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Responsibility of States for internationally wrongful acts

Responsibility of States for internationally wrongful acts

Compilation of decisions of international courts, tribunals and other bodies

Report of the Secretary-General

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Abbreviations

ACHPR	African Commission on Human and Peoples' Rights
ACtHPR	African Court on Human and Peoples' Rights
BIT	Bilateral investment treaty
CCJ	Caribbean Court of Justice
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CJEU	Court of Justice of the European Union
CRC	Committee on the Rights of the Child
ECHR	European Court of Human Rights
ECOWAS	Court of Justice of the Economic Community of West African States
EECC	Eritrea-Ethiopia Claims Commission
HRC	Human Rights Committee
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
ICSID Additional Facility Rules	Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States
ICTY	International Tribunal for the Former Yugoslavia
ILC	International Law Commission
ITLOS	International Tribunal for the Law of the Sea
IUSCT	Iran-United States Claims Tribunal
PCA	Permanent Court of Arbitration
SCC	Stockholm Chamber of Commerce
STL	Special Tribunal for Lebanon
UNCC	United Nations Compensation Commission
UNCITRAL	United Nations Commission on International Trade Law
WTO	World Trade Organization

I. Introduction

1. The International Law Commission adopted the draft articles on responsibility of States for internationally wrongful acts at its fifty-third session, in 2001. In its resolution 56/83, the General Assembly took note of the articles (hereinafter referred to as the State responsibility articles), the text of which was annexed to that resolution, and commended them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action.

2. As requested by the General Assembly in its resolution 59/35, the Secretary-General, in 2007, prepared a compilation of decisions of international courts, tribunals and other bodies referring to the State responsibility articles.[1] A further four compilations were prepared by the Secretary-General, in 2010, 2013, 2016 and 2019, on the basis of the requests of the Assembly in its resolutions 62/61,[2] 65/19,[3] 68/104[4] and 71/133[5] respectively. In 2017, pursuant to a request by the Assembly in its resolution 71/133, the Secretary-General prepared a technical report listing, in a tabular format, the references to the articles contained in the compilation of decisions of international courts, tribunals and other bodies referring to the articles prepared since 2001, as well as references to the articles made in submissions presented by Member States before international courts, tribunals and other bodies since 2001.[6]

3. In its resolution 74/180, the General Assembly acknowledged the importance of the State responsibility articles and commended them once again to the attention of Governments, without prejudice to the question of their future adoption or other appropriate action. The Assembly requested the Secretary-General to update the compilation of decisions of international courts, tribunals and other bodies referring to the articles, to invite Governments to submit information on their practice in that regard, and to submit that material well in advance of its seventy-seventh session. The Assembly also requested the Secretary-General to update the technical report listing, in a tabular format, the references to the articles contained in the compilations of decisions of international courts tribunals and other bodies referring to the articles prepared since 2001, as well as references to the articles made in submissions presented by Member States before international courts, tribunals and other bodies since 2001, and to submit that material during its seventy-seventh session.

4. By a note verbale dated 14 January 2020, the Secretary-General invited Governments to submit, no later than 1 February 2022, information regarding decisions of international courts, tribunals and other bodies referring to the articles for inclusion in an updated compilation.

5. The present compilation includes an analysis of a further 83 cases in which the State responsibility articles were referred to in decisions taken during the period from 1 February 2019 to 31 January 2022.[7] Such references were found in the decisions of the following international courts, tribunals and other bodies: the International Court of Justice;[8] the International Tribunal for the Law of the Sea; the Iran-United States Claims Tribunal; panels of the World Trade Organization; international arbitral tribunals; the Court of Justice of the European Union; the European Court of Human

[1] A/62/62, A/62/62/Corr.1 and A/62/62/Add.1.
[2] A/65/76.
[3] A/68/72.
[4] A/71/80.
[5] A/74/83.
[6] A/71/80/Add.1.
[7] It also includes a limited number of cases decided in January 2019 that became available only after the issuance of document A/74/83.
[8] Also included are decisions of the International Court of Justice taken to 15 February 2022.

Rights; the Inter-American Commission on Human Rights; the Inter-American Court of Human Rights, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of the Child.

6. The present compilation, which supplements the five previous Secretariat compilations on the topic, reproduces the relevant extracts of publicly available decisions under each of the articles referred to by international courts, tribunals or bodies, following the structure and numerical order of the State responsibility articles. Under each article, decisions appear in chronological order. In view of the number and length of the decisions, the compilation includes only the relevant extracts of the decisions referring to the State responsibility articles, together with a brief description of the context in which the reference was made.[9]

7. The compilation contains those extracts of publicly available decisions in which the State responsibility articles are invoked as the basis for the decision or where the articles are referred to as reflecting the existing law governing the issue at hand. It does not cover the submissions of the parties invoking the State responsibility articles, or opinions of judges appended to a decision.

8. An updated version of the technical report listing, in a tabular format, the references to the articles contained in the compilation of decisions of international courts, tribunals and other bodies referring to the articles prepared since 2001, as well as references to the articles made in submissions presented by Member States before international courts, tribunals and other bodies since 2001, as requested by the General Assembly in its resolution 74/180, is provided in the annex.

II. Extracts of decisions referring to the articles on responsibility of States for internationally wrongful acts

Part One
The internationally wrongful act of a State

Chapter I
General principles

Article 1
Responsibility of a State for its internationally wrongful acts

International Court of Justice

In its advisory opinion on *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, the International Court of Justice referred to article 1 in concluding that, "[t]he Court having found that the decolonization of Mauritius was not conducted in a manner consistent with the right of peoples to self-determination, it follows that the United Kingdom's continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State".[10]

[9] Unless otherwise indicated, footnote references in the decisions are omitted.

[10] International Court of Justice, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, at pp. 138–139, para. 177.

International arbitral tribunal (under the ICSID Convention)

In *B3 Croatian Courier Coöperatief U.A. v. Republic of Croatia*, the arbitral tribunal considered "it to be uncontroversial that an expropriation claim may be based not only on positive acts of the State, but also on omissions", referring to the commentary to article 1.[11]

International Tribunal for the Law of the Sea

In *M/V "Norstar" (Panama v. Italy)*, the International Tribunal for the Law of the Sea noted that, as stated in article 1, "[e]very internationally wrongful act of a State entails the international responsibility of that State", and observed that article 1 "also reflects customary international law".[12]

Article 2
Elements of an internationally wrongful act of a State

Permanent Court of Arbitration (under UNCITRAL rules)

In *Consutel Group S.P.A. in liquidazione (Italy) v. People's Democratic Republic of Algeria*, the arbitral tribunal stated that "the attribution to the State of acts or omissions committed by a public entity has no consequences, under international law, with regard to the lawfulness of those acts", noting that article 2 "stipulates, in that regard, that two separate conditions must be met in order for there to be an 'internationally wrongful act of a State': there must be (i) an act attributable to the State and (ii) a breach of an international obligation of the State".[13]

Permanent Court of Arbitration (under UNCITRAL rules)

The arbitral tribunal in *Venezuela US, S.R.L. v. Bolivarian Republic of Venezuela* recalled that "attribution is a concept of international law firmly rooted in the rules on State responsibility".[14] Thus, "[w]here there is a claim of a breach of an international obligation of a State under a BIT, the claimant has to prove (i) that the conduct complained of is, under international law, attributable to a State, i.e., under international law it is considered to be the conduct of a State; and (ii) that the obligation allegedly breached is an obligation which that State has undertaken under the applicable BIT".[15]

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *Muhammet Çap & Sehil Inşaat Endustri ve Ticaret Ltd. Sti. v. Turkmenistan* noted that, in many respects, the articles "codify customary international law".[16] The tribunal referred to article 2, which "provides that an internationally wrongful act of a State occurs when two cumulative conditions are met: (i) the act can be attributed to the State under international law; and (ii) the act constitutes a breach of an international obligation".[17] Thus, the tribunal stated that "one must first determine whether an act is attributable to the State before assessing

[11] ICSID Case No. ARB/15/5, Award, 5 April 2019, para. 1050.
[12] ITLOS, *M/V "Norstar" (Panama v. Italy), Judgment, ITLOS Reports 2018–2019*, p. 10, at p. 94, para. 317, citing *M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014*, p. 4, at p. 117, para. 430.
[13] PCA Case No. 2017-33, Final Award, 3 February 2020, para. 317.
[14] PCA Case No. 2013-34, Partial Award (Jurisdiction and Liability), 5 February 2021, para. 154.
[15] *Ibid*., para. 155.
[16] ICSID Case No. ARB/12/6, Award, 4 May 2021, para. 736 (footnote 628), citing *Tulip Real Estate Investment and Development Netherlands B.V. v. Republic of Turkey*, ICSID Case No. ARB/11/28, Award, 10 March 2014, para. 281.
[17] *Ibid*., para. 736.

whether the act can be deemed to be in breach of an international obligation",[18] and recalled that "under international law, the State is treated as a unity".[19]

Article 3
Characterization of an act of a State as internationally wrongful

International arbitral tribunal (under SCC rules)

The arbitral tribunal in *SunReserve Luxco Holdings S.R.L. v. Italy* considered that article 3 of the State responsibility articles and article 27 of the Vienna Convention on the Law of Treaties "codify the principles that a State cannot invoke its domestic law to either (i) influence or affect the characterization of an internationally wrongful act; or (ii) justify its failure to perform a treaty obligation".[20]

International arbitral tribunal (under the ICSID Convention)

In *Addiko Bank AG and Addiko Bank d.d. v. Republic of Croatia*, the arbitral tribunal analysed the role of domestic law and whether investments had to be carried out under Croatian law to qualify for protection under the investment treaty. The tribunal recalled that in the decision on annulment in *Azurix v. Argentine Republic*, the committee had used article 3 and its commentary as the framework for a similar analysis, under which "'internal law is relevant to the question of international responsibility', but 'this is because the rule of international law makes it relevant'", particularly when the provisions of internal law "'are actually incorporated in some form, conditionally or unconditionally, into that standard', but international law remains the governing law of the dispute".[21]

Court of Justice of the European Union

In *European Commission v. Hungary*, the Grand Chamber of the Court of Justice of the European Union referred to article 3, "which codif[ies] customary international law and [is] applicable to the Union, the characterization of an act of a State as being 'internationally wrongful' is governed solely by international law. Consequently, that characterization cannot be affected by any characterization of the same act that might be made under [European Union] law".[22]

International arbitral tribunal (under the ICSID Convention)

In *BayWa r.e. Renewable Energy GmbH and BayWa r.e. Asset Holding GmbH v. Kingdom of Spain*, the arbitral tribunal referred to article 3 in stating that, "[i]n an international forum such as the present one, a host State may not rely on its domestic law as a ground for non-fulfilment of its international obligations".[23]

International arbitral tribunal (under the ICSID Additional Facility Rules)

The arbitral tribunal in *América Móvil S.A.B. de C.V. v. Colombia* noted that "it is undisputable … that international law does not permit States to shield themselves behind their domestic law in order to evade their responsibility under international

[18] *Ibid*., para. 737, citing para. (5) of the commentary to article 2.
[19] *Ibid*., para. 742, citing para. (6) of the commentary to article 2.
[20] SCC Case No. 132/2016, Final Award, 25 March 2020, para. 982.
[21] ICSID Case No. ARB/17/37, Decision on Croatia's Jurisdictional Objection Related to the Alleged Incompatibility of the BIT with the EU *Acquis*, 12 June 2020, para. 263, citing *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Decision on Annulment, 1 September 2009, para. 149.
[22] Court of Justice of the European Union (Grand Chamber), Case No. C-66/18, Judgment, 6 October 2020, para. 88.
[23] ICSID Case No. ARB/15/16, Award, 25 January 2021, para. 569 (a).

law, since international law excludes the possibility of the international lawfulness of the conduct of a State being assessed on the basis of domestic law", a "fundamental principle" that was codified in article 27 of the Vienna Convention on the Law of Treaties and article 3 of the State responsibility articles.[24] Furthermore, the arbitral tribunal noted that "referring to Colombian law to determine the existence of a right to non-reversion clearly does not violate the principle codified in article 3 of the articles on State responsibility, which prevent a State from using its internal law to absolve itself of its international responsibility".[25]

International arbitral tribunal (under the ICSID Convention)

In *Casinos Austria International GmbH and Casinos Austria Aktiengesellschaft v. Argentine Republic*, the arbitral tribunal quoted article 3,[26] going on to explain "[t]hat a treaty claim remains governed by treaty law does not mean, however, that domestic law is wholly irrelevant for the determination of compliance with, or liability under, a BIT, including the BIT governing the present dispute". The tribunal noted that an investment treaty "may expressly refer to domestic law" for the determination of questions such as the investor's nationality "or compliance with domestic law under an in-accordance-with-host-State-law clause", as "certain elements of a treaty can only be determined by recourse to domestic law (such as whether an investor has title to a certain asset or what the treatment afforded under domestic law is for purposes of assessing compliance with a national treatment provision)".[27]

Chapter II
Attribution of conduct to a State

Article 4[28]
Conduct of organs of a State

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *Staur Eiendom AS, EBO Invest AS and Rox Holding AS v. Republic of Latvia* noted that "[i]t is common ground that under Article 4, the conduct of a State organ acting as such is attributable to the State".[29] The tribunal added that "a person or entity may be characterized as an organ of the State as a matter of international law even if it does not possess that character under the State's internal law".[30]

Iran-United States Claims Tribunal

In a partial award rendered in 2020, the Iran-United States Claims Tribunal noted that "[u]nder international law, as expressed in Article 4 of the ILC Articles, the conduct of a State's judiciary is attributable to the State, since the judiciary is a branch of the State".[31]

[24] ICSID Case No. ARB(AF)/16/5, Award, 7 May 2021, para. 417.
[25] *Ibid*., para. 422.
[26] ICSID Case No. ARB/14/32, Award, 5 November 2021, para. 315.
[27] *Ibid*., para. 316.
[28] *Ibid*., para. 305.
[29] ICSID Case No. ARB/16/38, Award, 28 February 2020, para. 312.
[30] *Ibid*., para. 313.
[31] IUSCT, Award No. 604-A15 (II:A)/A26 (IV)/B43-FT, Partial Award, 10 March 2020, para. 1141.

International arbitral tribunal (under the ICSID Convention)

In *Ortiz Construcciones y Proyectos S.A. v. People's Democratic Republic of Algeria*, the arbitral tribunal referred to article 4 and the commentary thereto and noted that it was uncontested that "any person or entity having the status of a State organ under Algerian law is a *de jure* organ of the State of Algeria" and that "article 4 (2) does not exclude the possibility of a person or entity that does not have that status of a State organ under Algerian law nevertheless being a *de facto* organ, or of the acts or omissions of such a *de facto* organ being attributable to the State of Algeria under article 4". [32] The tribunal stressed that articles 4 to 11 reflected customary international law on the subject of State responsibility.[33]

International arbitral tribunal (under Annex VII to the 1982 United Nations Convention on the Law of the Sea)

The arbitral tribunal constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea in *The "Enrica Lexie" Incident (Italy v. India)* referred to article 4, suggesting that "there exists a presumption under international law that a State is right about the characterization of the conduct of its official as being official in nature".[34]

World Trade Organization Panel

The panel established in *Saudi Arabia – Measures concerning the Protection of Intellectual Property Rights* cited the text of article 4, noting that as a consequence of such rule "a [WTO] Member is responsible for actions at all levels of government (local, municipal, federal) and for all actions taken by any agency within any level of government. Thus, the responsibility of Members under international law applies irrespective of the branch of government at the origin of the action having international repercussions".[35]

International arbitral tribunal (under the ICSID Convention)

In *Carlos Ríos and Francisco Ríos v. Republic of Chile*, the arbitral tribunal cited the commentary to article 4, noting that, except in the case of umbrella clauses contained in investment treaties, "in order for the international responsibility of a State to be engaged in connection with the breach of an investment treaty, the State must have acted in the exercise of sovereign prerogatives, not as a party in a contractual relationship".[36]

International arbitral tribunal (under SCC rules)

The arbitral tribunal in State Development Corporation "VEB.RF" v. Ukraine referred to article 4 in ascertaining whether the claimant investor should be characterized as an organ of the Russian Federation.[37] The tribunal cited the commentary to article 4, paragraph 2, according to which "it is not sufficient to refer to internal law for the status of State organs. In some systems the status and functions of various entities are determined not only by law but also by practice, and reference exclusively to internal law would be misleading".[38] The tribunal concluded "that the internal law of the

[32] ICSID Case No. ARB/17/1, Award, 29 April 2020, paras. 160–161.
[33] *Ibid*., para. 155.
[34] PCA Case No. 2015-28, Award, 21 May 2020, para. 858.
[35] WTO, Panel Report, WT/DS567/R, 16 June 2020, para. 7.50.
[36] ICSID Case No. ARB/17/16, Award, 11 January 2021, para. 259.
[37] SCC Case No. V2019/088, Partial Award on Preliminary Objections, 31 January 2021, para. 153.
[38] *Ibid*., para. 154.

Russian Federation may be relevant in the characterization of the Claimant as a matter of international law, but it will not be determinative of that characterization".[39]

International arbitral tribunal (under the ICSID Convention)

In *Naturgy Energy Group, S.A., and Naturgy Electricidad Colombia, S.L. v. Republic of Colombia*, the arbitral tribunal analysed whether the national authorities could be responsible for the debt for non-payment of electricity bills by certain governmental entities to the investor's local company. The tribunal referred to article 4, noting that, "while the Tribunal recognizes that the concept of State organ is broadly defined in article 4 …, the Tribunal reads this article simply as attributing the debts of regional public entities to the State".[40] However, it rejected the idea that all debts from decentralized entities, including city halls and clinics, could be considered attributable to the State.[41]

International arbitral tribunal (under UNCITRAL rules)

The arbitral tribunal in *Zhongshan Fucheng Industrial Investment Co. Ltd. v. Federal Republic of Nigeria* took the view that "all organs of the State, including those which have an independent existence in domestic law, are to be treated as part of the State. This is customary international law, and is clear in the light of the Articles".[42] The tribunal also cited articles 1, 5, 9, 34, 36 and 38.[43]

International arbitral tribunal (under the ICSID Additional Facility Rules)

In *América Móvil S.A.B. de C.V. v. Colombia*, the arbitral tribunal recalled the duty of international judges to respect domestic judicial decisions concerning issues of domestic law, but noted that, pursuant to article 4, "in some cases, actions of the judiciary, like those of other branches of Government, may also give rise to State responsibility".[44]

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *Muhammet Çap & Sehil Inşaat Endustri ve Ticaret Ltd. Sti. v. Turkmenistan* recalled that "under international law, the State is treated as a unity".[45] Furthermore, the tribunal pointed out that "the unity of the State in international law is the reason why all conduct of any State organ is attributable to the State under ILC Article 4 … Thus, the conduct of central and local State organs will be attributable to the State, as will be the conduct of legislative, judicial or executive organs".[46]

Furthermore, citing the commentary to article 4, the tribunal noted that "it is irrelevant if the State organ's conduct is sovereign or commercial in nature. While the nature of the conduct can be determinative for a liability analysis, for purposes of attribution under ILC Article 4, a State organ's commercial conduct will also be deemed an act of the State".[47] It considered that "the fact that an entity is not specifically classified as a State organ under domestic law, while relevant, is not outcome-determinative for the attribution inquiry under ILC Article 4, which is carried out pursuant to

[39] *Ibid*., para. 155.
[40] ICSID Case No. UNCT/18/1, Award, 12 March 2021, para. 423.
[41] See, generally, *ibid*., paras. 421–423.
[42] UNCITRAL, Final Award, 26 March 2021, para. 72.
[43] *Ibid*., paras. 72 and 134–135.
[44] ICSID Case No. ARB(AF)/16/5 (see footnote 24 above), para. 345.
[45] ICSID Case No. ARB/12/6 (see footnote 16 above), para. 742.
[46] *Ibid*., para. 743.
[47] *Ibid*., para. 744.

international law. Equally, the fact that an entity may have separate legal personality is not *per se* an impediment to that entity qualifying as a State organ".[48]

The tribunal considered a number of factors to determine "whether an entity can be deemed a State organ in international law": "(i) whether the entity carries out an overwhelming governmental purpose; (ii) whether the entity relies on other State organs for making and implementing decisions; (iii) whether the entity is in a relationship of complete dependence on the State; and (iv) whether the entity carries out the role of an executive agency, merely implementing decisions taken by State organs."[49]

The tribunal concluded that "the conduct of State ministries and State agencies, and the conduct of subdivisions of State, such as provinces and municipalities, are always attributable to a State under ILC Article 4".[50]

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *Eco Oro Minerals Corp. v. Republic of Colombia* referred to article 4 in the context of attribution, and found that "Colombia should have ensured that its various arms took the necessary steps to comply with [its] … obligation".[51]

International arbitral tribunal (under the ICSID Convention)

In *Pawlowski AG and Project Sever s.r.o. v. Czech Republic*, the arbitral tribunal concluded that "[t]he Mayor of Benice represents an organ of the Czech Republic at a territorial level, and in accordance with Article 4 of the ILC Articles her conduct must be attributed to the Czech Republic".[52]

Inter-American Court of Human Rights

In *Manuela et al. v. El Salvador*, the Inter-American Court of Human Rights analysed whether the actions of public defenders could be attributable to the State. It referred to article 4, noting that "[t]he Public Defenders' Unit is part of the Office of the Attorney General and can be considered an organ of the State; therefore, its actions should be considered acts of the State in the sense accorded to this by the articles on Responsibility of States for Internationally Wrongful Acts drawn up by the International Law Commission".[53]

Article 5
Conduct of persons or entities exercising elements of governmental authority

International arbitral tribunal (under the ICSID Convention)

In *Ortiz Construcciones y Proyectos S.A. v. People's Democratic Republic of Algeria*, the arbitral tribunal cited the text of article 5 and the commentary thereto,[54] and noted that "jurisprudence consistently indicates that article 5 … imposes two conditions that must both be fulfilled, namely: (i) under national law, the entity in question is authorized to exercise elements of governmental authority, and (ii) the act in question

[48] *Ibid*., para. 745.
[49] *Ibid*., para. 746.
[50] *Ibid*., para. 749.
[51] ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021, para. 821.
[52] ICSID Case No. ARB/17/11, Award, 1 November 2021, para. 373.
[53] Inter-American Court of Human Rights, Series C, No. 441, Judgment (Preliminary Objections, Merits, Reparations and Costs), 2 November 2021, para. 123.
[54] ICSID Case No. ARB/17/1 (see footnote 32 above), paras. 193 and 195–197.

involves the exercise of governmental authority."[55] The tribunal noted that "acts *jure gestionis* of public or private entities cannot be attributed to the State in principle under article 5, since the article concerns precisely the determination of whether the entity in question is exercising the functions, or elements, of governmental authority".[56]

Furthermore, the tribunal noted that, despite the absence in the State responsibility articles of a definition of the term "elements of governmental authority", it took the view that "this involves establishing in each case, in the light of the circumstances and evidence of the effective exercise of elements of sovereign authority, what the situation is",[57] and that the commentary "provides certain criteria that make it possible to identify the scope of governmental authority, such as (i) the content of the powers, (ii) the way they are conferred on an entity, (iii) the purposes for which they are to be exercised and (iv) the extent to which the entity is accountable to government for their exercise".[58]

International arbitral tribunal (under the ICSID Additional Facility Rules)

In *Strabag SE v. Libya*, the arbitral tribunal analysed whether Libya had entered into a contract with the investor through the conduct of local authorities.[59] The tribunal considered that to interpret "Libya" as only the Government of Libya would fail to take into account that, as noted in the commentary to article 5, "States may operate through 'parastatal entities, which exercise elements of governmental authority in place of State organs ...]'. The Tribunal therefore believes that [the text of the treaty] does not mean only the Government of Libya, but may also include other Libyan bodies".[60]

Permanent Court of Arbitration (under UNCITRAL rules)

The arbitral tribunal in *Venezuela US, S.R.L. v. Bolivarian Republic of Venezuela* referred to article 5, noting that "[t]he concept of 'governmental authority' is not defined in the ILC Articles. What, however, is required is that the law of the State authorizes an entity to exercise some aspects of that State's power, that is, public authority".[61]

International arbitral tribunal (under the ICSID Convention)

In *Interocean Oil Development Company and Interocean Oil Exploration Company v. Federal Republic of Nigeria*, the arbitral tribunal recalled that "[i]n principle, State-controlled entities are considered as separate from the State, unless they exercise elements of governmental authority within the meaning of ILC Article 5".[62]

Article 6
Conduct of organs placed at the disposal of a State by another State

European Court of Human Rights

In *Big Brother Watch and others v. United Kingdom*, the Grand Chamber of the European Court of Human Rights stated that article 6 would be relevant in a case of interception of communications by foreign intelligence services "if the foreign

[55] *Ibid*., para. 194; see also paras. 196–197.
[56] *Ibid*., para. 200.
[57] *Ibid*., para. 201.
[58] *Ibid*., para. 202.
[59] ICSID Case No. ARB(AF)/15/1, Award, 29 June 2020, para. 168.
[60] *Ibid*., para. 170.
[61] PCA Case No. 2013-34 (see footnote 14 above), para. 198.
[62] ICSID Case No. ARB/13/20, Award, 6 October 2020, para. 297.

intelligence services were placed at the disposal of the receiving State and were acting in exercise of elements of the governmental authority of that State".[63]

Article 7
Excess of authority or contravention of instructions

International arbitral tribunal (under Annex VII to the 1982 United Nations Convention on the Law of the Sea)

The arbitral tribunal constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea in *The "Enrica Lexie" Incident (Italy v. India)* noted that even if State agents were acting "*ultra vires* or contrary to their instructions or orders …, this would not preclude them from enjoying immunity *ratione materiae* as long as they continued to act in the name of the State and in their 'official capacity'". The tribunal recalled article 7, according to which "conduct by a State organ acting in its official capacity shall be attributable to the State 'even if it exceeds its authority or contravenes instructions'".[64]

International arbitral tribunal (under the ICSID Additional Facility Rules)

The arbitral tribunal in *Strabag SE v. Libya* analysed an argument presented by the respondent State "to the effect that that if damage was inflicted by Libya's military forces, it resulted from unauthorized conduct by forces acting outside of their orders". The tribunal referred to the commentary to article 7, indicating that "[a]s a matter of international law, the International Law Commission affirms that the responsibility of a State under Article 91 of Geneva Protocol I – that the State 'shall be responsible for all acts [committed] by persons forming part of its armed forces' – 'clearly covers acts committed contrary to orders or instructions'".[65]

Article 8
Conduct directed or controlled by a State

International arbitral tribunal (under the ICSID Convention)

In *Ortiz Construcciones y Proyectos S.A. v. People's Democratic Republic of Algeria*, the arbitral tribunal cited article 8,[66] recalling that the commentary thereto clarified that "the three terms 'instructions', 'direction' and 'control' are disjunctive" and that "it is sufficient to establish any one of them".[67] The tribunal analysed the degree of State control required over a company to apply article 8, and considered "that a mere recommendation or encouragement is not sufficient to satisfy the criterion of instruction."[68] Instead, "there are two elements to determining effective control: first, determining whether the entity in question is under the general control of the State, and, second, determining whether the State has exercised specific control during the act whose attribution to the State is being sought".[69]

The tribunal distinguished the application of article 8 from that of other relevant provisions, noting that:

> Conduct of entities under the effective control of the State that is unauthorized or contrary to instructions is not in principle attributable to the State. Indeed,

[63] ECHR, Grand Chamber, Applications No. 58170/13, No. 62322/14 and No. 24960/15, Judgment, 25 May 2021, para. 495.
[64] PCA Case No. 2015-28 (see footnote 34 above), para. 860.
[65] ICSID Case No. ARB(AF)/15/1 (see footnote 59 above), para. 319.
[66] ICSID Case No. ARB/17/1 (see footnote 32 above), para. 238.
[67] *Ibid*., para. 239.
[68] *Ibid*., para. 242.
[69] *Ibid*., para. 247.

article 7 of the articles on State responsibility "only applies to the conduct of an organ of a State or of an entity empowered to exercise elements of the governmental authority, i.e. only to those cases of attribution covered by articles 4, 5 and 6." The only exception to this rule is situations where specific instructions have been ignored while the State was exercising effective control over the conduct in question.[70]

World Trade Organization Panel

The panel established in *Saudi Arabia – Measures concerning the Protection of Intellectual Property Rights* cited article 8, indicating that "[t]he fact that acts or omissions of private parties 'may involve some element of private choice' does not negate the possibility of those acts or omissions being attributable to a [WTO] Member insofar as they reflect decisions that are not independent of one or more measures taken by a government (or other organ of the Member)".[71]

International arbitral tribunal (under the ICSID Additional Facility Rules)

In analysing whether a contract entered into by local authorities could be considered contracts of the State, the arbitral tribunal in *Strabag SE v. Libya* considered, among other factors, the nature of the entities involved and of the contracts, and "the circumstances surrounding the conclusion and implementation of the contracts". It took the view that the entities had "acted at the direction of Libyan State organs" and, therefore, "[a]s confirmed by Article 8 of the ILC Draft Articles, their conduct has to be considered as an act of the Libyan State".[72]

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *Muhammet Çap & Sehil Inşaat Endustri ve Ticaret Ltd. Sti. v. Turkmenistan* referred to article 8, noting that the commentary "shows that the mere ownership of shares in a State-owned company is not sufficient in order to establish attribution under ILC Article 8".[73] In that case, no evidence had been adduced "that would demonstrate that Respondent was exercising both a general control over these entities at all relevant times and that it specifically controlled these same entities in connection with specific acts challenged in these proceedings".[74] Instead, the tribunal was unconvinced that the acts and omissions of the entities, which were "not State organs", were "attributable to the State pursuant to Article 8 of the ILC Articles", as it had not been shown that the entities had, "at all relevant times, acted 'on the instructions of, or under the direction or control of, that State in carrying out the conduct'".[75]

Inter-American Court of Human Rights

In *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil*, the Inter-American Court of Human Rights addressed the attribution of State responsibility for the violation of the rights to life and to personal integrity resulting from especially hazardous activities, including the production of fireworks. It cited article 8, noting that "it is possible to attribute responsibility to the

[70] *Ibid*., para. 248, citing James Crawford, *Les articles de la C.D.I. sur la responsabilité de l'État: Introduction, texte et commentaires* (Paris, Pedone, 2003).
[71] WTO, Panel Report (see footnote 35 above), para. 7.51.
[72] ICSID Case No. ARB(AF)/15/1 (see footnote 59 above), para. 176.
[73] ICSID Case No. ARB/12/6 (see footnote 16 above), para. 775.
[74] *Ibid*., para. 776.
[75] *Ibid*., para. 777.

State in the case of … conduct that is under its direction or control".[76] In this case, the Court found, that "[r]egarding this activity, owing to the specific risks that it involved for the life and integrity of the individual, the State had the obligation to regulate, supervise and oversee its exercise, to prevent the violation of the rights of those who were working in this sector".[77]

European Court of Human Rights

In *Carter v. Russia*, the European Court of Human Rights referred to article 8, noting that "a factor indicative of State responsibility" for a particular operation would be that the conduct of the individuals involved in that operation "was directed or controlled by any State entity or official".[78]

Article 11
Conduct acknowledged and adopted by a State as its own

World Trade Organization Panel

The panel established in *Saudi Arabia – Measures concerning the Protection of Intellectual Property Rights* cited the text of article 11, which "provides that '[c]onduct which is not attributable to a State … 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'. By its terms, the principle only applies to conduct that is not otherwise attributable to a State".[79]

European Court of Human Rights

In *Makuchyan and Minasyan v. Azerbaijan and Hungary*, the European Court of Human Rights referred to article 11 in considering whether the conduct of an individual who was not a State agent could be attributable to Azerbaijan. The Court took the view that the current standard under international law, which stemmed from article 11 and the commentary thereto, set "a very high threshold for State responsibility for an act otherwise non-attributable to a State at the time of its commission. That threshold is not limited to the mere 'approval' and 'endorsement' of the act in question… Article 11 of the Draft Articles explicitly and categorically requires the 'acknowledgment' and 'adoption' of that act".[80] The Court determined that, for State responsibility for the impugned acts to have been established, international law would have required "that the Azerbaijani authorities 'acknowledge' and 'adopt' them as acts perpetrated by the State of Azerbaijan – thus directly and categorically assuming responsibility for the killing of G.M. and the preparations for the murder of the first applicant".[81]

[76] Inter-American Court of Human Rights, Series C, No. 407, Judgment (Preliminary Objections, Merits, Reparations and Costs), 15 July 2020, para. 121 (footnote 202).
[77] *Ibid*., para. 121.
[78] ECHR, Third Section, Application No. 20914/07, Judgment, 28 February 2022, para. 166.
[79] WTO, Panel Report (see footnote 35 above), para. 7.161.
[80] ECHR, Fourth Section, Application No. 17247/13, Judgment, 12 October 2020, para. 112.
[81] *Ibid*., para. 113.

Chapter III
Breach of an international obligation

Article 12
Existence of a breach of an international obligation

Permanent Court of Arbitration (under UNCITRAL rules)

The arbitral tribunal in *Venezuela US, S.R.L. v. Bolivarian Republic of Venezuela* referred to articles 12 and 20 to 25, noting that "[t]here is a breach only when the conduct of a State is not in conformity with what is required of it by an international obligation, provided that there are no circumstances precluding the wrongfulness".[82]

Article 13
International obligation in force for a State

Permanent Court of Arbitration (under UNCITRAL rules)

In *Renco Group v. Republic of Peru*, the arbitral tribunal noted that articles 13 and 14 reflected "the general principle that the lawfulness of State conduct must be assessed contemporaneously with that conduct. Since a State is not bound by a conventional obligation it has assumed under a treaty until such treaty enters into force, that treaty obligation cannot be breached until the treaty giving rise to that obligation has come into force".[83]

Permanent Court of Arbitration (under UNCITRAL rules)

In *Spółdzielnia Pracy Muszynianka v. Slovak Republic*, the arbitral tribunal quoted paragraph (7) of the commentary to article 13 and noted that, at the time that the facts occurred, the relevant bilateral investment treaty was in force and, "[a]s a result, … the Respondent's responsibility as well as the monetary consequences of a breach are governed by the BIT irrespective of the latter's termination".[84]

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *Astrida Benita Carrizosa v. Republic of Colombia* referred to article 13, noting that conduct prior to the entry into force of the investment treaty could not constitute a breach, as "confirmed by the rule of State responsibility, according to which there can be no breach of an international obligation if that obligation did not apply at the time of the commission of the allegedly unlawful conduct".[85]

Permanent Court of Arbitration (under UNCITRAL rules)

The arbitral tribunal in *OOO Manolium Processing v. Republic of Belarus* referred to article 13 and the commentary thereto. It noted that article 13 reflected a principle "which is considered 'well established' and supported by State practice", namely that "[t]he prohibition of retroactivity implies that the legality of a Member State's actions under the [Treaty on the Eurasian Economic Union] can only be assessed if the Treaty was in force at the time the act was performed".[86]

[82] PCA Case No. 2013-34 (see footnote 14 above), para. 155.
[83] PCA Case No. 2019-46, Decision on Expedited Preliminary Objections, 30 June 2020, paras. 141–142.
[84] PCA Case No. 2017-08, Award, 7 October 2020, para. 264.
[85] ICSID Case No. ARB/18/5, Award, 19 April 2021, para. 126.
[86] PCA Case No. 2018-06, Final Award, 22 June 2021, para. 269.

Article 14[87]
Extension in time of the breach of an international obligation

Committee on Economic, Social and Cultural Rights

In *S.C. and G.P. v. Italy*, the Committee on Economic, Social and Cultural Rights referred to article 14 in analysing the admissibility of the communication, noting that "an act that may constitute a violation of the Covenant does not have a continuing character merely because its effects or consequences extend in time. Therefore, when the facts constituting a violation of the Covenant occurred before the entry into force of the Optional Protocol for the State party concerned, the mere fact that their consequences or effects have not been extinguished, after the entry into force, is not sufficient grounds for declaring a communication admissible *ratione temporis*."[88]

International arbitral tribunal (under the ICSID Convention)

In *Carlos Ríos and Francisco Ríos v. Republic of Chile*, the arbitral tribunal referred to article 14, according to which "a simple internationally wrongful act is one that does not have a continuing character and, as such, 'occurs at the moment when the act is performed, even if its effects continue'."[89] In contrast, "a continuing wrongful act extends over the period during which the violative act maintains the state of non-compliance with a particular obligation. The breach ceases once the effects of the act cease or the primary obligation no longer exists".[90] The arbitral tribunal emphasized that pursuant to article 14, "determining whether a wrongful act is simple or continuing depends primarily on the content of the primary obligation, which indicates whether the obligation can be breached continuously (for example, during the illegal detention of a foreign public official) or not (for example, in an isolated instance of the unlawful use of force)."[91]

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *Infinito Gold Ltd. v. Republic of Costa Rica* referred to article 14 and the commentary thereto in establishing that it must "determine the point in time in which an act is capable of constituting an international wrong".[92] In particular, the tribunal cited paragraph (13) of the commentary in distinguishing preparatory conduct for an act from the act itself.[93] The tribunal concluded "that a simple act 'occurs' when it has been 'performed' or 'completed'; that the concept of 'completion' relates to the point in time at which the act is capable of constituting a breach, which depends on the content of the primary obligation; and that a breach need not be completed in a single act".[94]

[87] See also *Víctor Pey Casado and Foundation President Allende v. Republic of Chile*, ICSID Case No. ARB/98/2, Decision on Annulment, 8 January 2020, para. 681.
[88] *S.C. and G.P. v. Italy* (E/C.12/65/D/22/2017), para. 6.5, referring to *Merino Sierra and Marino Sierra v. Spain* (E/C.12/59/D/4/2014), para. 6.7, and *Alarcón Flores et al. v. Ecuador* (E/C.12/62/D/14/2016), para. 9.7.
[89] ICSID Case No. ARB/17/16 (see footnote 36 above), para. 187.
[90] *Ibid*., para. 200.
[91] *Ibid*.
[92] ICSID Case No. ARB/14/5, Award, 3 June 2021, para. 231; see also paras. 232–234.
[93] *Ibid*., para. 234.
[94] *Ibid*., para. 235.

Article 15[95]
Breach consisting of a composite act

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *Hydro S.r.l. et al. v. Republic of Albania* cited article 15, noting that the principle of non-retroactivity "does not exclude the application of treaty obligations where the series of acts result in an aggregate breach after the claimant acquires its investment".[96] The tribunal noted that "a composite act 'crystallizes' or 'takes place at a time when the last of these acts occurs and violates (in aggregate) the applicable rule'".[97]

International arbitral tribunal (under Annex VII to the 1982 United Nations Convention on the Law of the Sea)

The arbitral tribunal in the *Duzgit Integrity Arbitration (Republic of Malta v. Democratic Republic of Sao Tome and Principe)* recalled that, under article 15, paragraph 2, the breach of an international obligation by way of a composite act "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". Analysing the facts, the tribunal concluded that a series of actions by Sao Tome and Principe, beginning with certain administrative proceedings and extending until the release of the vessel, were incompatible with the United Nations Convention on the Law of the Sea and therefore internationally wrongful for the entire period concerned.[98]

International arbitral tribunal (under the ICSID Convention)

In *Global Telecom Holding S.A.E. v. Canada*, the arbitral tribunal referred to article 15 and the commentary thereto, noting that, particularly in the case of a composite act, "[i]t is only when the last of the actions or omissions necessary to constitute the wrongful act occurs (which, as the ILC noted, is not necessarily the last act in the series), that the investor can acquire knowledge of the loss caused by that wrongful act".[99]

International arbitral tribunal (under the ICSID Convention)

In *Carlos Ríos and Francisco Ríos v. Republic of Chile*, the arbitral tribunal referred to article 15 and the commentary thereto, noting that "a composite wrongful act is one that results from a series of actions or omissions of the State which, when considered in aggregate, are enough to constitute a breach an international obligation, regardless of whether each individual action or omission of the series might also be considered to constitute a wrongful act in respect of a different obligation".[100] The tribunal went on:

> In the case of composite wrongful acts, there is a State action which, considered together with the acts that precede it, crosses the threshold to constitute the breach of an obligation. It is this action that determines the moment at which an affected subject is able to become aware of the breach and the damage resulting

[95] See also *Víctor Pey Casado and Foundation President Allende v. Republic of Chile*, ICSID Case No. ARB/98/2 (see footnote 87 above), para. 681.
[96] ICSID Case No. ARB/15/28, Award, 24 April 2019, paras. 557–558.
[97] *Ibid*., para. 558, citing *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent's Jurisdictional Objections, 1 June 2012, para. 2.74.
[98] PCA Case No. 2014-07, Award on Reparation, 18 December 2019, para. 86.
[99] ICSID Case No. ARB/16/16, Award, 27 March 2020, para. 411.
[100] ICSID Case No. ARB/17/16 (see footnote 36 above), para. 189.

from it. The fact that other later actions and omissions may aggravate the composite wrongful act whose threshold has already been crossed is irrelevant for the purposes of identifying a violation and the resulting damage.[101]

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *Infinito Gold Ltd. v. Republic of Costa Rica* noted that the commentary to article 15 "makes it clear that, to amount to a composite breach, the various acts must not separately amount to the same breach as the composite act (although they could separately amount to different breaches). It also clarifies that the breach cannot 'occur' with the first of the acts in the series".[102]

Permanent Court of Arbitration (under UNCITRAL rules)

The arbitral tribunal in *OOO Manolium Processing v. Republic of Belarus* noted that while "Art. 15.1 defines the moment when a composite breach is deemed to occur and Art. 15.2 the date and extension in time of the breach",[103] those provisions "do not solve the issue of how the entry into force of a treaty affects the string of acts, where some acts have occurred before and others after the entry into force of that treaty".[104] The tribunal found that "[t]he appropriate solution is to break down the composite claim into individual claims related to measures prior to the Effective Date and claims related to measures after the Effective Date – the Tribunal only having jurisdiction to adjudicate those claims arising out of measures which occurred after the Effective Date".[105]

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

European Court of Human Rights

In *Big Brother Watch and others v. United Kingdom*, the Grand Chamber of the European Court of Human Rights stated that article 16 would be relevant in a case of interception of communications by foreign intelligence services "if the receiving State aided or assisted the foreign intelligence services in intercepting the communications where that amounted to an internationally wrongful act for the State responsible for the services, the receiving State was aware of the circumstances of the internationally wrongful act, and the act would have been internationally wrongful if committed by the receiving State".[106]

[101] *Ibid*., para. 190.
[102] ICSID Case No. ARB/14/5 (see footnote 92 above), para. 230.
[103] PCA Case No. 2018-06 (see footnote 86 above), para. 277.
[104] *Ibid*., para. 280.
[105] *Ibid*., para. 281.
[106] ECHR, Grand Chamber (see footnote 63 above), para. 495.

Article 17
Direction and control exercised over the commission of an internationally wrongful act

European Court of Human Rights

In *Big Brother Watch and others v. United Kingdom*, the Grand Chamber of the European Court of Human Rights stated that article 17 would be relevant in a case of interception of communications by foreign intelligence services "if the receiving State exercised direction or control over the foreign Government".[107]

Chapter V
Circumstances precluding wrongfulness

Article 23
Force majeure

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *(DS)2, S.A., Peter de Sutter and Kristof de Sutter v. Republic of Madagascar* cited article 23, indicating that "under the law, *force majeure* occurs when a wrongful act is due to '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'."[108] However, the tribunal concluded that in the facts of the case, there was nothing to indicate that it had been materially impossible for the State to perform its obligation.

Article 24
Distress

International arbitral tribunal (under the ICSID Convention)

In *(DS)2, S.A., Peter de Sutter and Kristof de Sutter v. Republic of Madagascar*, the arbitral tribunal quoted article 24, noting that, in a situation of distress, "the author of a wrongful act … 'has no other reasonable way … of saving the author's life or the lives of other persons entrusted to the author's care.' Again, as already indicated, it is not clear how inaction by law enforcement could have been the only way to save lives".[109]

Article 25
Necessity

International arbitral tribunal (under the ICSID Convention)

In *(DS)2, S.A., Peter de Sutter and Kristof de Sutter v. Republic of Madagascar*, the arbitral tribunal referred to article 25, explaining that, in a situation of necessity, "a State is exempted from its responsibility for acting contrary to its international obligations if its conduct is 'the only way for the State to safeguard an essential interest against a grave and imminent peril'. This means that, in this case, the inaction of Malagasy law enforcement on the ground … would have had to be this 'only way'. It is sufficient to articulate the hypothesis to see that it has no basis."[110]

[107] *Ibid*.
[108] ICSID Case No. ARB/17/18, Award, 17 April 2020, para. 347.
[109] *Ibid*., para. 349.
[110] *Ibid*., para. 348.

Article 26
Compliance with peremptory norms

Committee on the Elimination of Racial Discrimination

In its decision on jurisdiction regarding the inter-State communication *State of Palestine v. Israel*, the Committee on the Elimination of Racial Discrimination cited the commentary to article 26, noting that "several international bodies have recognized the essential character of the principle of the prohibition of racial discrimination for the international community as a whole", and emphasizing that "the International Law Commission has stated that the peremptory norms (*jus cogens*) that are clearly accepted and recognized include the prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination".[111]

Article 27
Consequences of invoking a circumstance precluding wrongfulness

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *Eco Oro Minerals Corp. v. Republic of Colombia* referred to articles 27, under which the invocation of a circumstance precluding wrongfulness is without prejudice to the question of compensation for any material loss caused by the act in question, and to article 36.[112] The tribunal therefore determined that under the applicable investment treaty, "whilst a State may adopt or enforce a measure pursuant to the stated objectives" in the treaty, "this does not prevent an investor claiming … that such a measure entitles it to the payment of compensation".[113]

Part Two
Content of the international responsibility of a State

Chapter I
General principles

Article 30
Cessation and non-repetition

International arbitral tribunal (under the ICSID Convention)

In *Pawlowski AG and Project Sever s.r.o. v. Czech Republic*, the arbitral tribunal noted that under article 30, "the first obligation [of States] arising from internationally wrongful acts" was "to cease the act, if it is ongoing", and to "offer appropriate assurances and guarantees of non-repetition, if circumstances so require".[114]

Article 31
Reparation

Permanent Court of Arbitration (under UNCITRAL rules)

In *William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, the arbitral tribunal referred to the commentary to article 31, noting that "[u]nder international law, a failure by an injured State to take reasonable steps to limit the losses it incurred as a result of an

[111] CERD/C/100/5, para. 40.
[112] ICSID Case No. ARB/16/41 (see footnote 51 above), para. 835.
[113] *Ibid*., para. 830.
[114] ICSID Case No. ARB/17/11 (see footnote 52 above), para. 723.

internationally wrongful act by another State may result in a reduction of recovery to the extent of the damage that could have been avoided".[115]

The arbitral tribunal noted that "the duty to mitigate is a restriction on compensatory damages", whose rationale "is to encourage efficiency and to minimize the consequences of unlawful conduct (such as a breach of a treaty)".[116] The tribunal specified that the "duty to mitigate applies if: (i) a claimant is unreasonably inactive following a breach of a treaty; or (ii) a claimant engages in unreasonable conduct following a breach of treaty".[117] The tribunal explained that the "first limb of the mitigation principle concerns the unreasonable failure by the claimant to act subsequent to a breach of treaty, where it could have reduced the damages arising (including by incurring certain additional expenses)", while the second limb, "conversely, concerns the unreasonable incurring of expenses by the claimant subsequent to a treaty breach, which results in increasing the size of its claim".[118]

International Tribunal for the Law of the Sea

In *M/V "Norstar" (Panama v. Italy)*, the International Tribunal for the Law of the Sea recalled that article 31 "is part of customary international law",[119] and emphasized "the requirement of a causal link between the wrongful act committed and damage suffered".[120]

Permanent Court of Arbitration (under UNCITRAL rules)

In *Serafín García Armas and Karina García Gruber v. Bolivarian Republic of Venezuela*, the arbitral tribunal cited article 31, noting that "customary international law also recognizes the right of the Claimants to full reparation for the damage suffered as a consequence of the acts of the Defendant".[121]

International arbitral tribunal (under the ICSID Convention)

In *9REN Holding S.à.r.l. v. Kingdom of Spain*, the arbitral tribunal noted that in absence of pertinent "explicit guidance to quantum" in the Energy Charter Treaty, "resort is had to the customary international law principle of full compensation", referring to article 31.[122]

International arbitral tribunal (under the ICSID Convention)

In *SolEs Badajoz GmbH v. Kingdom of Spain*, the arbitral tribunal considered that the compensation owed by the State to the investor was "governed by the customary international law of State responsibility", referring to the *Case concerning the Factory at Chorzów* and article 31.[123] The tribunal emphasized that "the injury for which reparation is due includes damage 'caused by' the State's internationally wrongful act", and, quoting the commentary to article 31, noted that the "notion of a

[115] PCA Case No. 2009-04, Award on Damages, 10 January 2019, para. 196.
[116] *Ibid*., para. 204.
[117] *Ibid*., para. 204.
[118] *Ibid*., para. 205.
[119] ITLOS, *M/V "Norstar" (Panama v. Italy)* (see footnote 12 above), p. 95, para. 318, citing *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 10, at p. 62, para. 194.
[120] *Ibid*., pp. 97–98, para. 333, citing *M/V "Virginia G" (Panama/Guinea Bissau)* (see footnote 12 above), pp. 118–120, paras. 435, 439 and 442.
[121] PCA Case No. 2013-03, Final Award, 26 April 2019, para. 476.
[122] ICSID Case No. ARB/15/15, Award, 31 May 2019, para. 373.
[123] ICSID Case No. ARB/15/38, Award, 31 July 2019, para. 476, citing Permanent Court of International Justice, *Case concerning the Factory at Chorzów, Judgment No. 13 (Claim for Indemnity) (Merits) of 13 September 1928, P.C.I.J., Series A, No. 17*, p. 1, at p. 47.

sufficient causal link which is not too remote is embodied in the general requirement in article 31".[124]

International arbitral tribunal (under the ICSID Convention)

In *Glencore International A.G. and C.I. Prodeco S.A. v. Republic of Colombia*, the arbitral tribunal stated that the principle of full reparation was adopted in the *Case concerning the Factory at Chorzów* and "subsequently codified" in the articles.[125] The tribunal concluded that "[c]ustomary international law rules on reparation for breaches of international law are set out in the ILC Articles", citing in particular article 31.[126]

Inter-American Court of Human Rights

In *Álvarez Ramos v. Venezuela*, the Inter-American Court of Human Rights cited the State responsibility articles and the American Convention on Human Rights, indicating "that any violation of an international obligation that has produced harm entails the obligation to make adequate reparation and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary law on State responsibility".[127]

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v. Kingdom of Spain* observed that while the applicable investment protection treaty did not "specify the consequences of a breach …, customary international law applies". The tribunal recalled that "the relevant principles of customary international law are derived from the … judgment [of the Permanent Court of International Justice] in the *Chorzów Factory Case* and are recorded in Articles 31–38 of the ILC Draft Articles".[128]

International arbitral tribunal (under the ICSID Convention)

While assessing the amount of compensation owed by the State to the investor, the arbitral tribunal in *Perenco Ecuador Limited v. Ecuador* found that no compensation was owed during the period prior to the promulgation of a decree that had violated the standard of protection contained in the relevant investment treaty, recalling that according to the commentary to article 31, "it is only '[i]njury … caused by the internationally wrongful act of a State' for which full reparation must be made".[129]

Inter-American Court of Human Rights

In an order in *Cesti Hurtado v. Peru*, the Inter-American Court of Human Rights cited articles 1 and 31, recalling that "whenever a State is found responsible for an internationally wrongful act that has caused damage, an obligation arises for that State to make full reparation for the damage".[130]

[124] ICSID Case No. ARB/15/38 (see previous footnote), para. 477.
[125] ICSID Case No. ARB/16/6, Award, 27 August 2019, para. 1567.
[126] *Ibid*., paras. 1569–1570.
[127] Inter-American Court of Human Rights, Series C, No. 380, Judgment (Preliminary Objection, Merits, Reparations and Costs), 30 August 2019, para. 192.
[128] ICSID Case No. ARB/15/36, Award, 6 September 2019, para. 609.
[129] ICSID Case No. ARB/08/6, Award, 27 September 2019, para. 127.
[130] Inter-American Court of Human Rights, Order (Request for Provisional Measures and Monitoring Compliance with Judgment), 14 October 2019, para. 30.

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *RWE Innogy GmbH and RWE Innogy Aersa S.A.U. v. Kingdom of Spain* referred to article 31 and the commentary thereto, noting the "basic proposition that reparation must, 'as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed'".[131]

Ad hoc committee (under the ICSID Convention)

The ad hoc committee in the annulment proceeding *Víctor Pey Casado and Foundation President Allende v. Republic of Chile* rejected an argument that the nature of the violation as a single act or continuous conduct could affect the analysis pertaining to adequate compensation. Instead, it noted that "[i]t does not make any difference whether a wrongful act is a single act or 'a course of conduct', as explicitly provided for in Articles 14 and 15 of the Articles on State Responsibility. A course of conduct cannot remove the wrongfulness of one or many acts, and it cannot remove the obligation of the wrongdoer to make full reparation for injury, as provided for in Article 31 of the Articles on State Responsibility".[132]

Iran-United States Claims Tribunal

In a partial award rendered in 2020, the Iran-United States Claims Tribunal noted that "[u]nder customary international law, as reflected in Article 31 (1) of the ILC Articles, '[t]he responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act'".[133] Referring to the commentary to article 31, the Tribunal indicated that "[u]nder international law, a failure by an injured State to take reasonable steps to limit the losses it incurred as a result of an internationally wrongful act by another State may result in a reduction of recovery to the extent of the damage that could have been avoided".[134]

International arbitral tribunal (under the ICSID Convention)

In (*DS)2, S.A., Peter de Sutter and Kristof de Sutter v. Republic of Madagascar*, the arbitral tribunal referred to article 31, paragraph 2, recalling that "injury 'includes any damage, whether material or moral, caused by the internationally wrongful act of a State'".[135]

International arbitral tribunal (under Annex VII to the 1982 United Nations Convention on the Law of the Sea)

The arbitral tribunal constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea in *The "Enrica Lexie" Incident (Italy v. India)* recalled that "under customary international law as codified in the ILC Draft Articles on State Responsibility, '[t]he responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act', which may include 'any damage, whether material or moral, caused by the internationally

[131] ICSID Case No. ARB/14/34, Decision on Jurisdiction, Liability and Certain Issues of Quantum, 30 December 2019, paras. 685 (see also paras. 733 and 741), citing Permanent Court of International Justice, *Case concerning the Factory at Chorzów* (see footnote 123 above), p. 47.

[132] ICSID Case No. ARB/98/2 (see footnote 87 above), para. 681.

[133] IUSCT, Award No. 604-A15 (II:A)/A26 (IV)/B43-FT (see footnote 31 above), para. 1787.

[134] *Ibid*., para. 1796.

[135] ICSID Case No. ARB/17/18 (see footnote 108 above), para. 396.

wrongful act'. Specifically, full reparation shall take the form of restitution, compensation and satisfaction, either singly or in combination".[136]

Permanent Court of Arbitration (under UNCITRAL rules)

In *Deutsche Telekom AG v. Republic of India*, the arbitral tribunal opined that it "must seek to implement the full reparation principle under customary international law as set out in *Chorzów* and restated in the ILC Articles, a point which is undisputed".[137] Furthermore, the tribunal recalled that:

> [I]n accordance with Article 31 of the ILC Articles, the determination of damages under international law implies a three-step process:
>
> i. establishing a breach;
>
> ii. ascertaining that the injury was caused by that breach (causation); and
>
> iii. determining the amount of compensation due for the injury caused (valuation or quantification of damages).[138]

Inter-American Court of Human Rights

In a provisional measures order in the case of *Galindo Cárdenas et al. v. Peru*, the Inter-American Court of Human Rights cited articles 1 and 31, noting that "under international law, whenever a State is found responsible for an internationally wrongful act that has caused damage, an obligation arises for that State to make full reparation for the damage".[139]

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *STEAG GmbH v. Kingdom of Spain* found that in the absence of a specific rule on compensation in the applicable investment treaty, the general rule of article 31 was applicable,[140] pursuant to which "the internationally wrongful conduct of the State must be the actual and proximate cause of the damage".[141]

Permanent Court of Arbitration (under UNCITRAL rules)

In *Cairn Energy PLC and Cairn UK Holdings Limited v. Republic of India*, the arbitral tribunal, citing article 31 and the commentary thereto, noted that India was "only under an obligation to repair 'the injury caused by the internationally wrongful act', which includes 'any damage, whether material or moral, caused by the internationally wrongful act'", and that "it is only 'the injury resulting from or ascribable to the wrongful act, rather than any and all consequences flowing from an internationally wrongful act', that must be repaired".[142]

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *Silver Ridge Power B.V. v. Italian Republic* considered that under article 31, paragraph 1, "which represents customary international law, the State responsible for an internationally wrongful act is under an obligation to make full

[136] PCA Case No. 2015-28 (see footnote 34 above), para. 1082.
[137] PCA Case No. 2014-10, Final Award, 27 May 2020, para. 287.
[138] *Ibid*., para. 119.
[139] Inter-American Court of Human Rights, Order (Request for Provisional Measures and Monitoring Compliance with Judgment), 3 September 2020, para. 17.
[140] ICSID Case No. ARB/15/4, Decision on Jurisdiction, Liability and Directions on Quantum, 8 October 2020, para. 745.
[141] *Ibid*., para. 748.
[142] PCA Case No. 2016-07, Final Award, 21 December 2020, para. 1862.

reparation for the injury caused by the internationally wrongful act. Hence, there can be no doubt that, under general international law, the existence of a causal link between the alleged infringement of obligations under international law and the damage ensuing from it is an indispensable prerequisite for a compensation claim".[143] The tribunal also cited articles 1 and 2.[144]

Inter-American Commission on Human Rights

In *Ronald Enrique Castedo Allerding v. Bolivia*, the Inter-American Commission on Human Rights, citing article 31, mentioned that it is a "cardinal principle of public international law … that when a State violates any of its international obligations, it incurs international responsibility, which immediately places upon it the obligation to make full reparation for the damage caused by its incompliance".[145] Thus, reparation "is a secondary obligation that arises for a State as a consequence of its violation of a primary obligation under international law".[146]

Permanent Court of Arbitration (under UNCITRAL rules)

Citing articles 31 and 36, the arbitral tribunal in *OOO Manolium Processing v. Republic of Belarus* indicated that the provision of the treaty concerned in that case "stating that adequate compensation shall be calculated as the fair market value is in line with the principle of full reparation of the injury caused, firmly established in jurisprudence since the seminal *Chorzów Factory* decision of the Permanent Court of International Justice and subsequently codified in the ILC Articles".[147]

Ad hoc committee (under the ICSID Convention)

The ad hoc committee in the annulment proceeding *Infrastructure Services Luxembourg S.à.r.l. and Energía Termosolar B.V. v. Kingdom of Spain* cited the text of article 31, indicating that international law "provides that reparation must 'as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed'".[148]

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *Eco Oro Minerals Corp. v. Republic of Colombia* noted that, pursuant to article 31, "Colombia is only required to make full reparation for damage 'caused by' the wrongful act".[149] However, the investor "must adduce 'persuasive evidence' that its loss was proximately caused by Colombia's actions".[150] The tribunal accepted, in terms of ascertaining the quantum of loss, "that the appropriate standard is full reparation for the loss suffered as a result of the breach, as provided for in the ILC Draft Articles".[151]

[143] ICSID Case No. ARB/15/37, Award, 26 February 2021, para. 513.
[144] *Ibid*., para. 512.
[145] Inter-American Commission of Human Rights, Petition No. 1178-13, Admissibility Report No. 117/21, 13 June 2021, para. 40.
[146] *Ibid*.
[147] PCA Case No. 2018-06 (see footnote 86 above), para. 618.
[148] ICSID Case No. ARB/13/31, Decision on Annulment, 30 July 2021, para. 251, citing Permanent Court of International Justice, *Case concerning the Factory at Chorzów* (see footnote 123 above), p. 47.
[149] ICSID Case No. ARB/16/41 (see footnote 51 above), para. 839.
[150] *Ibid*., para. 839.
[151] *Ibid*., para. 894.

International arbitral tribunal (under the ICSID Additional Facility Rules)

The arbitral tribunal in *Lion Mexico Consolidated L.P. v. United Mexican States* indicated that "[t]he customary international law principle of full reparation has been embodied in Art. 31(1)".[152]

International arbitral tribunal (under the ICSID Convention)

In *Pawlowski AG and Project Sever s.r.o. v. Czech Republic*, the arbitral tribunal cited article 31, which, as a "second consequence" of internationally wrongful acts, "requires that the delinquent State make 'full reparation' for the 'injury caused'".[153]

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *Casinos Austria International GmbH and Casinos Austria Aktiengesellschaft v. Argentine Republic* stated that the duty to provide full reparation was part of "customary international law … and is enshrined in Article 31 (1) of the ILC Articles".[154] The tribunal emphasized that "there must be a proximate causal link between the violation of international law and the injury caused to Claimants" and that "only 'the injury caused by the internationally wrongful act' has to be fully repaired. By contrast, hypothetical, speculative as well as undetermined and remote damage cannot be compensated".[155]

Additionally, the arbitral tribunal found that the duty to provide full compensation "also encompasses consequential damages that Claimants would not have incurred 'but for' Respondent's unlawful conduct", including "consequential damage that occurred after the internationally wrongful act occurred".[156]

Permanent Court of Arbitration (under UNCITRAL rules)

The arbitral tribunal in *Bank Melli Iran and Bank Saderat Iran v. Kingdom of Bahrain* cited the text of article 31 and recalled that "it is a basic principle of international law that States incur responsibility for their internationally wrongful acts. The corollary to this principle is that the responsible State must repair the damage caused by its internationally wrongful act".[157] The tribunal also referred to articles 36[158] and 37.[159]

International Court of Justice

In its judgment on reparations in *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, the International Court of Justice noted that article 31 "reflects customary international law".[160] In its analysis of expert evidence on the loss of lives during the conflict, the Court stated that "[s]ome of the lives lost during the conflict (the number of which cannot be determined) may be regarded as having a cause that is too remote from the internationally wrongful acts of Uganda to be a basis for a claim of reparation against it", and concluded that "the

[152] ICSID Case No. ARB(AF)/15/2, Award, 20 September 2021, para. 623.
[153] ICSID Case No. ARB/17/11 (see footnote 52 above), para. 725.
[154] ICSID Case No. ARB/14/32 (see footnote 26 above), para. 441.
[155] *Ibid*., para. 442.
[156] *Ibid*., para. 575.
[157] PCA Case No. 2017-25, Final Award, 9 November 2021, para. 738.
[158] *Ibid*., para. 740.
[159] *Ibid*., para. 701.
[160] International Court of Justice, *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, Judgment (Reparations), 9 February 2022, para. 70.

mortality surveys presented as evidence cannot contribute to the determination of the number of lives lost that are attributable to Uganda".[161]

Article 32
Irrelevance of internal law

Permanent Court of Arbitration (under UNCITRAL rules)

The arbitral tribunal in *Renco Group v. Republic of Peru* referred to article 32, noting that "[w]hile international law generally holds individual States' internal law to be irrelevant to a State's obligations under international law, [the tribunal] nevertheless acknowledges that issues may arise in respect of which there is no clearly applicable treaty or customary international law obligation. … In this domain, and especially where the international rule to be applied finds its origin in analogous national law, the 'rules generally accepted by municipal legal systems' may be invoked in order that the ultimate result not 'lose touch with reality'".[162]

Court of Justice of the European Union

In *European Commission v. Hungary*, the Grand Chamber of the Court of Justice of the European Union found that it was clear from article 32 "that the responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under international law".[163]

Article 33
Scope of international obligations set out in this part

International arbitral tribunal (under the ICSID Convention)

In addressing the principle of full reparation reflected in article 31, the arbitral tribunal in *ConocoPhillips Petrozuata B.V. et al. v. Bolivarian Republic of Venezuela* referred to article 33, indicating that "the provisions on State responsibility are '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' (Art. 33(2))".[164]

Chapter II
Reparation for injury

Article 34[165]
Forms of reparation

Iran-United States Claims Tribunal

In a partial award rendered in 2020, the Iran-United States Claims Tribunal noted that "[t]he forms of reparation recognized under customary international law as ways of satisfying a responsible State's obligation to make full reparation include … restitution in kind and compensation"[166]. The Tribunal recalled in particular the texts of articles 34 and 35.[167]

[161] *Ibid*., para. 148.
[162] PCA Case No. 2019-46 (see footnote 83 above), para. 213.
[163] Court of Justice of the European Union (Grand Chamber), Case No. C-66/18 (see footnote 22 above), para. 90.
[164] ICSID Case No. ARB/07/30, Award, 8 March 2019, para. 208.
[165] See also International Court of Justice, *Armed Activities on the Territory of the Congo* (see footnote 160 above), para. 101.
[166] IUSCT, Award No. 604-A15 (II:A)/A26 (IV)/B43-FT (see footnote 31 above), paras. 1788–1789.
[167] *Ibid*., paras. 1789 and 1847.

Permanent Court of Arbitration (under UNCITRAL rules)

In *Cairn Energy PLC and Cairn UK Holdings Limited v. Republic of India*, the arbitral tribunal cited article 34, noting that full reparation "shall take the form of restitution, compensation and satisfaction, either singly or in combination".[168] Following an analysis of the provision, the tribunal determined that the appropriate restitution would include the withdrawal of a tax demand by the Respondent, thus releasing the investor from any obligation to pay it.[169]

International arbitral tribunal (under the ICSID Additional Facility Rules)

The arbitral tribunal in *Lion Mexico Consolidated L.P. v. United Mexican States* indicated that customary law, as codified in article 31, requires full reparation, and that "[a]dditional guidance is provided by Art. 34" on the forms that such full reparation for the injury caused may take.[170]

Article 35[171]
Restitution

European Court of Human Rights

In *Ilgar Mammadov v. Azerbaijan*, the Grand Chamber of European Court of Human Rights cited article 35, which encompassed "the principles of international law whereby a State responsible for a wrongful act is under an obligation to make restitution, … provided that restitution is not 'materially impossible' and 'does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation'".[172] The Court also cited articles 30 to 32 and 34 to 37.[173]

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *Glencore International A.G. and C.I. Prodeco S.A. v. Republic of Colombia* cited article 35, explaining that pursuant to that article, "restitution – as opposed to compensation – is the first of the forms of reparation available to a party injured by an internationally wrongful act".[174] The tribunal noted that "the two factors which exclude the possibility of restitution" pursuant to the articles were whether restitution was materially impossible and whether it imposed a disproportionate burden on the party in breach.[175] Referring to article 36, the tribunal noted that, "[i]n certain cases, to ensure full reparation restitution must be completed by compensation".[176]

Iran-United States Claims Tribunal

In a partial award rendered in 2020, the Iran-United States Claims Tribunal cited article 35, recalling "that restitution is the primary form of reparation for injury caused by an internationally wrongful act".[177] The Tribunal therefore concluded that, in that case, "ordering the United States to arrange for the transfer of the Stradivarius

[168] PCA Case No. 2016-07 (see footnote 142 above), para. 1872.
[169] *Ibid*., paras. 1874 and 1877.
[170] ICSID Case No. ARB(AF)/15/2 (see footnote 152 above), paras. 623–625.
[171] See also *Pawlowski AG and Project Sever s.r.o. v. Czech Republic*, ICSID Case No. ARB/17/11 (see footnote 52 above), para. 373.
[172] ECHR, Grand Chamber, *Proceedings under Article 46 § 4 in the Case of Ilgar Mammadov v. Azerbaijan*, Application No. 15172/13, Judgment, 29 May 2019, para. 151.
[173] *Ibid*., paras. 84–88.
[174] ICSID Case No. ARB/16/6 (see footnote 125 above), para. 1572.
[175] *Ibid*., para. 1576.
[176] *Ibid*., para. 1577.
[177] IUSCT, Award No. 604-A15 (II:A)/A26 (IV)/B43-FT (see footnote 31 above), para. 1789.

constitutes the proper remedy, so as to put Iran in the situation [in which] it would have been had the breach by the United States not occurred".[178]

International arbitral tribunal (under the ICSID Convention)

In *(DS)2, S.A., Peter de Sutter and Kristof de Sutter v. Republic of Madagascar*, the arbitral tribunal cited articles 35, 36 and 38, noting that "in investment law, full reparation may take the form of restitution or compensation", plus interest.[179]

Article 36[180]
Compensation

International Tribunal for the Law of the Sea

In *M/V "Norstar" (Panama v. Italy)*, the International Tribunal for the Law of the Sea noted that article 36, paragraph 2, provided that "compensation shall cover any financially assessable damages including loss of profits insofar as it is established".[181]

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *9REN Holding S.à.r.l. v. Kingdom of Spain* referred to article 36 in assessing the amount of recoverable legal costs of the proceeding, noting that the claims for legal costs had been made under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, "and not as compensation for an internationally wrongful act subject to the *Chorzów Factory* and other principles of international law".[182]

International arbitral tribunal (under the ICSID Convention)

In *Perenco Ecuador Limited v. Ecuador*, the arbitral tribunal found that, pursuant to article 36, "it should award compensation insofar as [the] damage is not made good by restitution".[183] Furthermore, the tribunal emphasized that "[t]he key point is that financial damage must not only be proximately caused by the unlawful act(s), but that it also be 'assessable', that is, capable of being assessed".[184]

International arbitral tribunal (under the ICSID Convention)

In *(DS)2, S.A., Peter de Sutter and Kristof de Sutter v. Republic of Madagascar*, the arbitral tribunal noted that, pursuant to article 36, "it is generally accepted that compensation can be claimed for incidental expenses incurred as the result of an internationally wrongful act, insofar as they are financially assessable and reasonable".[185]

Permanent Court of Arbitration (under UNCITRAL rules)

The arbitral tribunal in *OOO Manolium Processing v. Republic of Belarus* noted that article 36, paragraph 1, reflected the general principle that "injured claimants bear the burden of demonstrating that there is a sufficiently close relationship between the host State's irregular conduct and the compensation which is being claimed. The duty to

[178] *Ibid*., para. 1849.
[179] ICSID Case No. ARB/17/18 (see footnote 108 above), para. 396.
[180] See also *The "Enrica Lexie" Incident (Italy v. India)*, PCA Case No. 2015-28 (see footnote 34 above), para. 1088.
[181] ITLOS, *M/V "Norstar" (Panama v. Italy)* (see footnote 12 above), p. 116, para. 431.
[182] ICSID Case No. ARB/15/15 (see footnote 122 above), para. 440.
[183] ICSID Case No. ARB/08/6 (see footnote 129 above), para. 74.
[184] *Ibid*., paras. 321–322.
[185] ICSID Case No. ARB/17/18 (see footnote 108 above), para. 427.

compensate extends only to those damages which are legally regarded as the consequence of an unlawful act".[186]

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *Eco Oro Minerals Corp. v. Republic of Colombia* indicated that "[w]here restitution is not possible, pursuant to Article 36 (1) the ILC Draft Articles, a State's obligation is to pay compensation for the damage caused".[187]

International arbitral tribunal (under the ICSID Convention)

In *Pawlowski AG and Project Sever s.r.o. v. Czech Republic*, the arbitral tribunal explained that damages, "under Article 36, include loss of profits insofar as they are established".[188] Furthermore, it stressed that article 36, paragraph 1, reflected the general principle that "injured claimants bear the burden of demonstrating … that the claimed quantum of damage was actually suffered, and … that such damages flowed from the host State's conduct, and that the causal relationship was sufficiently close (i.e., not 'too remote')".[189]

International arbitral tribunal (under the ICSID Convention)

In *Casinos Austria International GmbH and Casinos Austria Aktiengesellschaft v. Argentine Republic*, the arbitral tribunal noted that "[s]ince restitution of Claimants to the status quo ante…is neither requested nor suggested by the Parties, nor is it materially possible, the only form of reparation in question in the present proceeding is compensation in the sense of Article 36 of the ILC Articles". The tribunal further cited the article, noting that "[p]ursuant to paragraph 1 of that provision, Respondent 'is under an obligation to compensate for the damage caused'; pursuant to paragraph 2 of the same provision, 'compensation shall cover any financially assessable damage including loss of profits insofar as it is established'".[190]

Article 37[191]
Satisfaction

International arbitral tribunal (under the ICSID Convention)

In *Pawlowski AG and Project Sever s.r.o. v. Czech Republic*, the arbitral tribunal referred to satisfaction as one of the three forms that full reparation could take, explaining that it "may consist in an acknowledgement of the breach, an expression of regret, a formal apology, or another appropriate modality, as established in Article 37".[192] Moreover, the tribunal indicated that "[t]he only limitation (identified in Article 37 (3) of the ILC Articles) is that the satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State".[193]

International Court of Justice

In its judgment on reparations in *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, the International Court of Justice referred to article 37 and the commentary thereto in analysing a request for reparations in the

[186] PCA Case No. 2018-06 (see footnote 86 above), para. 657.
[187] ICSID Case No. ARB/16/41 (see footnote 51 above), para. 894.
[188] ICSID Case No. ARB/17/11 (see footnote 52 above), para. 726.
[189] *Ibid*., paras. 728–729.
[190] ICSID Case No. ARB/14/32 (see footnote 26 above), para. 441.
[191] See also *The "Enrica Lexie" Incident (Italy v. India)*, PCA Case No. 2015-28 (see footnote 34 above), para. 1087.
[192] ICSID Case No. ARB/17/11 (see footnote 52 above), para. 726.
[193] *Ibid*., para. 738.

form of "the conduct of criminal investigations and prosecutions",[194] observing that the forms of satisfaction listed in article 37, paragraph 2, "are not exhaustive. In principle, satisfaction can include measures such as 'disciplinary or penal action against the individuals whose conduct caused the internationally wrongful act'".[195]

Article 38
Interest

International Tribunal for the Law of the Sea

In *M/V "Norstar" (Panama v. Italy)*, the International Tribunal for the Law of the Sea cited article 38 and noted that, in its commentary thereto, the Commission had observed that "[t]here is no uniform approach, internationally, to questions of quantification and assessment of amounts of interest payable".[196]

International arbitral tribunal (under the ICSID Convention)

In *Tethyan Cooper Company Pty Limited v. Islamic Republic of Pakistan*, the arbitral tribunal quoted article 38 "as reflective of the standard [of full reparation] under customary international law".[197]

Permanent Court of Arbitration (under UNCITRAL rules)

The tribunal in *Stans Energy Corp. and Kutisay Mining LLC v. Kyrgyz Republic (II)* reasoned that "[t]he principle of full reparation … implies that Stans Energy is entitled to both pre-award interest applied from the valuation date … to the date of the Award, and to post-award interest on the full amount of damages awarded by the Tribunal", and that "[g]uidance can be taken from the principle of *restitutio ad integrum* under international law as reflected in Art. 38 of the ILC Articles".[198]

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v. Kingdom of Spain* noted that "[p]re-award interest is consistent with the principle of full compensation and also generally accepted in investment arbitration and this principle is enshrined in Article 38 of the ILC Draft Articles".[199] It added that "post-award interest provides an incentive to pay as is recognized in the ILC Draft Articles, Commentary (12) of Article 38".[200]

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à.r.l. v. Kingdom of Spain* referred to article 38, noting that "[i]nterests (whether pre- or post-award) are a necessary consequence of the principle of full reparation. They are a compensation for the damage suffered by the loss of use of the principal sum during the period for which the payment thereof continued to be withheld".[201]

[194] International Court of Justice, *Armed Activities on the Territory of the Congo* (see footnote 160 above), para. 388.
[195] *Ibid*., para. 389.
[196] ITLOS, *M/V "Norstar" (Panama v. Italy)* (see footnote 12 above), p. 122, paras. 457–458.
[197] ICSID Case No. ARB/12/1, Award, 12 July 2019, para. 1780.
[198] PCA Case No. 2015-32, Award, 20 August 2019, para. 849.
[199] ICISD Case No. ARB/15/36 (see footnote 128 above), para. 718.
[200] *Ibid*., para. 722.
[201] ICSID Case No. ARB/13/30, Award, 11 December 2019, paras. 65–66.

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *(DS)2, S.A., Peter de Sutter and Kristof de Sutter v. Republic of Madagascar* noted that, pursuant to article 38, full reparation may take the form of restitution or compensation, "to which is added the interest on the capital 'when necessary in order to ensure full reparation'".[202]

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *Strabag SE v. Libya* referred to article 38 when analysing the question as to whether interest over the compensation determined in the award should be simple or compound. The tribunal referred to the commentary to article 38, noting that "compound interest should be awarded only where there are 'special circumstances which justify some element of compounding as an aspect of full reparation'".[203]

International arbitral tribunal (under Annex VII to the 1982 United Nations Convention on the Law of the Sea)

In the *Duzgit Integrity Arbitration (Republic of Malta v. Democratic Republic of Sao Tome and Principe)*, the arbitral tribunal noted that "[i]nterest is well established as an element of full reparation where monetary damages are awarded and is recognized as such within the Articles on State Responsibility. Whether an award of interest is required in a particular case, however, and the appropriate rate and mode of calculation depend upon what is required to achieve full reparation". Since there was no specific rule established in the State responsibility articles or the United Nations Convention on the Law of the Sea, "this determination falls within the Tribunal's discretion, subject to the overarching goal of achieving full reparation".[204] The arbitral tribunal proceeded to analyse whether interest was due in respect of damages under various heads of claim.[205]

Permanent Court of Arbitration (under UNCITRAL rules)

The arbitral tribunal in *Cairn Energy PLC and Cairn UK Holdings Limited v. Republic of India* indicated that "interest is a component of full reparation", with reference to article 38, paragraph 1.[206] The tribunal added:

> [A]n award of interest must put the Claimants in the position [in which] they would have been had the breach not occurred. An award of interest aims to compensate a claimant for having been deprived of funds that it could have either invested, or used to pay off existing debts or avoid new ones. In today's economy, this means that the claimant had to forgo earning compound interest or was forced to pay it.[207]

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *Abed El Jaouni and Imperial Holding SAL v. Lebanese Republic* referred to article 38, noting that "interest is an integral component of full compensation under customary international law, as expressed in the ILC Articles. In this regard, the purpose of the award of interest is the same purpose as an award of damages for breach of an international obligation: to place the victim in the economic

[202] ICSID Case No. ARB/17/18 (see footnote 108 above), para. 396.
[203] ICSID Case No. ARB(AF)/15/1 (see footnote 59 above), para. 962.
[204] PCA Case No. 2014-07 (see footnote 98 above), para. 204.
[205] *Ibid*., paras. 205–216.
[206] PCA Case No. 2016-07 (see footnote 142 above), para. 1955.
[207] *Ibid*., para. 1956.

position it would have been [in] if the international wrong had not been committed".[208]

Permanent Court of Arbitration (under UNCITRAL rules)

In *Olympic Entertainment Group AS v. Ukraine*, the arbitral tribunal cited article 38 and found that the claimant was "entitled to receive pre-award and post-award interest on the compensation awarded to it as to ensure full reparation".[209] The tribunal also cited articles 31 and 36.[210]

International arbitral tribunal (under the ICSID Convention)

In *Casinos Austria International GmbH and Casinos Austria Aktiengesellschaft v. Argentine Republic*, the arbitral tribunal cited article 38, explaining that "compensation under the principle of full reparation for internationally unlawful conduct has to bear interest from the Valuation Date until the date of payment. This is what follows from general international law concerning State responsibility".[211] In that case, the tribunal took the view that compound interest was necessary in the sense of article 38 "to ensure full reparation of an investor for breach of a treaty that aims at protecting his or her investment",[212] as was the payment of interest "on the costs of the proceedings from the date the award is rendered".[213]

Article 39
Contribution to the injury

International arbitral tribunal (under the ICSID Convention)

The arbitral tribunal in *Perenco Ecuador Limited v. Ecuador* referred to article 39 and the commentary thereto, and recalled that the latter noted that the focus of the article was on "situations which in national law systems are referred to as 'contributory negligence', 'comparative fault', 'faute de la victime', etc.". The tribunal went on to recall that, according to paragraph (5) of the commentary thereto, "article 39 allows to be taken into account only those actions or omissions which can be considered as wilful or negligent, i.e. which manifest a lack of due care on the part of the victim of the breach for his or her own property or rights".[214]

The arbitral tribunal concluded that "[n]one of the alleged instances of contributory fault said to arise from Perenco's responses to Ecuador's contractual demands can be considered to amount to wilful or negligent conduct within the meaning of Article 39".[215] It cautioned that "it is wrong to equate a party's zealous protection of its legal rights and interests with wilful conduct or contributory negligence within the meaning of the ILC Articles",[216] referring to actions taken by the investor pursuant to provisional measures obtained in the arbitral proceeding.[217]

International arbitral tribunal (under the ICSID Convention)

In *(DS)2, S.A., Peter de Sutter and Kristof de Sutter v. Republic of Madagascar*, the arbitral tribunal cited article 39 and the commentary thereto, noting that in the

[208] ICSID Case No. ARB/15/3, Award, 14 January 2021, para. 356.
[209] PCA Case No. 2019-18, Award, 15 April 2021, para. 183.
[210] *Ibid*., paras. 140–141.
[211] ICSID Case No. ARB/14/32 (see footnote 26 above), para. 587.
[212] *Ibid*., para. 592.
[213] *Ibid*., para. 610.
[214] ICSID Case No. ARB/08/6 (see footnote 129 above), para. 344.
[215] *Ibid*., para. 352.
[216] *Ibid*., para. 359.
[217] *Ibid*., para. 360.

determination of reparation in investment cases, account should be taken of "the victim's contribution to the damage".[218] The tribunal explained that "according to the jurisprudence, a party contributes to the damage that it incurs if it engages in wilful or negligent conduct that demonstrates a want of due diligence on the part of the injured party in respect of its property or its rights and there is a causal link between the conduct and the injury".[219]

International arbitral tribunal (under the ICSID Convention)

In *STEAG GmbH v. Kingdom of Spain*, the arbitral tribunal observed that, pursuant to article 39, "the conduct of the party that claims to have suffered damage and, in particular, its contribution to the damage or injury, is a widely recognized element for analysing and quantifying the compensable injury".[220]

International arbitral tribunal (under the ICSID Convention)

In *Casinos Austria International GmbH and Casinos Austria Aktiengesellschaft v. Argentine Republic*, the arbitral tribunal's majority failed "to see any indications for Claimants' contribution to injury pursuant to Article 39 of the ILC Articles, either in the form of contributory fault to Respondent's internationally wrongful conduct …, or as a violation of a duty to mitigate damages after the revocation has taken place".[221]

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

Article 40
Application of this chapter

Inter-American Court of Human Rights

In an advisory opinion concerning the effects of a State's denunciation of the American Convention on Human Rights, the Inter-American Court of Human Rights, in an analysis of *jus cogens* norms, cited articles 40, 41 and 48 and the commentary to article 40, indicating that the obligations contained in article 40 "arise from those substantive rules of conduct that prohibit what has come to be seen as intolerable because of the threat it presents to the survival of States and their peoples and the most basic human values".[222]

Article 41
Particular consequences of a serious breach of an obligation under this chapter

International arbitral tribunal (under Annex VII to the 1982 United Nations Convention on the Law of the Sea)

In its award concerning preliminary objections, the arbitral tribunal in *Dispute Concerning Costal State Rights in the Black Sea, Sea of Azov, and Kerch Strait*

[218] ICSID Case No. ARB/17/18 (see footnote 108 above), para. 396; see also paras. 460–461.
[219] *Ibid*., para. 461.
[220] ICSID Case No. ARB/15/4 (see footnote 140 above), para. 760.
[221] ICSID Case No. ARB/14/32 (see footnote 26 above), para. 444 (footnote 521).
[222] Inter-American Court of Human Rights, *The Obligations in Matters of Human Rights of a State that has Denounced the American Convention on Human Rights and the Charter of the Organization of American States (Interpretation and Scope of articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States)*, Series A, No. 26, Advisory Opinion No. OC-26/20, 9 November 2020, paras. 103–104.

(Ukraine v. Russian Federation) indicated that article 41 "imposes upon all States an obligation not to recognize as lawful a situation created by a gross or systematic failure by the responsible State to fulfil an obligation arising under a peremptory norm of general international law".[223] Nevertheless, the arbitral tribunal concluded that it did not consider "that the [General Assembly] resolutions to which Ukraine refers can be read to go as far as prohibiting it from recognizing the existence of a dispute over the territorial status of Crimea".[224] The tribunal also cited article 40.[225]

Part Three
The implementation of the international responsibility

Chapter I
Invocation of the responsibility of a State

Article 44[226]
Admissibility of claims

Permanent Court of Arbitration (under UNCITRAL rules)

The arbitral tribunal in *Bank Melli Iran and Bank Saderat Iran v. Kingdom of Bahrain* cited article 44, subparagraph (*b*), and the commentary thereto, and indicted that the exhaustion of local remedies was not a requirement to bring arbitral claims. The tribunal noted the explanation in the commentary that the provision is "not concerned with questions of the jurisdiction of international courts and tribunals, or in general with the condition for the admissibility of cases brought before such courts or tribunals. Rather, [it] define[s] the conditions for establishing the international responsibility of a State and for the invocation of that responsibility by another State or States".[227]

Article 47
Plurality of responsible States

Committee on the Rights of the Child

In five cases – *Sacchi et al. v. Argentina*,[228] *Brazil*,[229] *France*,[230] *Germany*[231] and *Turkey*[232] respectively – concerning the legal implications of climate change, the Committee on the Rights of the Child referred to the commentary to article 47, finding that "the collective nature of the causation of climate change does not absolve the State party of its individual responsibility that may derive from the harm that the emissions originating within its territory may cause to children, whatever their location".

[223] PCA Case No. 2017-06, Award (Preliminary Objections), 21 February 2020, para. 170.
[224] *Ibid*., para. 177.
[225] *Ibid*., para. 169.
[226] See also *Michael Ballantine and Lisa Ballantine v. Dominican Republic*, PCA Case No. 2016-17, Final Award, 3 September 2019, para. 194.
[227] PCA Case No. 2017-25 (see footnote 157 above), paras. 516–518 and 526.
[228] *Sacchi et al. v. Argentina* (CRC/C/88/D/104/2019), para. 10.10.
[229] *Sacchi et al. v. Brazil* (CRC/C/88/D/105/2019), para. 10.10.
[230] *Sacchi et al. v. France* (CRC/C/88/D/106/2019), para. 10.10.
[231] *Sacchi et al. v. Germany* (CRC/C/88/D/107/2019), para. 9.10.
[232] *Sacchi et al. v. Turkey* (CRC/C/88/D/108/2019), para. 9.10.

International Court of Justice

In its judgment on reparations in *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, the International Court of Justice referred to the commentary to articles 31 and 47, noting that "in certain situations in which multiple causes attributable to two or more actors have resulted in injury, a single actor may be required to make full reparation for the damage suffered …. In other situations, in which the conduct of multiple actors has given rise to injury, responsibility for part of such injury should instead be allocated among those actors".[233]

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[233] International Court of Justice, *Armed Activities on the Territory of the Congo* (see footnote 160 above), para. 98.

Annex

Technical report

I. Introduction

1. In resolution 71/133, the General Assembly requested the Secretary-General to prepare a technical report listing, in a tabular format, the references to the articles contained in the compilation of decisions of international courts, tribunals and other bodies referring to the articles prepared since 2001, as well as references to the articles made in submissions presented by Member States before international courts, tribunals and other bodies since 2001, and further requested the Secretary-General to submit such material during its seventy-first session. The first technical report was produced in 2017.[1] In its resolution 74/180, the Assembly requested the Secretary-General to update the technical report and to submit such material during its seventy-seventh session.

2. In preparing the present report, the Secretariat reviewed the decisions of and submissions by Member States before the following international courts, tribunals and other bodies: the International Court of Justice; the International Tribunal for the Law of the Sea; the Iran-United States Claims Tribunal; the United Nations Compensation Commission; the Eritrea-Ethiopia Claims Commission; panels and the Appellate Body of the Word Trade Organization; international arbitral tribunals;[2] the International Tribunal for the Former Yugoslavia; the International Criminal Tribunal for Rwanda; the Special Court for Sierra Leone; the Special Tribunal for Lebanon; the Extraordinary Chambers in the Courts of Cambodia; the International Criminal Court; the United Nations system of administration of justice; the International Labour Organization Administrative Tribunal; the World Bank Administrative Tribunal; the International Monetary Fund Administrative Tribunal; the European Court of Human Rights; the Inter-American Court of Human Rights; the African Court on Human and Peoples' Rights; universal human rights and humanitarian law bodies, both Charter-based and treaty-based; the Inter-American Commission on Human Rights; the African Commission on Human and Peoples' Rights; the Court of Justice of the European Union; the Caribbean Court of Justice; the Court of Justice of the Economic Community of West African States; and the Common Court of Justice and Arbitration of the Organization for the Harmonization of Business Law in Africa.

3. The present report, based on the five compilations and the previous technical report prepared by the Secretariat, covers 332 cases with 786 references to the State responsibility articles in publicly available decisions taken during the period from 1 January 2001 to 31 January 2022.

4. In addition, the report covers 680 references to the articles in submissions by Member States before courts, tribunals and other bodies.[3] The term "submissions" covers written and oral submissions, where available. If submissions of the Member States were not made publicly available, the relevant information was retrieved from references to the submissions of the parties as summarized in the decision of the respective court, tribunal or other body, where available. A number of courts, tribunals

[1] A/71/80/Add.1.

[2] Arbitral tribunals include international arbitrations established and/or administered pursuant to the applicable rules under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Arbitration Rules of the United Nations Commission on International Trade Law, the Permanent Court of Arbitration or the Stockholm Chamber of Commerce or on an ad hoc basis.

[3] The present annex has been updated to reflect the content of the report, and accounts only for the submissions by Member States.

or other bodies did not provide information on submissions of the parties, either as a separate document or as part of their decision.

5. The tables included in the present report reflect references to the State responsibility articles by body of origin (section A) and by year (section B). The report takes into account references in which the articles were invoked as relevant or irrelevant law with regard to the issue at hand, or where the articles were referred to as the basis for the decision of the international court, tribunal or other body.

II. Tables

A. References to the State responsibility articles by body of origin

1. References in decisions by body of origin

Part, chapter or article	*ICJ*	*UNCC*	*Arbitral tribunals*	*EECC*	*WTO*	*ITLOS*	*ECHR*	*ACHPR*	*ACtHPR*	*IACtHR*	*IACHR*	*HRC*	*ICTY*	*STL*	*CJEU*	*CCJ*	*CRC*	*CESCR*	*CERD*	*IUSCT*	*ICC*	*ECOWAS*	*Total*
General comments	–	–	7	–	1	–	3	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	11
Part One	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Chap. I	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
1	–	–	10	–	–	3	2	–	–	1	–	–	–	–	–	–	–	–	–	–	1	4	21
2	–	–	19	–	–	1	3	–	–	1	–	–	–	–	–	–	–	–	–	–	–	2	26
3	1	–	29	–	–	–	1	–	–	3	–	–	–	–	–	1	–	–	–	–	–	–	35
Chap. II	–	–	7	–	1	–	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	10
4	1	–	65	–	7	–	3	–	1	3	–	–	–	–	1	1	–	–	–	1	–	4	87
5	–	–	37	–	1	1	5	–	–	2	–	–	–	–	–	–	–	–	–	–	–	–	46
6	–	–	3	–	–	–	4	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	7
7	–	–	10	–	1	–	8	–	–	2	–	1	–	–	1	–	–	–	–	–	–	–	23
8	1	–	28	–	2	1	6	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	39
9	–	–	2	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	3
10	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
11	–	–	6	–	1	–	2	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	10
Chap. III	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
12	–	–	3	–	–	–	–	1	–	–	–	–	–	1	–	1	–	–	–	–	–	–	6
13	1	–	10	–	–	–	2	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	14
14	1	–	13	–	1	–	8	–	–	4	–	–	–	–	–	–	–	1	–	–	–	–	28
15	–	–	16	–	–	–	5	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	21
Chap. IV	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
16	1	–	1	–	–	–	7	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	9
17	–	–	–	–	–	–	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	2
18	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
19	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–

Part, chapter or article	*ICJ*	*UNCC*	*Arbitral tribunals*	*EECC*	*WTO*	*ITLOS*	*ECHR*	*ACHPR*	*ACtHPR*	*IACtHR*	*IACHR*	*HRC*	*ICTY*	*STL*	*CJEU*	*CCJ*	*CRC*	*CESCR*	*CERD*	*IUSCT*	*ICC*	*ECOWAS*	*Total*
Chap. V	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
20	–	–	1	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	2
21	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
22	1	–	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	3
23	–	–	5	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	6
24	–	–	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	2
25	1	–	24	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	25
26	–	–	2	–	–	–	1	–	–	1	–	–	–	–	–	–	–	–	1	–	–	–	5
27	–	–	9	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	9
Part Two	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Chap. I	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
28	–	–	6	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	6
29	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
30	1	–	3	–	–	–	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	6
31	2	2	70	1	–	3	2	–	1	4	1	–	–	–	1	–	–	–	–	1	2	–	90
32	1	–	5	–	–	–	–	–	1	1	–	–	–	–	1	–	–	–	–	–	–	–	9
33	–	–	5	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	5
Chap. II	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
34	2	–	14	–	–	1	2	–	1	–	–	–	–	–	–	1	–	–	–	1	–	–	22
35	1	1	14	–	–	–	10	–	–	–	–	–	–	–	–	–	–	–	–	1	–	–	27
36	2	–	40	–	–	1	3	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	46
37	1	–	7	–	–	–	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	10
38	2	1	30	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	–	35
39	–	–	16	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	16
Chap. III	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
40	–	–	1	–	–	–	1	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	3
41	1	–	1	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	1	–	4
Part Three	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Chap. I	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
42	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
43	2	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	3

Part, chapter or article	*ICJ*	*UNCC*	*Arbitral tribunals*	*EECC*	*WTO*	*ITLOS*	*ECHR*	*ACHPR*	*ACtHPR*	*IACtHR*	*IACHR*	*HRC*	*ICTY*	*STL*	*CJEU*	*CCJ*	*CRC*	*CESCR*	*CERD*	*IUSCT*	*ICC*	*ECOWAS*	*Total*
44	2	–	5	–		–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	7
45	1	–	1	–	1	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	4
46	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
47	1	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	5	–	–	–	–	–	7
48	1	–	–	–	–	1	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	3
Chap. II	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
49	–	–	2	–	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	4
50	–	–	2	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	3
51	–	–	1	–	3	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	4
52	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
53	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
54	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Part Four	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
55	–	–	4	–	3	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	7
56	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
57	–	–	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	1
58	1	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	2
59	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Total	**30**	**4**	**546**	**3**	**28**	**14**	**88**	**3**	**4**	**26**	**1**	**1**	**2**	**1**	**4**	**5**	**5**	**1**	**1**	**4**	**5**	**10**	**786**

2. References in submissions by body of origin

Part, chapter or article	*ICJ*	*Arbitral tribunals*	*WTO*	*ECHR*	*ACHPR*	*ACHPR*	*IACHR*	*CRC*	*ICC*	*ITLOS*	*Total*
General comments	7	9	4	3	1	–	1	1	–	–	26
Part One	–	–	–	–	–	–	–	–	–	–	–
Chap. I	–	–	–	–	–	–	–	–	–	–	–
1	10	3	–	–	–	–	–	–	–	–	13
2	13	8	1	–	–	–	–	–	–	–	22
3	10	6	–	–	–	–	–	–	–	–	16

Part, chapter or article	*ICJ*	*Arbitral tribunals*	*WTO*	*ECHR*	*ACHPR*	*ACHPR*	*IACHR*	*CRC*	*ICC*	*ITLOS*	*Total*
Chap. II	6	–	–	1	–	–	–	–	–	–	7
4	22	29	3	–	–	–	–	–	–	–	54
5	1	22	6	1	–	–	–	–	–	–	30
6	–	–	–	1	–	–	–	–	–	–	1
7	6	1	–	–	–	–	–	–	–	–	7
8	3	25	3	–	–	–	–	–	–	–	31
9	–	–	–	–	–	–	–	–	–	–	–
10	–	–	–	–	–	–	–	–	–	–	–
11	2	4	–	–	–	–	–	–	–	–	6
Chap. III	–	–	–	–	–	–	–	–	–	–	–
12	6	3	–	–	–	–	–	–	–	–	9
13	1	9	1	–	–	–	–	–	–	–	11
14	12	4	2	–	–	–	–	–	–	–	18
15	1	9	1	–	–	–	–	–	–	–	11
Chap. IV	–	–	–	–	–	–	–	–	–	–	–
16	–	–	–	–	–	–	–	–	–	–	–
17		1	–	–	–	–	–	–	–	–	1
18	1	–	–	–	–	–	–	–	–	–	1
19	–	–	–	–	–	–	–	–	–	–	–
Chap. V	5	–	–	–	–	–	–	–	–	–	5
20	4	–	1	–	–	–	–	–	1	–	6
21	4	–	–	–	–	–	–	–	1	–	5
22	7	2	–	–	–	–	–	–	1	–	10
23	2	1	–	–	–	–	–	–	1	–	4
24	3	–	–	–	–	–	–	–	1	–	4
25	8	15	–	–	–	–	–	–	1	–	24
26	–	–	–	–	–	–	–	–	–	–	–
27	1	4	–	–	–	–	–	–	–	–	5
Part Two	2	–	–	–	–	–	–	–	–	–	2
Chap. I	–	–	–	–	–	–	–	–	–	–	–
28	4	2	–	–	–	–	–	–	–	–	6

Part, chapter or article	*ICJ*	*Arbitral tribunals*	*WTO*	*ECHR*	*ACHPR*	*ACHPR*	*IACHR*	*CRC*	*ICC*	*ITLOS*	*Total*
29	13	–	–	–	–	–	–	–	–	–	13
30	27	3	–	–	–	–	–	–	–	–	30
31	20	20	–	–	–	–	–	–	–	1	41
32	5	–	–	–	–	2	–	–	–	–	7
33	3	1	–	–	–	–	–	–	–	–	4
Chap. II	–	–	–	–	–	–	–	–	–	–	–
34	12	7	–	–	–	–	–	–	–	–	19
35	22	2	–	–	–	–	–	–	–	–	24
36	12	17	–	–	–	–	–	–	–	1	30
37	9	3	–	–	–	–	–	–	–	–	12
38	1	12	–	–	–	–	–	–	–	–	13
39	–	14	–	–	–	–	–	–	–	1	15
Chap. III	1	–	–	–	–	–	–	–	–	–	1
40	5	–	–	–	–	–	–	–	–	–	5
41	16	3	–	–	–	–	–	–	–	–	19
Part Three	1	–	–	–	–	–	–	–	–	–	1
Chap. I	–	–	–	–	–	–	–	–	–	–	–
42	9	–	–	–	–	–	–	–	–	–	9
43	11	–	–	–	–	–	–	–	–	–	11
44	6	5	–	–	–	–	–	–	–	1	12
45	6	2	–	–	–	–	–	–	–	–	8
46	–	–	–	–	–	–	–	–	–	–	–
47	1	–	–	–	–	–	–	–	–	–	1
48	14	–	–	–	–	–	–	–	–	–	14
Chap. II	3	–	1	–	–	–	–	–	–	–	4
49	7	3	–	–	–	–	–	–	–	–	10
50	6	1	–	–	–	–	–	–	–	–	7
51	5	1	–	–	–	–	–	–	–	–	6
52	6	1	–	–	–	–	–	–	–	–	7
53	4	1	–	–	–	–	–	–	–	–	5

Part, chapter or article	*ICJ*	*Arbitral tribunals*	*WTO*	*ECHR*	*ACHPR*	*ACHPR*	*IACHR*	*CRC*	*ICC*	*ITLOS*	*Total*
54	4	1	–	–	–	–	–	–	–	–	5
Part Four	–		–	–	–	–	–	–	–	–	–
55	1	8	–	–	–	–	–	–	–	–	9
56	2	–	–	–	–	–	–	–	–	–	2
57	–	–	–	–	–	–	–	–	–	–	–
58	1	–	–	–	–	–	–	–	–	–	1
59	–	–	–	–	–	–	–	–	–	–	–
Total	**374**	**262**	**23**	**6**	**1**	**2**	**1**	**1**	**6**	**4**	**680**

B. References to the State responsibility articles by year (2001 to 2022)

1. References in decisions by year of issuance

Part, chapter or article	*2001*	*2002*	*2003*	*2004*	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*2021*	*2022*	*Total*
General comments	–	–	–	–	–	–	1	2	–	–	1	1	2	3	1	–	–	–	–	–	–	–	11
Part One	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Chap. I	–	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	1
1	–	–	–	–	1	–	–	–	–	–	1	1	–	2	3	2	3	3	3	–	2	–	21
2	–	1	–	–	1	1	1	1	–	3	1	–	2	–	3	2	3	3	–	1	3	–	26
3	–	1	2	1	1	–	–	–	1	3	2	2	7	3	1	4	1	–	–	3	3	–	35
Chap. II	–	–	–	–	–	–	–	–	–	–	1	1	–	2	1	2	–	3	–	–	–	–	10
4	–	3	4	2	2	4	2	–	1	3	2	6	5	5	9	7	9	8	–	5	10	–	87
5	–	–	1	–	3	4	–	–	–	1	2	4	1	3	5	8	5	4	–	3	2	–	46
6	–	–	–	–	–	–	–	–	–	–	–	1	–	1	2	–	–	1	–	1	1	–	7
7	–	–	2	1	1	1	–	–	–	2	–	2	–	2	1	1	1	6	–	3		–	23
8	–	–	–	–	1	1	1	–	–	–	2	3	–	5	5	5	6	4	–	4	2	–	39
9	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	1	–	–	–	–	1	–	3
10	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	1
11	–	1	–	–	–	–	–	–	–	–	–	–	1	–	3	1	1	1	–	2	–	–	10

Part, chapter or article	*2001*	*2002*	*2003*	*2004*	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*2021*	*2022*	*Total*
Chap. III	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
12	–	1	–	–	–	–	–	–	–	–	–	–	1		1	1	–	1	–	–	1	–	6
13	–	1	–	–	–	1	–	–	1	–	–	2		1	3	1	–	–	–	2	2	–	14
14	–	1	1	1	2	1	1	–	3	1	1	3	1	1	1	1	–	3	1	2	3	–	28
15	–	–	1	1	–	–	–	–	–	1	2	1	–	1	–	4	1	2	2	2	3	–	21
Chap. IV	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
16	–	–	–	–	–	–	1	–	–	–	–	1	–	1	–	1	–	4	–	–	1	–	9
17	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	1	–	2
18	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
19	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Chap. V	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
20	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	1	–	–	2
21	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	–	–	1
22	–	–	–	–	–	–	1	–	–	–	1	–	–	–	–	–	–	–	–	1	–	–	3
23	–	–	1	–	–	–	1	–	–	1	–	1	–	–	–	–	–	–	–	1	1	–	6
24	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	1	–	2
25	–	–	–	1	1	1	1	–	–	4	2	1	–	2	1	4	2	3	–	1	1	–	25
26	–	–	–	–	1	–	–	–	–	–	–	–	–	–	1	1	–	1	1	–	–	–	5
27	–	–	–	–	1	2	1	–	–	–	1	1	–	–	–	1	–	1	–	–	1	–	9
Part Two	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Chap. I	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	1
28	–	–	–	–	–	–	–	–	–	–	–	–	1	–	1	1	2	–	–	–	1	–	6
29	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	1
30	–	–	–	–	–	–	–	–	–	–	–	1	–	1	–	–	–	1	3	–	–	–	6
31	–	–	1	–	1	1	3	2	1	3	3	3	3	6	5	7	9	9	14	8	10	1	90
32	–	–	–	–	–	–	–	–	1	–	–	–	2	–	1	–	1	–	2	2	–	–	9
33	–	–	–	–	–	–	1	–	–	–	–	–	–	1	–	–	1	–	2	–	–	–	5
Chap. II	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	1
34	–	–	–	–	1	–	–	1	1	1	1	–	2	–	4	–	3	–	2	3	2	1	22
35	–	–	1	–	1	1	–	–	1	3	–	1	1	2	2	2	3	3	3	2	1	–	27
36	–	–	–	–	1	1	3	–	–	3	2	2	2	2	4	4	7	2	5	1	7	–	46

Part, chapter or article	*2001*	*2002*	*2003*	*2004*	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*2021*	*2022*	*Total*
37	–	–	–	–	–	–	–	–	–	–	–	1		1	1		1		2	1	2	1	10
38	–	–	1	–	1	–	–	–	–	1		2	2		4	4	4	3	6	3	4	–	35
39	–	–	–	–	–	–	–	–		1	2	1	2	1		1	3	1	1	2	1	–	16
Chap. III	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	1
40	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	2	–	–	3
41	–	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	1	–	–	2	–	–	4
Part Three	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Chap. I	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
42	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
43	–	–	–	–	–	–	–	–	–	–	–	–	1	–	–	2	–	–	–	–	–	–	3
44	–	–	1	–	–	–	–	–	–	–	–	–	2	–	–	3	–	–	–	–	1	–	7
45	–	–	–	–	1	–	–	–	–	–	–	–	–	–	1	1	–	1	–	–	–	–	4
46	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
47	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	5	1	7
48	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	1	–	–	–	1	–	–	3
Chap. II	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
49	–	–	–	–	1	–	1	1	1	–	–	–	–	–	–	–	–	–	–	–	–	–	4
50	–	–	1	–	–	–	1	1	–	–		–	–	–	–	–	–	–	–	–	–	–	3
51	1	1	–	–	–	–	1		1	–	–	–	–	–	–	–	–	–	–	–	–	–	4
52	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
53	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
54	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Part Four	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
55	–	–	–	–	–	–	1	–	1	1	1	–	–	–	1	2	–	–	–	–	–	–	7
56	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	1
57	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
58	–	–	–	–	–	–	1	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	2
59	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Total	**1**	**11**	**17**	**7**	**23**	**19**	**25**	**10**	**15**	**33**	**30**	**44**	**38**	**47**	**68**	**76**	**67**	**69**	**48**	**61**	**73**	**4**	**786**

2. References in submissions by year of submission

Part, chapter or article	*2001*	*2002*	*2003*	*2004*	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*2021*	*2022*	*Total*
General comments	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
1	–	1	–	–	–	3	3	–	2	3	3	3	1	2	1	–	1	1	1		26	–	–
Part One	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Chap. I	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
1	–	1	–	1	–	–	4	–	1	1	2	1	–	1	–	–	1	–	–	–	–	–	13
2	–	–	–	–	–	2	2	–	3	3	1	1	–	2	3	1	–	–	3	–	1	–	22
3	–	–	2	1	–	–	1	2	1	1	2	1	–	1	–	1	–	1	1	–	1	–	16
Chap. II	–	–	–	–	–	–	1	2	1	1	2	–	–	–	–	–	–	–	–	–	–	–	7
4	1		3	1	–	1	1	8	7	2		4	–	1	4	4	3	1	4	5	4	–	–
5	–	–	1	–	1	–	1	–	–	2	1	3	–	1	5	1	1	1	3	6	3	–	30
6	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
7	–	–	–	–	–	–	1	1	1	–	–	–	2	–	–	–	–	1	1	–	–	–	7
8	–	–	1	–	2	–	–	–	1	2	2	3		2	3	2	1	2	2	6	2	–	31
9	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
10	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
11	–	–	–	1	–	–	–	–	1	–	–	–	1	–	–	1	–	–	–	1	1	–	6
Chap. III	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
12		1	–	2	–	–	–	–	1	–	1	–	–	1	1	–	1	–	1	–	–	–	9
13	–	–	–	–	–	–	–	–	1	2	–	–	–	–	–	1	–	1	2	1	3	–	11
14	–	–	–	–	–	2	2	1	3	4	2	–	–	–	–	1	–	–	1	1	1	–	18
15	–	–	–	–	–	1	–	–	–	–	1	–	–	1	–	3	–	–	2	1	2	–	11
Chap. IV	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
16	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
17	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
18	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
19	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Chap. V	–	–	–	–	–	–	–	–	–	3	1	–	–	–	1	–	–	–	–	–	–	–	5
20	–	–	–	1	–	–	1	1	1	–	–	–	–	–	1	–	–	1	–	–	–	–	6
21	–	–	–	1	–	–	1	–	–	–	–	–	–	–	1	–	–	2	–	–	–	–	5

Part, chapter or article	*2001*	*2002*	*2003*	*2004*	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*2021*	*2022*	*Total*
22	1	–	–	2	–	–	1	1	–	2	–	–	–	–	1	–	–	1	–	–	1	–	10
23	–	–	–	1	–	–	1	–	–	1	–	–	–	–	–	–	–	1	–	–	–	–	4
24	–	–	–	2	–	–	1	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	4
25	–	–	–	3	1	1	1	–	–	2	1	1	1	2	2	4	1	1	3	–	–	–	24
26	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
27	–	1	–	–	–	1	–	–	–	2	–	–	–	–	–	1	–	–	–	–	–	–	5
Part Two	–	–	–	–	–	–	–	–	–	–	–	1	–	–	1	–	–	–	–	–	–	–	2
Chap. I	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
28	–	1	1	1	–	–	–	–	2	–	–	–	–	–	–	–	1	–	–	–	–	–	6
29	–	1	–	1	–	1	3	1	2	1		1	–	1	1	–	–	–	–	–	–	–	13
30	–	1	3	3	–	1	2	5	4	4	1	2	–	–	2	–	–	–	1	1	–	–	30
31	–		4	3	–	1	1	1	6	3		2	–	1	1	1	2	5	4	3	2	1	42
32	–	1	2	–	–	–	–	–	–	1	1	–	1	1	–	–	–	–	–	–	–	–	7
33	–	–	–	–	–	–	–	–	–	–	3	–	–	1	–	–	–	–	–	–	–	–	4
Chap. II	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
34	–	–	3	1	–	–	2	1	3	–	–	3	–	–	2	–	1	–	2	1	–	–	19
35	–	1	5	4	–	1	3	2	3	–	–	1	–	–	3	1	–	–	–	–	–	–	24
36	–	1	1	2	–	1	1	1	3	–	–	–	2	–	4	–	3	3	4	2	1	1	30
37	–	–	–	1	–	–	–	1	3	1	2	1	–	–	2	1	–	–	–	–	–	–	12
38	–	–	–	–	–	–	–	–	1	–	–	–	1	2	1	1	1	1	2	2	1	–	13
39	–	–	–	–	–	–	–	–	–	–	–	–	–	1	1	1	1	4	5	1	1	–	15
Chap. III	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	1
40	–	–	1	2	–	–	–	–	1	–	1	–	–	–	–	–	–	–	–	–	–	–	5
41	–	–	–	1	–	–	–	1	10	1	3	–	–	–	–	–	–	–	1	2	–	–	19
Part Three	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	1
Chap. I	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
42	–	–	–	–	–	–	–	–	–	2	1	1	–	–	3	–	–	–	2	–	–	–	9
43	–	–	–	–	–	–	–	–	1	1	–	–	–	–	3	6	–	–	–	–	–	–	11
44	1	–	1	–	–	–	–	1	–	–	–	–	1	–	–	5	–	2	1	–	–	–	12
45	1	–	2	–	–	–	–	2	1	–	–	–	–	–	–	–	–	–	1	–	1	–	8
46	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–

Part, chapter or article	*2001*	*2002*	*2003*	*2004*	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*	*2019*	*2020*	*2021*	*2022*	*Total*
47	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	1
48	–	–	–	–	–	–	–	–	2	1	1	1	–	–	4	3	–	–	1	–	1	–	154
Chap. II	–	–	–	–	1	–	–	–	1	2	–	–	–	–	–	–	–	–	–	–	–	–	4
49	–	–	–	1	–	–	1	–	1	2	2	1	–	1	–	–	–	–	1	–	–	–	10
50	–	–	–	1	–	–	–	1	1	1	1	1	–	–	–	–	–	–	1	–	–	–	7
51	–	–	–	1	–	–	–	1	1	1	1	1	–	–	–	–	–	–	–	–	–	–	6
52	–	–	–	–	–	1	–	1	1	1	2	1	–	–	–	–	–	–	–	–	–	–	7
53	–	–	–	–	–	–	–	1	1	1	1	1	–	–	–	–	–	–	–	–	–	–	5
54	–	–	–	–	–	–	–	1	1	–	1	–	–	–	–	–	–	–	–	–	2	–	5
Part Four	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
55	–	–	–	–	1	1	1	3	–	–	–	–	–	–	–	1	–	–	2	–	–	–	9
56	–	–	–	–	–	–	–	–	–	1	1	–	–	–	–	–	–	–	–	–	–	–	2
57	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
58	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	1
59	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Total	**4**	**10**	**30**	**40**	**6**	**16**	**34**	**43**	**76**	**52**	**41**	**35**	**12**	**23**	**52**	**42**	**18**	**29**	**52**	**34**	**29**	**2**	**680**