

DRAFT ARTICLES ON RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS

Work on codifying the international law relating to State responsibility began under the auspices of the League of Nations and codification efforts were passed on to the United Nations.

At the first session of the International Law Commission in 1949, the question of State responsibility was included on a provisional list of fourteen topics which were considered suitable for codification, but was not given priority (A/CN.4/13 and Corr. 1-3).

By resolution 799 (VIII) of 7 December 1953, the General Assembly requested the Commission to undertake “the codification of the principles of international law governing State responsibility”, as soon as it considered it advisable.

At its sixth session, in 1954, the Commission considered a memorandum by Mr. F.V. García-Amador (A/CN.4/80), describing the background and scope of General Assembly resolution 799 (VIII), but in view of the Commission’s heavy agenda, it was decided not to begin work on the subject for the time being (A/CN.4/88).

At its seventh session, in 1955, the Commission decided to begin the study of State responsibility and appointed Mr. F.V. García Amador as Special Rapporteur for the topic (A/CN.4/94). At the next six sessions of the Commission, from 1956 to 1961, the Special Rapporteur presented six reports on the topic (A/CN.4/96; A/CN.4/106; A/CN.4/111; A/CN.4/119; A/CN.4/125; and A/CN.4/134 and Add.1), dealing, on the whole, with the question of responsibility for injuries to the persons or property of aliens.

By resolution 1686 (XVI) of 18 December 1961, the General Assembly recommended that the Commission continue its work on State responsibility. In pursuance of this resolution, the Commission, at its fourteenth session, in 1962, debated its future programme of work and the proposal of giving priority to the topic of State responsibility met with the general approval of the Commission. A Sub-Committee on State Responsibility, headed by Mr. Roberto Ago, was established, tasked with submitting a preliminary report with suggestions concerning the future study of the topic (A/CN.4/148).

At its fifteenth session, in 1963, after unanimously approving the report of the Sub-Committee (A/CN.4/152), the Commission appointed Mr. Roberto Ago as Special Rapporteur for the topic (A/CN.4/163). The General Assembly, in resolution 1902 (XVIII) of 18 November 1963, recommended that the Commission should “continue its work on State responsibility, taking into account the views expressed at the eighteenth session of the General Assembly and the report of the Sub-Committee on State Responsibility and giving due consideration to the purposes and principles enshrined in the Charter of the United Nations”.

In its resolution 2272 (XXII) of 1 December 1967, the General Assembly recommended that the Commission expedite the study of the topic of State responsibility. By resolution 2400 (XXIII) of 11 December 1968, it recommended that the Commission “make every effort to begin substantive work” on the topic as from its next session.

At its twenty-first session (A/CN.4/220), in 1969, the Commission, after examining the first report of Mr. Ago (A/CN.4/217 and Add.1), requested him to prepare a report containing a first set of draft articles on the topic, the aim being “to establish, in an initial part of the proposed draft articles, the conditions under which an act which is internationally illicit and which, as such, generates an international responsibility, can be imputed to a State”.

Mr. Ago presented his second report entitled “The origin of international responsibility” (A/CN.4/233) at the twenty-second session of the Commission, in 1970. The Commission’s discussion of the report led to a series of conclusions as to the method, substance, and terminology essential for the continuation of its work on State responsibility (A/CN.4/237). Mr. Ago presented his third report, entitled “The internationally wrongful act of the State, source of international responsibility” (A/CN.4/246 and Add.1-3) at the twenty-third session of the Commission in 1971, and his fourth report bearing the same title at the twenty-fourth session of the Commission in 1972 (A/CN.4/264 and Add.1). It was on the basis of these conclusions that the Commission undertook the preparation of draft articles on the topic, beginning the first reading thereof at its twenty-fifth session, in 1973 (A/9010/Rev.1).

The General Assembly, by resolution 3071 (XXVIII) of 30 November 1973, recommended that the Commission continue, on a priority basis, its work with a view to the preparation of a first set of draft articles on responsibility of States for internationally wrongful acts.

At its twenty-fifth to thirtieth sessions, from 1973 to 1978, the Commission provisionally adopted on first reading chapters I, II and III of Part One of the draft articles (see A/9010/Rev.1, A/9610/Rev.1, A/10010/Rev.1, A/31/10, A/32/10 and A/33/10). In 1978, the Commission requested Member States to transmit their observations and comments on those chapters (A/33/10), a decision which was endorsed by the General Assembly in resolution 33/139 of 19 December 1978.

Mr. Willem Riphagen was appointed by the Commission as the Special Rapporteur on this topic at its thirty-first session in 1979, following Mr. Ago’s election as a Judge of the International Court of Justice (see A/34/10). Mr. Riphagen presented his Preliminary report on the content, forms and degrees of international responsibility to the Commission in 1980 at its thirty-second session (see A/CN.4/330 and Corr.1, 2, 3).

At its thirty-second session, in 1980, the Commission provisionally adopted on first reading the whole of Part One of the draft articles, concerning the “origin of international responsibility”. It decided, in conformity with articles 16 and 21 of its Statute, to transmit the provisions of chapters IV and V to the Governments of Member States, through the Secretary-General, and to request them to transmit their observations and comments on those provisions. The Commission also decided to renew its request to Governments to transmit their observations and comments on chapters I, II and III. (A/35/10).

Mr. Riphagen presented six further reports to the Commission throughout his tenure, focused on Part Two of the draft articles, concerning content, forms and degrees of international responsibility, and Part Three, concerning “implementation” (*mise en oeuvre*) of international responsibility and the settlement of disputes (see A/CN.4/344 and Corr.1, Corr.2; A/CN.4/354 and Corr.1 and Add.1 & 2; A/CN.4/366 and Add.1 & Add.1/Corr.1; A/CN.4/380 and Corr.1; A/CN.4/389 and Corr.1 & Corr.2; A/CN.4/397 and Corr.1 & 2 and Add.1 & Corr.1)

At its thirty-ninth session, in 1987, the Commission appointed Mr. Gaetano Arangio-Ruiz as Special Rapporteur for the topic (see A/42/10). Mr. Arangio-Ruiz presented eight reports to the Commission during his tenure (see A/CN.4/416 & Corr.1 & 2 and Add.1 & Corr.1; A/CN.4/425 & Corr.1 and Add.1 & Corr.1; A/CN.4/440 and Add.1; A/CN.4/444 and Add.1-3; A/CN.4/453 and Add.1-3; A/CN.4/461 and Add.1-3 & Add.2/Corr.1; A/CN.4/469 and Add.1-2; A/CN.4/476 & Corr.1, Add. 1).

At its forty-eighth session, in 1996, the Commission completed the first reading of Parts Two and Three of the draft articles and decided, in accordance with articles 16 and 21 of its Statute, to transmit the draft articles, provisionally adopted by the Commission on first reading, to Member States for comments and observations (A/51/10). By resolution 51/160 of 16 December 1996, the General Assembly expressed its appreciation to the

Commission for the completion of the provisional draft articles and urged Member States to submit their comments and observations, as requested by the Commission.

At its forty-ninth session, in 1997, the Commission appointed Mr. James Crawford as Special Rapporteur on this topic. At the same session, the Commission began the second reading of the draft articles and established a Working Group on State Responsibility to address matters dealing with the second reading of the topic (A/52/10).

At its fiftieth session, in 1998, the Commission received the first report of Mr. Crawford (A/CN.4/490 and Add.1, Add.2, Add.3, Add.4, Add.5, Add.6, Add.7). At the same session, the Commission established a Working Group to assist the Special Rapporteur in the consideration of various issues during the second reading of the draft articles (A/53/10).

The Commission received three further reports from Mr. Crawford at its fifty-first, fifty-second and fifty-third sessions respectively (see A/CN.4/498; A/CN.4/507; A/CN.4/517).

At its fifty-third session, in 2001, the Commission completed the second reading of the draft articles. At that session, the Commission established two working groups on the topic: an open-ended Working Group to deal with the main outstanding issues on the topic; and a Working Group to consider the commentaries to the draft articles. On the recommendation of the first Working Group, the Commission agreed, as an exception to its long-standing practice in adopting draft articles on second reading, to include a brief summary of the debate concerning the main outstanding issues, in light of the importance of the topic and the complexity of the issues, as well as the Working Group's recommendations on those issues. The Commission also decided to amend the title of the topic to "Responsibility of States for internationally wrongful acts" to distinguish the topic from the responsibility of the State under internal law and from the concept of international "liability" for acts not prohibited by international law (A/56/10).

At the same session, the Commission adopted the entire set of final draft articles on responsibility of States for internationally wrongful acts consisting of 59 articles as well as commentaries thereto. The Commission decided, in accordance with article 23 of its Statute, to recommend to the General Assembly that it take note of the draft articles on responsibility of States for internationally wrongful acts. It decided further to recommend that the General Assembly consider, at a later stage, and in light of the importance of the topic, the possibility of convening an international conference of plenipotentiaries to examine the draft articles on responsibility of States for internationally wrongful acts with a view to concluding a convention on the topic (A/56/10).

The General Assembly, in resolution 56/83 of 12 December 2001, took note of the articles on responsibility of States for internationally wrongful acts, the text of which was annexed to the resolution, and commended them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action. The Assembly decided to include in the provisional agenda of its fifty-ninth session an item entitled "Responsibility of States for internationally wrongful acts".

In resolution 59/35 of 2 December 2004, the General Assembly again commended to the attention of governments the articles on responsibility of States for internationally wrongful acts, and requested the Secretary-General to invite Governments to submit their written comments on any future action regarding the articles, as well as to prepare an initial compilation of decisions of international courts, tribunals and other bodies referring to the articles and to invite Governments to submit information on their practice in this regard. The Assembly decided to include in the provisional agenda of its sixty-second session the item entitled "Responsibility of States for internationally wrongful acts".

In resolution 62/61 of 6 December 2007, the General Assembly noted with appreciation the compilation of decisions of international courts, tribunals and other bodies

referring to the articles, prepared by the Secretary-General (A/62/62 and Corr.1 and Add.1) and commended once again the articles on responsibility of States, to the attention of Governments, without prejudice to the question of their future adoption or other appropriate action. The Assembly decided to include in the provisional agenda of its sixty-fifth session the item entitled “Responsibility of States for internationally wrongful acts” and to further examine, within the framework of a working group of the Sixth Committee, the question of a convention on responsibility of States for internationally wrongful acts or other appropriate action on the basis of the articles.

On 6 December 2010, the General Assembly adopted resolution 65/19 in which it took into account the comments and observations of Governments (A/62/63 and Add.1 and A/65/96 and Add.1) and decided to include in the provisional agenda of its sixty-eighth session, in 2013, the item entitled “Responsibility of States for internationally wrongful acts” and to further examine, within the framework of a working group of the Sixth Committee and with a view to taking a decision, the question of a convention on responsibility of States for internationally wrongful acts or other appropriate action on the basis of the articles.