

DOCUMENT A/56/10*

Report of the International Law Commission on the work of its fifty-third session (23 April–1 June and 2 July–10 August 2001)

CONTENTS

	<i>Page</i>
Abbreviations	6
Note concerning quotations	6
Multilateral instruments cited in the present volume.....	7
<i>Chapter</i>	<i>Paragraphs</i>
I. ORGANIZATION OF THE SESSION.....	1–10 15
A. Membership	2 15
B. Officers and the Enlarged Bureau	3–5 15
C. Drafting Committee	6–7 15
D. Working groups	8 16
E. Secretariat	9 16
F. Agenda	10 16
II. SUMMARY OF THE WORK OF THE COMMISSION AT ITS FIFTY-THIRD SESSION.....	11–18 17
III. SPECIFIC ISSUES ON WHICH COMMENTS WOULD BE OF PARTICULAR INTEREST TO THE COMMISSION	19–29 18
A. Reservations to treaties	20–26 18
B. Diplomatic protection	27–28 19
C. Unilateral acts of States	29 19
IV. STATE RESPONSIBILITY	30–77 20
A. Introduction	30–40 20
B. Consideration of the topic at the present session.....	41–71 21
1. Brief summary of the debate on the main outstanding issues	
(a) Serious breaches of obligations to the international community as a whole (Part Two, chapter III proposed by the Drafting Committee at the fifty-second session..	45–49 22
(b) Countermeasures (Part Two bis, chapter II proposed by the Drafting Committee at the fifty-second session)	50–55 22
(c) Dispute settlement provisions (Part Three)	56–60 23
(d) Form of the draft articles	61–67 24
2. Change of the title of the topic	68 25
3. Adoption of the draft articles and commentaries	69–71 25
C. Recommendation of the Commission.....	72–73 25
D. Tribute to the Special Rapporteur, Mr. James Crawford.....	74–75 25
E. Draft articles on responsibility of States for internationally wrongful acts	
1. Text of the draft articles	76 26
2. Text of the draft articles with commentaries thereto	77 30
Responsibility of States for internationally wrongful acts	31
General commentary	31
PART ONE. THE INTERNATIONALLY WRONGFUL ACT OF A STATE	32
CHAPTER I. General principles	
Article 1. Responsibility of a State for its internationally wrongful acts.....	32
Commentary	32
Article 2. Elements of an internationally wrongful act of a State	34
Commentary	34
Article 3. Characterization of an act of a State as internationally wrongful	36
Commentary	36

* Initially distributed as *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10.*

	<i>Page</i>
CHAPTER II. Attribution of conduct to a State	38
Commentary.....	38
Article 4. Conduct of organs of a State	40
Commentary	40
Article 5. Conduct of persons or entities exercising elements of governmental authority	42
Commentary	42
Article 6. Conduct of organs placed at the disposal of a State by another State	43
Commentary	44
Article 7. Excess of authority or contravention of instructions	45
Commentary	45
Article 8. Conduct directed or controlled by a State	47
Commentary.....	47
Article 9. Conduct carried out in the absence or default of the official authorities	49
Commentary	49
Article 10. Conduct of an insurrectional or other movement	50
Commentary	50
Article 11. Conduct acknowledged and adopted by a State as its own	52
Commentary	52
CHAPTER III. Breach of an international obligation	54
Commentary	54
Article 12. Existence of a breach of an international obligation	54
Commentary	54
Article 13. International obligation in force for a State	57
Commentary	57
Article 14. Extension in time of the breach of an international obligation	59
Commentary	59
Article 15. Breach consisting of a composite act	62
Commentary	62
CHAPTER IV. Responsibility of a State in connection with the act of another State	64
Commentary	64
Article 16. Aid or assistance in the commission of an internationally wrongful act	65
Commentary	66
Article 17. Direction and control exercised over the commission of an internationally wrongful act	67
Commentary	68
Article 18. Coercion of another State	69
Commentary	69
Article 19. Effect of this chapter	70
Commentary	70
CHAPTER V. Circumstances precluding wrongfulness	71
Commentary	71
Article 20. Consent	72
Commentary	72
Article 21. Self-defence	74
Commentary	74
Article 22. Countermeasures in respect of an internationally wrongful act	75
Commentary	75
Article 23. <i>Force majeure</i>	76
Commentary	76
Article 24. Distress	78
Commentary	78
Article 25. Necessity	80
Commentary	80
Article 26. Compliance with peremptory norms	84
Commentary	84
Article 27. Consequences of invoking a circumstance precluding wrongfulness	85
Commentary	86
PART TWO. CONTENT OF THE INTERNATIONAL RESPONSIBILITY OF A STATE	86
CHAPTER I. General principles	87
Commentary	87
Article 28. Legal consequences of an internationally wrongful act	87
Commentary	87
Article 29. Continued duty of performance	88
Commentary	88
Article 30. Cessation and non-repetition	88
Commentary	88

	<i>Page</i>
Article 31. Reparation	91
Commentary	91
Article 32. Irrelevance of internal law	94
Commentary	94
Article 33. Scope of international obligations set out in this Part	94
Commentary	94
CHAPTER II. Reparation for injury	95
Commentary	95
Article 34. Forms of reparation	95
Commentary	95
Article 35. Restitution	96
Commentary	96
Article 36. Compensation	98
Commentary	98
Article 37. Satisfaction	105
Commentary	105
Article 38. Interest	107
Commentary	107
Article 39. Contribution to the injury	109
Commentary	109
CHAPTER III. Serious breaches of obligations under peremptory norms of general international law	110
Commentary	110
Article 40. Application of this chapter	112
Commentary	112
Article 41. Particular consequences of a serious breach of an obligation under this chapter ...	113
Commentary	114
PART THREE. THE IMPLEMENTATION OF THE INTERNATIONAL RESPONSIBILITY OF A STATE	116
CHAPTER I. Invocation of the responsibility of a State	116
Commentary	116
Article 42. Invocation of responsibility by an injured State	117
Commentary	117
Article 43. Notice of claim by an injured State	119
Commentary	119
Article 44. Admissibility of claims	120
Commentary	120
Article 45. Loss of the right to invoke responsibility	121
Commentary	121
Article 46. Plurality of injured States	123
Commentary	123
Article 47. Plurality of responsible States	124
Commentary	124
Article 48. Invocation of responsibility by a State other than an injured State	126
Commentary	126
CHAPTER II. Countermeasures	128
Commentary	128
Article 49. Object and limits of countermeasures	129
Commentary	130
Article 50. Obligations not affected by countermeasures	131
Commentary	131
Article 51. Proportionality	134
Commentary	134
Article 52. Conditions relating to resort to countermeasures	135
Commentary	135
Article 53. Termination of countermeasures	137
Commentary	137
Article 54. Measures taken by States other than an injured State	137
Commentary	137
PART FOUR. GENERAL PROVISIONS	139
Article 55. <i>Lex specialis</i>	140
Commentary	140
Article 56. Questions of State responsibility not regulated by these articles	141
Commentary	141
Article 57. Responsibility of an international organization	141
Commentary	141
Article 58. Individual responsibility	142
Commentary	142
Article 59. Charter of the United Nations	143
Commentary	143

<i>Chapter</i>	<i>Paragraphs</i>	<i>Page</i>
V. INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING OUT OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW (PREVENTION OF TRANSBOUNDARY HARM FROM HAZARDOUS ACTIVITIES) ..	78–98	144
A. Introduction	78–90	144
B. Consideration of the topic at the present session	91–93	145
C. Recommendation of the Commission	94	145
D. Tribute to the Special Rapporteur, Mr. Pemmaraju Sreenivasa Rao	95–96	145
E. Draft articles on prevention of transboundary harm from hazardous activities		
1. Text of the draft articles	97	146
2. Text of the draft articles with commentaries thereto	98	148
Prevention of transboundary harm from hazardous activities.....		148
General commentary		148
Preamble		149
Commentary		149
Article 1. Scope		149
Commentary		149
Article 2. Use of terms		151
Commentary		152
Article 3. Prevention		153
Commentary		153
Article 4. Cooperation		155
Commentary		155
Article 5. Implementation		156
Commentary		156
Article 6. Authorization		156
Commentary		157
Article 7. Assessment of risk		157
Commentary		157
Article 8. Notification and information		159
Commentary		159
Article 9. Consultations on preventive measures		160
Commentary		160
Article 10. Factors involved in an equitable balance of interests		161
Commentary		162
Article 11. Procedures in the absence of notification		164
Commentary		164
Article 12. Exchange of information		164
Commentary		165
Article 13. Information to the public		165
Commentary		165
Article 14. National security and industrial secrets		166
Commentary		167
Article 15. Non-discrimination		167
Commentary		167
Article 16. Emergency preparedness		168
Commentary		168
Article 17. Notification of an emergency		169
Commentary		169
Article 18. Relationship to other rules of international law		169
Commentary		169
Article 19. Settlement of disputes		169
Commentary		170
VI. RESERVATIONS TO TREATIES	99–157	171
A. Introduction	99–111	171
B. Consideration of the topic at the present session		
1. Second part of the fifth report	112–115	172
2. Sixth report	116–155	172
(a) Introduction by the Special Rapporteur of his sixth report	118–133	172
(b) Summary of the debate	134–155	175
C. Draft guidelines on reservations to treaties provisionally adopted so far by the Commission		
1. Text of the draft guidelines	156	177
2. Text of the draft guidelines with commentaries thereto adopted at the fifty-third session of the Commission	157	180
2.2 Confirmation of reservations when signing		180
2.2.1 Formal confirmation of reservations formulated when signing a treaty		180
Commentary		180
2.2.2 [2.2.3] Instances of non-requirement of confirmation of reservations formulated when signing a treaty		183
Commentary		183
2.2.3 [2.2.4] Reservations formulated upon signature when a treaty expressly so provides.....		183
Commentary		183

<i>Chapter</i>	<i>Paragraphs</i>	<i>Page</i>
2.3 Late formulation of a reservation		184
2.3.1 Late formulation of a reservation		185
Commentary		185
2.3.2 Acceptance of late formulation of a reservation		189
Commentary		189
2.3.3 Objection to late formulation of a reservation		190
Commentary		190
2.3.4 Subsequent exclusion or modification of the legal effect of a treaty by means other than reservations		191
Commentary		191
2.4.3 Time at which an interpretative declaration may be formulated		192
Commentary		192
2.4.4 [2.4.5] Non-requirement of confirmation of interpretative declarations made when signing a treaty		193
Commentary		193
2.4.5 [2.4.4] Formal confirmation of conditional interpretative declarations formulated when signing a treaty		194
Commentary		194
2.4.6 [2.4.7] Late formulation of an interpretative declaration		194
Commentary		194
2.4.7 [2.4.8] Late formulation of a conditional interpretative declaration		195
Commentary		195
VII. DIPLOMATIC PROTECTION	158–207	196
A. Introduction	158–163	196
B. Consideration of the topic at the present session	164–207	196
1. Article 9		
(a) Introduction by the Special Rapporteur	167–170	197
(b) Summary of the debate	171–183	197
(c) Special Rapporteur's concluding remarks	184	199
2. Article 10		
(a) Introduction by the Special Rapporteur	185–188	199
(b) Summary of the debate	189–195	200
(c) Special Rapporteur's concluding remarks	196–199	200
3. Article 11		
(a) Introduction by the Special Rapporteur	200–201	201
(b) Summary of the debate	202–206	201
(c) Special Rapporteur's concluding remarks	207	201
VIII. UNILATERAL ACTS OF STATES	208–254	202
A. Introduction	208–217	202
B. Consideration of the topic at the present session	218–254	202
1. Introduction by the Special Rapporteur of his fourth report	220–229	202
2. Summary of the debate	230–248	203
3. Special Rapporteur's concluding remarks	249–253	205
4. The Working Group	254	205
IX. OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION	255–281	206
A. Programme, procedures and working methods of the Commission, and its documen- tation	255–260	206
B. Date and place of the fifty-fourth session	261	206
C. Cooperation with other bodies	262–266	206
D. Representation at the fifty-sixth session of the General Assembly	267–268	206
E. International Law Seminar	269–281	207