

PART ONE

THE INTERNATIONALLY WRONGFUL ACT OF A STATE

Part One defines the general conditions necessary for State responsibility to arise. Chapter I lays down three basic principles for responsibility from which the articles as a whole proceed. Chapter II defines the conditions under which conduct is attributable to the State. Chapter III spells out in general terms the conditions under which such conduct amounts to a breach of an international obligation of the State concerned. Chapter IV deals with certain exceptional cases where one State may be responsible for the conduct of another State not in conformity with an international obligation of the latter. Chapter V defines the circumstances precluding the wrongfulness for conduct not in conformity with the international obligations of a State.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

IRAN-UNITED STATES CLAIMS TRIBUNAL

Rankin v. Islamic Republic of Iran

In its 1987 award in the *Rankin v. Islamic Republic of Iran* case, the Tribunal, in determining whether it had jurisdiction over the case, considered that Part One of the articles provisionally adopted by the International Law Commission in 1980 constituted “the most recent and authoritative statement of current international law” on the origin of State responsibility for internationally wrongful acts:^{[23] 4}

... the Tribunal observes that only injuries resulting from popular movements which are not an act of the Government of Iran are excluded from the Tribunal’s jurisdiction by this provision [*i.e.*, paragraph 11 of the Declaration of the Government of Algeria of 19 January 1981^{[24] 5}], which exclusion is no more than a restatement of the customary international law requirement that a State’s responsibility is engaged only by wrongful conduct attributable to the State. Such conduct has in recent years come under the scrutiny of the United Nations International Law Commission, culminating in the development of a set of draft articles on the origins of State responsibility for internationally wrongful acts. The Tribunal has adopted the criteria set down by the International Law Commission as the most recent and authoritative statement of current international law in this area. *See* draft articles on State responsibility (Part 2 of the draft) as provisionally adopted by the International Law Commission, cited *1980 Yearbook of the International Law Commission*, vol. II, Part Two at

^[23] 4 Part One of the articles provisionally adopted by the International Law Commission (entitled “Origin of international responsibility”) became, with amendments, Part One of the articles finally adopted in 2001.

^[24] 5 Under paragraph 11 of the Declaration of the Government of Algeria of 19 January 1981, the United States of America agreed to “bar and preclude prosecution against Iran of any pending or future claim ... arising out of events occurring before the date of this Declaration related to ... (d) injury to the United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran”.

pp. 30–34, United Nations doc. A/CN.4/SER.A/1980/Add.1 (Part 2); accord *Alfred L.W. Short v. The Islamic Republic of Iran*, Award No. 312–11135–3 (14 July 1987).^[25] 6

In furtherance of this finding, the Tribunal later referred to draft articles 5 to 10 provisionally adopted by the International Law Commission as the legal basis

to examine the circumstances of each departure [of United States citizens from the Islamic Republic of Iran] and to identify the general and specific acts relied on and evidenced to determine how they affected or motivated at that time the individual who now is alleging expulsion and whether such acts are attributable to Iran.^[26] 7

[A/62/62, para. 7]

INTERNATIONAL ARBITRAL TRIBUNAL (UNDER THE ICSID CONVENTION)

Burlington Resources Inc. v. Republic of Ecuador

The arbitral tribunal in *Burlington Resources Inc. v. Republic of Ecuador* referred generally to the State responsibility articles in support of the assertion that “someone’s breach of an obligation corresponds to the breach of another’s right”.^[27] 15

[A/68/72, para. 17]

^[25] 6 IUSCT, Award No. 326–10913–2, 3 November 1987, Iran–United States Claims Tribunal Reports, vol. 17 (1987–IV), p. 141, para. 18. The relevant extract of the previous case referred to in this passage (*Short v. Islamic Republic of Iran*) is reported [on pp. 168–169] below.

^[26] 7 *Ibid.*, pp. 147–148, para. 30.

^[27] 15 ICSID, Case No. ARB/08/5, Decision on Liability, 14 December 2012, para. 214, footnote 355.