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Responsibility of international organizations

Responsibility of international organizations

Compilation of decisions of international courts and tribunals

Report of the Secretary-General

Contents

* A/75/50.

Abbreviations

DARIO	Draft articles on the responsibility of international organizations
DARS	Draft articles on the responsibility of States for internationally wrongful acts
EACJ	East African Court of Justice
EALA	East African Legislative Assembly
EC	European Commission
ECT	Energy Charter Treaty
EU	European Union
ICSID	International Centre for Settlement of Investment Disputes
ILC	International Law Commission
NATO	North Atlantic Treaty Organization
REIO	Regional Economic Integration Organization
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
VCLT	Vienna Convention on the Law of Treaties
WTO	World Trade Organization

I. Introduction

1. The International Law Commission adopted the articles on the responsibility of international organizations at its sixty-third session, in 2011. In its resolution 66/100 of 9 December 2011, the General Assembly took note of the articles on the responsibility of international organizations presented by the Commission, the text of which was annexed to that resolution, and commended them to the attention of Governments and international organizations without prejudice to the question of their future adoption or other appropriate action.

2. As requested by the General Assembly in resolution 69/126 of 10 December 2014, the Secretary-General prepared a compilation of decisions of international courts, tribunals and other bodies referring to the articles on the responsibility of international organizations.[1]

3. In its resolution 72/122 of 7 December 2017, the General Assembly commended once again the articles on the responsibility of international organizations to the attention of Governments and international organizations without prejudice to the question of their future adoption or other appropriate action. Moreover, the Assembly requested the Secretary-General to invite Governments to submit their written comments on any future action regarding the articles. It also requested the Secretary-General to update the compilation of decisions of international courts, tribunals and other bodies referring to the articles, to invite Governments and international organizations to submit information on their practice in this regard and to submit the material well in advance of its seventy-fifth session.

4. By notes verbales dated 8 January 2018 and 17 January 2019, the Office of Legal Affairs invited Governments to submit, no later than 1 February 2020, their written comments on any future action regarding the articles on the responsibility of international organizations. In those notes, it also invited Governments to submit information regarding practice relating to decisions of international courts, tribunals and other bodies referring to the articles. The Under-Secretary-General for Legal Affairs, the Legal Counsel, also addressed a communication, dated 9 January 2018, to 23 international organizations and entities bringing to their attention resolution 72/122, and inviting them to submit, no later than 1 February 2020, comments and information in accordance with the request of the General Assembly.

5. The present compilation includes an analysis of four cases in which the articles on the responsibility of international organizations were referred to in decisions by international courts, tribunals and other bodies taken during the period from 1 January 2017 to 31 December 2019.[2] Such references were found in the decisions of the East African Court of Justice and arbitral proceedings conducted under the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States and the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce, respectively. The compilation also includes two decisions by domestic courts in the Netherlands. Those decisions were found during the search for references to the articles in decisions by international courts, tribunals and other bodies and have been included for the benefit of Member States. Given the scope of the compilation, which is limited to international decisions, the Secretariat did not conduct a systematic search of domestic jurisdictions.

6. The present compilation reproduces the relevant extracts of publicly available decisions under each of the articles referred to by international, and sometimes national, courts, tribunals or bodies, following the structure and numerical order of

[1] A/72/81.

[2] The compilation also includes one case decided in December 2016 that became available only after the issuance of document A/72/81.

the articles on the responsibility of international organizations as adopted on second reading in 2011. Under each article, decisions appear in chronological order. International decisions are listed separately from national decisions.

7. The compilation includes only the relevant extracts of the decisions referring to the articles on the responsibility of international organizations, together with a brief description of the context in which the reference was made.[3] In those extracts, the articles are invoked as the basis for the decision or referred to as reflecting the existing law governing the issue at hand. The compilation does not cover the submissions of the parties invoking the articles, nor opinions of judges appended to a decision.

II. Extracts of decisions referring to the articles on the responsibility of international organizations

General comments

International decisions

East African Court of Justice

8. In *Hon. Dr. Margaret Zziwa v. Secretary General of the East African Community*, the East African Court of Justice observed that "the East African Community (the Community) is created by the Treaty [for the Establishment of the East African Community] and is obviously an international organization"[4] and concluded that:

> Treaties usually do not prescribe the international responsibility of parties thereto or created thereby, or the consequences of breach of that responsibility. Depending on whether the violation of international responsibility complained of was by a state or an international organization, the principles of law applicable are found in the body of law known as state responsibility or the responsibility of international organizations. In the instant matter, the breach of Treaty is by EALA [East African Legislative Assembly], an organ of the Community, and, accordingly, the appropriate law is the law on the responsibility of international organizations. In that respect, the Court is of the considered opinion that the governing principles are those expressed by the International Law Commission (ILC) in its Draft Articles on the Responsibility of International Organizations, with Commentaries, 2011.[5]

National decisions

Court of Appeal of The Hague

9. In *Stichting Mothers of Srebrenica and Others v. State of the Netherlands*, the Court of Appeal of the Hague observed that:

> The question whether and to what extent acts performed under the UN flag (and for which the UN, under the Convention on the Privileges and Immunities of the United Nations (Treaty Series 1948, no. I 224) is immune from prosecution) should be attributed to the State, is subject to the provisions of written and unwritten (international) law, including, in particular, those drawn up by the International Law [Commission] (IL[C]), laid down in the *Draft Articles on Responsibility of International Organizations* and the *Draft Articles on Responsibility of States for Internationally Wrongful Acts*. The fact that the rules

[3] Unless otherwise indicated, footnote references in the decisions are omitted.

[4] East African Court of Justice (EACJ), appeal No. 2 of 2017, judgment, 25 May 2018, para. 36.

[5] Ibid., para. 38.

> laid down in international law could lead to the circumstance that the victims could not hold liable the UN (on grounds of immunity) and subsequently one of the UN Member States (on grounds of non-attributability) for certain acts and war crimes committed by the Bosnian Serbs, cannot be blamed on the State, and it does not follow that more should be attributed to the Member State than what it is liable for under the prevalent rules. This ground for appeal is unfounded, therefore.[6]

Supreme Court of the Netherlands

10. In *State of the Netherlands v. Stichting Mothers of Srebrenica and Others*, the Supreme Court observed that:

> In order to determine the conditions under which conduct may be attributed to a State or an international organization as developed in unwritten international law, alignment must be sought – as the Court of Appeal undisputedly has done (para. 11.1) – with two sets of articles drawn up and adopted by the UN's *International Law Commission* (ILC): the *Draft Articles on Responsibility of States for Internationally Wrongful Acts* from 2001 and the *Draft Articles on the Responsibility of International Organizations* from 2011.[7]

Part Two
The internationally wrongful act of an international organization

Chapter I
General principles

Article 3
Responsibility of an international organization for its internationally wrongful acts

International decisions

East African Court of Justice

11. In *Hon. Dr. Margaret Zziwa v. Secretary General of the East African Community*, the East African Court of Justice referred to article 3 of the articles on the responsibility of international organizations as "detail[ing] the international responsibility of international organizations".[8]

Article 4
Elements of an internationally wrongful act of an international organization

International decisions

East African Court of Justice

12. In assessing the responsibility of the East African Community in *Hon. Dr. Margaret Zziwa v. Secretary General of the East African Community*, the East African Court of Justice, citing articles 3, 4 and 6 of the articles on the responsibility of international organizations, concluded:

[6] Court of Appeal of The Hague, case No. 200.158.313/01 and 200.160.317/01, judgment, 27 June 2017, para. 11.2.

[7] Supreme Court of the Netherlands (Civil Law Division), case No. 17/04567, judgment, 19 July 2019, para. 3.2.

[8] EACJ, Appeal No. 2 of 2017, judgment, 25 May 2018, para. 38.

> From the circumstances of this matter and bearing the content of the above draft articles in mind, it is clear to the Court that EALA's [East African Legislative Assembly] removal of the Appellant as Speaker in contravention of the Treaty was an internationally wrongful act which is attributable to the Community and accordingly entails the Community's international responsibility.[9]

Chapter II
Attribution of conduct to an international organization

General comments

National decisions

Supreme Court of the Netherlands

13. In *State of the Netherlands v. Stichting Mothers of Srebrenica and Others*, the Supreme Court observed that:

> in these proceedings, unlike in the *[A]* and *[B]* judgments referred to above at 2.1.1,[10] the question of whether making Dutchbat available to the UN implies that Dutchbat's conduct can exclusively be attributed to the UN and not to the State, or that dual attribution (attribution to both the UN and the State) is possible, is not at issue. It was found in the *[A]* and *[B]* judgments that the latter was the case. This is why the provisions in DARIO [draft articles on the responsibility of international organizations] concerning the attribution of conduct to an international organization are not directly relevant in these proceedings. (In this regard, see the *[A]* and *[B]* judgments, para. 3.9.1 et seq.).[11]

Article 6
Conduct of organs or agents of an international organization

International decisions

East African Court of Justice

14. In *Hon. Dr. Margaret Zziwa v. Secretary General of the East African Community*, the East African Court of Justice referred to article 6 of the articles on the responsibility of international organizations as "detail[ing] the international responsibility of international organizations".[12]

Article 7
Conduct of organs of a State or organs or agents of an international organization placed at the disposal of another international organization

National decisions

Court of Appeal of The Hague

15. In *Stichting Mothers of Srebrenica and Others v. State of the Netherlands*, the Court of Appeal of the Hague observed that, in accordance with article 7 of the articles on the responsibility of international organizations, it was "not in dispute in this case

[9] Ibid., para. 40.

[10] See Supreme Court of the Netherlands (First Chamber), *State of the Netherlands v. Mustafić-Mujić*, case No. 12/03329, judgment, 6 September 2013, and *State of the Netherlands v. Nuhanović*, case No. 12/03324, judgment, 6 September 2013.

[11] Supreme Court of the Netherlands (Civil Law Division), case No. 17/04567, judgment, 19 July 2019, para. 3.6.1.

[12] EACJ, appeal No. 2 of 2017, judgment, 25 May 2018, paras. 38 and 39.

that a national contingent placed at the disposal of the UN for UNRPOFOR [*sic*] (such as Dutchbat) is to be considered an 'organ' of the UN".[13]

Supreme Court of the Netherlands

16. The Supreme Court, in *State of the Netherlands v. Stichting Mothers of Srebrenica and Others*, referred to the commentary to article 7 of the articles on the responsibility of international organizations referred to in earlier judgments by the Supreme Court[14] when finding that "in attributing acts to a State by virtue of Article 8 DARS [Draft articles on the responsibility of States for internationally wrongful acts], what matters is *factual control* of the specific conduct, in which all factual circumstances and the special context of the case must be considered".[15]

Article 8
Excess of authority or contravention of instructions

National decisions

Court of Appeal of the Hague

17. In the case of *Stichting Mothers of Srebrenica and Others v. State of the Netherlands*, the Court of Appeal of the Hague, quoting Article 8 of the articles on the responsibility of international organizations, stated that "it follows from the above that acts conducted by Dutchbat must be considered acts conducted by the UN if they took place '*in an official capacity and within the overall functions*' of the UN, even if they ran counter to instructions".[16] The Court went on to note:

> Only if troops acted beyond the "*official capacity*" or the "*overall functions*" of the UN organization (Cf. Article 8 DARIO) – so in the case of Dutchbat: beyond the remit of the capacity and functions conferred on it as *peacekeeper* – it can be concluded that the conduct cannot be attributed to the UN pursuant to Article 8 DARIO. This does not mean, however, that every departure from an order issued by the UN (or a departure from the interpretation of an order) must be attributed as acting *ultra vires* to a Member State of the UN, besides or instead of to the UN. Nor can this intention be concluded from the explanation given to Article 7 DARIO by the IL[C] (to which the District Court referred in its ground 4.58). The control of the State over mechanisms such as recruitment, selection and preparation of the troops, and the control of the State over staff matters and disciplinary measures afterwards, as the District Court has pointed out, are not such that by reason of them the in-situ operational decisions which deviate from a (higher) UN order are attributable to the State. Essentially, the State had precisely NO controlling powers with regard to operational decisions after the transfer of the *command and control*.[17]
>
> Neither did Dutchbat act beyond the "*official capacity*" or "*the overall functions*" of the UN organization with regard to operational acts of war, in the

[13] Court of Appeal of The Hague, case No. 200.158.313/01 and 200.160.317/01, judgment, 27 June 2017, para. 15.2.

[14] Supreme Court of the Netherlands (First Chamber), *State of the Netherlands v. Mustafić-Mujić*, case No. 12/03329, judgment, 6 September 2013, paras. 3.9.5 and 3.11.3, and *State of the Netherlands v. Nuhanović*, case No. 12/03324, judgment, 6 September 2013, paras. 3.9.5 and 3.11.3.

[15] Supreme Court of the Netherlands (Civil Law Division), case No. 17/04567, judgment, 19 July 2019, para. 3.5.4. See also Procurator General of the Supreme Court of the Netherlands, case No. 17/04567, opinion, 1 February 2019, para. 4.10.

[16] Court of Appeal of The Hague, case No. 200.158.313/01 and 200.160.317/01, judgment, 27 June 2017, para. 15.2 (original emphasis).

[17] Ibid., para. 15.3 (original emphasis).

> opinion of the Court of Appeal. Evaluating the situation in the field was a UN matter. Taking specific decisions about abandoning, reinforcing or recapturing observation posts, about the moment when and the way in which no resistance was put up (anymore) at the observation posts, about taking up or not taking up, moving or removing *blocking positions* at some point in time, about what to do with their own weapons and the weapons seized, about requesting close air support and the deployment of medical means by the military in the field were all part of the powers and duties of the UN *peacekeeper*, and were acts in *an official capacity and within the overall functions* of Dutchbat.[18]

Supreme Court of the Netherlands

18. In *State of the Netherlands v. Stichting Mothers of Srebrenica and Others*, the Supreme Court noted on the question of attribution of *ultra vires* conduct that "part 2 [of the Stichting's grounds for cassation] complains that the Court of Appeal failed to recognize that the conduct of UN Peacekeeping troops must always be attributed to the sending State if that conduct is in contravention of the instructions issued by the UN to the Peacekeeping troops".[19] The Supreme Court found that "the interpretation of the law advocated in this part is not supported by the law. Article 8 DARIO – which, according to the Commentary to this article (at 9), also applies to UN Peacekeeping troops like Dutchbat – provides that *ultra vires* conduct is in principle attributed to the international organization".[20] The Supreme Court concluded that "the challenged conduct of Dutchbat can only be attributed to the State if the requirements of Article 8 DARS are satisfied".[21]

Part Three
Content of the international responsibility of an international organization

General comments

International decisions

East African Court of Justice

19. In *Hon. Dr. Margaret Zziwa v. Secretary General of the East African Community*, the East African Court of Justice observed that "the draft articles [on the responsibility of international organizations] detail […] the legal consequences for the breach thereof in articles 30, 31, 33, 34, 35 and 36 which are in Part Three".[22] The Court further explained:

> The legal consequences of such a breach [by the East African Community] would, if the complainant were a State or another international organization, be cessation and non-repetition (Article 30) and/ or reparation (Article 31). Article 34 makes it clear that reparation may take the form of restitution, compensation and satisfaction, either singly or in combination.[23]

[18] Ibid., para. 16.1 (original emphasis).
[19] Supreme Court of the Netherlands (Civil Law Division), case No. 17/04567, judgment, 19 July 2019, para. 3.6.1.
[20] Ibid.
[21] Ibid. See also Procurator General of the Supreme Court of the Netherlands, case No. 17/04567, opinion, 1 February 2019, para. 4.22.
[22] EACJ, appeal No. 2 of 2017, judgment, 25 May 2018, para. 38.
[23] Ibid., para. 40.

Chapter I
General principles

Article 33
Scope of international obligations set out in this Part

International decisions

East African Court of Justice

20. With regard to the legal consequences of an internationally wrongful act committed by an international organization, the East African Court of Justice explained in *Hon. Dr. Margaret Zziwa v. Secretary General of the East African Community* that it

> apprehends the provision of Draft Article 33 to mean this: where a primary rule of international law (such as the Treaty) entitles an actor in international law who is not a State or an international organization to invoke the international responsibility of an international organization, the legal consequences are not to be sought in the ILC Draft Article[s on the responsibility of international organizations] 30 or 31 but are left to be determined by the Tribunal before which such responsibility is invoked in accordance with the primary rule.[24]

21. The Court further explained:

> Article 23 of the Treaty has conferred on this Court the duty to ensure adherence to the law in the interpretation, application and compliance with the Treaty. And Article 30 thereof has given any person who is resident in a Partner State the right to directly invoke the international responsibility of the organization created by the Treaty, namely, the East African Community, on his or her own account without the intermediation of the State to which he or she is a national. The Treaty itself (not unusually) has not prescribed the nature and form of the international responsibility resulting from a breach thereof. In those circumstances, we are of the considered opinion that the Treaty having provided a right, it is for the Court to provide such remedy or remedies as may be appropriate in each individual case. In our view, the legal consequences to be visited upon the Community in consequence of a breach of its international obligation to a person resident in a Partner State may, in appropriate cases, include cessation (usually known as injunction in internal law), reparation (which may take the form of restitution, or compensation), satisfaction, or similar, or other remedies.[25]

Chapter II
Reparation for injury

Article 38
Interest

International decisions

East African Court of Justice

22. While assessing interest on damages in the case of *Hon. Dr. Margaret Zziwa v. Secretary General of the East African Community*, the East African Court of Justice observed that article 38 of the articles on the responsibility of international

[24] Ibid., para. 42.
[25] Ibid., para. 43.

organizations was "in identical terms with Article 38 of the ILC draft articles on State responsibility".[26] The Court took inspiration from the jurisprudence found in the commentary to article 38 of the articles on the responsibility of States for internationally wrongful acts to conclude that "as a regional international Court, it has the jurisdiction and discretion to award interest on compensation",[27] and that "the Appellant's claim for loss of earnings was obviously in the nature of a liquidated claim rather than general damages at large to be assessed by the court".[28]

Part Five
Responsibility of a State in connection with the conduct of an international organization

Article 59
Direction and control exercised by a State over the commission of an internationally wrongful act by an international organization

National decisions

Court of Appeal of the Hague

23. In *Stichting Mothers of Srebrenica and Others v. State of the Netherlands*, the Court of Appeal of the Hague found with regard to decision-making by the North Atlantic Treaty Organization (NATO) and the United Nations that

>]It does not follow from the Association et al.'s [Stichting and Others'] allegation that [the Dutch Minister of Defence] Voorhoeve exerted influence on NATO decisions (which influence the State contested) that military operations are attributable to the State. Both *close air support* and *air strikes* required the consent of NATO, to which the Netherlands is a member State. Within NATO a member State can make known its position and, on the other hand, pressure may or may not be exerted on the member State to adopt a different view. From this, it does not follow that the NATO decision is attributable to the member State. Article 59, paragraph 2 DARIO provides as follows:
>
> > "An act by a State member of an international organization done in accordance with the rules of the organization does not as such engage the international responsibility of that State under the term of this article."
>
> The fact that a member State may express an opinion within the international organization (in conformity with the rules), does not mean that decisions made by the international organization are attributable to the member State. Decisions about *air strikes* and *close air support* were joint military operational choices of the UN and NATO, prompted by assessments of humanitarian developments, threat of war and on-site risks, and by the role and position of the UN and NATO member States both in this civil war as well as worldwide. In the process, member States may have a say politically, to a greater or lesser extent, without taking over decision-making (wholly or partially) from the UN or NATO. That NATO attempted unsuccessfully to exert pressure on the Netherlands to allow *air strikes*, as the American diplomat Holbrook wrote in his memoires, or that the UN interrupted or cancelled *close air support* after a telephone conversation on the subject between Voorhoeve and [the Special Representative of the Secretary-General of the United Nations] Akashi, does not mean that

[26] Ibid., para. 84.
[27] Ibid., para. 85.
[28] Ibid.

terminating *close air support* can be attributed to the State as a consequence of a (wrongful) act by the State.[29]

Part Six
General provisions

Article 64
Lex specialis

International decisions

International arbitral tribunal (under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States)

24. In *Blusun S.A., Jean-Pierre Lecorcier and Michael Stein v. Italian Republic*, the arbitral tribunal noted that "the EC [European Commission] considers that Member States are bound by the concept "liability follows competence" pursuant to Article 64 of the Draft articles on the responsibility of international organizations and the relevant case law, when assessing their international liability."[30] On that basis, the European Commission

> submit[ted] that all provisions within Part III of the ECT [Energy Charter Treaty] fall within the competence of the EU [European Union] and thus they are binding on the EU and that, as a result, in the event of a dispute between the EU and an investor from a third country, the EU will be internationally responsible for any breach. …Because the ECT provisions on investment protection only bind the EU, and not the Member States *inter se*, an EU investor cannot bring a claim against a Member State. According to the EC, such a claim would not represent a dispute against another Contracting Party for the purposes of Article 26 of the ECT.[31]

25. The arbitral tribunal found that "on its face there is nothing in the text of the ECT that carves out or excludes issues arising between EU Member States",[32] and "neither is there anything in the text to support the EC's argument that the ECT did not give rise to *inter se* obligations because the EU Member States were not competent to enter into such obligations".[33] The tribunal went on to explain:

> Pursuant to Article 6 of the VCLT [Vienna Convention on the Law of Treaties], every State possesses capacity to conclude treaties and is bound by those obligations pursuant to the principle of *pacta sunt servanda*. No limitation on the competence of the EU Member States was communicated at the time that the ECT was signed. Article 46 of the VCLT provides that a State may not invoke provisions of its internal law regarding competence to conclude treaties to invalidate a treaty unless it was a manifest violation of a rule of fundamental importance. While EU law operates on both an internal and international plane, a similar principle must apply. Even if, as a matter of EC law, the EC has exclusive competence over matters of internal investment, the fact is that Member States to the EU signed the ECT without qualification or reservation. The *inter se* obligations in the ECT are not somehow invalid or inapplicable

[29] Court of Appeal of The Hague, case No. 200.158.313/01 and 200.160.317/01, judgment, 27 June 2017, para. 29.6 (original emphasis).
[30] International Centre for Settlement of Investment Disputes (ICSID) case No. ARB/14/3, final award, 27 December 2016, para. 225.
[31] Ibid., para. 227.
[32] Ibid., para. 280.
[33] Ibid., para. 281.

> because of an allocation of competence that the EC says can be inferred from a set of EU laws and regulations dealing with investment. The more likely explanation, consistent with the text of the ECT, is that, at the time the ECT was signed, the competence was a shared one.[34]

International arbitral tribunal (under the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce)

26. In *Greentech Energy Systems A/S, et al v. Italian Republic*, the arbitral tribunal observed that the European Commission had objected to its jurisdiction by inter alia arguing that Part III and Article 26 of the Energy Charter Treaty did not create obligations among EU member States.[35] To support that argument, the European Commission had advanced that the EU and its member States were subject to

> a principle of international law, expressed as "liability follows competence", whereby international obligations and liability among an international organization and its member States are allocated according to special rules of the organization itself and not necessarily shared between the organization and its member States. This principle, asserts the EC, has been recognized in the International Law Commission's 2011 Draft Articles on the Responsibility of International Organizations ("DARIO"), WTO [World Trade Organization] panel reports, and a decision of the International Tribunal for the Law of the Sea.[36]

27. The arbitral tribunal found "the arguments for the intra-EU jurisdictional objection unpersuasive".[37]

International arbitral tribunal (under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States)

28. In *NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. v. Kingdom of Spain*, the arbitral tribunal explained that the European Commission had argued that Part III and Article 26 of the ECT do not apply between EU member States because "pursuant to Article 64 of the ILC Articles on Responsibility of International Organizations and case law, the principal law applicable for determining the extent of the international obligations and international liability of EU Member States is "liability follows competence." […] As such, pursuant to Article 3(2) of the TFEU [Treaty on the Functioning of the European Union], EU Member States did not have the external competence to conclude such type of [*inter se* investment protection] treaty".[38] In considering this argument, the arbitral tribunal could not

> infer from the terms of Articles 1 (3) and (10) of the ECT that the Contracting Parties intended to exclude intra-EU investment operations from the jurisdiction of investment tribunals. The fact that the EU is a Contracting Party to the ECT did not deprive the EU Member States of their competence to enter into obligations under the ECT at the time of its conclusion. Therefore, in absence of a disconnection clause and a revision of the ECT by the Contracting Parties, the Tribunal cannot conclude that presence of the EU as REIO [Regional Economic Integration Organization] consenting to the provisions of the ECT

[34] Ibid., para. 283.
[35] Arbitration Institute of the Stockholm Chamber of Commerce, case No. V 2015/095, Final Award, 23 December 2018, para. 278.
[36] Ibid., para. 288.
[37] Ibid., para. 336.
[38] ICSID case No. ARB/14/11, Decision on Jurisdiction, Liability and Quantum Principles, 12 March 2019, para. 326.

would supersede the consent given by each EU member State individually to the ECT. Rather, a good faith interpretation of the terms of the ECT leads to the conclusion that a REIO, such as the EU, may have standing under the ECT in arbitration proceedings. However, concluding that Contracting Parties, taken individually, lack standing when the investment operation remains in the European Area would go beyond the terms of the Treaty.[39]

[39] Ibid., para. 342.