

รายการอ้างอิง

ภาษาไทย

กนกวรรณ ภิบาลชนม์. อาชญากรรมสงคราม : ปัญหาและลู่ทางในการดำเนินคดีและการลงโทษอาชญากรรมสงคราม. วิทยานิพนธ์ปริญญาโทมหาบัณฑิต คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย, 2537.

กรรภิรมย์ สุนทรนาเวิน. ศาลอาญาระหว่างประเทศ. วิทยานิพนธ์ปริญญาโทมหาบัณฑิต คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, 2542.

จาดรนต์ ติราวัดมน. ศาลอาญาระหว่างประเทศ. ใน เอกสารประกอบการอภิปรายของกลุ่มกฎหมายความสัมพันธ์ระหว่างประเทศ สำหรับการประชุมนิติศาสตร์แห่งชาติประจำปี 2543. 14 – 15 กันยายน 2543.

จิตรา เพ็ญล้ำเลิศ. ข้อพิจารณาบางประการเกี่ยวกับศาลอาญาระหว่างประเทศ. วารสารกฎหมายสุโขทัยธรรมมาธิราช 12 (มิถุนายน 2543) : 70-79.

จุมพต สายสุนทร. กฎหมายระหว่างประเทศ. พิมพ์ครั้งที่ 1. กรุงเทพมหานคร : โรงพิมพ์เดือนตุลา, 2539.

จุมพต สายสุนทร. การระงับข้อพิพาทระหว่างประเทศโดยสันติ. พิมพ์ครั้งที่ 1. กรุงเทพมหานคร : สำนักพิมพ์นิติธรรม, 2540.

จันทิมา ลิ้มปานนท์. ปัญหากฎหมายและแนวทางการเยียวยาเกี่ยวกับการฆ่าล้างเผ่าพันธุ์. วิทยานิพนธ์ปริญญาโทมหาบัณฑิต คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย, 2541.

เฉลิมชาติ บัวสมบุญณ์. การรุกรานในกฎหมายระหว่างประเทศ : จากความรับผิดชอบของรัฐสู่ความรับผิดชอบของปัจเจกบุคคล. วิทยานิพนธ์ปริญญาโทมหาบัณฑิต คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย, 2543.

ชุมพร ปัจจุสานนท์. สหประชาชาติ. ใน เอกสารการสอนชุดวิชา สถาบันระหว่างประเทศ หน่วยที่ 1-7. พิมพ์ครั้งที่ 5. กรุงเทพมหานคร : สำนักพิมพ์มหาวิทยาลัยสุโขทัยธรรมมาธิราช, 2540.

นพมาศ คมขำ. ข้อมติขององค์การสหประชาชาติที่เกี่ยวข้องกับสถานการณ์ในกัมพูชา. วิทยานิพนธ์ปริญญาโทมหาบัณฑิต คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย, 2536.

ประภัสสร เทพชาตรี, บรรณาธิการ. บทบาทของสหประชาชาติในสหัสวรรษใหม่. พิมพ์ครั้งที่ 1. กรุงเทพมหานคร : โรงพิมพ์มหาวิทยาลัยธรรมศาสตร์, 2544.

ประสิทธิ์ ปิวาวัฒน์พานิช. ปัญหาองค์ประกอบเพื่อควมรับผิดชอบของรัฐตามกฎหมายระหว่างประเทศ. วิทยานิพนธ์ปริญญาโทมหาบัณฑิต คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, 2538.

ประสิทธิ์ เอกบุตร. หลักการห้ามใช้กำลังในความสัมพันธ์ระหว่างประเทศ. รัชที่ 38 กรุงเทพมหานคร : คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, 2538.

ไพฑูริย์ จรรยาไชย. กฎบัตรสหประชาชาติกับปัญหาโครงสร้างและอำนาจหน้าที่ของคณะมนตรีความมั่นคงแห่งสหประชาชาติภายหลังยุคสงครามเย็น. วิทยานิพนธ์ปริญญาโทมหาบัณฑิต คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย, 2538.

มานพ เมฆประยูรทอง. องค์การสหประชาชาติ. พิมพ์ครั้งที่ 1. กรุงเทพมหานคร : สำนักพิมพ์โอเดียนสโตร์, 2533.

มานพ เมฆประยูรทอง และกิตติศักดิ์ วรรณะภูมิ. สหประชาชาติ : สันติภาพกับการพัฒนา. พิมพ์ครั้งที่ 1. กรุงเทพมหานคร : สมาคมสหประชาชาติแห่งประเทศไทย, 2538.

วีระ โฉจายะ. สงคราม. ใน เอกสารการสอนชุดวิชากฎหมายระหว่างประเทศ (International Law) หน่วยที่ 7-15. พิมพ์ครั้งที่ 17. กรุงเทพมหานคร : สำนักพิมพ์มหาวิทยาลัยสุโขทัยธรรมมาธิราช, 2542.

ศรีราชา เจริญพานิช. ศาสนุติธรรมระหว่างประเทศ. ใน เอกสารการสอนชุดวิชา สถาบันระหว่างประเทศ หน่วยที่ 1 – 7. พิมพ์ครั้งที่ 5. กรุงเทพมหานคร : สำนักพิมพ์มหาวิทยาลัยสุโขทัย
ธรรมมาธิราช, 2540

ศิริศักดิ์ ดิยะพรรณ และกิตติ เจริญจำ. ข้อเสนอแนะทั่วไปบางประการเกี่ยวกับศาลอาชญากรรม
ระหว่างประเทศเพื่อพิจารณากรณีไม่สงบในยูโกสลาเวีย. วารสารอัยการ. 17 (มิถุนายน
2537) : 119 – 132.

สมพงศ์ ชูมาก. การปฏิบัติการรักษาสันติภาพของสหประชาชาติในอดีตและปัจจุบัน. พิมพ์ครั้งที่
1. กรุงเทพมหานคร : สำนักพิมพ์จุฬาลงกรณ์มหาวิทยาลัย, 2539.

สมพงศ์ ชูมาก. องค์การระหว่างประเทศ : สันนิบาตชาติ สหประชาชาติ. พิมพ์ครั้งที่ 2.
กรุงเทพมหานคร : สำนักพิมพ์จุฬาลงกรณ์มหาวิทยาลัย, 2533.

สุชาติ จุฑาสมิต. สหประชาชาติกับความมั่นคงของประเทศไทย. คำบรรยาย ณ วิทยาลัยป้องกัน
ราชอาณาจักร 9 สิงหาคม 2525. อ้างถึงใน มานพ เมฆประยูรทอง และกิตติ วรรณะภูมิ.
สหประชาชาติ : สันติภาพกับการพัฒนา. พิมพ์ครั้งที่ 1. กรุงเทพมหานคร : สมาคมสห
ประชาชาติแห่งประเทศไทย, 2538.

สุพจน์ อ้วนนอก. อเมริกากับศาลอาญาโลก. เดลินิวส์ (7 กรกฎาคม 2545) : 7.

สุพจน์ ไช้มุกด์. ปัญหาค่านิยมค่าว่าการรุกรานของสหประชาชาติ. วารสารกฎหมาย. 2
(พฤษภาคม 2529) : 49 – 57.

สุรศักดิ์ ลิขสิทธิ์วัฒนกุล. หลักความชอบด้วยกฎหมายในกฎหมายอาญา. ใน รวมบทความทาง
วิชาการ เนื่องในโอกาสครบรอบ 84 ปี ศาสตราจารย์ จิตติ ดิงศภัทย์. หน้า 11 – 16.
มปท. มปพ., 2536.

สุเทพ อัดถากร. กฎหมายระหว่างประเทศกับการเมืองระหว่างประเทศ พฤติกรรมและเอกสาร
เล่ม 1. กรุงเทพมหานคร : สำนักพิมพ์ไทยวัฒนาพานิช, 2516.

สุโขทัยธรรมมาธิราช, มหาวิทยาลัย. เอกสารการสอนชุดวิชากฎหมายระหว่างประเทศ (International Law) หน่วยที่ 1 – 6. พิมพ์ครั้งที่ 17. กรุงเทพมหานคร : สำนักพิมพ์ มหาวิทยาลัยสุโขทัยธรรมมาธิราช, 2542.

อรุณ ภาณุพงศ์. กฎหมายระหว่างประเทศกับปัญหาการใช้กำลัง. ใน รวมบทความทางวิชาการ เนื่องในโอกาสครบรอบ 80 ปี ศาสตราจารย์ ไพโรจน์ ชัยนาม. หน้า 407 – 427. กรุงเทพมหานคร : คณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, 2535.

ภาษาอังกฤษ

Ambos, K. Individual Criminal Responsibility in International Criminal Law : A Jurisprudential Analysis – From Nuremberg to the Hague. In Gabrielle K. McDonald and Olivia Swaak-Goldman. (eds.). Substantive and Procedural Aspects of International Criminal Law : The Experience of International and Nation Courts Volume I Commentary. Hague : Kluwer International Law, 2000.

Ambos, K. The Status, Role and Accountability of the Prosecutor of International Criminal Court : A Comparative Overview on the Basis of 33 Nations Report. European Journal of Crime, Criminal Law and Criminal Justice 8 (2000) : 119-127.

Article 98 Agreement : The EU 's Guiding Principle in Context. Available from : http://www.lchr.org/IJP/article_98_agre.htm [2002, July 2]

Bailey, D. S. The UN Security Council and Human Rights. New York : St. Martin's Press, 1994.

Bassiouni, M. C. ed. Commentaries on the International Law Commission's 1991 Draft Code of Crimes Against the Peace and Security of Mankind. Toulouse : Association Internationale de Droit Penal, 1993.

Bassiouni, M. C. Draft Statute International Tribunal. Projet de Statut du Tribunal Penal International. 2nd ed. Toulouse : Association Internationale de Droit Penal, 1993.

Bassiouni, M. C. Former Yugoslavia : Investigating Violations of International Humanitarian law and Establishing an International Criminal Tribunal. Fordham International Law Journal 18 (April 1995) : 1191 - 1211.

Bassiouni, M. C. International Criminal Court Ratification and Implementing Legislation. International Review of Penal Law 71 (2000) : 1 – 37.

Bassiouni, M. C. International Criminal Law A Draft International Criminal Code.
Alphen ann den Rjin : Sijhoff & Noordhoff International Publisher, 1980.

Bassiouni, M. C. International Criminal Law Convention and their Penal Provisions.
Cited in Saunders, L. W. and Mantilla, G. Y. Human Dignity Denied : Slavery and
Crimes Against Humanity in Sudan. Catholic University Law Review 5 (Spring
2002) : 715 – 739.

Bassiouni, M. C. and Nanda, P. V., eds. A Treatise on International Criminal Law
Volume I : Crime and Punishment. Springfield : Charles C Thomas Publisher,
1973.

Bassiouni, M. C. and Nanda, P. V., eds. A Treatise on International Criminal Law
Volume II : Jurisdiction and Cooperation. Springfield : Charles C Thomas
Publisher, 1973.

Baxter, R. R. Jurisdiction Over War Crimes and Crimes Against Humanity : Individual
and State Accountability. In M. Cherif Bassiouni and Ved P. Manda. (eds.), A
Treatise on International Criminal Law Volume I : Crimes and Punishment.
Springfield : Charles C Thomas Publisher, 1973.

Brownlie, I. International Law and the Use of Force by States. New York : Oxford
University Press, 1993.

Burns, P. An International Criminal Tribunal : The Difficult Union of Principle and
Politics. Criminal Law Forum 5 (1994) : 341 – 380.

Bullying Allies, Obstructing Justice : US Impunity Agreement Unlawful. Available from :

<http://www.amnestyusa.org/news/2002/usa09032002.html> [2002, December 29]

Charter of the United Nations.

Chronology of the U.S. Opposition to the International Criminal Court From 'Unsigning' to Immunity Agreements. Available from :
<http://www.iccnw.org/pressroom/factsheets/FS-AMICC-PostNullification.doc>
 [2002, November 20]

Dawson, M. G. Defining Substantive Crimes within the Subject Matter Jurisdiction of the International Criminal Court : What is the Crime of Aggression. New York Law School Journal of International and Comparative Law 19 (2000) : 413 – 452.

Dugard, J. Obstacles in the Way of an International Criminal Court. The Cambridge Law Journal 56 (July 1997) : 329 - 342.

Dugard, J. and Wyngaert, C. International Criminal Law and Procedure. Aldershot : Dartmouth Publishing, 1994.

Ekkehart, M. and Edward, M. W. Problems of Enforcement, Legal Assistance, Surrender of Persons, Recognition and Enforcement of Judicial Orders and Judgments Transfer and Enforcement of Sentences. International Review of Penal Law 67 (1996) : 75 - 81.

Etcherson, Craig. The Persistence of Impunity in Cambodia. In Christopher C. Joyner and M. Cherif Bassiouni (eds.), Reining in Impunity for International Crimes and Serious Violations of Fundamental Human Right : Precedings of the Siracusa Conference 17 – 21 September 1998, pp. 231-240. Toulouse : Associations International de droit Penal, 1998.

For Independent International Criminal Court Remember Crimes of the Permanent

Members of the UN Security Council. Available from :

http://www.gfbv.de/gfbv_e/docus/memo_e.htm [2002, December 27]

Gabrielle, K. McDonald. The International Criminal Tribunal : And Punishment in the International Arena. ILSA Journal of International and Comparative Law 7 (Summer 2001) : 667 - 686.

Get the Facts : Justice in Sudan. Available from :

http://www.usaforicc.org/fact_sudan.html [2002, December 18]

Goldstone, J. R. The United Nations and the Protection of Human Right : The Role of the United Nations in the Prosecution of International War Criminals Tribunal. Washington University Journal of Law & Policy 5 (2001) : 119 – 127.

Gowlland-Debbas, V. The Relationship between the Security Council and the Projected International Criminal Court. Journal of Armed Conflict Law 3 (June 1998) : 97 – 119

Guide to the report of the Preparatory Commission. Available from :

<http://www.un.org/english/law/icc/prepcomm/report/prepreportdocs.htm> [2002, November 2]

International Criminal Law . Available from : <http://www.asil.org/resource/crim1.htm> [2002, August 3]

Joyner , C. C., and Bassiouni M. C., eds. Reining in Impunity for International Crimes and Serious Violations of Fundamental Human Right : Proceedings of The Siracusa Conference 17 – 21 September 1998. Toulouse ; Association Internationale de droit Penal, 1998.

Kirsch, P. Q. C. The International Criminal Court : Current Issues and Perspective.

Law and Contemporary Problems 64 (Winter 2001) : 3 – 13.

Kittichaisaree, K. International Criminal Law. New York : Oxford University Press, 2001.

Lawer Committee urges establishment of Cambodia Tribunal. Available from :

http://www.lchr.org/media/2001_1996/cambodia0399.htm [2002, November 16]

Lissitzny, J. O. The International Court of Justice. New York : Octagon Book, 1972.

Morris, M. High Crimes and Misconceptions : The ICC and Non-Party States. Law and Contemporary Problem 64 (Winter 2001) : 13 – 66.

Muntarbhorn, V. The 1899 Hague Peace Conference and the Development of the Laws of War : Asia's Contribution to the Quest for Humanitarianism ?. In T.L.H. Mc. Cormack. et.al. eds. A century of war and peace. Hague : Kluwer law international, 2001.

Murphy, D. S. Progress and Jurisprudence of the International Criminal Tribunal for the Former Yugoslavia. American Journal of International Law 93 (January 1999) : 57 – 97.

O'Brien, C. J The International Tribunal for Violations of International Humanitarian Law in the Former Yugoslavia. American Journal of International Law 87 (October 1993) : 639 – 359.

Oppenheim. International Law. 7th ed. London : Longman, 1952.

Overview of Events Leading up to the Adoption of the Rome Statute of the International Criminal Court and a Description of the Rationale Behind the Creation of the Court. Available from : <http://www.un.org/english/law/icc/generalpublic.htm> [2002, November 15]

- Paust, J. J., and others. International Criminal Law : Case and Materials. North Carolina : Carolina Academic Press, 1996.
- Peirce, R. Which of the Preparatory Commission's Latest Proposals of the Definition of the Crime of Aggression and the Exercise of Jurisdiction Should be Adopted into the Rome Statute of the International Criminal Court. Brigham Young University Journal of Public Law 15 (2001) : 281 – 299.
- Preparatory Commission for the International Criminal Court. Draft Financial Regulations and the International Criminal Court. (13 July 2000).
- Preparatory Commission for the International Criminal Court. Draft Relationship Agreement between the United Nations and the International Criminal Court. (9 August 2000).
- Ratner, R. S., and Abrams S. J. Accountability for Human Rights Atrocities in International Law : Beyond the Nuremberg Legacy. 2nd ed. New York : Oxford University Press, 2001.
- Rodriguez, L. C. Slaying the Monster : Why the United States should not Support the Rome Treaty. American University International Law Review 14 (1999) : 805 – 844.
- Scharf, P. M. The Amnesty Exception to the Jurisdiction of the International Criminal Court. Cornell International Law Journal 32 (1999) : 507 – 527.
- Schaffer, J. D. The International Criminal Tribunal Foreword : Deterrence of War Crimes in the 21st Century. Maryland Journal of International Law and Trade 23 (spring / summer, 1999) : 1 – 13.

- Schocken, C. The Special Court for Sierra Leone : Overview and Recommendations. Berkeley Journal of International Law 20 (2002) : 436 – 461.
- Sheldon, M. J. Nuclear Weapon and the Laws of War : Does Customary International Law Prohibit the Use of Nuclear Weapons in all Circumstances. Fordham International Law Journal 20 (November 1996) : 181 – 262.
- Shenon, P. UN Plans Joint War Crimes Tribunal for Khmer Rouge. Available from : <http://www.globalpolicv.org/security/issues/cambodia/99-0802.htm> [2001, December 29]
- Simonovic, I. The Role of the ICTY in the Development of International Criminal Adjudication. Fordham International Law Journal 23 (December 1999) : 440 – 459.
- Sunga, S. L. The Emerging System of International Criminal Law : Developments in Codification and Implementation. Cambridge : Kluwer International Law, 1997.
- The Nuremberg Charter.
- The Stanley Foundation. The UN Security Council and the International Criminal Court : How Should They Relate ?. Report of the Twenty-Ninth United Nations Issue Conference. (20 – 22 February 1998).
- United Nations. Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone. Appendix II. (8 March 2002).
- United Nations. Department of Public Information. The United Nations and Situations in the Former Yugoslavia. Reference Paper Revision 4. (30 April 1995).

United Nations General Assembly Resolution 36/106 (10 December 1981).

United Nations General Assembly Resolution 174 (21 November 1947).

United Nations General Assembly Resolution 260 (9 December 1948).

United Nations General Assembly Resolution 3314 (XXIX) 1974, Definition of Aggression.

United Nations Press Release L/ROM/10 (17 June 1998).

United Nations Press Release L/ROM/11 (17 June 1998).

United Nations Press Release L/ROM/22 (17 July 1998).

United Nations Press Release SC/7450 (12 July 2002).

United Nations. Rome Statute of the International Criminal Court.

United Nations. Report of the International Law Commission on the Work of its forty-sixth session (2 May – 22 July 1994).

United Nations. Report of the Planning on the Establishment of the Special Court for Sierra Leone. (8 March 2002).

United Nations. Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violation of International Humanitarian Law Committed in the Territory of Rwanda and Rwanda Citizens of neighboring between 1 January and 31 December 1994.

United Nations. Statute of the International Tribunal for the Prosecution of Persons

Responsible for Serious Violation of International Humanitarian Law Committed in the Former Yugoslavia since 1991.

United Nations Security Council Functions and Powers. Available from :

<http://www.un.org/Docs/scinfo.htm> [2002, November 25]

United Nations Security Council Resolution 780 (6 October 1992).

United Nations Security Council Resolution 827 (25 May 1993).

United Nations Security Council Resolution 955 (8 November 1994).

United Nations Security Council Resolution 1315 (14 August 2000).

United Nations Security Council Resolution 1422 (12 July 2002).

Wang, M. M. The International Tribunal for Rwanda : Opportunities for Clarification, Opportunities for Impact. Columbia Human Right Law Review 27 (Fall 1995) : 177 – 225.

White, N. D. The United Nations and the Maintenance of International Peace and Security. New York : Manchester University Press, 1990.

ภาคผนวก

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Part I Draft Relationship Agreement between the Court and the United Nations

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Draft Relationship Agreement between the Court and the United Nations

Preamble

The United Nations and the International Criminal Court,

Bearing in mind the principles and purposes of the Charter of the United Nations,

Recalling that the Rome Statute of the International Criminal Court reaffirms the purposes and principles of the Charter of the United Nations,

Noting the important role assigned to the International Criminal Court in dealing with the most serious crimes of concern to the international community as a whole, as referred to in the Rome Statute, and which threaten the peace, security and well-being of the world,

Bearing in mind that, in accordance with the Rome Statute, the International Criminal Court is established as an independent permanent institution in relationship with the United Nations system,

Recalling also that, in accordance with article 2 of the Rome Statute, the International Criminal Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of the States Parties to the Rome Statute and thereafter concluded by the President of the Court on its behalf,

Recalling further General Assembly resolution ____ of ____ calling for the conclusion of a relationship agreement between the United Nations and the International Criminal Court,

Noting the responsibilities of the Secretary-General of the United Nations under the provisions of the Rome Statute of the International Criminal Court,

Desiring to make provision for a mutually beneficial relationship whereby the discharge of respective responsibilities of the United Nations and the International Criminal Court may be facilitated,

Taking into account for this purpose the provisions of the Charter of the United Nations and the provisions of the Rome Statute of the International Criminal Court,

Have agreed as follows:

I. General provisions

Article 1

Purpose of the Agreement

The present Agreement, which is entered into by the United Nations and the International Criminal Court ("the Court"), pursuant to the provisions of the Charter of the United Nations ("the Charter") and the Rome Statute of the International Criminal Court ("the Statute"), respectively, defines the terms on which the United Nations and the Court shall be brought into relationship.



Article 2

Principles

1. The United Nations recognizes the Court as an independent permanent judicial institution which, in accordance with articles 1 and 4 of the Statute, has international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.
2. The Court recognizes the responsibilities of the United Nations under the Charter.
3. The United Nations and the Court respect each other's status and mandate.

Article 3

Obligation of cooperation and coordination

The United Nations and the Court agree that, with a view to facilitating the effective discharge of their respective responsibilities, they shall cooperate closely, whenever appropriate, with each other and consult each other on matters of mutual interest pursuant to the provisions of the present Agreement and in conformity with the respective provisions of the Charter and the Statute.

II. Institutional relations

Article 4

Reciprocal representation

1. The Court may attend and participate in the work of the General Assembly of the United Nations in the capacity of observer. The United Nations shall, subject to the rules and practice of the bodies concerned, invite the Court to attend meetings and conferences convened under the auspices of the United Nations where observers are allowed and whenever matters of interest to the Court are under discussion.
2. Whenever the Security Council considers matters related to the activities of the Court, the President of the Court or the Prosecutor may address the Council, at its invitation, in order to give assistance with regard to matters within the jurisdiction of the Court.
3. Subject to the applicable provisions of the Rules of Procedure and Evidence, the United Nations shall have a standing invitation to attend public hearings of the Chambers of the Court that relate to cases of interest to the United Nations.

Article 5

Exchange of information

1. Without prejudice to other provisions of the present Agreement concerning the submission of documents and information concerning particular cases before the Court, the United Nations and the Court shall, to the fullest extent possible and practicable, arrange for the exchange of information and documents of mutual interest. In particular:
 - (a) The Secretary-General shall:
 - (i) Transmit to the Court information on developments related to the Statute which are relevant to the work of the Court, including information on

communications received by the Secretary-General in the capacity of depositary of the Statute or depositary of any other agreements which relate to the exercise by the Court of its jurisdiction;

(ii) Keep the Court informed regarding the implementation of article 123, paragraphs 1 and 2, of the Statute relating to the convening by the Secretary-General of review conferences;

(iii) In addition to the requirement provided in article 121, paragraph 7, of the Statute, circulate to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency which are not parties to the Statute the text of any amendment adopted pursuant to article 121 of the Statute;

(b) The Registrar shall:

(i) Upon the request of the United Nations and in accordance with the Statute and the Rules of Procedure and Evidence, provide information and documentation relating to pleadings, oral proceedings, judgements and orders, when the Court deems it appropriate;

(ii) Furnish to the United Nations, with the concurrence of the Court and subject to its Statute and rules, any information relating to the work of the Court requested by the International Court of Justice in accordance with its Statute;

(c) The Court shall keep the United Nations informed about proceedings of the Court in cases that involve crimes committed against the personnel of the United Nations or that involve the improper use of the flag, insignia or uniform of the United Nations resulting in death or serious personal injury.

2. The United Nations and the Court shall make every effort to achieve maximum cooperation with a view to avoiding undesirable duplication in the collection, analysis, publication and dissemination of information relating to matters of mutual interest. They shall strive, where appropriate, to combine their efforts to secure the greatest possible usefulness and utilization of such information.

Article 6

Reports to the United Nations

The Court may, if it deems it appropriate, submit reports on its activities to the United Nations through the Secretary-General.

Article 7

Agenda items

The Court may propose items for consideration by the United Nations. In such cases, the Court shall notify the Secretary-General of its proposal and provide any relevant information. The Secretary-General shall submit the proposed item to the General Assembly or the Security Council, and also to any other United Nations body, as appropriate.

Article 8
Personnel arrangements

1. The United Nations and the Court agree to consult and cooperate as far as practicable regarding personnel standards, methods and arrangements.
2. The United Nations and the Court agree to:
 - (a) Periodically consult on matters of mutual interest relating to the employment of their officers and staff, including conditions of service, the duration of appointments, classification, salary scale and allowances, retirement and pension rights and staff regulations and rules;
 - (b) Cooperate in the interchange of personnel, where appropriate;
 - (c) Strive for maximum cooperation in order to achieve the most efficient use of specialized personnel, systems and services.

Article 9
Administrative cooperation

The United Nations and the Court shall consult, from time to time, concerning the most efficient use of facilities, staff and services with a view to avoiding the establishment and operation of overlapping facilities and services. They may also consult to explore the possibility of establishing common facilities or services in specific areas, provided that there are cost savings.

Article 10
Conference services and facilities

1. The United Nations agrees that it shall, subject to availability and to any arrangement on costs and expenses, provide for the purposes of the Court such facilities and services as may be required, including for the meetings of the Assembly and of its Bureau, including translation and interpretation services, documentation and conference services. When the United Nations is unable to meet the request of the Court, it shall notify the Court accordingly, giving reasonable notice.
2. The terms and conditions on which any such facilities or services of the United Nations may be provided shall, as appropriate, be the subject of supplementary arrangements.

Article 11
Access to United Nations Headquarters

The United Nations and the Court shall endeavour to facilitate access by the representatives of all States Parties to the Statute and observers in the Assembly, as provided for in article 112, paragraph 1, of the Statute, to United Nations Headquarters when a meeting of the Assembly is to be held.

Article 12
Laissez-passer

The judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the staff of the Office of the Prosecutor and the Registry shall be entitled, in accordance with

such special arrangements as may be concluded between the Secretary-General and the Court, to use the laissez-passer of the United Nations as a valid travel document where such use is recognized by States.

Article 13

Financial matters

1. The United Nations and the Court agree that the conditions under which any funds may be provided to the Court by a decision of the General Assembly of the United Nations pursuant to article 115 of the Statute shall be subject to separate arrangements. The Registrar shall inform the Assembly of the making of such arrangements.
2. The United Nations and the Court further agree that the costs and expenses resulting from cooperation or the provision of services pursuant to the present Agreement shall be subject to separate arrangements between the United Nations and the Court. The Registrar shall inform the Assembly of the making of such arrangements.
3. The United Nations may, upon request of the Court and subject to paragraph 2 of this article, provide advice on financial and fiscal questions of interest to the Court.

Article 14

Other agreements concluded by the Court

The United Nations and the Court shall consult, when appropriate, on the registration with the United Nations of agreements concluded by the Court with States or international organizations.

III. Cooperation and judicial assistance

Article 15

General provisions regarding cooperation between the United Nations and the Court

1. With due regard to its responsibilities and competence under the Charter and subject to its rules, the United Nations undertakes to cooperate with the Court and to provide to the Court such information or documents as the Court may request pursuant to article 87, paragraph 6, of the Statute.
2. The United Nations or its programmes, funds and offices concerned may agree to provide to the Court other forms of cooperation and assistance compatible with the provisions of the Charter and the Statute.
3. In the event that the disclosure of information or documents or the provision of other forms of cooperation would endanger the safety or security of current or former personnel of the United Nations or otherwise prejudice the security or proper conduct of any operation or activity of the United Nations, the Court may order, particularly at the request of the United Nations, appropriate measures of protection.

Article 16**Testimony of the officials of the United Nations**

1. If the Court requests the testimony of an official of the United Nations or one of its programmes, funds or agencies, the United Nations undertakes to cooperate with the Court and, if necessary and with due regard to its responsibilities and competence under the Charter and subject to its rules, shall waive that person's obligation of confidentiality.
2. The Secretary-General may be authorized by the Court to appoint a representative of the United Nations to assist any official of the United Nations who appears as a witness before the Court.

Article 17**Cooperation between the Security Council of the United Nations and the Court**

1. When the Security Council, acting under Chapter VII of the Charter of the United Nations, decides to refer to the Prosecutor of the Court ("the Prosecutor"), pursuant to article 13, paragraph (b), of the Statute, a situation in which one or more of the crimes referred to in article 5 of the Statute appears to have been committed, the Secretary-General of the United Nations ("the Secretary-General") shall immediately transmit the written decision of the Security Council to the Prosecutor together with documents and other materials that may be pertinent to the decision of the Council. Information provided by the Court to the Security Council in accordance with the Statute and the Rules of Procedure and Evidence shall be transmitted through the Secretary-General.
2. When the Security Council adopts under Chapter VII of the Charter a resolution requesting the Court, pursuant to article 16 of the Statute, not to commence or proceed with an investigation or prosecution, this request shall immediately be transmitted by the Secretary-General to the President of the Court and the Prosecutor.
3. If the Court, pursuant to article 87, paragraph 5 (b) or paragraph 7, of the Statute, decides to inform the Security Council of a failure to cooperate with its requests, or to refer a matter to the Security Council, as the case may be, the Registrar of the Court ("the Registrar") shall convey to the Security Council through the Secretary-General the decision of the Court together with relevant information in the case. The Security Council, through the Secretary-General, shall inform the Court, through the Registrar, of action, if any, taken by it under the circumstances.

Article 18**Cooperation between the United Nations and the Prosecutor**

1. With due regard to its responsibilities and competence under the Charter of the United Nations and subject to its rules, the United Nations undertakes to cooperate with the Prosecutor and to enter with the Prosecutor into such arrangements or, as appropriate, agreements as may be necessary to facilitate such cooperation, in particular when the Prosecutor exercises, under article 54 of the Statute, his or her duties and powers with respect to investigation and seeks the cooperation of the United Nations in accordance with that article.
2. Subject to the rules of the organ concerned, the United Nations undertakes to cooperate in relation to requests from the Prosecutor in providing such additional

information as he or she may seek, in accordance with article 15, paragraph 2, of the Statute, from organs of the United Nations in connection with investigations initiated *proprio motu* by the Prosecutor pursuant to that article. The Prosecutor shall address a request for such information to the Secretary-General who shall convey it to the presiding officer or other appropriate officer of the organ concerned.

3. The United Nations and the Prosecutor may agree that the United Nations provide documents or information to the Prosecutor on condition of confidentiality and solely for the purpose of generating new evidence and that such documents or information shall not be disclosed to other organs of the Court or to third parties, at any stage of the proceedings or thereafter, without the consent of the United Nations.

4. The Prosecutor and the United Nations or its programmes, funds and offices concerned may enter into such arrangements as may be necessary to facilitate their cooperation for the implementation of this article, in particular in order to ensure the confidentiality of information, the protection of any person, including former or current United Nations personnel, and the security or proper conduct of any operation or activity of the United Nations.

Article 19

Rules concerning United Nations privileges and immunities

If the Court seeks to exercise its jurisdiction over a person who is alleged to be criminally responsible for a crime within the jurisdiction of the Court and if, in the circumstances, such person enjoys, according to the relevant rules of international law, any privileges and immunities as are necessary for the independent exercise of his or her work for the United Nations, the United Nations undertakes to cooperate fully with the Court and to take all necessary measures to allow the Court to exercise its jurisdiction, in particular by waiving any such privileges and immunities.

Article 20

Protection of confidentiality

If the United Nations is requested by the Court to provide information or documentation in its custody, possession or control which was disclosed to it in confidence by a State or an intergovernmental or international organization, the United Nations shall seek the consent of the originator to disclose that information or documentation. If the originator is a State Party to the Statute and the United Nations fails to obtain its consent to disclosure within a reasonable period of time, the United Nations shall inform the Court accordingly, and the issue of disclosure shall be resolved between the State Party concerned and the Court in accordance with the Statute. If the originator is not a State Party to the Statute and refuses to consent to disclosure, the United Nations shall inform the Court that it is unable to provide the requested information or documentation because of a pre-existing obligation of confidentiality to the originator.

IV. Final provisions

Article 21

Supplementary arrangements for the implementation of the present Agreement

The Secretary-General and the Court may, for the purpose of implementing the present Agreement, make such supplementary arrangements as may be found appropriate.

Article 22

Settlement of disputes

The United Nations and the Court agree to settle any dispute related to the interpretation or application of the present Agreement by appropriate means.

Article 23

Amendments

The present Agreement may be amended by agreement between the United Nations and the Court. Any such amendment shall be approved by the General Assembly of the United Nations and by the Assembly in accordance with article 2 of the Statute. The United Nations and the Court shall notify the other in writing of the date of such approval, and the Agreement shall enter into force on the date of the later of the said approvals.

Article 24

Entry into force

The present Agreement shall be approved by the General Assembly of the United Nations and by the Assembly in accordance with article 2 of the Statute. The United Nations and the Court shall notify the other in writing of the date of such approval, and the Agreement shall enter into force on the date of the later of the said approvals.

In witness thereof the undersigned have signed the present Agreement.

Signed this ____ day of _____ at United Nations Headquarters in New York in two copies in all the official languages of the United Nations and the Court.



United Nations

PCNICC/2002/2/Add.2



Preparatory Commission for the International Criminal Court

Distr.: General
24 July 2002

Original: English

New York
1-12 July 2002

Report of the Preparatory Commission for the International Criminal Court (continued)

Addendum

Part II Proposals for a provision on the crime of aggression*

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* See also paragraphs 8 and 9 of the present report (PCNICC/2002/2).

Draft resolution of the Assembly of States Parties on the continuity of work in respect of the crime of aggression

The Assembly of States Parties,

Recalling paragraph 2 of article 5 of the Rome Statute,

Recalling also paragraph 7 of resolution F, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998,

Desirous of continuing and completing the work on the crime of aggression,

1. *Takes note with appreciation* of the report of the Preparatory Commission for the International Criminal Court on the crime of aggression;¹

2. *Decides* to establish a special working group on the crime of aggression, open on an equal footing to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, for the purpose of elaborating proposals for a provision on aggression in accordance with paragraph 2 of article 5 of the Statute and paragraph 7 of resolution F adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998;

3. *Decides also* that the special working group shall submit such proposals to the Assembly for its consideration at a Review Conference, with a view to arriving at an acceptable provision on the crime of aggression for inclusion in the Statute in accordance with the relevant provisions of the Statute;

4. *Decides further* that the special working group shall meet during the regular sessions of the Assembly or at any other time that the Assembly deems appropriate and feasible;

5. *Requests* the Bureau of the Assembly to prepare a proposal for the meetings of the special working group and to submit the proposal, with its budgetary implications, at the earliest possible session with a view to holding the first meeting of the special working group in 2003.

¹ PCNICC/2002/2/Add.2.

Discussion paper proposed by the Coordinator

I. Definition of the crime of aggression and conditions for the exercise of jurisdiction

1. For the purpose of the present Statute, a person commits a “crime of aggression” when, being in a position effectively to exercise control over or to direct the political or military action of a State, that person intentionally and knowingly orders or participates actively in the planning, preparation, initiation or execution of an act of aggression which, by its character, gravity and scale, constitutes a flagrant violation of the Charter of the United Nations.

Option 1: Add “such as, in particular, a war of aggression or an act which has the object or result of establishing a military occupation of, or annexing, the territory of another State or part thereof”.

Option 2: Add “and amounts to a war of aggression or constitutes an act which has the object or the result of establishing a military occupation of, or annexing, the territory of another State or part thereof”.

Option 3: Neither of the above.

2. For the purpose of paragraph 1, “act of aggression” means an act referred to in United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, which is determined to have been committed by the State concerned,

Option 1: Add “in accordance with paragraphs 4 and 5”.

Option 2: Add “subject to a prior determination by the Security Council of the United Nations”.

3. The provisions of articles 25, paragraphs 3, 28 and 33 of the Statute do not apply to the crime of aggression.

4. Where the Prosecutor intends to proceed with an investigation in respect of a crime of aggression, the Court shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned. If no Security Council determination exists, the Court shall notify the Security Council of the situation before the Court so that the Security Council may take action, as appropriate:

Option 1: under Article 39 of the Charter of the United Nations.

Option 2: in accordance with the relevant provisions of the Charter of the United Nations.

5. Where the Security Council does not make a determination as to the existence of an act of aggression by a State:

Variant (a) or invoke article 16 of the Statute within six months from the date of notification.

Variant (b) [Remove variant a.]

Option 1: the Court may proceed with the case.

Option 2: the Court shall dismiss the case.

Option 3: the Court shall, with due regard to the provisions of Articles 12, 14 and 24 of the Charter, request the General Assembly of the United Nations to make a recommendation within [12] months. In the absence of such a recommendation, the Court may proceed with the case.

Option 4: the Court may request

Variant (a) the General Assembly

Variant (b) the Security Council, acting on the vote of any nine members,

to seek an advisory opinion from the International Court of Justice, in accordance with Article 96 of the Charter and Article 65 of the Statute of the International Court, on the legal question of whether or not an act of aggression has been committed by the State concerned. The Court may proceed with the case if the International Court of Justice gives an advisory opinion that an act of aggression has been committed by the State concerned.

Option 5: the Court may proceed if it ascertains that the International Court of Justice has made a finding in proceedings brought under Chapter II of its Statute that an act of aggression has been committed by the State concerned.

II. Elements of the crime of aggression (as defined in the Rome Statute of the International Criminal Court)²

Precondition

In addition to the general preconditions contained in article 12 of the present Statute, it is a precondition that an appropriate organ³ has determined the existence of the act of aggression required by element 5 of the following Elements.

Elements

- 1: The perpetrator was in a position effectively to exercise control over or to direct the political or military action of the State which committed an act of aggression as defined in element 5 of these Elements.
- 2: The perpetrator was knowingly in that position.
- 3: The perpetrator ordered or participated actively in the planning, preparation or execution of the act of aggression.
- 4: The perpetrator committed element 3 with intent and knowledge.
- 5: An "act of aggression", that is to say, an act referred to in United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, was committed by a State.
- 6: The perpetrator knew that the actions of the State amounted to an act of aggression.

² The elements in part II are drawn from a proposal by Samoa and were not thoroughly discussed.

³ See options 1 and 2 of paragraph 2 of part I. The right of the accused should be considered in connection with this precondition.

7: The act of aggression, by its character, gravity and scale, constituted a flagrant violation of the Charter of the United Nations,

Option 1: Add “such as a war of aggression or an aggression which had the object or result of establishing a military occupation of, or annexing the territory of another State or part thereof”.

Option 2: Add “and amounts to a war of aggression or constitutes an act which has the object or the result of establishing a military occupation of, or annexing, the territory of another State or part thereof”.

Option 3: Neither of the above.

8: The perpetrator had intent and knowledge with respect to element 7.

Note:

Elements 2, 4, 6 and 8 are included out of an abundance of caution. The “default rule” of article 30 of the Statute would supply them if nothing were said. The dogmatic requirement of some legal systems that there be both intent and knowledge is not meaningful in other systems. The drafting reflects these, perhaps insoluble, tensions.

United Nations

S/RES/1422 (2002)



Security Council

Distr.: General

12 July 2002

Resolution 1422 (2002)

**Adopted by the Security Council at its 4572nd meeting, on
12 July 2002**

The Security Council,

Taking note of the entry into force on 1 July 2002, of the Statute of the International Criminal Court (ICC), done at Rome 17 July 1998 (the Rome Statute),

Emphasizing the importance to international peace and security of United Nations operations,

Noting that not all States are parties to the Rome Statute,

Noting that States Parties to the Rome Statute have chosen to accept its jurisdiction in accordance with the Statute and in particular the principle of complementarity,

Noting that States not Party to the Rome Statute will continue to fulfil their responsibilities in their national jurisdictions in relation to international crimes,

Determining that operations established or authorized by the United Nations Security Council are deployed to maintain or restore international peace and security,

Determining further that it is in the interests of international peace and security to facilitate Member States' ability to contribute to operations established or authorized by the United Nations Security Council,

Acting under Chapter VII of the Charter of the United Nations,

1. *Requests*, consistent with the provisions of Article 16 of the Rome Statute, that the ICC, if a case arises involving current or former officials or personnel from a contributing State not a Party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation, shall for a twelve-month period starting 1 July 2002 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decides otherwise;

2. *Expresses* the intention to renew the request in paragraph 1 under the same conditions each 1 July for further 12-month periods for as long as may be necessary;

3. *Decides* that Member States shall take no action inconsistent with paragraph 1 and with their international obligations;

4. *Decides* to remain seized of the matter.

Draft articles on

Responsibility of States for internationally wrongful acts

adopted by the
International Law Commission
at its fifty-third session (2001)

(extract from the Report of the International Law Commission on the work of its Fifty-third session,
Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (A/56/10), chp.IV.E.1)

November 2001

E. Text of the draft articles on Responsibility of States for internationally wrongful acts

1. Text of the draft articles

76. The text of the draft articles adopted by the Commission at its fifty-third session are reproduced below.

RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS

PART ONE

THE INTERNATIONALLY WRONGFUL ACT OF A STATE

CHAPTER I

General principles

Article 1

Responsibility of a State for its internationally wrongful acts

Every internationally wrongful act of a State entails the international responsibility of that State.

Article 2

Elements of an internationally wrongful act of a State

There is an internationally wrongful act of a State when conduct consisting of an action or omission:

- (a) Is attributable to the State under international law; and
- (b) Constitutes a breach of an international obligation of the State.

Article 3

Characterization of an act of a State as internationally wrongful

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.

CHAPTER II

Attribution of conduct to a State

Article 4

Conduct of organs of a State

1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State.
2. An organ includes any person or entity which has that status in accordance with the internal law of the State.

Article 5

Conduct of persons or entities exercising elements of governmental authority

The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.

Article 6

Conduct of organs placed at the disposal of a State by another State

The conduct of an organ placed at the disposal of a State by another State shall be considered an act of the former State under international law if the organ is acting in the exercise of elements of the governmental authority of the State at whose disposal it is placed.

Article 7

Excess of authority or contravention of instructions

The conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.

Article 8

Conduct directed or controlled by a State

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

Article 9

Conduct carried out in the absence or default of the official authorities

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority.

Article 10

Conduct of an insurrectional or other movement

1. The conduct of an insurrectional movement which becomes the new government of a State shall be considered an act of that State under international law.
2. The conduct of a movement, insurrectional or other, which succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered an act of the new State under international law.
3. This article is without prejudice to the attribution to a State of any conduct, however related to that of the movement concerned, which is to be considered an act of that State by virtue of articles 4 to 9.

Article 11

Conduct acknowledged and adopted by a State as its own

Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.

CHAPTER III

Breach of an international obligation

Article 12

Existence of a breach of an international obligation

There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.

Article 13

International obligation in force for a State

An act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs.

Article 14

Extension in time of the breach of an international obligation

1. The breach of an international obligation by an act of a State not having a continuing character occurs at the moment when the act is performed, even if its effects continue.
2. The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.
3. The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.

Article 15

Breach consisting of a composite act

1. The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful, occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.

2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

CHAPTER IV

Responsibility of a State in connection with the act of another State

Article 16

Aid or assistance in the commission of an internationally wrongful act

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- (a) That State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) The act would be internationally wrongful if committed by that State.

Article 17

Direction and control exercised over the commission of an internationally wrongful act

A State which directs and controls another State in the commission of an internationally wrongful act by the latter is internationally responsible for that act if:

- (a) That State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) The act would be internationally wrongful if committed by that State.

Article 18

Coercion of another State

A State which coerces another State to commit an act is internationally responsible for that act if:

- (a) The act would, but for the coercion, be an internationally wrongful act of the coerced State; and
- (b) The coercing State does so with knowledge of the circumstances of the act.

Article 19

Effect of this chapter

This chapter is without prejudice to the international responsibility, under other provisions of these articles, of the State which commits the act in question, or of any other State.

CHAPTER V

Circumstances precluding wrongfulness

Article 20

Consent

Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent.

Article 21

Self-defence

The wrongfulness of an act of a State is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations.

Article 22

Countermeasures in respect of an internationally wrongful act

The wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter State in accordance with chapter II of Part Three.

Article 23

Force majeure

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the act is due to *force majeure*, that is the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation.

2. Paragraph 1 does not apply if:
 - (a) The situation of *force majeure* is due, either alone or in combination with other factors, to the conduct of the State invoking it; or
 - (b) The State has assumed the risk of that situation occurring.

Article 24

Distress

1. The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the author of the act in question has no other reasonable way, in a situation of distress, of saving the author's life or the lives of other persons entrusted to the author's care.
2. Paragraph 1 does not apply if:
 - (a) The situation of distress is due, either alone or in combination with other factors, to the conduct of the State invoking it; or
 - (b) The act in question is likely to create a comparable or greater peril.

Article 25

Necessity

1. Necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that State unless the act:
 - (a) Is the **only** way for the State to safeguard an essential interest against a grave and imminent peril; and
 - (b) Does not seriously impair an essential interest of the State or States towards which the obligation exists, or of the international community as a whole.
2. In any case, necessity may not be invoked by a State as a ground for precluding wrongfulness if:
 - (a) The international obligation in question excludes the possibility of invoking necessity; or
 - (b) The State has contributed to the situation of necessity.

Article 26

Compliance with peremptory norms

Nothing in this chapter precludes the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law.

Article 27

Consequences of invoking a circumstance precluding wrongfulness

The invocation of a circumstance precluding wrongfulness in accordance with this chapter is without prejudice to:

- (a) Compliance with the obligation in question, if and to the extent that the circumstance precluding wrongfulness no longer exists;
- (b) The question of compensation for any material loss caused by the act in question.

PART TWO

CONTENT OF THE INTERNATIONAL RESPONSIBILITY OF A STATE

CHAPTER I

General principles

Article 28

Legal consequences of an internationally wrongful act

The international responsibility of a State which is entailed by an internationally wrongful act in accordance with the provisions of Part One involves legal consequences as set out in this Part.

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.

Article 30

Cessation and non-repetition

The State responsible for the internationally wrongful act is under an obligation:

- (a) To cease that act, if it is continuing;
- (b) To offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

Article 31

Reparation

1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.

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.

Article 33

Scope of international obligations set out in this Part

1. The obligations of the responsible State set out in this Part may be owed to another State, to several States, or to the international community as a whole, depending in particular on the character and content of the international obligation and on the circumstances of the breach.
2. This Part is without prejudice to any right, arising from the international responsibility of a State, which may accrue directly to any person or entity other than a State.

CHAPTER II

Reparation for injury

Article 34

Forms of reparation

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.

Article 35

Restitution

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

- (a) Is not materially impossible;
- (b) Does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

Article 36

Compensation

1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.
2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

Article 37

Satisfaction

1. The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.
2. Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.

3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State.

Article 38

Interest

1. Interest on any principal sum due under this chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.
2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.

Article 39

Contribution to the injury

In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or any person or entity in relation to whom reparation is sought.

CHAPTER III

Serious breaches of obligations under peremptory norms of general international law

Article 40

Application of this chapter

1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law.
2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.

Article 41

Particular consequences of a serious breach of an obligation under this chapter

1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.
2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.

3. This article is without prejudice to the other consequences referred to in this Part and to such further consequences that a breach to which this chapter applies may entail under international law.

PART THREE

THE IMPLEMENTATION OF THE INTERNATIONAL RESPONSIBILITY OF A STATE

CHAPTER I

Invocation of the responsibility of a State

Article 42

Invocation of responsibility by an injured State

A State is entitled as an injured State to invoke the responsibility of another State if the obligation breached is owed to:

- (a) That State individually; or
- (b) A group of States including that State, or the international community as a whole, and the breach of the obligation:
 - (i) Specially affects that State; or
 - (ii) Is of such a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation.

Article 43

Notice of claim by an injured State

1. An injured State which invokes the responsibility of another State shall give notice of its claim to that State.
2. The injured State may specify in particular:
 - (a) The conduct that the responsible State should take in order to cease the wrongful act, if it is continuing;
 - (b) What form reparation should take in accordance with the provisions of Part Two.

Article 44

Admissibility of claims

The responsibility of a State may not be invoked if:

- (a) The claim is not brought in accordance with any applicable rule relating to the nationality of claims;
- (b) The claim is one to which the rule of exhaustion of local remedies applies and any available and effective local remedy has not been exhausted.

Article 45

Loss of the right to invoke responsibility

The responsibility of a State may not be invoked if:

- (a) The injured State has validly waived the claim;
- (b) The injured State is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim.

Article 46

Plurality of injured States

Where several States are injured by the same internationally wrongful act, each injured State may separately invoke the responsibility of the State which has committed the internationally wrongful act.

Article 47

Plurality of responsible States

1. Where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act.
2. Paragraph 1:
 - (a) Does not permit any injured State to recover, by way of compensation, more than the damage it has suffered;
 - (b) Is without prejudice to any right of recourse against the other responsible States.

Article 48

Invocation of responsibility by a State other than an injured State

1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if:
 - (a) The obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or
 - (b) The obligation breached is owed to the international community as a whole.
2. Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State:
 - (a) Cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and
 - (b) Performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached.
3. The requirements for the invocation of responsibility by an injured State under articles 43, 44 and 45 apply to an invocation of responsibility by a State entitled to do so under paragraph 1.

CHAPTER II

Countermeasures

Article 49

Object and limits of countermeasures

1. An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations under Part Two.
2. Countermeasures are limited to the non-performance for the time being of international obligations of the State taking the measures towards the responsible State.
3. Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question.

Article 50

Obligations not affected by countermeasures

1. Countermeasures shall not affect:
 - (a) The obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations;
 - (b) Obligations for the protection of fundamental human rights;
 - (c) Obligations of a humanitarian character prohibiting reprisals;
 - (d) Other obligations under peremptory norms of general international law.
2. A State taking countermeasures is not relieved from fulfilling its obligations:
 - (a) Under any dispute settlement procedure applicable between it and the responsible State;
 - (b) To respect the inviolability of diplomatic or consular agents, premises, archives and documents.

Article 51

Proportionality

Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.

Article 52

Conditions relating to resort to countermeasures

1. Before taking countermeasures, an injured State shall:
 - (a) Call on the responsible State, in accordance with article 43, to fulfil its obligations under Part Two;
 - (b) Notify the responsible State of any decision to take countermeasures and offer to negotiate with that State.
2. Notwithstanding paragraph 1 (b), the injured State may take such urgent countermeasures as are necessary to preserve its rights.

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Article 57**Responsibility of an international organization**

These articles are without prejudice to any question of the responsibility under international law of an international organization, or of any State for the conduct of an international organization.

Article 58**Individual responsibility**

These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State.

Article 59**Charter of the United Nations**

These articles are without prejudice to the Charter of the United Nations.

ประวัติผู้เขียนวิทยานิพนธ์

นางสาววันวิภา สุขสวัสดิ์ เกิดเมื่อวันที่ 27 ธันวาคม พ.ศ. 2520 ที่ กรุงเทพมหานคร สำเร็จปริญญาตรีนิติศาสตรบัณฑิต จากมหาวิทยาลัยธรรมศาสตร์ ในปี การศึกษา 2541 และเข้าศึกษาต่อในหลักสูตรนิติศาสตรมหาบัณฑิต ที่จุฬาลงกรณ์มหาวิทยาลัย เมื่อปี พ.ศ. 2542

