at 427–428 (paras 81, 83); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, *Preliminary Objections*, ICJ Reports (1996) 594, at 615–617 (paras 31–32); *Oil Platforms (Islamic Republic of Iran v. United States of America)*, *Preliminary Objection*, ICJ Reports (1996) 802, at 820 (para. 51); *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, *Preliminary Objections*, ICJ Reports (1998) 9, at 18 (paras 24–25); *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)*, *Preliminary Objections*, ICJ Reports (1998) 115, at 123 (paras 23–24).

²¹ The following would be included, for example: any question concerning the attribution of conduct to a state (Part One, Chapter II); any question as to whether an obligation was in force for a state (Article 13) or as to the existence of a continuing breach of an obligation (Article 14); any question as to the existence of a circumstance precluding wrongfulness (Part One, Chapter V) or as to the nature and extent of the obligations of cessation and reparation for a breach (Part Two, Chapters I and II).

²² For example, claims and counterclaims of state responsibility have been raised in disputes over maritime jurisdiction or territorial sovereignty: e.g., *Fisheries Jurisdiction (United Kingdom v. Iceland)*, *Merits*, ICJ Reports (1974) 3; *Fisheries Jurisdiction (Federal Republic of Germany v. Iceland)*, *Merits*, ICJ Reports (1974) 175; *Land and Maritime Boundary between Cameroon and Nigeria*, *Preliminary Objections*, ICJ Reports (1998) 275. In such cases it would be necessary to decide the underlying issue of jurisdiction or sovereignty in order to resolve the state responsibility claim.

²³ See Provisional Summary Record of the 2675th Meeting, A/CN.4/SR.2675, 17 May 2001, at 19.

²⁴ Part [Two bis] of the 2000 text, on ‘The Implementation of Responsibility’, has been renumbered Part Three in the final text.

attention to the desirability of peaceful settlement in disputes concerning state responsibility and to the machinery elaborated by the Commission in the first reading text as a possible means of implementation, leaving it to the General Assembly to consider whether dispute settlement provisions could be included in any eventual convention on state responsibility.²⁵

B Form of the Articles

The Commission's practice in respect of other topics has been to make some recommendation to the General Assembly on questions of form, although such recommendations are not always accepted. In the case of the Articles on State Responsibility two alternative options were considered: a convention on state responsibility and some form of endorsement or taking note of the Articles by the General Assembly.

The advantage of a convention is that states would have full input into the eventual text. The adoption of the Articles in the form of a multilateral treaty would give them durability and authority. The Commission's work on the law of treaties, adopted as the Vienna Convention on the Law of Treaties, has had a stabilizing effect and exerts a strong continuing influence on customary international law, irrespective of whether particular states are parties to the Convention. Many members of the Commission, and a number of governments, considered that the lengthy and careful work of the Commission on state responsibility merited reflection in a law-making treaty.

On the other hand, adoption of the Articles by the General Assembly offers greater flexibility and would allow for a continued process of legal development. States might well not see it as in their interests to ratify an eventual treaty rather than relying on particular aspects of it as the occasion arose. An unsuccessful convention might even have a 'decodifying' effect. A more realistic and potentially more effective option would be to rely on international courts and tribunals, on state practice and doctrine to adopt and apply the rules in the text. The International Court has already referred to the Draft Articles on a number of occasions, even though they were still only provisionally adopted by the Commission.²⁶ So have other tribunals.²⁷ This experience suggests that the Articles may have long-term influence even if they do not take the form of a convention.²⁸

A more important issue than that of form, in the view of many governments, is the question of whether and how the substance of the text will be reviewed and

²⁵ Report of the International Law Commission on the Work of its Fifty-third Session, 2001, A/56/10, para. 73.

²⁶ See, e.g., *Gabčíkovo-Nagymaros Case (Hungary/Slovakia)*, ICJ Reports (1997) 7, at 38, 39–41, 46, 54, 55–56, paras 47, 50–53, 58, 79, 83; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, ICJ Reports (1999) 62, at 87, para. 62.

²⁷ See, e.g., *Rainbow Warrior (New Zealand/France)*, RIAA, vol. XX (1990) 217; *The M/V 'Saiga' (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, International Tribunal for the Law of the Sea, judgment of 1 July 1999.

²⁸ This general view was expressed, for example, by Austria, China, Japan, the Netherlands, the United Kingdom, the United States: Comments and Observations, *supra* note 8. The Netherlands affirmed that the result should not be expressed in any weaker form than a General Assembly declaration: *ibid.*

considered. A preparatory commission process, as adopted for example for the Draft Statute for an International Criminal Court, can be extremely time consuming. It is also less appropriate for a statement of secondary rules of international law, abstracted from any specific field of primary legal obligations but with wide-ranging implications for international law as a whole. A diplomatic conference, and the preparatory commission which would necessarily precede it, might result in the repetition or renewal of the discussion of complex issues, which could endanger the balance of the text found by the Commission.²⁹ The Special Rapporteur accordingly recommended a less divisive approach. This was for the General Assembly simply to take note of the text and to commend it to states and to international courts and tribunals, leaving its content to be taken up in the normal processes of the application and development of international law.³⁰ Although this ‘modest’ approach attracted a considerable measure of support in the Commission, probably the dominant view was to prefer the process and form of a law-making convention. Members taking this view stressed the importance of the subject, the balance of the text, the very substantial measure of support for it in the Commission and among governments, and the need for dispute settlement in the field of state responsibility.³¹

Faced with this division of opinion, the Commission by consensus endorsed a two-stage approach. In the first instance it recommended that the General Assembly take note of and annex the Articles in a resolution, with appropriate language emphasizing the importance of the subject.³² The second phase would involve the further consideration of the question at a later session of the General Assembly, after a suitable period for reflection, with a view to the possible conversion of the Articles into a convention, if this was thought appropriate and feasible. At this second stage the General Assembly could consider whether and what provisions for dispute settlement should be included in an eventual convention.³³

4 Remaining Substantive Issues

In addition to issues relating to the eventual form of the Articles and the possibility of compulsory dispute settlement procedures, several questions of substance gave rise to

²⁹ See the comments by the Austrian Government, *ibid.* A similar process would likely be involved in preparing for the adoption of the text by the General Assembly as a solemn declaration in quasi-legislative form.

³⁰ J. Crawford, Fourth Report, A/CN.4/517 (2001), at para. 26.

³¹ Report, *supra* note 25, at paras 61–67.

³² A useful precedent for such a resolution is GA Res. 55/153, 30 January 2001, on nationality of natural persons in relation to the succession of states concerning the Commission’s Draft Articles on that subject as adopted in 1999. The General Assembly took note of the ILC’s text, which was annexed to the resolution, noted that the ILC had decided to recommend the Draft Articles for adoption in the form of a declaration and decided to reconsider the matter of its adoption as a declaration at its fifty-ninth session in 2005. In the case of the Articles on Responsibility, the ILC’s recommendation is not even for a declaration but for the Assembly to take note of and annex the text.

³³ See A/CN.4/SR.2675, 11 May 2001, at 18–19.

discussion and changes to the text as adopted in 2000. The most important of these were as follows.

A 'Injury', 'Damage' and the Invocation of Responsibility

The first substantive issue concerned the cluster of articles which define what constitutes 'injury' and 'damage' for the purposes of State responsibility, as well as related provisions dealing with the invocation of responsibility by 'injured' and 'other' States. Articles {43} and {49} were introduced in 2000 in substitution for Article [40]. They drew a distinction between the case of the state individually injured by a breach, defined in relatively narrow terms, and the wider range of states with a legal interest in ensuring compliance with an obligation although they are not individually injured by the breach. By contrast, Article [40] had bundled the various possible categories up in a single, convoluted article.³⁴ The clarification was widely endorsed and supported in the Commission and by governments. Government comments, however, highlighted three related points: the use of terms such as 'injury' and 'damage', the definition of 'injured state' in Article {43}, especially as concerns so-called 'integral' obligations, and the scope for invocation of responsibility by states other than the injured state, especially in the context of obligations for the protection of a collective interest (Article {49}).

1 'Injury' and 'Damage'

The terms 'injury', 'harm', 'damage', 'loss', etc., are not defined consistently in international law and there are no agreed or exact equivalencies between them in the various official languages of the United Nations. A review of any given field will reveal a range of terms and definitions specific to the context – for example, in the various treaties dealing with transboundary pollution. Given the current state of international law, it would be wrong to presume any specific definition of 'injury' or 'damage' applicable across the board. The many declarations and agreements which lay down primary rules of responsibility do not seem to be in derogation from any general rule about injury or damage, nor do they embody so many special provisions given effect by way of the *lex specialis* principle. Rather each is tailored to meet the particular requirements of the context and the balance of a given negotiated text.³⁵ Thus the most that the Articles can do is to use general terms in a broad and flexible way, while maintaining internal consistency.³⁶

In 2000 the Drafting Committee introduced into the article dealing with the general obligation of reparation (Article {31}) a definition of 'injury' in the following terms: 'Injury consists of any damage, whether material or moral, arising in consequence of the internationally wrongful act of a State'. This was done in an attempt to provide

³⁴ See further Crawford, 'The Standing of States: A Critique of Article 40 of the ILC's Draft Articles on State Responsibility', in M. Andenas (ed.), *Judicial Review in International Perspective: Liber Amoricum in Honour of Lord Slynn of Hadley* (2000), 23.

³⁵ Crawford, *supra* note 30, at para. 31.

³⁶ Cf. the conclusion of the Arbitral Tribunal in the *Rainbow Warrior (New Zealand/France)*, RIAA, vol. XX (1990) 217.

some clarification of the concept of ‘injury’. But in the light of comments received, it was problematic in three ways:

- First, it defined ‘injury’, i.e., the legal wrong done to another arising from a breach of an obligation, as ‘consisting’ of damage. In some cases damage may be the gist of the injury, in others not; in still others there may be loss without any legal wrong (*damnum sine injuria*).
- Secondly, in different legal traditions the notion of ‘moral damage’ is differently conceived. In some systems it covers emotional or other non-material loss suffered by individuals; in some, ‘moral damage’ may extend to various forms of legal injury, e.g., to reputation, or the affront associated with the mere fact of a breach. There are difficulties in using a term drawn from internal law which has arguably not developed autonomously in international law.³⁷ On the other hand, the term ‘moral damage’ is used in the jurisprudence, and so long as the kinds of non-material loss which may be compensable are not forced into any single theory of moral damage, it is appropriate to refer to it in Article 31.
- Thirdly, the phrase ‘arising in consequence of’ in paragraph 2 stood in apparent contrast with ‘caused by’ in paragraph 1 of Article {31}. The former phrase was confusing as it implied that consequential losses were invariably covered by reparation, despite the Commission’s position that no single verbal test for remoteness of damage should be adopted, whether by use of the term ‘direct’ or ‘foreseeable’ or by reference to the theory of an ‘unbroken causal link’.³⁸

The Commission concluded that the different and sometimes conflicting uses of the notions of ‘injury’ and ‘damage’ in different legal traditions required an inclusive approach to the term ‘injury’, one which could be broadly construed so as to take into account various forms of reparation provided for under Part Two. Paragraph 2 was therefore amended to read: ‘Injury *includes* any damage, whether material or moral, caused by the internationally wrongful act of a State’ (emphasis added).

2 *Invocation of Responsibility by an Injured State*

Despite the general endorsement of the distinction between injured and other states, a distinction articulated in Articles {43} and {49}, several criticisms were raised.

First, with regard to the definition of ‘injured state’, a number of governments had suggested that the phrase ‘the international community as a whole’, used in Article {43} and elsewhere, should read ‘the international community of States as a whole’.³⁹ They pointed in particular to the definition of peremptory norms in Article 53 of the two Vienna Conventions of 1969 and 1986.

³⁷ Special Rapporteur Arangio-Ruiz suggested that ‘moral damage’ to the state is a legally distinct conception from moral damage to individuals within the framework of human rights or diplomatic protection: see his Second Report, in *Yearbook of the ILC*, vol. II (Part One) (1989), Doc. A/CN.4.25 and Add.1, paras 7–17. This may well be correct, but it hardly reduces the terminological confusion.

³⁸ See J. Crawford, Third Report, A/CN.4/507 (2000), at paras 27–29, 31–37.

³⁹ The suggestion was made, e.g., by France, Mexico, Slovakia and the United Kingdom, not only in relation to Article {43} but also Articles {26}, {34}, {41}. See Appendix to Crawford, *supra* note 30, note to Article 26.

The Commission considered these views but in the end rejected them in favour of the phrase 'international community as a whole', on the basis that the term 'international community' is used in numerous international instruments and is more appropriate in the present context, being more inclusive. For example, the phrase 'international community as a whole' was recently used in the preamble of the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly in 1999.⁴⁰ The Commission itself has never used the phrase 'international community of States as a whole'.⁴¹ Likewise, the International Court used the phrase 'international community as a whole' in the *Barcelona Traction* case.⁴² The formulation does not imply that there is a legal person, the international community, a fallacy exposed by Judge Fitzmaurice in his dissenting opinion in the *Namibia* Advisory Opinion.⁴³ But it does suggest that, especially these days, the international community is a more inclusive one.

The position underlying the Commission's formulation is that there is only one international community to which all states belong, but that this is no longer limited to states (if it ever was). States remain central to the process of international law-making, i.e. the establishment of international obligations, and especially those of a peremptory character. It is this pre-eminence which Article 53 of the Vienna Convention intended to stress, and not to assert the existence of an international community consisting exclusively of states. The international community includes entities in addition to states; for example, the United Nations, the European Communities, the International Committee of the Red Cross. Everyone accepts that there are other persons or entities besides states towards whom obligations may exist, and this is, *inter alia*, the context of Part Three of the Articles.

⁴⁰ See also Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 14 December 1973, 1035 UNTS 167, preambular para. 3; International Convention against the Taking of Hostages, 17 December 1979, 1316 UNTS 205, preambular para. 4; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Rome, 10 March 1988, IMO Document SUA/CON/15; 27 *ILM* (1988) 665, preambular para. 5; Convention on the Safety of United Nations and Associated Personnel, 9 December 1994, A/RES/49/59, preambular para. 3; International Convention for the Suppression of Terrorist Bombings, 15 December 1997, A/RES/52/164, preambular para. 10; Statute for the International Criminal Court, 17 July 1998, A/CONF.183/9, preambular para. 9; International Convention for the Suppression of the Financing of Terrorism, 9 December 1999, A/RES/54/109, opened for signature 10 January 2000, preambular para. 9.

⁴¹ The Commission's version of what became Art. 53 of the Vienna Convention on the Law of Treaties (Art. 50 made no reference to the 'international community' at all. The phrase emerged from the Drafting Committee at the Vienna Conference (*Official Records of the Vienna Conference, First Session, 80th meeting*) after a Finnish/Greek/Spanish proposal referring to the 'international community as a whole': *ibid.*, 52nd meeting. See also the explanation of the amendment proposed by the United States of America, *ibid.*; in general see I. Sinclair, *The Vienna Convention on the Law of Treaties* (1973), at 125–127. The ILC's Draft Statute for an International Criminal Court of 1994 referred to 'the most serious crimes of concern to the international community as a whole': *Yearbook of the ILC*, vol. II (Part Two) (1984), at 27, language now embodied in Art. 5 of the Rome Statute for an International Criminal Court.

⁴² *Barcelona Traction, Light and Power Company, Limited, Second Phase*, ICJ Reports (1970) 3, at 32, para. 33.

⁴³ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, ICJ Reports (1971) 16, at 241 (para. 33).

Secondly, Draft Article {43} attracted criticism principally regarding the sub-paragraph providing that the breach of an ‘integral’ obligation entitles all other states to which that obligation is owed to consider themselves as injured states. Although the term ‘integral obligation’ is sometimes used to cover non-synallagmatic obligations in the general interest (e.g. human rights obligations),⁴⁴ the conception adopted in the Articles is much more narrowly drawn: it refers to obligations which operate in an all-or-nothing fashion, such that each state’s continued performance of the obligation is in effect conditioned upon its performance by each other party. Under Article 60(2)(c) of the Vienna Convention on the Law of Treaties, the material breach of an integral obligation entitles any other party unilaterally to suspend the performance of the treaty not merely *vis-à-vis* the state in breach but *vis-à-vis* all states.⁴⁵ In other words, a breach of such an obligation threatens the treaty structure as a whole; performance of the treaty is considered interdependent. Fortunately this is not true of human rights treaties. Rather the reverse, since one state cannot disregard its own human rights obligations on account of another state’s breach. Human rights obligations are incremental, and human rights treaties do not operate in an all-or-nothing way. By contrast some treaty obligations require complete collective restraint if they are to work at all (as with the central obligations of states parties to the Outer Space Treaty or the Antarctic Treaty).

In Article {43}, the relevant sub-paragraph provided that a state was injured if the obligation breached by the responsible state was owed to

a group of States including that State, or the international community as a whole, and the breach of the obligation . . . is of such a character as to affect the enjoyment of the rights or the performance of the obligations of all the States concerned.⁴⁶

It was felt, however, that this provision was too vague and created a risk of overlap with the provisions of Article {49}. That article provided that a state was entitled to invoke responsibility if the obligation breached was ‘owed to a group of States including that State, and is established for the protection of a collective interest’. On one view, an integral obligation is simply a special form of obligation in the collective interest, and does not relate to the concept of legal injury.

For these reasons, it was proposed that the sub-paragraph be deleted from Article {43}. On balance, however, the Commission considered that there was merit in retaining it and thereby maintaining the parallelism with Article 60 of the Vienna Convention. Although the category may be narrow, it is an important one. Moreover it has as much relevance for state responsibility as it has for treaty suspension. The other parties to an integral obligation which has been breached may have no interest in its suspension and should be able to insist, *vis-à-vis* the responsible state, on

⁴⁴ See for example Sachariew, ‘State Responsibility for Multilateral Treaty Violations: Identifying the “Injured State” and its Legal Status’, 35 *Netherlands International Law Review* (1988) 273, at 281.

⁴⁵ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331; ‘integral’ obligations are those where ‘the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty’.

⁴⁶ Article {43}(b)(ii) of the 2000 Articles.

cessation and restitution. It was felt that the objections that had been raised could be attributed to the loose drafting of the provision which created the risk of confusion with Article {49}. It was therefore decided to retain the concept but to narrow the definition of 'integral' obligations. Article 42(b)(ii) accordingly provides that a state may consider itself to be an injured state within the meaning of the Articles if the obligation 'is owed to a group of States including that State, or the international community as a whole', and the breach of the obligation

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 future performance of the obligation.

This language closely follows that of Article 60(2)(c) of the Vienna Convention, and to that extent narrows the category of injured states.

3 Invocation of Responsibility by Other States

Although governments generally accepted the principle of invocation of responsibility by states other than the injured state as set out in Article {49}, a number of questions were raised as to the formulation and intended function of the article. One concern was with the meaning of invocation itself, which was not expressly defined. It often happens that third states, not themselves party to a dispute, may informally express concerns or take positions in relation to an apparent breach of international law by another state. Are such states to be considered as invoking responsibility merely by expressing concern? The answer is, clearly, no. The commentary spells this out in the following terms:

invocation should be understood as taking measures of a relatively formal character, for example, the raising or presentation of a claim against another State or the commencement of proceedings before an international court or tribunal. A State does not invoke the responsibility of another State merely because it criticizes that State for the breach and calls for observance of the obligation, or even reserves its rights or protests. For the purpose of these Articles, protest as such is not an invocation of responsibility; it has a variety of forms and purposes and is not limited to cases involving State responsibility. There is in general no requirement that a State which wishes to protest against a breach of international law by another State or remind it of its international responsibilities in respect of a treaty or other obligation by which they are both bound should establish any other title or interest to do so.⁴⁷

Even on the basis of a narrow conception of 'invocation', concern was expressed with respect to the notion of 'the protection of a collective interest' in Article {49}(1)(a). It may be asked which international obligations (even, in some cases, purely bilateral treaty obligations) are not in some sense 'established for the protection of a collective interest'? Even treaties that most closely approximate to the classical 'bundle' of bilateral obligations may at a deeper level be established for the protection of a collective interest. For example, diplomatic relations between two states pursuant to the Vienna Convention on Diplomatic Relations⁴⁸ are generally regarded as bilateral

⁴⁷ Commentary to Art. 42, para. (2).

⁴⁸ Vienna Convention on Diplomatic Relations, 18 May 1961, 500 UNTS 95.

in character, and ‘ordinary’ breaches of that Convention *vis-à-vis* one state would not be considered as giving standing to other states parties to the Convention. But at some level of seriousness, a breach of the Convention could raise questions about the institution of diplomatic relations which would be of legitimate concern to third states.⁴⁹

The Commission sought to address this concern by adding the words ‘of the group’ after the words ‘protection of a collective interest’. Thus the provision speaks of the ‘collective interest of the group’. This does not exclude the possibility of a group of states undertaking an obligation which is in the common interest of a larger group or of the international community as a whole. For example, a group of states with rainforests may undertake an obligation for the protection and the preservation of the rainforests not only for their own benefit, but also for the benefit of the international community at large. On the other hand, paragraph (1)(a) is limited to multilateral obligations which are established for the protection of a common interest as such. Unlike Article [40](2)(f), there is no requirement that the obligation be expressly stipulated to be in the collective interest.⁵⁰ It is sufficient that this is established from the surrounding circumstances or (in the case of multilateral treaties) that it is clear from the object and purpose of the treaty in question. An example given in the commentary was the obligation of the Mandatory under Article 22 of the Covenant of the League of Nations.⁵¹

B Serious Breaches: The Ghost of Article [19]?

The characterization and consequences of serious breaches of certain basic obligations (denominated as ‘international crimes’ of state) were dealt with on first reading by the highly contentious Article [19]. The Commission in 1998 set Article [19] temporarily to one side while it sought to resolve the questions of responsibility raised by such breaches in other ways.⁵² The issue however continued to provoke deeply conflicting positions, both among governments and within the Commission.⁵³ Some states (France, Japan, United Kingdom, United States of America) argued for the

⁴⁹ Cf. the comments of the International Court in *United States Diplomatic and Consular Staff in Tehran*, ICJ Reports (1980) 3, at 42–43, para. 92.

⁵⁰ Art. [40](2)(f) on first reading provided that the obligation in question must be ‘expressly stipulated in that treaty for the protection of the collective interests of the States parties thereto’. In fact, hardly any treaties expressly so stipulate, even if they are plainly established for the protection of a collective interest. See Crawford, Third Report, *supra* note 38, at para. 92.

⁵¹ Commentary to Art. 48, para. (7). The commentary notes that under this provision, Ethiopia and Liberia should be considered as entitled to invoke the responsibility of South Africa in circumstances such as those which arose in the *South-West Africa, Second Phase* cases, ICJ Reports (1966) 6. The narrow approach taken by the ‘majority’ in that case is thus disapproved.

⁵² See the summary of the debate in Report of the International Law Commission on the Work of its Fiftieth Session, 1998, A/53/10, paras 241–331.

⁵³ For full bibliographies, see Spinedi, ‘Crimes of States: A Bibliography’, in J. H. H. Weiler, A. Cassese and M. Spinedi (eds), *International Crimes of States – A Critical Analysis of the International Law Commission’s Draft Article 19 on State Responsibility* (1989) 339 and N. Jørgensen, *The Responsibility of States for International Crimes* (2000), at 299–314. In particular, see Abi-Saab, ‘The Uses of Article 19’, 10 *EJIL* (1999) 339; Gaja, ‘Should All References to International Crimes Disappear from the International Law Commission

deletion of the Chapter altogether on the basis that the seriousness of the breach of an obligation involves a difference of degree, not kind, and that appropriate account can be taken of gradations of seriousness by other means.⁵⁴ In their view it would be more appropriate to substitute a clause stating that the Articles were without prejudice to the possible development of stricter forms of responsibility for serious breaches of international law. On the other hand, other states (e.g. Austria, the Nordic countries, the Netherlands, Slovakia, Spain)⁵⁵ were supportive of the retention of the Chapter; in some cases, strongly so.

In 2000, the Special Rapporteur proposed, and the Commission accepted, a compromise whereby the concept of international crimes of states would be deleted, and with it Article [19], but that certain special consequences would be specified as applicable to a serious breach of an obligation owed to the international community as a whole. These consequences included the possibility of 'aggravated' damages, as well as certain obligations on the part of third states not to recognize such a breach or its consequences as lawful and to cooperate in its suppression.⁵⁶ This 'depenalization' of state responsibility was generally welcomed, even by former proponents of Article [19]. However the formulation of Part Two, Chapter III embodying the compromise still gave rise to difficulties. In particular Article {42}(1), which provided that a serious breach may give rise to the possibility of the 'payment of damages reflecting the gravity of the breach', proved controversial. Although there was general agreement that this should not be equated with punitive damages, and despite the fact that the Special Rapporteur continued to press for the inclusion of the provision, it was eventually agreed that the chapter on Serious Breaches would be retained but that Article {42}(1) would be deleted.

A second element of the compromise involved the formulation of 'serious breach of an obligation owed to the international community as a whole and essential for the protection of its fundamental interests' in Article {41}(1). Concern was expressed that

Draft Articles on State Responsibility?', 10 *EJIL* (1999) 365; Pellet, 'Can a State Commit a Crime? Definitely, yes!', 10 *EJIL* (1999) 425; Tomuschat, 'International Crimes by States: An Endangered Species?', in K. Wellens (ed.), *International Law: Theory and Practice (1998)* 253; Graefrath, 'International Crimes and Collective Security', in *ibid.*, 237; Rosenne, 'State Responsibility and International Crimes: Further Reflection on Article 19 of the Draft Articles on State Responsibility', 30 *NYUJ. Int'l L. & P.*, (1998) 145; Bowett, 'Crimes of State and the 1996 Report of the International Law Commission on State Responsibility', 9 *EJIL* (1998) 163; Jørgensen, 'A Reappraisal of Punitive Damages in International Law', 68 *BYbIL* (1997) 247; Rosenstock, 'An International Criminal Responsibility of States?', in *International Law on the Eve of the Twenty-First Century: Views from the International Law Commission* (1997) 265; Pellet 'Vive la crime! Remarques sur les degrés de l'illicite en droit international', in *ibid.*, 287; Triffterer, 'Prosecution of States for Crimes of State', 67 *Revue Internationale de Droit Pénal*, (1996) 341; Palmisano, 'Les causes d'aggravation de la responsabilité des Etats et la distinction entre "crimes" et "délits" internationaux', 98 *RGDIP* (1994) 629; Kawasaki, 'Crimes of State in International Law', 15 *Shudo Law Review* (1993) 27; Gilbert, 'The Criminal Responsibility of States', 39 *BYbIL* (1990) 345.

⁵⁴ Comments and Observations, *supra* note 8. See also the Topical Summary, *supra* note 7.

⁵⁵ *Ibid.*

⁵⁶ See Articles {41} and {42}, provisionally adopted in 2000. See further Crawford, Third Report, *supra* note 38 at paras 407–411; for the text of the proposal, *ibid.*, para. 412.

the concept of obligations to the international community as a whole was too general, and that some more clearly defined category of underlying obligations should be substituted for it. It was noted that the International Court in articulating the concept of obligations *erga omnes* in 1970 had been concerned with invocation, not with the status of the breach as such. To avoid confusion it was agreed to limit Part Two Chapter III to serious breaches of obligations deriving from and having the status of peremptory norms. Article 40(1) as finally adopted thus reads:

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.

The notion of peremptory norms is now well established in the two Vienna Conventions on the Law of Treaties,⁵⁷ and is now widely accepted. In certain circumstances there might be minor breaches of peremptory norms which would not be the concern of Chapter III. Only serious breaches, i.e. those characterized as involving ‘a gross or systematic failure by the responsible state to fulfil the obligation’ imposed by a peremptory norm are covered; only such breaches thus entail the additional consequences set out in Article 41. The Commission did not feel that it was its role to provide a list of peremptory norms; the qualification of a norm as peremptory is left to evolving state practice and decisions of judicial bodies.⁵⁸

Chapter III of Part Two is a framework for the progressive development, within a narrow compass, of a concept which ought to be broadly acceptable. On the one hand it does not call into question established understandings of the conditions for state responsibility as contained in Part One. On the other hand, it recognizes that there can be egregious breaches of fundamental obligations which require some response by all states. As to individual responses, the obligations imposed by Article 41 are not demanding. The most important, that of non-recognition, already reflects general international law.⁵⁹

Genocide, aggression, apartheid and forcible denial of self-determination, for example, all of which are generally accepted as prohibited by peremptory norms of general international law, constitute wrongs which ‘shock the conscience of mankind’.⁶⁰ It is surely appropriate to reflect this in terms of the consequences attached to their breach. No doubt it is true that other breaches of international law may have particularly serious consequences, depending on the circumstances. The notion of serious breaches of peremptory norms is without prejudice to this possibility, and to that extent the consequences referred to in Article 41 are indicative and non-exclusive.

⁵⁷ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331 Art. 53; Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 21 March 1986 (not yet in force), Art. 53.

⁵⁸ See, however, commentary to Art. 40, paras (3)–(5). See also commentary to Article 26, para. (5).

⁵⁹ See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, ICJ Reports (1971) 16, at 54, para. 118; at 56, para. 126.

⁶⁰ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, ICJ Reports (1951) 15, at 23.

The Commission was also asked to give further consideration to aspects of the definition of the consequences of serious breaches as contained in Article {42}, in order to simplify it and avoid excessively vague formulae. Article 41 was reformulated to a degree, but without further significant changes in substance. It now reads:

1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 41.
2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 41, 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.

In addition it is provided that the articles are without prejudice 'to any question of the individual responsibility under international law of any person acting on behalf of a State' (Article 58). Thus a clear distinction is drawn between the individual responsibility, e.g. under international criminal law, of a state official for genocide or crimes against humanity and that of the state itself under the Articles.

C Countermeasures

The Chapter dealing with countermeasures was the most controversial aspect of the provisional text adopted in 2000, as indicated by the large number of government comments. Concerns were expressed at a number of levels. The most fundamental of these related to the very principle of including countermeasures in the text, either at all or in the context of the implementation of state responsibility. The second involved the question of so-called 'collective' countermeasures, for which provision was made in Article {54}. The third went to the formulation of the various articles, especially those dealing with obligations not subject to countermeasures and with the procedural conditions on resort to countermeasures.

The debate on these issues in the Sixth Committee in 2000 showed once again their extreme sensitivity, and the concern felt by many governments as to the dangers of abuse.⁶¹ Some governments advocated the deletion of the Chapter on countermeasures altogether, viewing the danger of legitimizing countermeasures by regulating them as too great to justify their inclusion.⁶² Others, by contrast, took the view that the articles imposed unjustified and arbitrary limitations on resort to countermeasures; Article {53}, dealing with the procedural conditions on the taking of countermeasures, was a particular target of criticism. These governments likewise – but for very different reasons – preferred to delete the Chapter and to incorporate any

⁶¹ For a summary of the Sixth Committee debate on countermeasures see Topical Summary, *supra* note 7, at paras 144–182.

⁶² Cuba, A/C.6/55/SR.18, para. 61; India, A/C.6/55/SR.15, para. 29; Mexico, A/C.6/55/SR.20, paras 37–38.

necessary limitations in Article {23}.⁶³ A clear majority of the governments commenting on the Chapter, however, accepted that countermeasures had a place in the final text and were generally supportive of the balance of the articles, both as to substance and procedure.⁶⁴

1 *Inclusion of Countermeasures in the Articles*

Although at least one Government argued that countermeasures should be prohibited entirely,⁶⁵ the Commission did not endorse that position. Deletion of Article {23} (former [29]) was not appropriate in view of its placement in the text for more than two decades and its endorsement in the jurisprudence, in particular the clear affirmation by the International Court in the *Gabčíkovo-Nagymaros* case.⁶⁶ Nor could Article {23} simply treat countermeasures as available under international law without qualification or condition, any more than necessity or *force majeure* could be envisaged as available without specifying the conditions for relying on them. This left the Commission effectively with three options: (1) deletion of a separate Chapter and incorporation of the substance of these articles into Article {23}; (2) retention of the Chapter with drafting improvements, and (3) retention of the Chapter only with regard to countermeasures by an injured state, with Article {54} being deleted or converted to a saving clause.

In the event the third of these options was adopted. The compromise reached by the Commission was to retain both Article {23} and the Chapter on countermeasures, but to replace Article {54} with a savings clause, leaving open the possibility of ‘lawful measures’ taken by other states in response to internationally wrongful conduct infringing some collective interest.

2 ‘Collective Measures’

Article {54} dealt with countermeasures taken by states other than the injured state. It referred rather succinctly to two different situations. The first concerned countermeasures taken by a state other than the injured state ‘at the request and on behalf

⁶³ This view was taken, in particular, by the United States (*A/C.6/55/SR.18*, paras 68–70) and the United Kingdom (*A/C.6/55/SR.14*, para. 33), and was repeated by both in their written comments: see Comments and Observations, *supra* note 8. In its written comments Japan made a similar suggestion: *ibid.*

⁶⁴ In the Sixth Committee debate these included Argentina, *A/C.6/55/SR.15*, paras 65–66; Brazil, *A/C.6/55/SR.18*, paras 64–65; Chile, *A/C.6/55/SR.17*, para. 48; China, *A/C.6/55/SR.14*, paras 38–39 (but stressing the need for further improvement); Costa Rica, *A/C.6/55/SR.17*, para. 64; Croatia, *A/C.6/55/SR.16*, para. 72; Cuba, *A/C.6/55/SR.18*, paras 60, 62; Denmark (on behalf of the Nordic countries), *A/C.6/55/SR.15*, para. 58; Egypt, *A/C.6/55/SR.16*, para. 33; France, *A/C.6/55/SR.15*, para. 10; Hungary, *A/C.6/55/SR.16*, para. 57; Italy, *A/C.6/55/SR.16*, para. 26; Jordan, *A/C.6/55/SR.18*, paras 15–16; New Zealand, *A/C.6/55/SR.16*, para. 7; Poland, *A/C.6/55/SR.18*, para. 48; Sierra Leone, *A/C.6/55/SR.16*, para. 51; Slovakia, *A/C.6/55/SR.16*, para. 66; South Africa, *A/C.6/55/SR.14*, para. 24 (on behalf of the members of the Southern African Development Community); Spain, *A/C.6/55/SR.16*, para. 16; Switzerland, *A/C.6/55/SR.18*, para. 81. See also the written observations by China, Denmark (on behalf of the Nordic countries), the Netherlands, Slovakia and Spain: Comments and Observations, *supra* note 8.

⁶⁵ Greece, *A/C.6/55/SR.17*, para. 85.

⁶⁶ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, ICJ Reports (1997) 7, at 55, para. 83.

of any State injured by the breach' (para. 1); this on the analogy of collective self-defence on behalf of a state the subject of an armed attack. The second concerned countermeasures taken in response to serious breaches covered by Chapter III, Part Two (para. 2). Paragraph 3 dealt with the coordination of countermeasures taken by more than one state. In effect the article permitted a state other than the injured state to take countermeasures, either in support of an injured state or independently in the case of a serious breach. In all other cases, such states were limited to the invocation of responsibility under Article {49}.

By contrast under former Articles [40] and [47], any state could take countermeasures in the case of an 'international crime', a breach of human rights or the breach of certain collective obligations, irrespective of the position of any other state, including the state directly injured by the breach. The effect of Article {54} was to *reduce* the extent to which countermeasures could be taken in the community interest, as compared with the first reading text, though the separation of Article [47] from Article [40] and the convoluted character of the definition of the 'injured State' in Article [40] may have prevented governments from focusing on this issue. Apparently those who criticized Article {54} for going too far had not appreciated that the older Articles [47] and [40] went much further. But that was a purely historical justification; now that the proposed position was clarified, Article {54} needed substantive justification and could not be saved simply by saying that it was an improvement on its predecessor. A matter of particular concern was the relation of Article {54} to collective measures taken by or within the framework of international organizations. There was a risk of duplicating Chapter VII of the Charter at the level of the individual action of states, or of a small number of states – as exemplified, perhaps, in the Kosovo crisis.

As the Special Rapporteur's Third Report had concluded, general international law on the subject of collective countermeasures is limited and rather embryonic.⁶⁷ A number of governments were concerned at the tendency to 'freeze' an area of law still very much in the process of development. For others, Article 54 raised highly controversial issues about the balance between law enforcement and intervention. It also reopened questions of the linkage between individual state action and collective measures under the United Nations Charter or regional arrangements. Thus the thrust of government comments, both from those generally supportive of and those hostile to countermeasures, was that Article {54}, and especially paragraph 2, had only a doubtful basis in international law and would be destabilizing.⁶⁸ A majority of the Commission agreed.

However there was a concern that the mere deletion of Article {54} would imply that countermeasures can only ever be taken by injured States, narrowly defined. The current state of international law on measures taken in the general or common interest is no doubt uncertain. But it can hardly be the case that countermeasures in aid of compliance with international law are limited to breaches of a bilateral

⁶⁷ For a review of the practice see commentary to Article 54, paras 3–5.

⁶⁸ E.g., Israel, A/C.6/55/SR.15, para. 25.

character. Obligations towards the international community, or otherwise in the collective interest, are not 'second class' obligations by comparison with obligations under bilateral treaties.⁶⁹ It is to be hoped that international organizations will have the capacity and will to address the humanitarian or other crises that often arise from serious breaches of collective obligations. But, as experience has shown, this is by no means always true, and it does not appear that states have given up all possibility of individual action in such cases of collective apathy or inaction. Thus the Commission agreed on the need for a saving clause which would reserve the position and leave the resolution of the matter to further developments in international law and practice. Article 54 as finally adopted provides that the Chapter on countermeasures does not prejudice the right of any state, entitled under Article 48(1) to invoke the responsibility of another state, to take lawful measures against the responsible state to ensure cessation of the breach and reparation in the interests of the beneficiaries. Article 54 speaks of 'lawful measures' rather than 'countermeasures' so as not to prejudice any position on the lawfulness or otherwise of measures taken by states other than the injured state in response to breaches of obligations for the protection of the collective interest or those owed to the international community as a whole. Of course like all other aspects of countermeasures, it is not concerned with issues involving the use of force contrary to the United Nations Charter, which questions are governed by the applicable primary rules.

3 *Substantive and Procedural Conditions on Countermeasures*

Article {53} set out rather detailed procedural conditions relating to resort to countermeasures. It was the focus of many comments by governments and others. Views were polarized, with some governments continuing to express concern at the possibility of unilateral determinations on the part of a state taking countermeasures,⁷⁰ while others criticized the procedural conditions laid down in the article as unfounded in law and as unduly cumbersome and restrictive.⁷¹ The most difficult aspect of the provision was the relationship between countermeasures and dispute settlement. On the one hand, it is clear that a state should not be entitled to take countermeasures, except perhaps those required in order to maintain the *status quo*, before calling on the responsible state to fulfil its obligations. The requirement that it first do so was stressed both by the Arbitral Tribunal in the *Air Services Arbitration*⁷²

⁶⁹ A number of governments suggested that countermeasures could be taken by states other than the injured state, but only to ensure cessation of the breach: e.g., Austria, A/C.6/55/SR.17, para. 76; Cuba, A/C.6/55/SR.18, para. 59; Poland, A/C.6/55/SR.18, para. 48. Others would limit Article 54 to cases of 'serious breaches' as defined in Article 41: Costa Rica, A/C.6/55/SR.17, para. 63; Italy, A/C.6/55/SR.16, para. 28; Russian Federation, A/C.6/55/SR.18, para. 51; Spain, A/C.6/55/SR.16, para. 13.

⁷⁰ E.g., Chile, A/C.6/55/SR.17, para. 50; Croatia, A/C.6/55/SR.16, para. 72; Greece, A/C.6/55/SR.17, paras 85–86.

⁷¹ E.g., United Kingdom, A/C.6/55/SR.14, paras 35–36; United States, A/C.6/55/SR.18, para. 69. Several governments expressed the view that the burden of initiating negotiations should be on the responsible state, not the state taking countermeasures: Chile, A/C.6/55/SR.17, para. 50; Republic of Korea, A/C.6/55/SR.19, para. 74.

⁷² *Air Services Agreement of 27 March 1946 (United States v. France)*, RIAA, vol. XVIII (1978) 417, at 444, paras 85–87.

and by the International Court in the *Gabčíkovo-Nagymaros* case.⁷³ It also appears to reflect a general practice.⁷⁴ On the other hand the taking of countermeasures could not reasonably be postponed until negotiations have actually broken down. Negotiations may be indefinitely prolonged; an injured state should not be required to break off negotiations, however fruitless they may appear at the time, before availing itself of the right to take countermeasures. The Commission thus deleted paragraph 4 of Article {53}, which had prohibited countermeasures while negotiations were being pursued in good faith, but retained paragraph 5 requiring the suspension of countermeasures where the states concerned are before a competent court or tribunal with the power to make binding decisions.

A further difficulty arose with respect to the distinction drawn in paragraph 3 of Article {53} between countermeasures on the one hand, and provisional and urgent countermeasures on the other.⁷⁵ A distinction between 'urgent' and other countermeasures does not correspond with existing international law:⁷⁶ it was developed in the course of the first reading by way of a compromise between sharply opposed positions on the suspensive effect of negotiations.⁷⁷ The distinction was better seen as a guide to the application of principles of necessity and proportionality in a given case. As a distinct requirement it tended to imply that 'normal' countermeasures are not themselves provisional and temporary in character. It potentially confused countermeasures and interim measures of protection awarded by third parties. There were also practical difficulties. For example, mere agreement to submit a dispute to arbitration should not require the suspension of countermeasures, since until the

⁷³ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, ICJ Reports (1997) 7, at 56, para. 84.

⁷⁴ In this context one may note the United Kingdom's reservation to Articles 51–55 of Additional Protocol I (1977), which provides in part:

... If an adverse party makes serious and deliberate attacks, in violation of article 51 or article 52 against the civilian population or civilians or against civilian objects, or, in violation of articles 53, 54 and 55, on objects or items protected by those articles, the United Kingdom will regard itself as entitled to take measures otherwise prohibited by the articles in question to the extent that it considers such measures necessary for the sole purpose of compelling the adverse party to cease committing violations under those articles, but only after formal warning to the adverse party requiring cessation of the violations has been disregarded and then only after a decision taken at the highest level of government. Any measures thus taken by the United Kingdom will not be disproportionate to the violations giving rise thereto and will not involve any action prohibited by the Geneva Conventions of 1949, nor will such measures be continued after the violations have ceased. The United Kingdom will notify the Protecting Powers of any such formal warning given to an adverse party, and if that warning has been disregarded, of any measures taken as a result.

⁷⁵ Some governments criticized this distinction as artificial and unreal: see Hungary, A/C.6/55/SR.16, para. 58; Japan, A/C.6/55/SR.14, para. 68.

⁷⁶ As noted, e.g., by Italy, A/C.6/55/SR.16, para. 27; and the United Kingdom, A/C.6/55/SR.14, para. 36. The United Kingdom made the point that such a requirement may deter a state from agreeing to third-party settlement: *ibid.*

⁷⁷ See *Yearbook of the ILC*, vol. I (1996), at 171–176.

tribunal has been constituted and is in a position to deal with the dispute, even a power to order binding provisional measures would not help.⁷⁸

As part of an overall compromise on Chapter II, the Commission agreed to delete the distinction between countermeasures and provisional countermeasures, though the right of the injured state to take ‘such urgent countermeasures as are necessary to preserve its rights’ is retained. The article has also been simplified and brought substantially into line, in particular, with the statement of the Arbitral Tribunal in the *Air Services* case.⁷⁹

Article {51} on obligations not subject to countermeasures was also reconsidered in light of various comments made by governments. Paragraph 1 was controversial, with a number of governments raising questions about the general economy of the article and about particular inclusions or exclusions.⁸⁰ In the course of its consideration of this paragraph, the Commission discussed whether it would be useful to make paragraph 1 entirely general, with no listing of specific obligations. On this approach, the scope of the paragraph would remain within the realm of secondary rules; this would avoid the possibility of excluding any of the obligations against which countermeasures may not be taken. On the other hand, the purpose of specifying at least the major ‘prohibited countermeasures’ was to remove uncertainty and to give guidance on a vitally important issue. As to a number of these exceptions, there can be no doubt or ambiguity; others needed to be affirmed on their merits. On balance, the Commission was persuaded that it was better to maintain a list approach in this one article, even though it would necessarily have to draw on primary rules.⁸¹ Article 50 has however been reformulated so as to draw a clearer distinction between,

⁷⁸ See United States, *A/C.6/55/SR.18*, para. 69; Costa Rica, *A/C.6/55/SR.17*, para. 65. This is the basis for the provisional measures jurisdiction of the International Tribunal of the Law of the Sea in the period prior to the constitution of an arbitral tribunal: see UNCLOS, Art. 290 (5).

⁷⁹ *Air Services Agreement*, *supra* note 72, at 445–446, paras. 91, 94–96. As finally adopted, Article 52 reads: ‘Conditions relating to resort to countermeasures’

1. Before taking countermeasures, an injured State shall:
 - (a) Call on the responsible State, in accordance with article 43, to fulfil its obligations under Part Two;
 - (b) Notify the responsible State of any decision to take countermeasures and offer to negotiate with that State.
2. Notwithstanding paragraph 1(b), the injured State may take such urgent countermeasures as are necessary to preserve its rights.
3. Countermeasures may not be taken, and if already taken must be suspended without undue delay if:
 - (a) The internationally wrongful act has ceased, and
 - (b) The dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties.
4. Paragraph 3 does not apply if the responsible State fails to implement the dispute settlement procedures in good faith.

⁸⁰ See the written observations of the United Kingdom (proposing a single non-exhaustive formula illustrated in the commentary) and the United States (proposing its deletion altogether). See Comments and Observations, *supra* note 8.

⁸¹ In particular, no government had expressed doubt about the general approach taken in Article {51} or its predecessor, Article [50]. Concerns had related rather to the formulation of the clauses, especially as concerns human rights. See Comments and Observations, *supra* note 8.

on the one hand, fundamental substantive obligations which may not be affected by countermeasures (the prohibition on the threat or use of force, fundamental human rights obligations, humanitarian obligations prohibiting reprisals and obligations under other peremptory norms) and, on the other hand, certain obligations concerned with the maintenance of channels of communication between the two states concerned, including machinery for the resolution of their disputes.⁸²

D Assurances and Guarantees of Non-repetition

In the first reading text of the Articles, assurances and guarantees of non-repetition were included amongst the forms of reparation which the injured state was entitled to demand from the responsible state by way of remedying the damage caused by the breach (Article [46]). But Special Rapporteur Arangio-Ruiz noted that the classification of assurances and guarantees is not straightforward,⁸³ and his valuable emphasis on cessation in Part Two gave rise to further questions as to their placement.

On second reading, the Commission took the view that assurances and guarantees of non-repetition should be considered as more akin to cessation than to reparation. They concern future rather than past conduct. Indeed usually they concern future conduct in cases other than that which has given rise to the dispute. They are unrelated to the concept of continuing wrongful acts; they may be equally appropriate in cases where, following an earlier breach, further breaches involving different factual situations are reasonably apprehended. Moreover, like cessation, assurances and guarantees can only be relevant where the obligation in question is a subsisting one.⁸⁴ Although an assurance or guarantee may be considered a form of satisfaction in certain cases, it is surely more appropriate conceptually to associate them with cessation. Whereas reparation is concerned with the past, with restoration of the *status quo ante*, cessation and assurances and guarantees are concerned essentially with the future, with the repair of the continuing relationship ruptured by the internationally wrongful act.⁸⁵ For these reasons, the provisional text adopted in 2000 dealt with assurances and guarantees of non-repetition alongside cessation.

⁸² As finally adopted, Article 50 reads:

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.

⁸³ G. Arangio-Ruiz, Second Report, *Yearbook of the ILC*, vol. II (Part One) (1989), at 42–44, paras 148–153.

⁸⁴ In the *Rainbow Warrior* case, for example, once the Tribunal had held that the obligation to detain the two French agents on the island of Hao had expired by effluxion of time, assurances and guarantees could no longer be relevant. See *RIAA*, vol. XX (1990) 217, at 266, para. 105.

⁸⁵ See Crawford, Third Report, *supra* note 38, at para. 57, p. 26; Crawford, Fourth Report, *supra* note 30, at 12, para. 32.

Article {30}(b) provided that the responsible state was ‘under an obligation . . . to offer appropriate assurances and guarantees of non-repetition, if circumstances so require’.

The question whether assurances and guarantees of non-repetition are to be considered as legal consequences of an internationally wrongful act was raised as a central issue before the International Court in the *LaGrand* case, which was *sub judice* during the first half of the Commission’s session in 2001. To avoid the appearance of prejudging the issue and to allow it to take into account the Court’s views, the Commission decided to postpone any reconsideration of the issue pending the judgment.

The *LaGrand* case⁸⁶ concerned an admitted failure of consular notification contrary to Article 36 of the Vienna Convention on Consular Relations of 1963.⁸⁷ In its fourth submission Germany sought both general and specific assurances and guarantees as to the means of future compliance with the Convention. The United States argued that to give such assurances or guarantees went beyond the scope of the obligations in the Convention and that the Court lacked jurisdiction to require them. In any event, it argued, formal assurances and guarantees were unprecedented and should not be required. Germany’s entitlement to a remedy did not extend beyond an apology, which the United States had given. Alternatively no assurances or guarantees were appropriate in light of the extensive action it had taken to ensure that federal and state officials would in future comply with the Convention.

On the question of jurisdiction the Court held

that a dispute regarding the appropriate remedies for the violation of the Convention alleged by Germany is a dispute that arises out of the interpretation or application of the Convention and thus is within the Court’s jurisdiction. Where jurisdiction exists over a dispute on a particular matter, no separate basis for jurisdiction is required by the Court to consider the remedies a party has requested for the breach of the obligation. Consequently, the Court has jurisdiction in the present case with respect to the fourth submission of Germany.⁸⁸

On the question of appropriateness, the Court noted that an apology would not be sufficient in any case in which a foreign national had been ‘subjected to prolonged detention or sentenced to severe penalties’ following a failure of consular notification.⁸⁹ But in the light of information provided by the United States as to the steps taken to comply in future, the Court held

that the commitment expressed by the United States to ensure implementation of the specific measures adopted in performance of its obligations under Article 36, paragraph 1(b), must be regarded as meeting Germany’s request for a general assurance of non-repetition.⁹⁰

As to the specific assurances sought by Germany, the Court limited itself to stating that

⁸⁶ *LaGrand* case, *supra* note 13.

⁸⁷ *UNTS*, vol. 596, at 262.

⁸⁸ *LaGrand* case, *supra* note 13, at para. 48, citing *Factory at Chorzów, Jurisdiction*, 1927, PCIJ, Series A, No. 9, at 22.

⁸⁹ *LaGrand* case, *supra* note 13, at para. 123.

⁹⁰ *Ibid.*, at para. 124; see also the *dispositif*, para. 128 (6).

... If the United States, notwithstanding its commitment referred to ... should fail in its obligation of consular notification to the detriment of German nationals, an apology would not suffice in cases where the individuals concerned have been subjected to prolonged detention or convicted and sentenced to severe penalties. In the case of such a conviction and sentence, it would be incumbent upon the United States to allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in the Convention.⁹¹

The Court thus upheld its jurisdiction on Germany's fourth submission and responded to it in the *dispositif*. It did not, however, discuss the legal basis for assurances of non-repetition. In particular it did not say in so many words that assurances and guarantees were to be regarded as an aspect of reparation.⁹²

The Commission was divided as to the interpretation of the Court's judgment and its significance for the role of assurances and guarantees of non-repetition in the Articles. Some members stressed that the Court had taken no clear position even on the existence of a possible obligation to provide assurances and guarantees of non-repetition, let alone its classification as an aspect of satisfaction or something else. The Court had simply taken note of the measures taken by the United States which in the Court's view satisfied the request of the claimant state. Some considered that the Court's judgment provided support for the retention of Article {30}(b). Others felt that the Court had implicitly remained within the framework of reparation, even if it envisaged the consequences of a hypothetical wrongful act that could occur in the future.

The Court's decision in the *LaGrand* case was of course not the only basis on which to decide the issue relating to assurances and guarantees of non-repetition. Governments had rather consistently supported their inclusion in Part Two, and for that matter their placement in Article 30. In the end the Commission decided to retain the existing text on the ground that it is drafted with flexibility and reflects a useful policy. In particular the words 'if circumstances so require' clearly indicate that assurances and guarantees are not a necessary part of the legal consequences of an internationally wrongful act. Much will depend on the circumstances of the case, including the nature of the obligation and of the breach. Assurances and guarantees are likely to be appropriate only where there is a real risk of repetition causing injury to the requesting state or others on whose behalf it is acting. But in such cases assurances and guarantees may be a valuable part of the restoration of the legal relationship affected by the breach.

5 Conclusion

The topic of state responsibility is one of the most important topics that the Commission has undertaken. The final text of the Articles seeks to respond fairly and

⁹¹ *Ibid.*, at para. 125. See also *ibid.*, para. 127, and the *dispositif*, para. 128 (7).

⁹² The use of the verb '*satisfaire*' in the French text of the judgment at para. 124 hardly decides the point, and in any case the English text is studiously neutral ('the commitment expressed by the United States ... must be regarded as meeting Germany's request for a general assurance of non-repetition').

fully to the comments made by governments and others. Adopted without a vote and with substantial consensus on virtually all points, it accurately reflects the balance of opinion within the Commission following prolonged discussion and debate.

For the reasons given above, the Articles and their accompanying commentaries have been referred to the General Assembly at its next session with the recommendation that the General Assembly initially take note of and annex the text of the Articles in a resolution, reserving to a later session the question whether the Articles should be embodied in a convention on state responsibility. Regardless of the eventual form of the Articles it is to be hoped that they will make a significant contribution to the codification and progressive development of the international legal rules of responsibility, and that the Commission's work, now finalized, will continue to exert an influence over this important area of international law.

Annex

Table of Equivalent Articles

Final Article Number	{Provisional Article, 2000}	[First reading Article]	Title
<i>Part One: The Internationally Wrongful Act of a State</i>			
<i>Chapter I: General principles</i>			
1	1	1	Responsibility of a state for its internationally wrongful acts
2	2	3	Elements of an internationally wrongful act of a state
3	3	4	Characterization of an act of a state as internationally wrongful
<i>Chapter II: Attribution of conduct to a state</i>			
4	4	5, 6, 7(1)	Conduct of organs of a state
5	5	7(2)	Conduct of persons or entities exercising elements of governmental authority
6	8	9	Conduct of organs placed at the disposal of a state by another state
7	9	10	Excess of authority or contravention of instructions
8	6	8(1)	Conduct directed or controlled by a state
9	7	8(2)	Conduct carried out in the absence or default of the official authorities
10	10	14, 15	Conduct of an insurrectional or other movement
11	11	—	Conduct acknowledged and adopted by a state as its own
<i>Chapter III: Breach of an international obligation</i>			
12	12	16, 17, 18(1)	Existence of a breach of an international obligation
13	13	18(2)	International obligation in force for a state
14	14	24	Extension in time of the breach of an international obligation
15	15	25	Breach consisting of a composite act
<i>Chapter IV: Responsibility of a state in connection with the act of another state</i>			
16	16	27	Aid or assistance in the commission of an internationally wrongful act

17	17	28(1)	Direction and control exercised over the commission of an internationally wrongful act
18	18	28(2)	Coercion of another state
19	19	—	Effect of this Chapter
			<i>Chapter V: Circumstances precluding wrongfulness</i>
20	20	29	Consent
21	22	34	Self-defence
22	23	30	Countermeasures in respect of an internationally wrongful act
23	24	31	Force majeure
24	25	32	Distress
25	26	33	Necessity
26	21	—	Compliance with peremptory norms
27	27	35	Consequences of invoking a circumstance precluding wrongfulness
			<i>Part Two: Content of the International Responsibility of a State</i>
			<i>Chapter I: General principles</i>
28	28	36(1)	Legal consequences of an internationally wrongful act
29	29	36(2)	Continued duty of performance
30	30	41, 46	Cessation and non-repetition
31	31	42(1)	Reparation
32	32	42(4)	Irrelevance of internal law
33	34	—	Scope of international obligations set out in this Part
			<i>Chapter II: Reparation for injury</i>
34	35	42(1)	Forms of reparation
35	36	43	Restitution
36	37	44	Compensation
37	38	45	Satisfaction
38	39	—	Interest
39	40	42(2)	Contribution to the injury
			<i>Chapter III: Serious breaches of obligations under peremptory norms of general international law</i>
40	41	—	Application of this Chapter

41	42	51, 53	Particular consequences of a serious breach of an obligation under this Chapter <i>Part Three: The Implementation of the International Responsibility of a State</i> <i>Chapter I: Invocation of the responsibility of a state</i>
42	43	40	Invocation of responsibility by an injured state
43	44	—	Notice of claim by an injured state
44	45	22	Admissibility of claims
45	46	—	Loss of the right to invoke responsibility
46	47	—	Plurality of injured states
47	48	—	Plurality of responsible states
48	49	40	Invocation of responsibility by a state other than an injured state <i>Chapter II: Countermeasures</i>
49	50	47	Objects and limits of countermeasures
50	51	50	Obligations not affected by countermeasures
51	52	49	Proportionality
52	53	48	Conditions relating to resort to countermeasures
53	55	—	Termination of countermeasures
54	54	—	Measures taken by states other than an injured state <i>Part Four: General Provisions</i>
55	56	37	<i>Lex specialis</i>
56	33	38	Questions of state responsibility not regulated by these articles
57	57	—	Responsibility of an international organization
58	58	—	Individual responsibility
59	59	39	Charter of the United Nations