Article 32. Irrelevance of internal law

The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this Part.

Commentary

(1) Article 3 concerns the role of internal law in the characterization of an act as wrongful. Article 32 makes clear the irrelevance of a State's internal law to compliance with the obligations of cessation and reparation. It provides that a State which has committed an internationally wrongful act may not invoke its internal law as a justification for failure to comply with its obligations under this part. Between them, articles 3 and 32 give effect for the purposes of State responsibility to the general principle that a State may not rely on its internal law as a justification for its failure to comply with its international obligations.[1413]477 Although practical difficulties may arise for a State organ confronted with an obstacle to compliance posed by the rules of the internal legal system under which it is bound to operate, the State is not entitled to oppose its internal law or practice as a legal barrier to the fulfilment of an international obligation arising under Part Two.

(2) Article 32 is modelled on article 27 of the 1969 Vienna Convention, which provides that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This general principle is equally applicable to the international obligations deriving from the rules of State responsibility set out in Part Two. The principle may be qualified by the relevant primary rule, or by a *lex specialis*, such as article 50 of the European Convention on Human Rights, which provides for just satisfaction in lieu of full reparation "if the internal law of the High Contracting Party concerned allows only partial reparation to be made".[1414] 478

(3) The principle that a responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations arising out of the commission of an internationally wrongful act is supported both by State practice and international decisions. For example, the dispute between Japan and the United States in 1906 over California's discriminatory education policies was resolved by the revision of the Californian legislation.[1415] 479 In the incident concerning article 61, paragraph 2, of the Weimar Constitution (Constitution of the Reich of 11 August 1919), a constitutional amendment was provided for in order to ensure the discharge of the obligation deriving from article 80 of the Treaty of Peace between the Allied and Associated Powers and Germany (Treaty of Versailles).[1416] 480 In the *Peter Pázmány University* case, PCIJ specified that the property to be returned should be "freed from any measure of transfer, compulsory administration, or sequestration".[1417] 481 In short, international law does not recognize that the obligations of a responsible State under

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[1413] 477 See paragraphs (2) to (4) of the commentary to article 3.

[1414] 478 Article 41 of the Convention, as amended by Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby. Other examples include article 32 of the Revised General Act for the Pacific Settlement of International Disputes and article 30 of the European Convention for the Peaceful Settlement of Disputes.

[1415] 479 See R. L. Buell, "The development of the anti-Japanese agitation in the United States", *Political Science Quarterly*, vol. 37 (1922), pp. 620 *et seq.*

[1416] 480 See *British and Foreign State Papers, 1919* (London, H. M. Stationery Office, 1922), vol. 112, p. 1094.

[1417] 481 *Appeal from a Judgment of the Hungaro/Czechoslovak Mixed Arbitral Tribunal (The Peter Pázmány University), Judgment, 1933, P.C.I.J., Series A/B, No. 61*, p. 208, at p. 249.

Part Two are subject to the State's internal legal system nor does it allow internal law to count as an excuse for non-performance of the obligations of cessation and reparation.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

Permanent Court of Arbitration (under UNCITRAL Rules)

Hulley Enterprises Limited v. *The Russian Federation, Yukos Universal Limited* v. *The Russian Federation and Veteran Petroleum Limited* v. *The Russian Federation*

The arbitral tribunal constituted to hear the *Hulley Enterprises Limited* v. *The Russian Federation*, *Yukos Universal Limited* v. *The Russian Federation* and *Veteran Petroleum Limited* v. *The Russian Federation* cases accepted an expert opinion, submitted by James Crawford, which cited articles 3 and 32 in support of the proposition that there existed "a strong presumption of the separation of international from national law".[1418] 163

[A/68/72, para. 114]

Inter-American Court of Human Rights

Case of Gelman v. *Uruguay*

In an order in the *Case of Gelman* v. *Uruguay*, the Inter-American Court of Human Rights cited the State responsibility articles in support of the assertion that "no pueden, por razones de orden interno, dejar de asumir la responsabilidad internacional ya establecida".[1419] 165

[A/71/80, para. 116]

African Court on Human and Peoples' Rights

Tanganyika Law Society and Reverend Christopher Mtikila. v. *Republic of Tanzania*

In *Tanganyika Law Society and Reverend Christopher Mtikila.* v. *Republic of Tanzania*, the African Court on Human and Peoples' Rights noted that article 32 provided that '"the Responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations"'.[1420] 166

[A/71/80, para. 117]

International arbitral tribunal (under the ICSID Convention)

Bernhard von Pezold and others v. *Republic of Zimbabwe*

In *Bernhard von Pezold and others* v. *Republic of Zimbabwe*, the arbitral tribunal noted that, "[i]nternal laws, per ILC Article 32, do not justify the failure to provide repara-

[1418] 163 See footnotes [159] 24, [160] 25 and [161] 26 above, para. 316.

[1419] 165 IACHR, Order, 20 March 2013, para. 59, footnote 38.

[1420] 166 African Court on Human and Peoples' Rights, Application Nos. 009/2011 and 011/2011, Judgment, 14 June 2013, para. 108 (quoting article 32).

tion; obstacles in administration or politics are also insufficient. Proportionality is such that restitution is only barred if 'there is a grave disproportionality' between the remedy awarded and the relevant breach".[1421] [167] The tribunal also stated that "Article 32 of the ILC Articles prohibits a state from relying on its internal laws to justify non-compliance with its international obligations".[1422] [168]

[A/71/80, para. 118]

[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",[1423] [150] which were relevant with regard to the parties' claims for relief.[1424] [151]

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

Renco Group v. *Republic of Peru*

The arbitral tribunal in *Renco Group* v. *Republic of Peru* referred to article 32, noting that

> [w]hile international law generally holds individual States' internal law to be irrelevant to a State's obligations under international law, [the tribunal] nevertheless acknowledges that issues may arise in respect of which there is no clearly applicable treaty or customary international law obligation. … In this domain, and especially where the international rule to be applied finds its origin in analogous national law, the 'rules generally accepted by municipal legal systems' may be invoked in order that the ultimate result not 'lose touch with reality'.[1425] [162]

[A/77/74, p. 29]

Court of Justice of the European Union

European Commission v. *Hungary*

In *European Commission* v. *Hungary*, the Grand Chamber of the Court of Justice of the European Union found that it was clear from article 32 "that the responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under international law".[1426] [163]

[A/77/74, p. 29]

[1421] [167] See footnote [114] 24 above, para. 690 (quoting para. (11) of the commentary to article 35).

[1422] [168] *Ibid*., para. 725.

[1423] [[150] PCA, Case No. 2009–23, Second Partial Award on Track II, 30 August 2018, paras. 3.34–3.45.]

[1424] [[151] *Ibid*., para. 9.9.]

[1425] [162] See footnote [796] 83 above, para. 213.

[1426] [163] See footnote [189] 22 above, para. 90.