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State Responsibility in International Law

- The laws of state responsibility are the principles governing when and how a state is held **responsible for a breach of an international obligation**.
- A state is responsible for direct violations of international law e.g., the breach of a treaty or the violation of another state's territory.
- A state is not internationally responsible if its conduct was required by a peremptory norm of general international law, if it was taken in conformity with the right to **self-defense** under the UN Charter, if it constituted a legitimate measure to pressure another state to comply with its international obligations, if it was taken as a result of a *force majeure* ("greater force") **beyond the state's control**, if it could not reasonably be avoided in order to **save a life or lives**, or if it constituted the only means of safeguarding an essential interest of the state against a **grave and imminent peril**.
- A breach of an international obligation gives rise to a **requirement for reparation**.

Rainbow Warrior (New Zealand v. France 1999)

- France sank the Rainbow Warrior, a New Zealand vessel. Two French military officers were sentenced to **ten years in prison in New Zealand**. The UN Secretary-General was asked to mediate and his ruling in 1986 provided inter alia for French **payment (7 Million) to New Zealand and for the transference of two French agents to a French base** in the Pacific, where they were to stay for **three years** and not to leave without the mutual consent of both states.
- One of the officers became seriously ill and while the other one became pregnant. France permitted each military officer to leave the Pacific before the three-year period ended and prior to receiving New Zealand's consent. When the ill officer recovered, he was not returned to prison. New Zealand unilaterally commenced an arbitration proceeding, seeking the return of the French officers to Pacific.
- New Zealand and France submitted their dispute again to an arbitral tribunal. New Zealand demanded a declaration that France **had breached its obligations** by unilaterally transferring the agents without New Zealand's consent, and an order that France be required to return the two agents to the military facility. France denied international responsibility on the grounds of *force majeure and distress*. The arbitral tribunal decided that the A declaration by an international tribunal that a *respondent State had committed a violation of its 'international obligations towards a claimant State...'*

- The international responsibility of States is based on **two legal precepts**: first, a State must be subject to international obligations; and second, a State must be responsible for non-compliance with such obligations.
- A landmark case in this regard is *Nicaragua v. United States (1986) ICJ Rep 14, ICGJ 112*; the case concerning military and paramilitary activities in and around Nicaragua. It involved the United States supporting rebellion groups against the Nicaraguan government.
- The Court found in its verdict that the United States was “in breach of its obligations under customary international law not to use force against another State” and “not to intervene in its affairs”. **Article 2(4) of the UN Charter** prohibits dictatorial non-intervention by stating that every State is under a legal obligation not to use or threaten to use force against others. However, non-intervention is not merely limited to the prohibition of the usage of force.
- Draft Articles on The Origin of State Responsibility (*non-binding instrument*).
Read for your own benefit

Basis and nature of State responsibility

- There are *three factors* employed to determine the liability of a State.
 - Firstly, the State must be under a legal duty not to commit the act.
 - Secondly, the State must commit the act.
 - Finally, the act must cause injury (loss or damage) to another entity.
- If these factors are satisfied, the State is bound to make reparation to the injured parties. in the *Germany v Poland (1927)* PCIJ Series A No 9, ICGJ 247, the Permanent Court of International Justice said that: it is a principle of international law, and even a greater conception of law, that **any breach of an engagement involves an obligation to make reparation.**

The question of fault or the risk theory

There are contending theories as to whether responsibility of the state for unlawful acts or omissions is strict or whether it is necessary to show some fault or intention on the part of the officials concerned. The principle of objective responsibility (the so-called 'risk' theory) **maintains that the liability of the state is strict.** Once an unlawful act has taken place, which has caused injury and which has been committed by an agent of the state, that state will be responsible in international law to the state suffering the damage **irrespective of good or bad faith.**

In the **Caire Claim (1929)**, Caire was a French national who was asked to obtain a large sum of money by a major in the Mexican army. He was unable to obtain the money and was subsequently arrested, tortured and killed by the major and a number of soldiers. France successfully pursued a claim against the Mexican government which was heard by the French-Mexican Claims Commission.

The principal question for the Commission was whether Mexico could be responsible for the actions of individual military personnel **who were acting without orders** and against the wishes of their commanding officer and independently of the needs and aims of the revolution. The presiding commissioner, gave support to the objective responsibility of the state according to which **a state is responsible for the acts of its officials and organs even in the absence of any fault of its own.**

The Doctrine of Imputability

- Imposing upon the **state absolute liability** wherever an official is involved encourages that **state to exercise greater control** over its various departments and representatives.
- Imputability is the legal fiction which assimilates **the actions or omissions of state officials to the state itself and which renders the state liable for damage resulting to the property or person of an alien.**
- **Article 5 of Part I of the ILC Draft Articles provides that:**

“... conduct of any state organ having that status under the internal law of that state shall be considered as an act of the state concerned under international law, provided that organ was acting in that capacity in the case in question”.

and **Article 6 states that:**

- The conduct of an organ of the state shall be considered as an act of that state under international law, whether that **organ belongs to the constituent, executive, judicial or other power**, whether its functions are of an international or an internal character and whether it holds a superior or a subordinate position in the organization of the state.

- **Direct Responsibility/Article 5 and 6 of the Draft Articles**

The State is represented by the government, which comprises the administration, **legislature, judiciary, central authorities, and local authorities**. As a result, if any of these organs violates international law, the State will be held directly responsible.

Diplomatic ambassadors, for example, are regarded to be representatives of the head of the sending State under the representational paradigm.

As a result, if they commit unlawful conduct while acting in their diplomatic position, the sending State will be held responsible. Similarly, a State is held liable for the wrongful acts of its **armed forces**, if it had authorized the armed forces to carry out those acts.

In the **Genocide Convention (Bosnia v. Serbia) case, ICJ (2007)** regarded it as ‘one of the cornerstones of the law of state responsibility, that the **conduct of any state organ is to be considered an act of the state under international law**, and therefore gives rise to the responsibility of the state if it constitutes a breach of an obligation of the state’. It was a rule of customary international law.

Indirect Responsibility/Article 8 of the Draft Articles

- A State may also be held liable for the actions of third parties if such actions were approved by it. This norm is based on the relationship that exists between the State and the individual or people who conduct the unlawful act or omission.
- Indirect responsibility/vicarious responsibility is a circumstance in which one entity is held accountable for the actions of another entity.
- **United States v. Iran (1980)** A group of Iranian insurgents stormed the US embassy in Tehran on November 4, 1979. They caused damage to the embassy and destroyed documents. The invasion lasted many hours, but Iranian military personnel **did not come until much later**, despite repeated pleas. More than sixty American diplomats and civilians were kept captive until January 20, 1981. Some of the hostages were released sooner, while 52 were held captive until the end. When the Iranian soldiers arrived on the scene, they made no move to release the hostages. The United States filed a lawsuit against Iran at the International Court of Justice on November 29, 1979.
- The ICJ found the rebels to be ‘agents of the Iranian Government because the latter had approved and perpetuated their actions, translating the occupation of the embassy and detention of the hostages into official acts of the State, for which the perpetrators, while initially acting in private capacities, were rendered agents of the Iranian State.

Rebellion and revolution

- Article 11 of the Draft Articles makes it clear that the conduct of a person or persons not acting on behalf of the state will not be considered as an act of the state under international law. It therefore follows that the actions of rebels and revolutionary will not normally be considered as acts of the state and this is provided for in Article 14. However, **the state is required to show due diligence.**
- Where an insurrectionary movement is successful and the revolutionaries take over the government, the new government will be liable for the actions of the insurrectionaries before they took power. In the Bolivar Railway Company Claim (1903) the tribunal held Venezuela liable for the acts of successful revolutionaries committed before they had taken power.

Circumstances precluding wrongfulness

- 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**. The most common example of this kind of situation is **where troops from one state are sent to another at the request of the latter**.
- Wrongfulness is also precluded **where the act constitutes a lawful measure of self-defence** taken in conformity with the Charter of the UN. This would also cover force used in self-defence as defined in the customary right as well as under **article 51 of the Charter**, since that article refers in terms to the ‘inherent right’ of individual and collective self-defence.
- Article 22 of the ILC Articles provides that the wrongfulness of an act is precluded if and to the extent that the act constitutes a countermeasure.

The right to bring claims

A. The exhaustion of local remedies

- International law requires that before State responsibility could be invoked, all local remedies in the defendant State must be exhausted. For instance, if a national working under **State A** commits a wrongful act against **State B**, the remedies in the national courts of **State A must first be exhausted**.
- The rule was considered in the *Ambatelios Arbitration (1956)* which arose following a contractual dispute between a **Greek national and the UK**. Mr Ambatelios failed to call a vital witness and also failed to take advantage of the opportunity of taking the case to the Court of Appeal.
- The Commission of Arbitration found that **it was up to the defendant state to prove the existence in its municipal law of effective remedies which have not been used**.

B. Injured state (s)

- The general rule is that it is only **injured states** which are able to bring international claims against other states for a breach of some international obligation. Article 5(1) of the ILC Draft Articles on State Responsibility, Part II (1985) provides that an injured state is any state a right of which is **infringed by the act of another state if such an act constitutes an internationally wrongful act**.
- Article 5(3) of the Draft Articles goes further by providing that if the internationally wrongful act constitutes an **international crime, then ‘injured state’ means all other states**. This idea of collective responsibility is one of the most controversial areas of state responsibility and Article 5(3) cannot in any way be said to express an existing rule of international law. The concept of international crimes and *erga omnes* obligations is of particular relevance to claims arising out of human rights abuses, breaches of humanitarian law and environmental damage

Conclusion

When a state violates its responsibilities then, **(a) Cessation**, the state responsible for the internationally wrongful act is under an obligation to **cease** that act, if it is continuing, and to offer appropriate assurances and guarantees of non-repetition if circumstances so require. **(b) Reparation** is an essential complement to a state's failure to carry out any of its commitments.

This was illustrated in the case between **Uganda vs. Congo (ICJ, 1998-2021)**. The International Court of Justice (ICJ) ruled Uganda had violated international norms as an occupying force between 1998 and 2003. The judges found that Uganda was responsible for the deaths of **10-15,000 people** in the eastern Ituri region. Ugandan troops were also found to have looted gold, diamonds and timber. **DR Congo had demanded \$11bn** but the judges dismissed several parts of the claim and decided on a far lower amount **\$325m**. Uganda had argued that the billions demanded by DR Congo would destroy its economy. The court said its order would be "within the capacity of Uganda to pay".

The \$325m covers:

\$225m for damages to persons

\$40m for damages to property

\$60m for the looted resources

THANK YOU