

*Article 15. Breach consisting of a composite act*

**1. The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.**

**2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.**

*Commentary*

(1) Within the basic framework established by the distinction between completed and continuing acts in article 14, article 15 deals with a further refinement, viz. the notion of a composite wrongful act. Composite acts give rise to continuing breaches, which extend in time from the first of the actions or omissions in the series of acts making up the wrongful conduct.

(2) Composite acts covered by article 15 are limited to breaches of obligations which concern some aggregate of conduct and not individual acts as such. In other words, their focus is “a series of acts or omissions defined in aggregate as wrongful”. Examples include the obligations concerning genocide, apartheid or crimes against humanity, systematic acts of racial discrimination, systematic acts of discrimination prohibited by a trade agreement, *etc.* Some of the most serious wrongful acts in international law are defined in terms of their composite character. The importance of these obligations in international law justifies special treatment in article 15.<sup>[861] 256</sup>

(3) Even though it has special features, the prohibition of genocide, formulated in identical terms in the Convention on the Prevention and Punishment of the Crime of Genocide and in later instruments,<sup>[862] 257</sup> may be taken as an illustration of a “composite” obligation. It implies that the responsible entity (including a State) will have adopted a systematic policy or practice. According to article II, subparagraph (a), of the Convention, the prime case of genocide is “[k]illing members of the [national, ethnical, racial or religious] group” with the intent to destroy that group as such, in whole or in part. Both limbs of the definition contain systematic elements. Genocide has also to be carried out with the relevant intention, aimed at physically eliminating the group “as such”. Genocide is not committed until there has been an accumulation of acts of killing, causing harm, *etc.*, committed with the relevant intent, so as to satisfy the definition in article II. Once that threshold is crossed, the time of commission extends over the whole period during which any of the acts was committed, and any individual responsible for any of them with the relevant intent will have committed genocide.<sup>[863] 258</sup>

---

<sup>[861] 256</sup> See further J. J. A. Salmon, “Le fait étatique complexe: une notion contestable”, *Annuaire français de droit international*, vol. 28 (1982), p. 709.

<sup>[862] 257</sup> See, *e.g.*, article 4 of the statute of the International Tribunal for the Former Yugoslavia, originally published as an annex to document S/25704 and Add.1, approved by the Security Council in its resolution 827 (1993) of 25 May 1993, and amended on 13 May 1998 by resolution 1166 (1998) and on 30 November 2000 by resolution 1329 (2000); article 2 of the statute of the International Tribunal for Rwanda, approved by the Security Council in its resolution 955 (1994) of 8 November 1994; and article 6 of the Rome Statute of the International Criminal Court.

<sup>[863] 258</sup> The intertemporal principle does not apply to the Convention, which according to its article I is declaratory. Thus, the obligation to prosecute relates to genocide whenever committed. See

(4) It is necessary to distinguish composite obligations from simple obligations breached by a “composite” act. Composite acts may be more likely to give rise to continuing breaches, but simple acts can cause continuing breaches as well. The position is different, however, where the obligation itself is defined in terms of the cumulative character of the conduct, *i.e.* where the cumulative conduct constitutes the essence of the wrongful act. Thus, apartheid is different in kind from individual acts of racial discrimination, and genocide is different in kind from individual acts even of ethnically or racially motivated killing.

(5) In *Ireland v. United Kingdom*, Ireland complained of a practice of unlawful treatment of detainees in Northern Ireland which was said to amount to torture or inhuman or degrading treatment, and the case was held to be admissible on that basis. This had various procedural and remedial consequences. In particular, the exhaustion of local remedies rule did not have to be complied with in relation to each of the incidents cited as part of the practice. But the Court denied that there was any separate wrongful act of a systematic kind involved. It was simply that Ireland was entitled to complain of a practice made up by a series of breaches of article VII of the Convention on the Prevention and Punishment of the Crime of Genocide, and to call for its cessation. As the Court said:

A practice incompatible with the Convention consists of an accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected to amount not merely to isolated incidents or exceptions but to a pattern or system; *a practice does not of itself constitute a violation separate from such breaches ...*

The concept of practice is of particular importance for the operation of the rule of exhaustion of domestic remedies. This rule, as embodied in Article 26 of the Convention, applies to State applications ... in the same way as it does to “individual’ applications” ... On the other hand and in principle, the rule does not apply where the applicant State complains of a practice as such, with the aim of preventing its continuation or recurrence, but does not ask the Commission or the Court to give a decision on each of the cases put forward as proof or illustrations of that practice.<sup>[864] 259</sup>

In the case of crimes against humanity, the composite act is a violation separate from the individual violations of human rights of which it is composed.

(6) A further distinction must be drawn between the necessary elements of a wrongful act and what might be required by way of evidence or proof that such an act has occurred. For example, an individual act of racial discrimination by a State is internationally wrongful,<sup>[865] 260</sup> even though it may be necessary to adduce evidence of a series of acts by State officials (involving the same person or other persons similarly situated) in order to show that any one of those acts was discriminatory rather than actuated by legitimate grounds. In its essence such discrimination is not a composite act, but it may be necessary for the purposes of proving it to produce evidence of a practice amounting to such an act.

---

*Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections* (footnote [48] 54 above), p. 617, para. 34.

<sup>[864] 259</sup> *Ireland v. The United Kingdom* (footnote [800] 236 above), p. 64, para. 159; see also *ibid.*, page 63, para. 157. See further the United States counterclaim in *Oil Platforms (Islamic Republic of Iran v. United States of America)*, *Counter-Claim, Order of 10 March 1998, I.C.J. Reports 1998*, p. 190, which likewise focuses on a general situation rather than specific instances.

<sup>[865] 260</sup> See, *e.g.*, article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination; and article 26 of the International Covenant on Civil and Political Rights.

(7) A consequence of the character of a composite act is that the time when the act is accomplished cannot be the time when the first action or omission of the series takes place. It is only subsequently that the first action or omission will appear as having, as it were, inaugurated the series. Only after a series of actions or omissions takes place will the composite act be revealed, not merely as a succession of isolated acts, but as a composite act, *i.e.* an act defined in aggregate as wrongful.

(8) Paragraph 1 of article 15 defines the time at which a composite act “occurs” as the time at which the last action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act, without it necessarily having to be the last in the series. Similar considerations apply as for completed and continuing wrongful acts in determining when a breach of international law exists; the matter is dependent upon the precise facts and the content of the primary obligation. The number of actions or omissions which must occur to constitute a breach of the obligation is also determined by the formulation and purpose of the primary rule. The actions or omissions must be part of a series but the article does not require that the whole series of wrongful acts has to be committed in order to fall into the category of a composite wrongful act, provided a sufficient number of acts has occurred to constitute a breach. At the time when the act occurs which is sufficient to constitute the breach it may not be clear that further acts are to follow and that the series is not complete. Further, the fact that the series of actions or omissions was interrupted so that it was never completed will not necessarily prevent those actions or omissions which have occurred being classified as a composite wrongful act if, taken together, they are sufficient to constitute the breach.

(9) While composite acts are made up of a series of actions or omissions defined in aggregate as wrongful, this does not exclude the possibility that every single act in the series could be wrongful in accordance with another obligation. For example, the wrongful act of genocide is generally made up of a series of acts which are themselves internationally wrongful. Nor does it affect the temporal element in the commission of the acts: a series of acts or omissions may occur at the same time or sequentially, at different times.

(10) Paragraph 2 of article 15 deals with the extension in time of a composite act. Once a sufficient number of actions or omissions has occurred, producing the result of the composite act as such, the breach is dated to the first of the acts in the series. The status of the first action or omission is equivocal until enough of the series has occurred to constitute the wrongful act; but at that point the act should be regarded as having occurred over the whole period from the commission of the first action or omission. If this were not so, the effectiveness of the prohibition would thereby be undermined.

(11) The word “remain” in paragraph 2 is inserted to deal with the intertemporal principle set out in article 13. In accordance with that principle, the State must be bound by the international obligation for the period during which the series of acts making up the breach is committed. In cases where the relevant obligation did not exist at the beginning of the course of conduct but came into being thereafter, the “first” of the actions or omissions of the series for the purposes of State responsibility will be the first occurring after the obligation came into existence. This need not prevent a court taking into account earlier actions or omissions for other purposes (*e.g.* in order to establish a factual basis for the later breaches or to provide evidence of intent).

## DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

## INTERNATIONAL ARBITRAL TRIBUNAL (UNDER THE ICSID ADDITIONAL FACILITY RULES)

*Técnicas Medioambientales Tecmed S.A. v. United Mexican States*

In its 2003 award, the arbitral tribunal constituted to hear the *Técnicas Medioambientales Tecmed S.A. v. United Mexican States* case referred to a text taken from the commentary to article 15 finally adopted by the International Law Commission. The relevant passage is quoted [on page 203] above.

[A/62/62, para. 83]

## EUROPEAN COURT OF HUMAN RIGHTS

*Ilaşcu and others v. Moldova and Russia*

In its 2004 judgement in the *Ilaşcu and others v. Moldova and Russia* case, the European Court, sitting as a Grand Chamber, referred *inter alia* to the commentary to article 15, paragraph 2 finally adopted by the International Law Commission in 2001. The relevant passage is quoted [on page 204] above.

[A/62/62, para. 84]

## INTERNATIONAL ARBITRAL TRIBUNAL (UNDER THE ICSID ADDITIONAL FACILITY RULES)

*Gemplus S.A. et al. v. The United Mexican States and Talsud S.A. v. The United Mexican States*

The arbitral tribunal constituted to hear the *Gemplus S.A. et al. v. The United Mexican States* and *Talsud S.A. v. The United Mexican States* cases relied upon article 15 and its accompanying commentary to determine the relevant date for the assessment of compensation.<sup>[866] 116</sup>

[A/68/72, para. 83]

## INTERNATIONAL ARBITRAL TRIBUNAL (UNDER UNCITRAL RULES)

*Sergei Paushok et al. v. The Government of Mongolia*

The arbitral tribunal in *Sergei Paushok et al. v. The Government of Mongolia* referred to the commentary to articles 14 and 15 dealing with continuing and composite acts, and determined that certain negotiations did not constitute continuing or composite acts or omissions.<sup>[867] 117</sup>

[A/68/72, para. 84]

<sup>[866]</sup> <sup>116</sup> ICSID, Case Nos. ARB (AF)/04/3 & ARB (AF)/04/4, Award, 16 June 2010, paras. 12–44, 12–45.

<sup>[867]</sup> <sup>117</sup> See footnote [299] 41 above, paras. 496–500.

## INTERNATIONAL ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)

*El Paso Energy International Company v. The Argentine Republic*

The arbitral tribunal in *El Paso Energy International Company v. The Argentine Republic* referred to article 15 in finding that a series of measures taken by the Government of Argentina amounted to a “composite act”.<sup>[868] 118</sup>

[A/68/72, para. 85]

*Pac Rim Cayman LLC v. The Republic of El Salvador*

The arbitral tribunal constituted to hear the *Pac Rim Cayman LLC v. The Republic of El Salvador* case considered the “well-established distinctions under customary international law” recognized in the commentary to articles 14 and 15 between a “one-time act”, a “continuous act” and a “composite act”.<sup>[869] 110</sup> Upon consideration of the commentary to articles 14 and 15, as well as the factual circumstances of the dispute,<sup>[870] 111</sup> the tribunal determined that the alleged measure “should be considered as a continuing act under international law ...”.<sup>[871] 112</sup>

[See A/68/72, footnote 115 and para. 80]]

## EUROPEAN COURT OF HUMAN RIGHTS

*El-Masri v. The Former Yugoslav Republic of Macedonia*

In its 2012 judgment in the case of *El-Masri v. The Former Yugoslav Republic of Macedonia*, the European Court of Human Rights referred to articles 7, 14, 15 and 16 of the State responsibility articles as relevant international law.<sup>[872] 119</sup>

[A/68/72, para. 86]

*Husayn (Abu Zubaydah) v. Poland*

In *Husayn (Abu Zubaydah) v. Poland*, the European Court of Human Rights listed articles 7, 14, 15 and 16 as relevant international law.<sup>[873] 85</sup>

[A/71/80, para. 68]]

## AD HOC COMMITTEE (UNDER THE ICSID CONVENTION)

*El Paso Energy International Company v. The Argentine Republic*

The *ad hoc* committee in *El Paso Energy International Company v. The Argentine Republic*, noted that the arbitral tribunal, basing itself, *inter alia*, on article 15, had exposed

<sup>[868]</sup> <sup>118</sup> See footnote [56] 16 above, para. 516.

<sup>[869]</sup> <sup>[110]</sup> See footnote [840] 110, paras. 2.65–2.74.]

<sup>[870]</sup> <sup>[111]</sup> *Ibid.*, paras. 2.65–2.93.]

<sup>[871]</sup> <sup>[112]</sup> *Ibid.*, para. 2.94.]

<sup>[872]</sup> <sup>119</sup> See footnote [552] 84 above.

<sup>[873]</sup> <sup>[85]</sup> ECHR, Former Fourth Section, Application No. 7511/13, Judgment, 24 July 2014, para. 201.]

the substance of the problem that led to its reasoning and decision, namely “that the cumulative effect of a series of measures which might be inoffensive and legal one by one may alter the global situation and the legal framework in a way that the investor could not have legitimately expected”.<sup>[874] 123</sup>

[A/71/80, para. 90]

[EUROPEAN COURT OF HUMAN RIGHTS

*Nasr et Ghali v. Italy*

The European Court of Human Rights in *Nasr et Ghali v. Italy* referred to articles 7, 14, 15 and 16 of the State responsibility articles as relevant international law.<sup>[875] 82</sup>

[A/74/83, p. 17]]

INTERNATIONAL ARBITRAL TRIBUNAL (UNDER THE ICSID ADDITIONAL FACILITY RULES)

*Crystallex International Corporation v. Bolivarian Republic of Venezuela*

The arbitral tribunal in *Crystallex International Corporation v. Bolivarian Republic of Venezuela* explained that “State responsibility for creeping expropriation is reflected in the concept of a composite act, defined in Article 15(1) of the ILC’s Articles on State Responsibility”.<sup>[876] 126</sup>

[A/74/83, p. 24]

*Rusoro Mining Limited v. The Bolivarian Republic of Venezuela*

In *Rusoro Mining Limited v. The Bolivarian Republic of Venezuela*, the arbitral tribunal stated that “the general thrust of the ILC Articles regarding composite acts is clear, the Articles do not address every single question, and in particular do not solve how time bar affects a string of acts which gives rise to a composite breach of a treaty”.<sup>[877] 127</sup> The tribunal considered “the better approach for applying the time bar consists in breaking down each alleged composite claim into individual breaches, each referring to a certain governmental measure, and to apply the time bar to each of such breaches separately”.<sup>[878] 128</sup>

[A/74/83, p. 24]

INTERNATIONAL ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)

*Blusun A.A., Jean-Pierre Lecorcier and Michael Stein v. Italian Republic*

The arbitral tribunal in *Blusun A.A., Jean-Pierre Lecorcier and Michael Stein v. Italian Republic* stated that “Article 15 only applies to a breach ‘through a series of acts or omis-

<sup>[874] 123</sup> ICSID, Case No. ARB/03/15 Decision of the *Ad Hoc* Committee on the Application for Annulment of the Argentine Republic, 22 September 2014, para. 284.

<sup>[875]</sup> <sup>[82</sup> ECHR, Fourth Section, Application 44883/09, Judgment, 23 February 2016, para. 185.]

<sup>[876]</sup> <sup>126</sup> ICSID (Additional Facility), Case No. ARB(AF)/11/2, Award, 4 April 2016, para. 669.

<sup>[877]</sup> <sup>127</sup> ICSID (Additional Facility), Case No. ARB(AF)/12/5, Award, 22 August 2016, para. 227.

<sup>[878]</sup> <sup>128</sup> *Ibid.*, para. 231.

sions defined in aggregate as wrongful’—for example, genocide. The first two sentences of ECT Article 10(1) do not define an aggregate of acts as wrongful in the way that Article 1 of the Genocide Convention does”.<sup>[879]</sup> 129

[A/74/83, p. 24]

*Burlington Resources Inc. v. Republic of Ecuador*

In *Burlington Resources Inc. v. Republic of Ecuador*, the arbitral tribunal noted that “[t]he cases relied upon by Burlington are inapposite since they deal with breaches consisting of composite acts, as set out in Article 15 of the ILC Articles . . . In the present case, the Tribunal excluded the hypothesis of creeping expropriation”.<sup>[880]</sup> 130

[A/74/83, p. 24]

*Hydro S.r.l. et al. v. Republic of Albania*

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”.<sup>[881]</sup> 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’”.<sup>[882]</sup> 97

[A/77/74, p. 19]

INTERNATIONAL ARBITRAL TRIBUNAL (UNDER ANNEX VII TO THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA)

*Duzgit Integrity Arbitration (Republic of Malta v. Democratic Republic of Sao Tome and Principe)*

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.<sup>[883]</sup> 98

[A/77/74, p. 19]

<sup>[879]</sup> 129 ICSID, Case No. ARB/14/3, Award, 27 December 2016, para. 361.

<sup>[880]</sup> 130 ICSID, Case No. ARB/08/5, Decision on Reconsideration and Award, 7 February 2017, para. 452.

<sup>[881]</sup> 96 ICSID, Case No. ARB/15/28, Award, 24 April 2019, paras. 557–558.

<sup>[882]</sup> 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.

<sup>[883]</sup> 98 PCA, Case No. 2014–07, Award on Reparation, 18 December 2019, para. 86.

## INTERNATIONAL ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)

*Global Telecom Holding S.A.E. v. Canada*

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”.<sup>[884] 99</sup>

[A/77/74, p. 19]

*Carlos Ríos and Francisco Ríos v. Republic of Chile*

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.<sup>[885] 100</sup>

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 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.<sup>[886] 101</sup>

[A/77/74, p. 19]

*Infinito Gold Ltd. v. Republic of Costa Rica*

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”.<sup>[887] 102</sup>

[A/77/74, p. 20]

<sup>[884]</sup> 99 ICSID, Case No. ARB/16/16, Award, 27 March 2020, para. 411.

<sup>[885]</sup> 100 See footnote [386] 36 above, para. 189.

<sup>[886]</sup> 101 *Ibid.*, para. 190.

<sup>[887]</sup> 102 See footnote [857] 92 above, para. 230.

## PERMANENT COURT OF ARBITRATION (UNDER UNCITRAL RULES)

*OOO Manolium Processing v. Republic of Belarus*

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”,<sup>[888] 103</sup> 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”.<sup>[889] 104</sup> 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”.<sup>[890] 105</sup>

[A/77/74, p. 20]

## [AD HOC COMMITTEE (UNDER THE ICSID CONVENTION)]

*Víctor Pey Casado and Foundation President Allende v. Republic of Chile*

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.<sup>[891] 132</sup>

[A/77/74, p. 25]]

---

<sup>[888] 103</sup> See footnote [799] 86 above, para. 277.

<sup>[889] 104</sup> *Ibid.*, para. 280.

<sup>[890] 105</sup> *Ibid.*, para. 281.

<sup>[891]</sup> [<sup>132</sup> See footnote [860] 132 above, para. 681.]