

UNIVERSITY OF OXFORD

PUBLIC INTERNATIONAL LAW

RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS

A. Outline:

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- II. State responsibility in context
- III. Sources
- IV. The ILC Articles on Responsibility of States for Internationally Wrongful Acts
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 - a. The International Law Commission
 - b. Work and Rapporteurs
 - c. Title
 2. Legal status of the Articles
 3. Basic concepts underlying the Articles
 - a. Distinction between primary and secondary obligations
 - b. Distinction between injured State and other States
 - c. Uniform concept of breach of international obligation
 4. Residual nature of the Articles (55)
- V. Conditions for State responsibility under the ILC Articles
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 - a. Act of the State (2 (a))
 - (1) Conduct
 - (2) Attributable to the State (2-11)
 - (a) Formal State organs (4, 7)
 - (b) Quasi State organs (5, 7)
 - (c) Person or group or persons in fact exercising elements of governmental authority (9)
 - (d) Organs of another State placed at the disposal of the State and exercising elements of its governmental authority (6)
 - (e) Person or group of persons acting on the instructions of, or under the control of, the State (8)
 - (f) Insurrectional or other movement (10)
 - (g) Conduct acknowledged and adopted by the State as its own (11)
 - b. International wrongfulness of the act (2 (b))
 - (1) Act must breach an international obligation of the State
 - (a) International obligation of the State
 - (b) State must be bound by the obligation at the time the act occurs (13)
 - (i) Single action or omission (14 (1))
 - (ii) Conduct of continuing character (14 (2), (3))
 - (iii) Composite act (15)
 - (c) Act must breach (ie be not in conformity with what is required of it by) the international obligation (12)

- (2) No preclusion of the wrongfulness of the act
 - (a) Wrongfulness cannot be precluded (26)
 - (b) Circumstances precluding wrongfulness (20-25) are not present
 - (i) Consent (20)
 - (ii) Self-defence (21)
 - (iii) Countermeasure (22)
 - (iv) Force majeure (23)
 - (v) Distress (24)
 - (vi) Necessity (25)
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 - a. Act of the other State
 - b. International wrongfulness of that act
 - c. Implication of the State in that act
 - (1) Acts implicating the State
 - (a) Aid or assistance (16)
 - (i) Facilitation of the act
 - (ii) Wrongfulness of act for the assisting State
 - (iii) Knowledge of the circumstances of the international wrongful act
 - (b) Direction and control (17)
 - (i) Direction and control over the act
 - (ii) Knowledge of the circumstances of the international wrongful act
 - (iii) Wrongfulness of act for the directing State
 - (2) Acts not implicating the State
 - (a) Incitement of the internationally wrongful act
 - (b) Dominance or dependence
 - (c) Non-suppression of the internationally wrongful act
 - 3. Responsibility of a State for coercion of another State to commit an act (18)
 - a. International wrongfulness of the act precluded by coercion
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- VI. Legal consequences of the international responsibility of a State (Part II)
- 1. Relationship between primary and secondary obligations (29, 33)
 - 2. Obligations arising out of the internationally wrongful act
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 - b. Assurances and guarantees of non-repetition (30 (b))
 - c. Full reparation for the injury caused (31 (1))
 - (1) Injury (31 (2))
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 - (b) Compensation (36)
 - (c) Satisfaction (37)
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 - (4) Determination of reparation (39)
 - (5) Interest (38)
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 - 3. Obligations arising out of serious breaches of jus cogens obligations
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- (1) Jus cogens obligations
 - (2) Seriousness of breach
 - b. Obligations of the responsible State (41 (3))
 - c. Obligations of all States
 - (1) Cooperation to end the serious breach (41 (1))
 - (2) Non-recognition of situations created by a serious breach (41 (2))
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- VII. Implementation of the international responsibility of a State
 - 1. The injured State
 - a. Definition of the injured State (42, 46)
 - b. Invocation of responsibility
 - (1) Conditions for the invocation of responsibility
 - (a) Nationality of claim (44 (a))
 - (b) Exhaustion of local remedies (44 (b))
 - (c) No waiver of the claim (45 (a))
 - (d) No acquiescence in the lapse of the claim (45 (b))
 - (2) Notice of claim (43)
 - (a) Conduct to be taken in order to cease the wrongful act
 - (b) Form of reparation
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 - (1) Object (49 (1), 53)
 - (2) Conditions (52)
 - (a) Notice of claim (52 (1)(a))
 - (b) Non-compliance with secondary obligations (53)
 - (c) No compulsory dispute settlement (52 (3))
 - (d) Notification of decision to take countermeasures (52 (1) (b))
 - (e) Offer to negotiate (52 (1) (b))
 - (3) Limits of countermeasures (49 (2), (3) and 50)
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 - 2. States other than the injured States
 - a. Definition (48 (1))
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 - (1) Cessation of internationally wrongful act (48 (2) (a))
 - (2) Assurances and guarantees of non-repetition (48 (2) (a))
 - (3) Reparation in the interest of the injured State (48 (2) (b))
 - c. Take lawful measures against the responsible State (54)
 - d. Take measures ordered by the Security Council (59)

B. Basic Reading:

(a) Treaties and Other Documents

(i) Treaties and Documents Available in Blackstone's International Law Documents:

–1969 Vienna Convention on the Law of Treaties, Art. 60

–1994 WTO Understanding on Rules and Procedures Governing the Settlement of Disputes,

Art. 22

–2001 ILC Articles on Responsibility of States for Internationally Wrongful Acts

(ii) Other Relevant Documents

–1996 Report of the Working Group on International Liability for Injurious Consequences Arising Out of Acts Not Prohibited by International Law [UN Doc. A/51/10, available on the ILC website at <http://www.un.org/law/ilc/guide/gfra.htm>]

(b) Cases

(1) International Court of Justice

– *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgement of 25 September 1997: ICJ Rep. 1997, 7

(2) International Arbitral Tribunals

– *Rainbow Warrior (New Zealand/France)*, Ruling of 6 July 1986: UNRIIAA, vol. XX, 217; 82 ILR 499; ILM 26 (1987), 1346

(3) European Court of Human Rights

– *Loizidou v. Turkey (Merits)*, Application No. 15318/89, Judgment of 18 December 1996: ECHR Rep. 1996-IV, 2216; ILM 36 (1997), 438; 108 ILR 443

(c) Literature

(i) General Textbooks

The following general textbooks contain suitable chapters on Jurisdiction:

Brownlie, Ian, *Principles of Public International Law* (6th edn., Oxford: Oxford University Press, 2003), 419-493

Evans, Malcolm D. (ed.), *International Law* (Oxford: Oxford University Press, 2003), 445-528

Shaw, Malcolm N., *International Law* (Cambridge: Cambridge University Press, 2003), 694-752

(ii) Cases and Materials

Dixon, M./McCorquodale, R., *Cases and Materials on International Law* (4th edn., Oxford: Oxford University Press, 2003), 403-453

Harris, D.J., *Cases and Materials on International Law* (5th edn., London: Sweet & Maxwell, 1998), 484-519

C. Specialist Monographs and Articles:

Bodansky, Daniel/Crook, John R., Symposium: The ILC's State Responsibility Articles,

Introduction and Overview, *American Journal of International Law* 96 (2002), 773-791

Brown Weiss, Edith, Symposium: The ILC's State Responsibility Articles, Invoking State Responsibility in the Twenty-first Century, *American Journal of International Law* 96 (2002), 798-816

Crawford, James, *The International Law Commission's Articles on State Responsibility.*

Introduction, Text and Commentaries (Cambridge: CUP, 2002), 1-60 [Introduction]

Klein, Pierre, Responsibility for Serious Breaches of Obligations Deriving from Peremptory Norms of International Law and United Nations Law, *European Journal of International Law* 13(2002), 1241-1255

Koskeniemi, Martti, Solidarity Measures: State Responsibility as a New International Order?, *British Year Book of International Law* 72 (2001), 337-356

Nollkaemper, André, Concurrence Between Individual Responsibility and State Responsibility in International Law, *International and Comparative Law Quarterly* 52 (2003), 615-640

Nolte Georg, From Dionisio Anzilotti to Roberto Ago: The Classical International Law of State Responsibility and the Traditional Primacy of a Bilateral Conception of Inter-State Relations, *European Journal of International Law* 13 (2002), 1083-1098

Shelton, Dinah, Symposium: The ILC's State Responsibility Articles, Righting Wrongs: Reparations in the Articles on State Responsibility, *American Journal of International Law* 96 (2002), 833-856