International Law and Migration

Reflections on the International Responsibility of States for Wrongful Acts

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Abstract: The subjects' responsibility for violations of their obligations is incident to any legal system. We intend to analyze in this article aspects of states' responsibility, fundamental institution of public international law, relating to its classification as a form of the legal liability and as a fundamental principle of public international law, to the codification of international norms emphasizing the activity of the International Law Commission, to the two theories of guilt and liability based on risk, underlying legal nature of the international responsibility of states and the unlawful act, generator of international responsibility. In preparing the paper we used as research methods the analysis of the problems generated by the mentioned topic with reference to doctrinal views expressed in treaties and specialized papers, solutions retained in international jurisprudence, documentary research, interpretation of legal norms in the matter.

Keywords: the International Law Commission, liability, responsibility, international public law

1. International Responsibility – Form of Legal Liability

The issue of the international responsibility of states has often been addressed both in doctrine and in international practice. The recent events, which give rise to a tensed picture of international relations all over the world and at the same time closer to our borders, have determined for the international responsibility issue to return to our attention.

The international law system was established as a reflection of international society, and it has faithfully followed its historical evolution and it has transposed into legal norms the relations between subjects of international law in its successive stages of development. Specific for the international law is that states that create

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international standards, through their agreement of will, freely expressed, treaties and customs, they also create mechanisms ensuring the compliance with these rules (Maftei, 2010, pp. 16-17). The inconsistency of states' conduct (or other subjects of international law) and the requirements of international legal norms attract the international legal responsibility of the subject who violated such a limitation.

Investigating the legal liability from the perspective of general theory of law shows us this concept as a specific form of social responsibility that occurs in case of breaching the rules of law. Regarded as compared to other forms of social responsibility (moral, political, etc.), the legal liability differs in that it determines the obligation of abiding a legal sanction (Huma, 2007, p. 152). The legal liability occurs in all branches of law. Max Huber appreciated that liability is "*the necessary corollary of law*" (Huber, 2006, p. 641)

The International responsibility is one of the fundamental institutions of public international law (Maftei & Coman, 2010, p. 109). Referring to the important role of this institution, Reuter noted that it can be considered as "*the Constitution of the international community*" because it "i*s at the heart of international law"* (Reuter, 1995, p. 574)

The subjects of international law must be reliable for not respecting the assumed legal commitments, for disregarding the international law norms. In this respect, in the Romanian literature it has been emphasized that "*responsibility, under the international law, means the obligation of those who violate its rules, to bear the consequences of their illicit conduct, an obligation imposed as sanctions established by the states*." (Anghel & Anghel, 1998, p. 11)

The importance of the legal institution of international responsibility appears indubitably also from its qualification as principle by the Permanent Court of International Justice in a decision of 1928 where it is states that "*it is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation (...) reparation is the indispensable complement of a failure to apply a convention, and there is no necessity for this to be stated in the convention itself"*. (Permanent Court of International Justice, 1928, p. 29)

The definition of international liability included in the *Dicţionarul de drept internaţional public/Dictionary of International Law* of 1982 refers to legal relations arising as a result of disregarding the international legal norms: the

institution of public international law under which the State or other subject of international law, committing international wrongful act, is liable to the State violated by these acts and to all countries, in the case of international crimes (Cloșcă, 1982, p. 249).

According to Grigore Geamănu, the international responsibility ensures the effectiveness of international law and it fulfills important functions: international legality, guaranteeing the international legal order, the stability of international relations and their development. (Geamănu, 1981, p. 327)

From the presented definitions there are emerged two fundamental features of international responsibility: the international responsibility constitutes a penalty is a "continuation" of international obligations. The international liability is interrelated with the international obligations. States as subjects of legal relations governed by international law, are required to fulfill their obligations under treaties and customs, and the international legal responsibility, regarded as a complex phenomenon requires a set of rules pertaining to applicable law sanctions as a consequence of not complying with a rule of international conduct and it aims as blaming, condemning and even repression of non-compliance with the international law rules (Anghel & Anghel, 1998, pp. 14-15) in order to restore the international legal order.

2. Encoding International Responsibility

The conventional international law regulates the international responsibility of the states only in certain areas[1] as *lex specialis*, it is not so far a general, single regime of responsibility.

The rules relating to international responsibility are customary, and the codification of this area is in progress, even if the concerns in this direction started under the auspices of the League of Nations.

After creating the UN and taking up the activity of the International Law Commission[2], the codification process has experienced a more "fertile" period (Moca & Duţu, 2008, p. 52). The International Law Commission was concerned

[1] See for example (Negrut, 2012), to cover liability in environmental law.

[2] The International Law Commission was established by resolution 174 (II) adopted by the General Assembly at its 123rd plenary meeting on 21 November 1947, (International Law Commission, 1949, p. 278)

about the issue of codifying the responsibility institution from the first session of 1949 (Miga-Besteliu, 2006), but it did not grant priority, as it is listed in 13th position in the list of 14 topics selected for codification (International Law Commission, 1949, p. 281).

The codification activity of international responsibility of states has considered developing a set of general rules, that it would cover a large are of particular situations arising in the international practice (Maxim, 2011, p. 7)

The actual coding work began in 1956 (Crawford, 1998, p. 2), and the International Law Commission's activity has resulted in the achievement of several rough drafts for which the UN's General Assembly expressed its appreciation. The draft articles on State responsibility adopted by the International Law Commission in 1996 consisted of three parts: the origin of international responsibility, content, forms and degrees of liability and dispute settlement, as detailed in 62 articles (Nastase, Aurescu, & Jura, 2002, p. 281). It was considered, however, that it cannot be proposed as the text of an international treaty, the Special Rapporteur's conclusion being that "*the question of the eventual form of the draft articles should be deferred for the time being*." (Crawford, 1998, p. 9)

In 2001, the International Law Commission proposed the UN General Assembly a final draft that included 59 articles - "Responsibility of States for Internationally Wrongful Acts" - and recommended drafting a convention on the matter (International Law Commission, 2001)[1]. Although it brought two essential novelties, eliminating the distinction between international crimes and international crimes and substituting the international crimes with wrongful acts likely to harm the international community as a whole, this project was considered being "modest". (Dupuy, 2012, p. 522)[2]

The document adopted by the Resolution of UN General Assembly no. 56/83 of 12 December 2001 represents undoubtedly an important step in the evolution of international law, helping to clarify and strengthen the various traditional rules on State responsibility (Diaconu, 2013, p. 14).

[1] Text adopted by the International Law Commission at its fifty-third session and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10).
[2] Apud (Moţăţăianu, 2013, p. 230).

Although the UN General Assembly repeatedly recommended states to consider the issue of adopting an international convention in this field, the efforts of the UN specialized body have not materialized in this regard.

Following the work of the International Law Commission in the codification domain of international responsibility, the UN General Assembly has subsequently adopted several resolutions:

- A / RES / 61/36, the Resolution adopted by the General Assembly on 4 December 2006 regarding the Principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities;
- A / RES / 62/67, the Resolution adopted by the General Assembly on 6 December 2007, on Diplomatic protection;
- A/RES/62/68, Resolution adopted by the General Assembly on 6 December 2007, on Prevention of transboundary harm from hazardous activities
- A/RES/66/100, the Resolution adopted by the General Assembly on 9 December 2011 and A/RES/69/126, Resolution adopted by the General Assembly on 10 December 2014, cu on the responsibility of international organizations.

3. The Legal Nature of International Responsibility

The scientific analysis of international responsibility identifies two theories that have been formulated for the substantiation of its legal nature: the theory of guilt and the theory based on risk (objective responsibility).

According to the first theory, the existence of international responsibility is based on the breach of an international obligation and on the existence of the subjective element of guilt in committing the international wrongful act.

This theory was supported by Oppenheim, which substantiates the idea of international responsibility based on guilt and deception, a state that the act adversely affecting another state does not constitute an international wrongful act "*if committed neither wilfully and maliciously, nor with culpable negligence.*" (Oppenheim, 1905-1906, p. 311)

In arguing this view, Georges Scelle considered that international responsibility arises from automatic contrariety between the rule of law and the conduct of state bodies, identifying the State with the activity of its bodies or agents and he considered that their individual actions deemed to be guilty by incompetence, abuse of power, misappropriation of power should be attributed to the State: "*S'il y a manquement à la règle de doit international, ce ne peut être que pour incompétence, excès de pouvoir, détournement de pouvoir, abstention dans l'exercice d'une compétence liée, c'est-à-dire, faute d'un agent dans l'exercice de la fonction. Nous ne comprenons pas ce que peut être juridiquement une « faute », si ce n'est un agissement contraire à la règle de droit/If there is breach of the rule of international law, it can only be for incompetence, abuse of power, misuse of power, misappropriation of power, the abstention in the exercise of circumscribed powers, that is to say, the absence of an officer in the performance of the function. We do not understand what can be legally "at fault", if not an act contrary to the rule of law".* (Scelle, 1943, p. 685)

Roberto Ago's view is clearly expressed in his 1939 *Délit international/International crime* "*il serait bien étrange que, dans un ordre juridique comme l'ordre international, pour la formation duquel les théories du droit romain ont eu une importance décisive, ait pu s'affirmer un système excluant d'une façon rigide l'élément subjectif de la faute de la détermination du fait illicite/it would be strange for in a legal system such as the international order for the formation of which the theories of Roman law have had a decisive importance, it could assert a system of rigidly excluding the subjective element of the guilt of the determination of the wrongful act."* (Ago, 1947, p. 487)

In his view Anzilotti, who formulated the principle of objectives responsibility (Anzilotti, 1906)[1], the existence of international responsibility is based on the causal link between the activity of the State and the damage caused by this activity to another state or international law subject, without requiring proving the guilt thereof. That being so, the international responsibility of a state is conditioned by the imputability and illegality of its act.

Regarding the controversy regarding the Civil law or Criminal law nature of State responsibility, the International Law Commission recorded in the 1998 Report that the majority of its members noted that the rules on State responsibility are norms governing the relations between sovereign states, as subjects of international law,

[1] See also (Anzilotti, 1902).

without being civil or criminal norms, but *sui generis* international norms (International Law Commission, 1998, p. 70).

4. Wrongful Act - Generator of International Responsibility

In the specialized literature it has been emphasized the interdependence between domestic and international law and the domestic order of some institutions of international law, such as the responsibility of the subjects of international law, the succession of states, good faith, legal interpretation, etc. (Ciuvăţ & Lupu, 2006, p. 166) The international responsibility is equivalent to the responsibility of the international law subjects. In the contemporary international law, the responsibility of States, and (in relation to their specific) of other subjects of international law (international organizations, nations fighting for their independence) has two forms: *the responsibility for acts or unlawful acts* in terms of International law (violation of customary or conventional international law) and *the responsibility for injurious consequences* arising from activities that are not prohibited by the international law (permitted lawful activities). We may consider the international responsibility as a legal institution whereby a State or another subject of international law which has committed an act detrimental to another state or another subject of international law, owes repairs to the party injured by that act.

As it has been taken from the general theory of liability in internal law, the international responsibility has as constituent elements the following, which must be met cumulatively: *unlawful conduct* - representing the violation of rules of international law and the *imputability* of this unlawful conduct of a subject of international law, to which the doctrine and the International Law Commission (in the draft articles) added the *prejudice* as a prerequisite for the international responsibility (Chirtoaca & Florea, 2014, p. 12). In light of ILC Project 2001 "*Every internationally wrongful act of a State entails the international responsibility of that State*" (Article 1). State liability after committing an internationally wrongful act is conditioned, according to Article 2 of the Project ILC, by the imputability of the *international wrongful act* (Part I, Chapter II *Attribution of conduct to a State*, Art. 4-11) and by the wrongful acts and deeds of the States under the international law (Part I, Chapter III Breach of an international obligation, Art. 12-15) (International Law Commission, 2001).

The categories of acts and wrongful acts that may be attributable to the State and that determine the international responsibility are: acts of state public authorities; conduct of other entities empowered to execute elements of the public authority; the conduct of persons acting on behalf of the state; conduct of state bodies made available to another state or by an international organization; the conduct of state bodies that have acted outside their jurisdiction (or *ultra vires* acts). The state is liable therefore for all acts committed within official framework by its legislative, administrative or judicial bodies, considering that their acts are acts of the State itself (Cretu, 2006, p. 264). They cannot be considered acts of the State: the conduct of persons not acting on behalf of the state; the conduct of other state bodies on the territory of the concerned State; the conduct of the bodies of an international organization in the territory of the concerned State; the conduct of the bodies of an insurrectional movement organs conduct. As regards the assigning to the illicit conduct, the comments on article 4 of the ILC Project brings important clarification: "(4) *The attribution of conduct to the State as a subject of international law is based on criteria determined by international law and not on the mere recognition of a link of factual causality. As a normative operation, attribution must be clearly distinguished from the characterization of conduct as internationally wrongful. Its concern is to establish that there is an act of the State for the purposes of responsibility. To show that conduct is attributable to the State says nothing, as such, about the legality or otherwise of that conduct and rules of attribution should not be formulated in terms which imply otherwise. But the different rules of attribution stated in chapter II have a cumulative effect, such that a State may be responsible for the effects of the conduct of private parties, if it failed to take necessary measures to prevent those effects. For example, a receiving State is not responsible, as such, for the acts of private individuals in seizing an embassy, but it will be responsible if it fails to take all necessary steps to protect the embassy from seizure, or to regain control over it. In this respect there is often a close link between the basis of attribution and the particular obligation said to have been breached, even though the two elements are analytically distinct.*" (International Law Commission, 2001, pp. 38-39)

The violation by a State, of an international obligation represents "*an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character*" (Article 12 of the Draft CDI 2001, but in order to engage the states' responsibility, it should be fulfilled the condition that the state would have been "*bound by the obligation in question at the time the act occurs*." (art.

13). In the international practice, in Case Concerning United States Diplomat and Consular Staff in Tehran (United States of America vs. Iran), for example, the International Court of Justice ruled that Republic of Iran breached its obligations to the United States established by the international conventions currently applicable to the two countries[1] and the general rules of international law, and that violation undertakes its responsibility towards the United States of America under international law towards the United States of America under international law (International Court of Justice, 1980, p. 44)

1996 Project of the International Law Commission classifies the international wrongful act in two categories: *international misdemeanor* and *international crimes*, according to the seriousness of the infringement. In article 19, paragraph 2, the international crime was defined as being "*an internationally wrongful act which results from the breach by a State of an international obligation so essential for the protection of fundamental interests of the international community that its breach is recognized as a crime that community as a whole constitutes an international crime"*. International misdemeanor represents any internationally wrongful act which is not classified as being international crime. (International Law Commission, 1997, pp. 105-106) In the 2001 project it was abandoned this distinction. Articles 40 and 41 from the contents of 2001 Project of the International Law Commission, in Chapter III of Part II, refer only to "s*erious breaches of obligations under peremptory norms of general international law*", inserting the requirement for the states to cooperate to put an end to such violations. An act of a State is regarded as a serious breach of such an obligation "*if it involves a gross or systematic failure by the responsible State to fulfill the obligation*" (art. 40, paragraph 2) and no state shall recognize it as legitimate situation created by such a serious breach and will not grant aid or assistance to maintain that situation (article 41, paragraph 2). As sustained in the specialized literature, these provisions create "*a difference in regime*" between serious violations of obligations under the peremptory norm of general international law and other violations of international law norms, regarding the international responsibility of states (Nastase, Aurescu & Jura, 2002, p. 283).

[1] 1961 Vienna Convention on Diplomatic Relations, 1963 Vienna Convention on Consular Relations, Treaty of Amity, Economic Relations, and Consular Rights of 1955 between the United States and Iran.

In the case of the claims submitted by Serbia and Montenegro towards the NATO member states[1] after bombing its territory, in the lack of a resolution of the UN Security Council, the International Court of Justice had to rule on the legality of the use of force. The International Court of Justice declared in its decision "*profoundly concerned with the use of force in Yugoslavia*", a situation that "*under the present circumstances ... raises very serious issues of international law*". The Court has also stated that in accordance with the purposes and principles of the UN Charter and its own responsibilities in maintaining peace and security established by the UN Charter and its Statute "*deems it necessary to emphasize that all parties before it must act in conformity with their obligations under the United Nations Charter and other rules of international law, including humanitarian law*" (International Court of Justice, 1999, p. 122).

International responsibility can be removed if certain occurring circumstances could lead to exclusion of the illegal nature of the act. The draft articles of the International Law Commission in 2001 has included those circumstances in Chapter V of Part I, art. 20-25:

a) *the consent of the victim-state* (Article 20)[2]; to exclude the unlawfulness of that fact, the consent must be express and validly expressed, prior to committing the fact, to not see as the *jus cogens* violation of rules; in case concerning armed activities on the territory of the Congo, the International Court of Justice, examining whether Lusaka, Kampala and Harare Agreements include expressed valid consent of the Democratic Republic of the Congo to the presence of Ugandan troops, recorded that *Nothing in provisions of Lusaka Agreement can be interpreted as affirmation that security interests of Uganda had already required the presence of Ugandan forces on territory of the DRC as from September 1998 — Lusaka Agreement represented an agreed* modus operandi *for the parties, providing framework for orderly withdrawal of all foreign forces from the DRC — The DRC did not thereby recognize situation on ground as legal — Kampala and Harare Disengagement Plans did not change legal status of presence of Ugandan troops*

[1] See (Serbia and Montenegro *v.* Belgium) (Serbia and Montenegro v. Canada) (Serbia and Montenegro v. France) (Serbia and Monténégro v. Germany) (Serbia and Montenegro v. Italy) (Serbia and Montenegro v. Netherlands) (Serbia and Montenegro v. Portugal) (Yugoslavia v. Spain) (Serbia and Montenegro v. United Kingdom), List of Cases referred to the Court, http://www.icj-cij.org/docket/index.php?p1=3&p2=2#2004.

[2] Article 20 - *Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent.*

— Luanda Agreement authorized limited presence of Ugandan troops in border area — None of the aforementioned Agreements (save for limited exception in the Luanda Agreement) constituted consent by the DRC to presence of Ugandan troops on Congolese territory for period after July 1999" (International Court of Justice, 2005, p. 169). Moreover, the Court emphasized that "*the fact that the consent that had been given to Uganda to place its forces in the DRC, and to engage in military operations, was not an open-ended consent. The DRC accepted that Uganda could act, or assist in acting, against rebels on the eastern border and in particular to stop them operating across the common border. Even had consent to the Ugandan military presence extended much beyond the end of July 1998, the parameters of that consent, in terms of geographic location and objectives, would have remained thus restricted"*. (International Court of Justice, 2005, pp. 198-199);

b) self-defense (Article 21)[1]; if the act is a legitimate measure of self-defense taken in conformity with the UN Charter, the unlawful nature of that act is removed; as such, it cannot be the basis for the international responsibility of that State; the United Nations Charter guarantees self-defense in article 51, which states: "*Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security*"; legitimate defense is an exception to the prohibition of the use of force principle; in the *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)* Case, International Court of Justice stated that: "*In the case of individual self-defense, the exercise of this right is subject to the State concerned having been the victim of an armed attack. Reliance on collective self-defense of course does not remove the need for this"* (International Court of Justice, 1986, p. 103) and concluded that *accordingly, the Court concludes that the plea of collective self-defense against an alleged armed attack on El Salvador. Honduras or Costa Rica, advanced by the United States to justify its conduct toward Nicaragua. cannot be upheld ; and accordingly that the United States has violated the principle prohibiting recourse to the threat or use of force by the acts listed in paragraph 227 above. and by its assistance to the contras to the extent that this assistance "involve[s] a threat or use of force (paragraph 228 above)"* (International Court of Justice, 1986, p. 123).

[1] Article 21 - *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.*

c) counter measures represent, in the formulation of Article 22[1] of the International Law Commission's Project, the actions that are not in conformity with the international law, but legitimate as they are adopted by a state in response to the unlawful conduct of another State; the justification for those actions that do not involve the use of force or threat of force, can be found in chapter II of part three of the ILC project where there are specified the rules on proportionality (article 51), prior notification (article 52 (1)), the temporary feature of countermeasures (article 53) and the prohibition of countermeasures (article 50); Denis Alland (2002, p. 1226) called them "*mechanisms of private justice*", the countermeasures have been confirmed by international jurisprudence as circumstances that exclude the unlawful nature of an act: in the *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)* Case, The Court stated that "*These violations cannot be justified either by collective self-defense, for which, as the Court has recognized, the necessary circumstances are lacking, nor by any right of the United States to take countermeasures involving the use of force in the event of intervention by Nicaragua in El Salvador, since no such right exists under the applicable international law. They cannot be justified by the activities in El Salvador attributed to the Government of Nicaragua. The latter activities, assuming that they did in fact occur, do not bring into effect any right belonging to the United States which would justify the actions in question. Accordingly, such actions constitute violations of Nicaragua's sovereignty under customary international law* (International Court of Justice, 1986, p. 128).

d) force majeure (Article 23), as the circumstance which excludes the unlawfulness of the act, represents the intervention of the irresistible force or of unforeseen event beyond the control of the State and which renders impossible the execution of the obligation in the given circumstances; the unlawful feature exists if the state contributed to its production or assumed the risk of the resulted situation; for example, in the jurisprudence of the Permanent Court of International Justice, in Case concerning the payment of various Serbian loans issued in France, in 1929, the Court noted that: "*it cannot be maintained that the war itself, despite its grave economic consequences, affected the legal obligations of the contracts between the Serbian Government and the French bondholders. The economic dislocations caused by the war did not release the debtor State, although they may present*

[1] Article 22 - *The wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter State in accordance with chapter II of part three*.

equities which doubtless will receive appropriate consideration in the negotiations and - if resorted to - the arbitral determination for which Article II of the Special Agreement provides" (Permanent Court of International Justice, 1929, pp. 39-40).

e) state of danger (article 24 (1)[1]) removes the wrongful feature of the act, in the case where the author had no other reasonable way, in that situation, in order to save his life or to save the lives of other persons entrusted to his care; the situation should not be entrusted to the State's conduct which invokes it, and that is not likely to create a comparable greater danger; in *Case Concerning the Aerial incident of 3 July 1988 (Islamic Republic of Iran v. United States of America*, the International Court of Justice had to judge the dispute between the two countries, following the action brought by the Islamic Republic against the USA for wrongful acts committed against aviation security; the US shot down an Iranian commercial airliner over the Persian Gulf and killed 290 passengers and its crew; although the USA has motivated in the Preliminary Objections that the "*U.S. military forces took an active role in responding to requests for help from U.S. vessels and from other vessels in distress when attacked by Iranian military and paramilitary gunboats"* (International Court of Justice, 2000, p. 18), the Court classified the US action as illegal and condemned it as such, while recommending in the future for the US to take all security measures in compliance with the UN Charter. Later Iran withdrew the charges, the Court noting that "*Whereas by a letter dated 22 February 1996, filed in the Registry on the same day, the Agents of the two Parties jointly notified the Court that their Governments had agreed to discontinue the case because they had entered into «an agreement in full and final settlement of al1 disputes, differences, claims, counterclaims and matters directly or indirectly raised by or capable of arising out of, or directly or indirectly related to or connected with, this case»*" (International Court of Justice, 1996, p. 10); the US has offered a compensation of 131.8 million dollars to the Iranian government, of which 61.8 million dollars went to the victims' families. (International Court of Justice, 1996)

f) *the state of necessity* (Article 25 of the ILC Project) may be invoked to remove the wrongful feature of the act, in case the essential interests are endangered: the territorial status, the form of government, the independence or the capacity to act of

[1] Article 24 (1) - *The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the author of the act in question has no other reasonable way, in a situation of distress, of saving the author's life or the lives of other persons entrusted to the author's care.*

the state; it cannot be invoked the state of necessity if the international obligation in question excludes the possibility of invoking the necessity or if the State concerned has contributed to the state of necessity; and in the international practice it was detained the exceptional nature of accepting a situation as being a state of necessity; in Case Concerning the Gabcikovo-Nagymaros Project, the International Court of Justice has considered *that the state of necessity is a ground recognized by customary international law for precluding the wrongfulness of an act not in conformity with an international obligation. It observes moreover that such ground for precluding wrongfulness can only be accepted on an exceptional basis. The International Law Commission was of the same opinion when it explained that it had opted for a negative form of words in Article 33 of its Draft «in order to show, by this formal means also, that the case of invocation of a state of necessity as a justification must be considered as really constituting an exception - and one even more rarely admissible than is the case with the other circumstances precluding wrongfulness...»"* and it has admitted that *"the concerns expressed by Hungary for its natural environment in the region affected by the Gabcikovo-Nagymaros Project related to an "essential interest" of that State, within the meaning given to that expression in Article 33 of the Draft of the International Law Commission."* (International Court of Justice, 1997, pp. 40-41)

Whether the exculpatory circumstances are beyond the control of the victim (force majeure, fortuitous event, state of danger and state of necessity) or arising from the conduct of the victim (self-defense, countermeasures) (Miga-Besteliu, 2008, p. 31), their invocation to exclude the wrongful nature will not affect the obligation in question, if also to the extent that the circumstance that removes the unlawful nature no longer exists and also there is no question of compensation for any material loss caused by the act in question. None of exculpatory circumstances does not remove the unlawful nature of a State, which does not comply with an obligation arising from a peremptory norm (*de jus cogens*) of the general international law (article 26 of the ILC Project)

The damage caused as a result of the unlawful conduct of a state could be *material*, when it is damaged the state-victim patrimony or of its citizens and it is assessable pecuniary or *moral*, when there are affected non-property values of the state (e.g. violating the airspace of a state).

The prejudice is direct when it is affected the state as subject of law or its State organs and *mediated*, when there are affected the rights of citizens of a state as individuals or legal persons who are nationals of that State.

Compensation for the prejudice may take one of the following forms: *restitution in kind* (*restitutio in integrum*), repair by equivalent (compensation) and satisfaction (formal apology).

Restitutio in integrum involves restoring, where possible, the existing situation before committing the act. In the present Case Concerning the Factory at Chorzow, Permanent Court of International Justice said that the purpose of repairing is to remove all the consequences of international wrongful act (Permanent Court of International Justice, 1928, p. 47). A priority will be the restitution in kind and only when it is not possible repairing than the equivalent will be applied: "*Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it - such are the principles which should serve to determine the amount of compensation due for an act contrary to international law"* (Permanent Court of International Justice, 1928, p. 47). The refund does not involve a totally disproportionate burden, and must cover any damage compensation assessable in financial terms.

Satisfaction is considered a form of compensation for moral damages and it may consist in recognizing the abuse, by expressing official apology and regret and it is granted to the extent that the damage is not repaired by restitution or compensation or it cannot be estimated financially (Burian 2009, p. 618). Satisfaction must not be disproportionate to the injury in question. In LaGrand Case, the International Court of Justice ruled that, although "*the United States has presented an apology to Germany for this breach*", „ *an apology is not sufficient in this case, as it would not be in other cases where foreign nationals have not been advised without delay of their rights under Article 36, paragraph 1, of the Vienna Convention and have been subjected to prolonged detention or sentenced to severe penalties"*. (International Court of Justice, 2001, p. 618) In any case, satisfaction should not represent a humiliating form for the responsible State (article 37 (3), ILC Draft).

5. Conclusions

Ideologists and international practice unanimously admit as principle that any behavior deemed to be wrongful under the international law it must incur the state/states responsibility.

The institution of international responsibility of states has developed with the evolution of international law and in our brief analysis on the international responsibility of States for wrongful acts we have tried to highlight the efforts of the International Law Commission of nearly half a century for the codification and progressive development of this very important area of public international law and to clarify certain aspects of the implementation by States of customary and conventional rules in this area in the contemporary international society.

Our approach is obviously perfectible and in a future analysis we will address the international responsibility of states also from other perspectives.

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