

### Article 29. Continued duty of performance

**The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible State to perform the obligation breached.**

#### Commentary

(1) Where a State commits a breach of an international obligation, questions as to the restoration and future of the legal relationship thereby affected are central. Apart from the question of reparation, two immediate issues arise, namely, the effect of the responsible State's conduct on the obligation which has been breached, and cessation of the breach if it is continuing. The former question is dealt with by article 29, the latter by article 30.

(2) Article 29 states the general principle that the legal consequences of an internationally wrongful act do not affect the continued duty of the State to perform the obligation it has breached. As a result of the internationally wrongful act, a new set of legal relations is established between the responsible State and the State or States to whom the international obligation is owed. But this does not mean that the pre-existing legal relation established by the primary obligation disappears. Even if the responsible State complies with its obligations under Part Two to cease the wrongful conduct and to make full reparation for the injury caused, it is not relieved thereby of the duty to perform the obligation breached. The continuing obligation to perform an international obligation, notwithstanding a breach, underlies the concept of a continuing wrongful act (see article 14) and the obligation of cessation (see subparagraph (a) of article 30).

(3) It is true that in some situations the ultimate effect of a breach of an obligation may be to put an end to the obligation itself. For example, a State injured by a material breach of a bilateral treaty may elect to terminate the treaty.<sup>[1195] 424</sup> But as the relevant provisions of the 1969 Vienna Convention make clear, the mere fact of a breach and even of a repudiation of a treaty does not terminate the treaty.<sup>[1196] 425</sup> It is a matter for the injured State to react to the breach to the extent permitted by the Convention. The injured State may have no interest in terminating the treaty as distinct from calling for its continued performance. Where a treaty is duly terminated for breach, the termination does not affect legal relationships which have accrued under the treaty prior to its termination, including the obligation to make reparation for any breach.<sup>[1197] 426</sup> A breach of an obligation under general international law is even less likely to affect the underlying obligation, and indeed will never do so *as such*. By contrast, the secondary legal relation of State responsibility arises on the occurrence of a breach and without any requirement of invocation by the injured State.

<sup>[1195] 424</sup> See footnote [1184] 422 above.

<sup>[1196] 425</sup> Indeed, in the *Gabčíkovo-Nagymaros Project* case, ICJ held that continuing material breaches by both parties did not have the effect of terminating the 1977 Treaty on the Construction and Operation of the Gabčíkovo-Nagymaros Barrage System (footnote [31] 37 above), p. 68, para. 114.

<sup>[1197] 426</sup> See, e.g., "*Rainbow Warrior*" (footnote [40] 46 above), p. 266, citing Lord McNair (dissenting) in *Ambatielos, Preliminary Objection, I.C.J. Reports 1952*, p. 28, at p. 63. On that particular point the Court itself agreed, *ibid.*, p. 45. In the *Gabčíkovo-Nagymaros Project* case, Hungary accepted that the legal consequences of its termination of the 1977 Treaty on the Construction and Operation of the Gabčíkovo-Nagymaros Barrage System on account of the breach by Czechoslovakia were prospective only, and did not affect the accrued rights of either party (footnote [31] 37 above), pp. 73–74, paras. 125–127. The Court held that the Treaty was still in force, and therefore did not address the question.

(4) Article 29 does not need to deal with such contingencies. All it provides is that the legal consequences of an internationally wrongful act within the field of State responsibility do not affect any continuing duty to comply with the obligation which has been breached. Whether and to what extent that obligation subsists despite the breach is a matter not regulated by the law of State responsibility but by the rules concerning the relevant primary obligation.

## DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

### ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE

#### *Mohammad Ammar Al-Bahloul v. The Republic of Tajikistan*

In *Mohammad Ammar Al-Bahloul v. The Republic of Tajikistan*, the arbitral tribunal cited article 29 as authority for the proposition that “it is a generally recognized international law principle that, where the breach is of a continuing character, a Contracting Party has a continuing duty to perform the obligation breached”.<sup>[1198] 144</sup>

[A/68/72, para. 101]

### [PERMANENT COURT OF ARBITRATION (UNDER UNCITRAL RULES)]

#### *Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador*

The arbitral tribunal in *Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador* referred to articles 28 to 39 of the State responsibility articles under, part III, “Principal legal and other texts”,<sup>[1199] 150</sup> which were relevant with regard to the parties’ claims for relief.<sup>[1200] 151</sup>

[A/74/83, p. 28]]

<sup>[1198]</sup> 144 SCC, Case No. V (064/2008), Final Award, 8 June 2010, para. 48.

<sup>[1199]</sup> <sup>[150]</sup> PCA, Case No. 2009–23, Second Partial Award on Track II, 30 August 2018, paras. 3.34–3.45.]

<sup>[1200]</sup> <sup>[151]</sup> *Ibid.*, para. 9.9.]