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**Establishing state responsibility in the absence of effective government**  
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## Appendix: Articles 4-5, 7-11 and 16 ARSIWA

### *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 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.

*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.

## List of Treaties and Other Agreements

### TREATIES

- African Charter on Human and Peoples' Rights, Nairobi, 27 June 1981, in force 21 October 1986, 1520 UNTS 218
- Agreement concerning the Headquarters of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, New York, 29 July 1994, in force provisionally 29 July 1994, definitively 17 November 1994, 1792 UNTS 351
- American Convention on Human Rights, Costa Rica, 22 November 1969, in force 18 July 1978, 1144 UNTS 123
- Charter of the United Nations, San Francisco, 26 June 1945, in force 24 October 1945, certified true copy at <https://treaties.un.org/doc/Publication/CTC/uncharter.pdf>
- Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949, in force 21 October 1950, 75 UNTS 31
- Convention (IV) concerning the Laws and Customs of War on Land and its Annex: Regulations Respecting the Laws and Customs of War on Land, The Hague, 18 October 1907, in force 26 January 1910, 205 CTS 277
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984, in force 26 June 1987, 1465 UNTS 85
- Convention between Great Britain and the United Mexican States, 5 December 1930, 5 UNRIAA 10
- Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950, in force 3 September 1953, 213 UNTS 221
- Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979, in force 3 September 1981, 1249 UNTS 13
- Convention on the Prevention and Punishment of the Crime of Genocide, Paris, 9 December 1948, in force 12 January 1951, 78 UNTS 277
- Convention on the Rights of Persons with Disabilities, New York, 13 December 2006, in force 3 May 2008, 2515 UNTS 3
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- Headquarters Agreement between the International Criminal Court and the Host State, The Hague, 7 June 2007, in force 1 March 2008, 2517 UNTS 173
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- International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966, in force 4 January 1969, 660 UNTS 195

- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, New York, 18 December 1990, in force 1 July 2003, 2220 UNTS 3
- International Covenant on Civil and Political Rights, New York, 16 December 1966, in force 23 March 1976, 999 UNTS 171
- International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966, in force 3 January 1976, 993 UNTS 3
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- Statute of the International Court of Justice, San Francisco, 26 June 1945, in force 24 October 1945, certified true copy at <https://treaties.un.org/doc/Publication/CTC/uncharter.pdf>
- Vienna Convention on Diplomatic Relations, Vienna, 18 April 1961, in force 24 April 1964, 500 UNTS 95
- Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, in force 27 January 1980, 1155 UNTS 331

#### OTHER AGREEMENTS

- Acuerdo entre Gobierno Nacional y la Autodefensas Unidas de Colombia para la zona de ubicación en Tierralta, Córdoba (Acuerdo de Fátima), 13 May 2004, available at <https://peacemaker.un.org/colombiaacuerdofatima2004>

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*Communication No. 245/02: Zimbabwe Human Rights NGO Forum v. Zimbabwe*, Decision of 15 May 2006

*Communication No. 272/03: Association of Victims of Post Electoral Violence & INTERIGHTS / Cameroon*, Decision of 25 November 2009

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*American Manufacturing & Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1, Award of 21 February 1997, (1997) 36 ILM 1534

*Asian Agricultural Products Ltd. (AAPL) v. Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Award of 27 June 1990, (1991) 6 ICSID Review 526

*Bolívar Railway Company (Great Britain) v. Venezuela*, Award of 17 February 1903, 9 UNRIAA 445

*Charles S. Stephens and Bowman Stephens (U.S.A.) v. United Mexican States*, Award of 15 July 1927, 4 UNRIAA 265

*Christina Patton (Great Britain) v. United Mexican States*, Award of 8 July 1931, 5 UNRIAA 224

*Clipperton Island (Mexico v. France)*, Award of 28 January 1931, 2 UNRIAA 1105

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- Francis J. Acosta (U.S.A.) v. United Mexican States*, Award of 18 October 1928, 4 UNRIAA 411  
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- Pantechniki S.A. Contractors & Engineers (Greece) v. The Republic of Albania*, ICSID Case No. ARB/07/21, Award of 30 July 2009, (2009) IIC 383
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- Tinoco Arbitration*, see *Aguilar-Amory and Royal Bank of Canada Claims*
- Trail Smelter (USA, Canada)*, Award of 16 April 1938 and 11 March 1941, 3 UNRIAA 1905
- Walter A. Noyes (United States) v. Panama*, Award of 22 May 1933, 6 UNRIAA 308
- Wena Hotels v. Egypt*, ICSID Case No. ARB/98/4, Award of 8 December 2000, (2002) 41 ILM 896
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- Zafiro case*, see *D. Earnshaw and Others (Great Britain) v. United States*

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- Chrysostomos and Papachrysostomou v. Turkey*, Application Nos. 15299/89 and 15300/89, Report of 8 July 1993
- Cyprus v. Turkey*, Application No. 25781/94, Report of 4 June 1999

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- Al Nashiri v. Poland*, Application No. 28761/11, Fourth Section, Judgment of 24 July 2014
- Al Nashiri v. Romania*, Application No. 33234/12, First Section, Judgment of 31 May 2018
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## Curriculum Vitae

Andrea Varga was born in 1985 in Székesfehérvár, Hungary. She first studied international relations at the Corvinus University of Budapest, receiving an MA in 2009. She then went on to study public international law at Leiden University, graduating *cum laude* from the LLM (reg.) programme in 2010 and completing the Law Faculty's Talent Programme at the same time. She started her doctorate at Leiden in 2011 as a Meijers PhD Fellow. During her PhD, she was a Visiting Scholar for a semester at Columbia University in New York in 2014. Between 2015 and 2018, she worked at the Lauterpacht Centre for International Law in Cambridge as a Research Associate on the *Legal Tools for Peace-Making* project, led by Prof. Marc Weller. As part of the project, she oversaw the development of the award-winning *Language of Peace* database, created together with the UN Mediation Support Unit and PASTPRESENTFUTURE.



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