Article 56. Questions of State responsibility not regulated by these articles

The applicable rules of international law continue to govern questions concerning the responsibility of a State for an internationally wrongful act to the extent that they are not regulated by these articles.

Commentary

(1) The present articles set out by way of codification and progressive development the general secondary rules of State responsibility. In that context, article 56 has two functions. First, it preserves the application of the rules of customary international law concerning State responsibility on matters not covered by the articles. Secondly, it preserves other rules concerning the effects of a breach of an international obligation which do not involve issues of State responsibility but stem from the law of treaties or other areas of international law. It complements the *lex specialis* principle stated in article 55. Like article 55, it is not limited to the legal consequences of wrongful acts but applies to the whole regime of State responsibility set out in the articles.

(2) As to the first of these functions, the articles do not purport to state all the consequences of an internationally wrongful act even under existing international law and there is no intention of precluding the further development of the law on State responsibility. For example, the principle of law expressed in the maxim *ex injuria jus non oritur* may generate new legal consequences in the field of responsibility.[2161] [825] In this respect, article 56 mirrors the preambular paragraph of the 1969 Vienna Convention which affirms that "the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention". However, matters of State responsibility are not only regulated by customary international law but also by some treaties; hence article 56 refers to the "applicable rules of international law".

(3) A second function served by article 56 is to make it clear that the present articles are not concerned with any legal effects of a breach of an international obligation which do not flow from the rules of State responsibility, but stem from the law of treaties or other areas of law. Examples include the invalidity of a treaty procured by an unlawful use of force,[2162] [826] the exclusion of reliance on a fundamental change of circumstances where the change in question results from a breach of an international obligation of the invoking State to any other State party,[2163] [827] or the termination of the international obligation violated in the case of a material breach of a bilateral treaty.[2164] [828]

[2161] [825] Another possible example, related to the determination whether there has been a breach of an international obligation, is the so-called principle of "approximate application", formulated by Sir Hersch Lauterpacht in *Admissibility of Hearings of Petitioners by the Committee on South West Africa*, *Advisory Opinion*, *I.C.J. Reports 1956*, p. 23, at p. 46. In the *Gabčíkovo-Nagymaros Project* case (footnote [31] 37 above), the Court said that "even if such a principle existed, it could by definition only be employed within the limits of the treaty in question" (p. 53, para. 76). See also S. Rosenne, *Breach of Treaty* (footnote [1150] 411 above), pp. 96–101.

[2162] [826] 1969 Vienna Convention, art. 52.

[2163] [827] *Ibid*., art. 62, para. 2 (*b*).

[2164] [828] *Ibid*., art. 60, para 1.

DECISIONS OF INTERNATIONAL COURTS, TRIBUNALS AND OTHER BODIES

Eritrea-Ethiopia Claims Commission

Ethiopia's Damages Claims, Final Award, 17 August 2009 and Eritrea's Damages Claims, Final Award, 17 August 2009

In its 2009 final award on *Ethiopia's Damages Claims*, the Eritrea-Ethiopia Claims Commission noted that the "size of the Parties' claims raised potentially serious questions involving the intersection of the law of State responsibility with fundamental human rights norms". It recalled that an earlier version of the State responsibility articles had included a qualification that "[i]n no case may a people be deprived of its own means of subsistence", which was also reflected in article 1, paragraph 2, of both Human Rights Covenants.[2165] [92] The Claims Commission proceeded to confirm that, while such qualification was not included in the 2001 text, that did "not alter the fundamental human rights law rule of common Article 1(2) in the Covenants, which unquestionably applies to the Parties".[2166] [93]

[A/65/76, para. 56]

[2165] [92] See article 31.

[2166] [93] *Ethiopia's Damages Claims* (footnote [1280] 47 above), para. 19, and *Eritrea's Damages Claims* (footnote [1280] 47 above), para. 19.