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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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STATE RESPONSIBILITY FOR TREATY OR CONTRACTUAL OBLIGATIONS: A LEGAL ANALYSIS

AUTHORED BY - SHUBHAM SHUKLA¹ & SAKSHI SINGH²

Introduction

The international responsibility of state's for breaching international obligation's is one of the most important principle's of international law As said in the **Factory at Chorzow**³ case it is a principle of international law that when a state breach's an engagement it has to make reparation The International Law Commission's Article's on State Responsibility (2001)⁴ also explain this idea through secondary rule's which basically deal with what happen's when a primary obligation is broken.

“One major distinction in the law of state responsibility is between treaty obligation's and contractual obligation's made with private party's Both are important but they operate on different level's and the line between them sometimes become's blur especially in investment dispute's where contract and treaty overlap each other.”⁵ Traditionally, international law treated these categories differently, with treaty breaches clearly engaging state responsibility while contract breaches engaged it only through denial of justice. “Modern investment treaties have substantially blurred this distinction through umbrella clauses and direct investor protections.”⁶ This article examines how these boundaries have evolved and how international law interprets accountability across both categories.

¹ 3rd Year Student of B.B.A.LL. B(Hons.) at Rashtriya Raksha University, Gandhinagar, Gujarat

² Rashtriya Raksha University, Gandhinagar

³ Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74, p. 10, at p. 28. See also S.S. “Wimbledon”, 1923, P.C.I.J., Series A, No. 1, p. 15, at p. 30; Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 21; and *ibid*, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 29.

⁴ *International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries*, UN Doc. A/56/10 (2001), https://legal.un.org/ilc/texts/instruments/English/commentaries/9_6_2001.pdf [hereinafter *ILC Draft Articles*].

⁵ Solape, Oluwateniola Akinbodewa, "THE RELATIONSHIP BETWEEN THE LAW OF TREATIES AND THE LAW OF STATE RESPONSIBILITY WITH REFERENCE TO NON-PERFORMANCE OF TREATY" (2024). Theses and Dissertations. 98. <https://digitalcommons.law.ggu.edu/theses/98>

⁶ *United Nations Conference on Trade and Development, International Investment Agreements: Key Issues, Vol. I*, UN Doc. UNCTAD/ITE/IIT/2004/11 (2004), https://unctad.org/system/files/official-document/iteiit200411_en.pdf.

Elements of an internationally wrongful act of a State⁷

“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.”⁸

“Breach requires that conduct “is not in conformity with what is required by that obligation, regardless of its origin”. Critically, this language regardless of its origin means no hierarchy exists among obligation sources such as treaty, custom, general principle, and unilateral acts all trigger the same responsibility framework.”⁹ The ILC deliberately excluded fault and damage as general requirements for responsibility, though specific obligations may require these elements.

Upon establishing wrongfulness, Article 31 provides that “the responsible State is under an obligation to make full reparation for the injury”¹⁰. Following the **Factory at Chorzów**¹¹ formulation, reparation must “wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed”¹². Injury encompasses “any damage, whether material or moral,” with material damage referring to financially assessable harm and moral damage encompassing individual suffering or dignitary harm.

⁷ *International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts*, G.A. Res. 56/83, U.N. GAOR, 56th Sess., Supp. No. 10, at 43, U.N. Doc. A/56/10 (2001), https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.

⁸ Article 2, Elements of an internationally wrongful act of a State, in *Responsibility of States for Internationally Wrongful Acts* (2001), I.L.C. Draft Articles. https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

⁹ *United Nations, Article 2. Elements of an internationally wrongful act of a State, in Materials on the Responsibility of States for Internationally Wrongful Acts, Legislative Series, Book 25, at 22-33* (2022), https://legal.un.org/legislativeseries/pdfs/chapters/book25/english/book25_part1_ch1_art2.pdf.

¹⁰ Article 31, Elements of an internationally wrongful act of a State, in *Responsibility of States for Internationally Wrongful Acts* (2001), I.L.C. Draft Articles. https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

¹¹ *Phosphates in Morocco*, Judgment, 1938, P.C.I.J., Series A/B, No. 74, p. 10, at p. 28. See also *S.S. “Wimbledon”*, 1923, P.C.I.J., Series A, No. 1, p. 15, at p. 30; *Factory at Chorzów*, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 21; and *ibid.*, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 29.

¹² *Cristina Hoss, Satisfaction, in Max Planck Encyclopedia of Public International Law (MPEPIL)*, Apr. 2011, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1099>.

Treaty Obligations and Responsibility

Treaties create binding obligations under **pacta sunt servanda**, enshrined in Article 26 of the Vienna Convention on the Law of Treaties. Breach by a bound state constitutes an internationally wrongful act if properly attributed. The ILC Articles apply equally to treaty and non-treaty obligations Article 12 specifies that breach occurs “regardless of its origin”.

For bilateral treaties, “the injured state is the other contracting party. Under Article 42, an injured state may invoke responsibility if the obligation is owed to it individually.”¹³ The injured state may seek cessation of the wrongful act, assurances of non-repetition, and full reparation.

Multilateral treaties present greater complexity. Not all states parties need to be “injured” for responsibility to be invoked. Article 42(b) provides that a state is injured if

- (i) “the obligation is owed to a group including that state and the breach specially affect it; or”¹⁴
- (ii) “the obligation is owed to the international community as a whole and the breach radically changes all other states positions regarding further performance.”

Critically, Article 48 extends invocation rights beyond injured states. “Any state may invoke responsibility for breach of obligations owed to a group of states or the international community as a whole, even if not specially affected. However, non-injured states seeking collective enforcement can only obtain cessation and assurances of non-repetition, not reparation.”¹⁵

Contractual Obligations and Responsibility

Traditional doctrine sharply distinguished state contracts from treaties. “every contract which is not an international agreement i.e., a treaty between States is subject to municipal law”¹⁶.

¹³ United Nations, Article 42. *Invocation of Responsibility by an Injured State*, in *Materials on the Responsibility of States for Internationally Wrongful Acts*, Legislative Series, Book 25, at 464-475 (2022), https://legal.un.org/legislativeseries/pdfs/chapters/book25/english/book25_part3_ch1_art42.pdf.

¹⁴ Article 42, *Elements of an Internationally Wrongful Act of a State*, in *Responsibility of States for Internationally Wrongful Acts* (2001), I.L.C. Draft Articles. https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

¹⁵ Priya Urs, *The Elusiveness of ‘Interdependent Obligations’ and the Invocation of Responsibility for their Breach*, 95 *Brit. Y.B. Int’l L.* 1 (2024), <https://doi.org/10.1093/bybil/brae006>.

¹⁶ Irmgard Marboe & August Reinisch, *Contracts between States and Foreign Private Law Persons*, *Max Planck Encyclopedia of Public International Law* (MPEPIL), Apr. 2021, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1391>.

Under this approach, contract breach per se did not constitute international wrongfulness responsibility arose only through accompanying denial of justice, discrimination, or other international law violation.

The rationale was straightforward private parties entering contracts with foreign governments “ipso facto agrees to be bound by the local law with respect to all the legal consequences”¹⁷. Contract disputes belonged in municipal courts, with international responsibility arising only from denial of justice in those proceedings.

Modern development has substantially altered this landscape. Contemporary contracts frequently contain arbitration clauses specifying international tribunal resolution and international law applicability. These “internationalized” contracts blur the boundary between domestic contracts and international agreements. In the **Abu Dhabi Arbitration (1951)**¹⁸, Lord Asquith held that contractual reference to principles “rooted in the good sense and common practice of civilized nations”¹⁹ precluded application of any particular municipal law.

The investment treaty system has majorly changed how contractual obligation’s are treated in international law “There are now more than 3000 Bilateral Investment Treaty’s (BITs) which gives protection’s against things like unfair treatment uncompensated expropriation and discrimination between foreign and local investor’s Many of these treaty’s also have umbrella clauses which say that the host state should observe any obligation it has entered into with respect to investment’s”²⁰

“These umbrella clause’s have led to lot of confusion in interpretation Some tribunal’s think that they automatically make a contract breach into a treaty breach which means the state

¹⁷ Malgosia Fitzmaurice, Third Parties and the Law of Treaties, 6 Max Planck Yearbook of United Nations Law 37 (2002), https://www.mpil.de/files/pdf1/mpunyb_fitzmaurice_6.pdf.

¹⁸ Petroleum Development (Trucial Coast) Ltd. v. Sheikh of Abu Dhabi, (1952) 1 ILR 144-161 (U.K. Arb. Award 1951).

¹⁹ Rudolf Dolzer, Petroleum Development (Trucial Coast) Ltd. v. Sheikh of Abu Dhabi, Max Planck Encyclopedia of Public International Law (MPEPIL), Dec. 2006, <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095345343>.

²⁰ Nasirli, Farid, Balancing Investor Protection and Sovereignty: The Evolution of BITs and ISDS in International Public Investment Law (April 14, 2025). Available at SSRN: <https://ssrn.com/abstract=5228487> or <http://dx.doi.org/10.2139/ssrn.5228487>

becomes internationally responsible But other tribunal's take a more limited view saying that something extra is needed like a sovereign act or denial of justice."²¹

For example the tribunal in **SGS v Pakistan**²² took a narrow approach while **SGS v Philippines**²³ understood the umbrella clause more broadly saying it protects the sanctity of contract. This divergence creates substantial uncertainty about contract obligations international law status.

Defences and Circumstances Precluding Wrongfulness

Chapter V of the ILC Articles identifies circumstances precluding wrongfulness when conduct would otherwise breach an international obligation. "Article 23 addresses force majeure occurrence of an irresistible force or unforeseen event, beyond the control of the State, making it materially impossible to perform"²⁴. Force majeure requires actual impossibility, not merely increased difficulty or burden.

Article 25 addresses necessity with notably stringent conditions that "the act must be "the only way to safeguard an essential interest against a grave and imminent peril, and must not seriously impair an essential interest of the State towards which the obligation exists"²⁵. The International Court of Justice in **Gabčíkovo-Nagymaros Project** emphasized necessity's "exceptional nature," rejecting Hungary's ecological necessity invocation because the alleged peril was insufficiently grave and imminent.

Article 22 provides for countermeasures non-forcible conduct inducing compliance with obligations. Strict limits apply: countermeasures must be temporary, aimed at compliance rather than punishment, proportionate to injury suffered, and cannot affect fundamental

²¹ Shashank P. Kumar et al., Special Issue: International Investment Law, 2 Trade, Law & Dev. (2010), <https://docs.manupatra.in/newsline/articles/Upload/4E016C4F-3051-47B2-AF60-AD8AA7D39715.pdf>.

²² *SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/01/13 (Award Nov. 6, 2003). <https://www.iisd.org/itn/2018/10/18/sgs-v-pakistan/>

²³ *SGS Société Générale de Surveillance S.A. v. Republic of the Philippines*, ICSID Case No. ARB/02/6 (Award Apr. 11, 2008). <https://www.iisd.org/itn/2018/10/18/sgs-v-philippines/>

²⁴ Article 23, Elements of an internationally wrongful act of a State, in Responsibility of States for Internationally Wrongful Acts (2001), I.L.C. Draft Articles. https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

²⁵ Article 25, Elements of an internationally wrongful act of a State, in Responsibility of States for Internationally Wrongful Acts (2001), I.L.C. Draft Articles. https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

obligations or peremptory norms. Procedural requirements include prior notification and offer to negotiate.

Critically, Article 26 provides that “nothing in this chapter precludes the wrongfulness of any act not in conformity with an obligation arising under a peremptory norm”²⁶. Circumstances precluding wrongfulness cannot justify violations of **jus cogens** norms such as prohibitions on genocide, slavery, torture, or racial discrimination.

Remedies and Enforcement

Cessation of wrongful conduct comes first. Article 30 requires that “the responsible State is under an obligation to cease the wrongful act if it is continuing”²⁷. When appropriate, the responsible state must offer “appropriate assurances and guarantees of non-repetition”.

Restitution follows as the primary form of reparation. Article 35 requires restoration of the situation existing before the wrongful act, unless materially impossible or involving disproportionate burden. Because restitution most closely conforms to wiping out breach consequences, it takes precedence over other remedies.

Compensation addresses damage not cured by restitution. Article 36 requires compensation for “any financially assessable damage including loss of profits insofar as established”²⁸. The **Factory at Chorzów**²⁹ standard remains controlling: compensation must cover the value restitution would have provided plus consequential damages.

Finally, “Article 37 addresses satisfaction for injury not remediable through restitution or compensation. Satisfaction may consist of acknowledgment, regret expression, formal apology,

²⁶ Article 26, Elements of an internationally wrongful act of a State, in Responsibility of States for Internationally Wrongful Acts (2001), I.L.C. Draft Articles. https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

²⁷ Article 30, Elements of an internationally wrongful act of a State, in Responsibility of States for Internationally Wrongful Acts (2001), I.L.C. Draft Articles. https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

²⁸ Article 36, Elements of an internationally wrongful act of a State, in Responsibility of States for Internationally Wrongful Acts (2001), I.L.C. Draft Articles. https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

²⁹ Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74, p. 10, at p. 28. See also S.S. “Wimbledon”, 1923, P.C.I.J., Series A, No. 1, p. 15, at p. 30; Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 21; and *ibid.*, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 29.

or other modality, though it “shall not be out of proportion to the injury”³⁰. In **Rainbow Warrior**, the tribunal awarded satisfaction for “moral, political and legal injury”³¹ to New Zealand.

Interface Between Treaty and Contractual Responsibility

The ILC Articles primary/secondary rules distinction proves essential to understanding treaty and contractual responsibility’s interface. “Primary rules establish what states must do and secondary rules determine breach consequences. Whether an obligation derives from treaty or contract with private parties is a primary rules matter. Regardless of origin, however, secondary rules of state responsibility apply.”³²

Article 55 says that “the Article’s do not apply where and to the extent that the condition’s for an internationally wrongful act or responsibility are already covered by some special rule’s. This is called the **lex specialis**”³³, principle which allow’s different treaty regime’s to have their own system for dealing with responsibility. For example the WTO Dispute Settlement Understanding show’s this idea clearly since it provide’s its own procedure’s and remedies for violation’s of WTO agreement’s.

In investment arbitration it is very common that claimant’s bring both contract breach claim’s and also direct treaty claim’s like fair and equitable treatment or expropriation. This overlap sometimes create’s confusion because the boundary between contractual and treaty responsibility is not always clear in practice.

“The **Vivendi** annulment committee articulated an influential framework: “Treaty protection of contract rights is not to be equated with contract performance or non-performance. Rather it require’s considering whether the state has actually violated the treaty obligation’s while

³⁰ Article 37, Elements of an internationally wrongful act of a State, in Responsibility of States for Internationally Wrongful Acts (2001), I.L.C. Draft Articles. https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

³¹ Rainbow Warrior (New Zealand v. France), France-New Zealand Arbitration Tribunal, 30 April 1990, 74 Int’l Law Rep. 241 (Jiménez de Aréchaga, Chairman; Sir Kenneth Keith and Prof. Bredin, Members), <https://ijl.org/wp-content/uploads/2016/08/Aréchaga-et-al-Rainbow-Warrior-1990.pdf>

³² Timo Koivurova & Kritika Singh, Due Diligence, Max Planck Encyclopedia of Public International Law (MPEPIL), Aug. 2022, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1034>

³³ Katja Creutz, The Tenacity of the Articles on State Responsibility as a General and Residual Framework: An Appraisal, EJIL: Talk! (Aug. 5, 2021), <https://www.ejiltalk.org/the-tenacity-of-the-articles-on-state-responsibility-as-a-general-and-residual-framework-an-appraisal/>

dealing with the investor's contractual rights"³⁴. This helps in keeping a difference between normal municipal law contract claims and international treaty claims but at the same time also recognises that both of them can interact and overlap in some situations

Emerging Challenges

Investment treaty's proliferation and fragmentation has created big challenges in recent times. Different tribunals even when they are applying the same language often come to totally different conclusions on very basic questions. This kind of inconsistency threatens the overall coherence of the system and makes it uncertain for both states and investors

Also the traditional idea that "only states can be responsible in international law is now slowly changing. Non-state actors are becoming more involved specially through investment arbitration where private parties are given direct standing to raise claims against a state"³⁵. Article 33(2) of the ILC articles even mentions that "rights may also accrue directly to any person or entity other than a state but the real impact of this change is still not fully clear"³⁶.

In modern times technological issues like cyber operations have started to test the old standards of attribution and sovereignty. Even environmental obligations are bringing new problems such as how to calculate compensation for long term damage or how to decide who exactly is the injured party when the harm is done to global commons like the atmosphere or the ocean. These new realities show that the law of state responsibility has to keep adapting with changing world conditions

Conclusion

State responsibility for treaty and contractual obligation has been evolving into a more coherent framework over time. The ILC articles explain that responsibility comes when there is a breach of an international obligation regardless of its origin and this applies equally to treaties

³⁴ Stanimir A. Alexandrov, *Vivendi (Compañía de Aguas del Aconquija) v. Argentina Case*, Max Planck Encyclopedia of Public International Law (MPEPIL), Feb. 2008, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1785>.

³⁵ *International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries*, UN Doc. A/56/10 (2001), https://legal.un.org/ilc/texts/instruments/English/commentaries/9_6_2001.pdf [hereinafter *ILC Draft Articles*].

³⁶ Article 33, *Elements of an internationally wrongful act of a State*, in *Responsibility of States for Internationally Wrongful Acts* (2001), I.L.C. Draft Articles. https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

contracts that are protected under investment law and even customary obligation's Earlier doctrine's tried to keep these categories separate but in modern investment law the lines have become blur especially because of umbrella clauses and other substantive protection's.

“Some principle's still remain same”³⁷

- Responsibility needs both attribution and breach of an international obligation
- Full reparation should remove the consequence's of breach
- Defence's are very limited and cannot be used to justify violations of peremptory norm's
- Remedies follow a kind of hierarchy where cessation restitution and compensation are given priority

In coming year's there is more focus needed on making investment treaty interpretation more clear giving proper recognition to non state actor's rights and defining collective enforcement mechanism's also the law has to adjust with new technology and environmental challenge's that are emerging Still the core idea remains that whenever there is breach of an international obligation whatever its source may be the state is responsible and has to make full reparation This idea is very important for maintaining international rule of law in a world that is becoming more complex day by day.

References

1. International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, U.N. Doc. A/56/10 (2001), https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.
2. F.V. Garcia Amador, "International Responsibility, Second Report," Yearbook of the International Law Commission, Vol. II (1957).
3. Pierre Klein et al., "The State of State Responsibility," ASIL Proceedings, Vol. 96 (2002).
4. F.A. Mann, "State Contracts and State Responsibility," American Journal of International Law, Vol. 54 (1960).

³⁷ *International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, UN Doc. A/56/10 (2001), https://legal.un.org/ilc/texts/instruments/English/commentaries/9_6_2001.pdf [hereinafter ILC Draft Articles].*

5. Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.
6. Factory at Chorzów (Germany v. Poland), Merits, Judgment, P.C.I.J. Series A No. 17 (1928).
7. Barcelona Traction, Light and Power Company (Belgium v. Spain), Second Phase, Judgment, I.C.J. Reports 1970.
8. Gabčíkovo-Nagymaros Project (Hungary v. Slovakia), Judgment, I.C.J. Reports 1997.
9. LaGrand Case (Germany v. United States), Judgment, I.C.J. Reports 2001.
10. Rainbow Warrior (New Zealand v. France), Award, 82 I.L.R. 499 (1990).
11. Vienna Convention on Consular Relations, Apr. 24, 1963, 596 U.N.T.S. 261.
12. United Nations Charter, June 26, 1945, 1 U.N.T.S. XVI.
13. United Nations Conference on Trade and Development, International Investment Agreements: Key Issues, Vol. I, UN Doc. UNCTAD/ITE/IIT/2004/11 (2004), https://unctad.org/system/files/official-document/iteit200411_en.pdf.
14. Cristina Hoss, Satisfaction, Max Planck Encyclopedia of Public International Law (MPEPIL), Apr. 2011, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1099>.
15. United Nations, Article 42. Invocation of Responsibility by an Injured State, in Materials on the Responsibility of States for Internationally Wrongful Acts, Legislative Series, Book 25, at 464-475 (2022), https://legal.un.org/legislativeseries/pdfs/chapters/book25/english/book25_part3_ch1_art42.pdf.
16. Priya Urs, The Elusiveness of 'Interdependent Obligations' and the Invocation of Responsibility for their Breach, 95 Brit. Y.B. Int'l L. 1 (2024), <https://doi.org/10.1093/bybil/brac006>.
17. Irmgard Marboe & August Reinisch, Contracts between States and Foreign Private Law Persons, Max Planck Encyclopedia of Public International Law (MPEPIL), Apr. 2021, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1391>.
18. Malgosia Fitzmaurice, Third Parties and the Law of Treaties, 6 Max Planck Yearbook of United Nations Law 37 (2002), https://www.mpil.de/files/pdf/mpunyb_fitzmaurice_6.pdf.
19. Petroleum Development (Trucial Coast) Ltd. v. Sheikh of Abu Dhabi, (1952) 1 ILR 144-161 (U.K. Arb. Award 1951).

20. Rudolf Dolzer, Petroleum Development (Trucial Coast) Ltd. v. Sheikh of Abu Dhabi, Max Planck Encyclopedia of Public International Law (MPEPIL), Dec. 2006, <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095345343>.
21. Shashank P. Kumar et al., Special Issue: International Investment Law, 2 Trade, Law & Dev. (2010), <https://docs.manupatra.in/newline/articles/Upload/4E016C4F-3051-47B2-AF60-AD8AA7D39715.pdf>.
22. SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan, ICSID Case No. ARB/01/13 (Award Nov. 6, 2003), http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C205/DC622_En.pdf.
23. SGS Société Générale de Surveillance S.A. v. Republic of the Philippines, ICSID Case No. ARB/02/6 (Award Apr. 11, 2008).
24. Rainbow Warrior (New Zealand v. France), France-New Zealand Arbitration Tribunal, 30 April 1990, 74 Int'l Law Rep. 241 (Jiménez de Aréchaga, Chairman; Sir Kenneth Keith and Prof. Bredin, Members), <https://iilj.org/wp-content/uploads/2016/08/Aréchaga-et-al-Rainbow-Warrior-1990.pdf>.
25. Timo Koivurova & Kritika Singh, Due Diligence, Max Planck Encyclopedia of Public International Law (MPEPIL), Aug. 2022, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1034>.
26. Katja Creutz, The Tenacity of the Articles on State Responsibility as a General and Residual Framework: An Appraisal, EJIL: Talk! (Aug. 5, 2021), <https://www.ejiltalk.org/the-tenacity-of-the-articles-on-state-responsibility-as-a-general-and-residual-framework-an-appraisal/>.
27. Stanimir A. Alexandrov, Vivendi (Compañía de Aguas del Aconquija) v. Argentina Case, Max Planck Encyclopedia of Public International Law (MPEPIL), Feb. 2008, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1785>.