

FOREWORD

In 1950, the International Law Commission considered ways and means for making customary international law more readily available, in accordance with article 24 of its Statute. The Commission recommended, *inter alia*, that the General Assembly of the United Nations should authorize the Secretariat to prepare and issue, with as wide a distribution as possible, a *Legislative Series* containing the texts of current national legislation on matters of international interest. In this connection, it was recommended that the Secretariat should assemble and publish from time to time collections of the texts of national legislation on special topics of general interest. The *Legislative Series* is prepared by the Codification Division of the Office of Legal Affairs.

The first 24 volumes in the *Legislative Series* have addressed a broad range of special topics of general interest relating, *inter alia*, to the law of the sea, the law of treaties, nationality, diplomatic and consular law, international organizations, State succession, non-navigational uses of international watercourses, jurisdictional immunities of States and their property, the multilateral treaty-making process as well as the prevention and suppression of international terrorism. The legal materials contained in this series have included not only national legislation but also treaties, judicial decisions, diplomatic correspondence and other relevant materials depending on the topic. The present volume of this series is devoted to the topic of the responsibility of States for internationally wrongful acts.

In 2001, at its fifty-third session, the International Law Commission adopted the draft articles on responsibility of States for internationally wrongful acts. In resolution 56/83 of 12 December 2001, the General Assembly took note of the 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. The General Assembly commended again the articles to the attention of Governments without prejudice to the question of their future adoption or other appropriate action, in 2004, 2007, 2010, 2013, 2016, 2019 and 2022.¹

In resolution 59/35, the General Assembly also requested the Secretary-General, *inter alia*, to prepare an initial compilation of decisions of international courts, tribunals and other bodies referring to the articles.² The compilation was subsequently updated on five further occasions,³ on the basis of requests by the General Assembly in each resolution adopted from 2007 onwards.⁴

¹ See General Assembly resolutions 59/35 of 2 December 2004, 62/61 of 6 December 2007, 65/19 of 6 December 2010, 68/104 of 16 December 2013, 71/133 of 13 December 2016, 74/180 of 18 December 2019 and 77/97 of 7 December 2022.

² See A/62/62 and Corr.1 and Add.1 (covering the period 1973 until April 2007).

³ See A/65/76 (covering the period from May 2007 until 31 January 2010); A/68/72 (covering the period from February 2010 until 31 January 2013); A/71/80 and Add.1 (covering the period from February 2013 until 31 January 2016); A/74/83 (covering the period from February 2016 until 31 January 2019) and A/77/74 83 (covering the period from February 2019 until 31 January 2022). In resolution 71/133 of 13 December 2016, the General Assembly also requested the preparation of 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. The request was repeated in resolution 74/180 of 18 December 2019. Two such technical reports were prepared (see: A/71/80/Add.1 and A/77/74, annex).

⁴ See footnote 1 above.

This collection of materials, in its second edition,⁵ reproduces the text of the articles, with commentaries thereto, as presented in the *Yearbook of the International Law Commission*,⁶ together with the compilation of decisions in which the articles and commentaries were referred to, by international courts, tribunals and other bodies,⁷ during the period from 1973 to 1996 when the draft articles were adopted on first reading, from 1996 to their adoption on second reading in 2001,⁸ and up to 31 January 2022, as contained in the five reports of the Secretary-General. The compilation of decisions recorded a combined total of 453 instances in which international courts, tribunals and other bodies had referred to the articles (both in their form prior to, and following, their adoption in 2001) and corresponding commentaries.

The collection of materials is organized in accordance with the structure of the articles as adopted in 2001, with each article (or Part or Chapter heading) presented together with its commentary, followed by the respective extract from the compilation of decisions prepared by the Secretary-General. The compilation of decisions reproduced the extracts of decisions in which the articles were referred to by international courts, tribunals or other bodies. Under each article, the extracts of decisions appeared in chronological order to reflect historical developments and to facilitate the understanding of decisions containing references to previous case law. In view of the number and length of those decisions, only the relevant extracts referring to the articles were included. Each extract was accompanied by a brief description of the context in which the statement was made by the international court, tribunal or other body. Only those extracts in which the articles were invoked as the basis for the decision or where the articles were referred to as reflecting the existing law governing the issue at hand were included. Submissions of parties invoking the articles, and opinions of judges appended to a decision were not included.

Annex I reproduces the articles on the responsibility of States for internationally wrongful acts. Annex II lists the various cases and decisions pertaining to each article, or part of the articles (where applicable), cited in both the commentaries and the extracts from the compilation of decisions. Annex III lists, in alphabetical order, all the cases and decisions cited in the present volume.

⁵ The first edition, published in 2012, reproduced the original compilation together with the first two subsequent Secretary-General reports (covering the period until 31 January 2010). See United Nations Sales No. E.12.V.12.

⁶ 2001, vol. II (Part Two), para. 77.

⁷ Following a comprehensive review of the decisions of international, regional and sub-regional courts, tribunals and other bodies, the extracts reproduced in this volume were identified in the decisions of: the International Court of Justice; the International Criminal Court; the International Criminal Tribunal for Rwanda; the International Tribunal for the former Yugoslavia; the Special Court for Sierra Leone; the Special Tribunal for Lebanon; the International Tribunal for the Law of the Sea; the African Court on Human and Peoples' Rights; the African Commission for Human Rights; the Caribbean Court of Justice; the European Court of Human Rights; the Court of Justice of the European Union; the General Court of the European Union; the European Commission of Human Rights; the Inter-American Court of Human Rights; the Economic Community of West African States Court of Justice; international arbitral tribunals; the Iran-United States Claims Tribunal; the United Nations Compensation Commission; the WTO Appellate Body; panels established under GATT and WTO; the Human Rights Committee; 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.

⁸ References to draft articles adopted prior to the final adoption of the articles in 2001 were included only when the draft article was incorporated in the final articles. In those cases, the text of the draft article was reproduced in a footnote accompanying the extract.