

Document:-
A/CN.4/L.574 [and Corr.1 and 3]

**State responsibility. Titles and texts of draft articles adopted by the Drafting Committee:
articles 16 to 26 bis (chapter III), 27 to 28 bis (chapter IV) and 29 to 35 (chapter V) -
reproduced in document A/CN.4/SR.2605, para.4**

Topic:
State responsibility

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4. The titles and texts of the draft articles adopted by the Drafting Committee at the fifty-first session read:

CHAPTER III
BREACH OF AN INTERNATIONAL OBLIGATION

Article 16. Existence of a breach of an international obligation

There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.

Article 17

[Deleted]

Article 18. International obligation in force for the State

An act of a State shall not be considered a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs.

Article 19

1. [Deleted]

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Article 20

[Deleted]

Article 21

[Deleted]

Article 22

[See article 26 bis]

Article 23

[Deleted]

Article 24. Extension in time of the breach of an international obligation

1. The breach of an international obligation by an act of a State not having a continuing character occurs at the moment when the act is performed, even if its effects continue.

2. The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.

3. The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with what is required by that obligation.

Article 25. 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.

Article 26

[Deleted]

Article 26 bis

...

CHAPTER IV

RESPONSIBILITY OF A STATE IN RESPECT OF THE ACT OF ANOTHER STATE

Article 27. Aid or assistance in the commission of an internationally wrongful act

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- (a) That State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) The act would be internationally wrongful if committed by that State.

Article 27 bis. Direction and control exercised over the commission of an internationally wrongful act

A State which directs and controls another State in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

- (a) That State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) The act would be internationally wrongful if committed by that State.

Article 28. Coercion of another State

A State which coerces another State to commit an act is internationally responsible for that act if:

- (a) The act would, but for the coercion, be an internationally wrongful act of the coerced State; and
- (b) The coercing State does so with knowledge of the circumstances of the act.

Article 28 bis. Effect of this Chapter

This Chapter is without prejudice to the international responsibility, under other provisions of the present articles, of the State which commits the act in question, or of any other State.

CHAPTER V

CIRCUMSTANCES PRECLUDING WRONGFULNESS

Article 29. Consent

Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent.

Article 29 bis. Compliance with peremptory norms

The wrongfulness of an act of a State is precluded if the act is required in the circumstances by a peremptory norm of general international law.

Article 29 ter. Self-defence

The wrongfulness of an act of a State is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations.

Article 30

[Countermeasures in respect of an internationally wrongful act]

...

Article 31. Force majeure

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the act is due to force majeure, that is 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.

2. Paragraph 1 does not apply if:

(a) The occurrence of force majeure results, either alone or in combination with other factors, from the conduct of the State invoking it; or

(b) The State has assumed the risk of that occurrence.

Article 32. Distress

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the author of the act in question had no other reasonable way, in a situation of distress, of saving the author's life or the lives of other persons entrusted to the author's care.

2. Paragraph 1 does not apply if:

(a) The situation of distress results, either alone or in combination with other factors, from the conduct of the State invoking it; or

(b) The act in question was likely to create a comparable or greater peril.

Article 33. State of necessity

1. Necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that State unless the act:

(a) Is the only means for the State to safeguard an essential interest against a grave and imminent peril; and

(b) Does not seriously impair an essential interest of the State or States towards which the obligation exists, or of the international community as a whole.

2. In any case, necessity may not be invoked by a State as a ground for precluding wrongfulness if:

(a) The international obligation in question arises from a peremptory norm of general international law;

(b) The international obligation in question excludes the possibility of invoking necessity; or

(c) The State has contributed to the situation of necessity.

Article 34

[See article 29 ter]

Article 34 bis

...

Article 35. Consequences of invoking a circumstance precluding wrongfulness

The invocation of a circumstance precluding wrongfulness under this Chapter is without prejudice to:

(a) Compliance with the obligation in question, if and to the extent that the circumstance precluding wrongfulness no longer exists;

(b) The question of compensation for any material harm or loss caused by the act in question.

5. The Commission's general view, also expressed by some Governments, was that chapter III was unnecessarily detailed and created difficulties in interpretation. In his summary of proposals concerning chapter III, in paragraph 156 of his second report on State responsibility (A/CN.4/498 and Add.1-4), the Special Rapporteur had substantially reduced the number of articles.

6. The first article in chapter III was article 16 (Existence of a breach of an international obligation). The Special Rapporteur had proposed that articles 16, 17, paragraph 1, and 19, paragraph 1, should be amalgamated. The Drafting Committee had found the new structure to be economical, coherent and logical. In addition, taking into account a suggestion made in the Commission, the Committee had incorporated the ideas expressed in articles 20 and 21 in article 16.

7. Articles 20 and 21 dealt with the distinction between obligations of conduct and of result, but the Special Rapporteur had suggested their deletion on the grounds that the obligations could not always be divided as specified by the articles, that the distinction appeared to have no consequences for the rest of the draft articles and that the words "obligations of conduct" were misleading, while the words "obligations of means" would be more accurate. Most members of the Commission had supported that analysis and the idea of deleting articles 20 and 21. Some, however, had expressed concern, since the fact that the distinction had gained currency and acceptance in international law suggested that it should be retained somewhere in the draft. In order to address those concerns, the Drafting Committee had agreed that the description of various forms of obligations could be made in the commentary, while the text should refer only to the "character" of the obligation, replacing the reference to "content" of the obligation proposed by the Special Rapporteur. The new phrase not only brought the substance of article 19, paragraph 1, into article 16 but also provided a vehicle by which the notions of obligations of means and result could be explained in the commentary. The commentary would also explain why the Commission had not entirely ignored the distinction between different types of obligations: in some instances, it could be conceptually useful, even though it was of no apparent normative utility for the purposes of the draft. The commentary would also explain the different types of obligations and the reasons for looking at them slightly differently, including the change in the name of the obligation of "conduct" to obligation of "means".

8. The Drafting Committee had decided to delete article 23. The views expressed in the Commission concurred with the Special Rapporteur's conclusion that article 23 was confusing and that the obligation of prevention