# Some Reflections on the Liability of States for International Illicit Acts

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**Abstract:** The authors aim to foray in the institution of international responsibility, addressing constituent issues of international responsibility. Accountability is the general international law which establishes a legal relationship exclusively between two or more subjects of international law. International responsibility of a state can only be driven by another subject of international law whose international subjective right he violated (breach). If a Member suffers an injury directly and immediately, he may apply directly responsible for such State to obtain reparation. Rather, the injury suffered by a particular breach (violation) of international law does not provide, thereby, as a victim to obtain redress in international courts. A state - and can attract international responsibility only if the author of an international fact illegal. There is a wrongful act of the state, where: a) conduct consisting of an action or omission may be attributed (imputed), in accordance with international law, rule, and b) that conduct constitutes a breach of an international obligation of the State. The doctrine generally recognized international scope of these two elements gives rise to international responsibility of the state.

**Keywords:** responsibility of states, imputability, fact illegal, principles, convention

**1.** The institution of liability is the heart of any system of legal order. All legal systems contain rules (Dongoroz, 2000, p. 191)[1] more or less perfect, which

[1] The rules governing the international liability of States for acts deemed illegal by the International Law Committee (CDI) has found a rule of customary international law which gives (*or charges*) the state any conduct of any organ which has exceeded a normal jurisdiction or has contravened the rules and instructions on the content of their activity. Also, CDI in the draft articles has preferred the term "attribute" instead of "to accuse" which according to the authors of the project was borrowed from

stipulate the liability of subjects, persons who commit illicit (Thierry, Combacau, Sar, & Valle, 1984, p. 673) acts. Standard international law does not actually recognize the individual's capacity to sue and be sued internationally, in other words the individual, as such, does not benefit from *"locus standi"*. The capacity to stand trial in international for remains in the current state of the standard international public law a monopoly of the state (Velasco, 1974-I).

It has been mentioned that the notion of legal order (*law order*) would lack content if regarding it's consequences, we wouldn't be able to differentiate between a behavior that is consistent with the legal regulations and a conduct that violates (Dominice, 1982, p. 32), (Perrin, 1984, p. 91), (Cottereau, 1991, p. 3) them.

Moreover international law observes these principles, granting rights to its subjects but at the same time imposes some obligations. Failure to comply with the international obligations will attract the liability of the culprit.

In this regard, the author Max Huber (Hubber, 1924, p. 641), emphasize the fact that *liability* is the core of law. All international rights have as consequence (*entail*) international liability. International liability is therefore the penalty for violating a rule of law (Carreau, 1986, pp. 397-398), (Arechaga & Tanzi, 1991, tome I, p. 367).

Classical concept defines international liability as "that legal institution by which the state that is assigned an unlawful act in accordance with international law is bound to act against the rule in spite of which that illicit (Rousseau, 1983, pp. 2-6), (Ruzie, 1989, p. 72), (Dupuy, 1984, p. 25), (Zemanek, 1987, p. 60) act was committed".

Liability will create a new legal relationship which will consist of the obligation to compensate having as resolution the right of the harmed state to obtain damages. Another writer, Roberto Ago, defines responsibility as „all forms of new legal relationships which may be incurred in international law as a result of the illicit act of a State" (Ago, Troisieme rapport, 1971, p. 222). In this author's opinion, he considers that an international illicit act arises two types of legal relationships granting -where appropriate- to the state whose rights have been harmed, either the subjective right to request for the damage to be repaired, or the right to request for a sanction to be enforced upon the liable state (which may be exercised as appropriate by a third party state) (Ago, Troisieme rapport, 1971, p. 43), (Dupuy, 1984, pp. 25-26) (Dominice, 1982, pp. 13-14).

domestic criminal law, may create some ambiguity. We use the term "to accuse" within the meaning used in international law without reference to the meaning of law.

Thus, if the principle of international responsibility should be rejected it would mean that states will no longer be bound to comply with international law. It will come eventually to be denied the very existence of international legal order (Ago, Troisieme rapport, 1971, p. 216).

Alfred Verdross clearly underlined this view, the denial of this principle would reduce international law to nothingness because denying responsibility for illicit acts will also deny the obligations of States to act in accordance with international law (Verdross, 1959, p. 295).

The fundamental principle linking any international illicit act with the liability of its author is one of the main principles firmly rooted in the doctrine of international law and one that is best supported by state practice and international law (Ago, Troisieme rapport, 1971, p. 215).

As a result, International Law Committee (C.D.I.) has put this rule in the first article of the first part of its draft articles on international liability of states such as for example, the following principle: *Any international illicit act committed by a State entails international liability.*

Moreover, throughout this century there have been developed numerous coding projects on international liability of states, whose authors were either international organizations under the aegis of which they have been made and various private institutions (private) or individual authors who have taken the initiative in this area. The main feature of the majority of these projects is the fact that they have addressed only the codification of this important matter in terms of international responsibility of the state (bound) arising out of damages were caused in its territory to foreign persons or property of third parties (Ago, Premier rapport sur la responsabilité des État, 1969, p. 131).

This restrictive approach to codifications of customary rules of international responsibility may be due to the influence exerted on the authors of project coding by practice and international law which were dominated, in particular, of this certain aspect of the issue of international responsibility.

The codification works situation undertaken by the League of Nations many associations and institutes have developed between 1926 and 1930 draft codes or conventions on international liability.

Please note, the draft code of international law *Rules Concerning Responsibility of a State in Relation to the Life, Person and Property of Aliens* which was developed in

1926 by the International Law Association of Japan (Kokusaiko - Jakkwai) in agreement with the Japanese branch of the International Law Association (Association, 1926, pp. 382, 383), Resolution on International *Liability of States for damage to their territory to foreign individuals and foreign goods* passed in 1927 by the Institute of International Law at its session in Lausanne [(AIDI), 1927, pp. 330-335], *the Draft Convention on international liability of States for damage to their territory to foreign persons or foreign property* developed in 1929 at Harvard Law School (Law, 1929, pp. 131, 218), and *the Draft convention on state liability for damage on their territory to foreign individuals or foreign goods* produced in 1930 by German Association of International Law[1] (Münch, 1963, pp. 327, 332).

Author Harvard Law School published in 1961 the *Draft Convention on international responsibility of States for damage caused to foreigners* (AJIL, 1961, pp. 545, 584) which is a revised version of the project in 1929. American Law Institute developed in 1965 a project entitled *Restatement of the Law on Responsibility of States for Injuries to Aliens*, whose revised version was adopted by the same Institute in 1986 (Publishers, 1987, pp. 641, 561). We further mention that in 1973 teachers Graefrath Bernhard and Peter Steigniger have developed the Draft Convention on international liability (Justiz, 1973, pp. 227-228).

At the end of this survey, rather summary, of the main private projects of codification of international liability, we should also point out two individual works, namely: *Draft Treaty on State responsibility for international illegal acts* developed by Professor Karl Strupp in 1927[2] (Münch, 1963, pp. 327-332) and the *Draft Convention on state liability for international illicit acts*, composed in 1932 by Professor Anton Roth[3] (Roth, 1932, pp. 177-178). Also a gradual codification of the state's liability was made at Conferences in the years 1924, 1927, 1929 by the League of Nations.

**2**. Liability is in the general international law a legal relationship which is established exclusively between two or more international law subjects. International responsibility of a state can only be driven by another subject of international law whose international subjective right it has violated (*breached*). If a

[1] Entwurf eines Abkommens über die Verantwortlichkeit der Staaten für die Schädigungen von Person und Vermögen fremder Staatsangehöriger auf ihrem Gebiete.
[2] Staatsvertrag, betreffend die Haftung eines Staates für völkerrechtswidrige Handlungen.
[3] Entwurf eines Abkommens über die Haftung der Staaten für völkerrechtliche unerlaubte Handlungen.

state suffers direct and immediate injury it can directly contact and request to the liable[1] (Rousseau, 1983, pp. 13-14) state, in order to obtain compensation.

On the contrary, the injury suffered by an individual by breach (violation) of international law does not provide, thereby, the right for the victim to obtain redress in international courts (Rousseau, 1983, pp. 5-10) (Carreau, 1986, p. 374).

A state can't- and it can attract international liability only when it is the author of an illegal international act (art.1, part I, from the CDI Draft– Commission du droit international des Nations Unies). An illicit act of a state, is when: a) a conduct consisting of an action or omission that may be attributed (imputed), in accordance with international law, rule, and b) that conduct constitutes a breach of international obligations of the State (J.G.Starke, Imputability in international delinquencies, tome 19, 1938 , p. 106) (Starke, 1984, p. 294) (Ago, 1939-II, p. 441) (Zannas, 1952, p. 23) (Lenoble, 1981, p. 96) (Condorell, 1984-VI, tome i 89, pp. 24-25) (Cheng, 1987, p. 170).

In the international doctrine it is usually recognized the incidence of these two elements leads to the international liability of the state.

**3**. Chargeability (assigned act) and illegality that is characterized by the violation of international obligations, forms the building blocks of illicit international crime in the state. The first element – chargeability is qualified, considered generally as (a) subjective constituent element and the second element - the illegal character is described as the objective constituent element. International jurisprudence has admitted the fundamental principle linking the conception of international liability of a state to the very existence of these two elements. In this regard, the General Claim Committee of United States of America/Mexico has underlined the verdict given in the case of Dickson Car Wheel Company (1931) (Nation), p. 678). Moreover, in the case of Rankin v. Iran, Iran arbitrary Court /United States of America, established by the Declaration of January 19, 1981 of the Algerian Republic regarding the settlement of the dispute made explicitly (Iran – United States Claims Tribunal reports, 1981-1982, pp. 3-15) reference to the works of CDI (Commission du droit international des Nations Unies) in order to be able to state that under customary international law principle the state liability can only be pursued by the illicit conduct (illegal) which can be assigned (imputed) to that State (Reports, 1987-IV, vol.17, p. 141).

[1] It is an injury suffered directly by the state in its constituent elements such as an infringement of its territorial sovereignty or state bodies.

When in public international law is the state's deed it must be well considered that the state as a legal or moral person of international right cannot physically adopt a certain behavior. All its actions, omissions or free will manifestations are in fact acts of its bodies, individuals who are duly authorized to act on its behalf (Anzilotti, 1906, p. 29). Therefore it is necessary to establish which are the actions conducted by individuals (*persons*) and which can be seen as actions of the state and which are the ones that have to be regarded as acts or omissions of ordinary individuals.

In international law, charging, which involves dissociation between the material author and the legal behavior author, consists of linking the behavior of an individual to a person with international right, in our case the state.

Author Starke (Starke, 1938, tome 19, p. 105), said that charging in international law is the result of an intellectual operation that is required to transfer (*move*) the "crime" of the official body by assigning it and the corresponding liability to the state.

Dominant doctrine in international law recognizes that this imputation mechanism is not the result of a natural causality connection but on the contrary imputation is the result of a logical operation performed using a rule of law, thus through a legal connection (Ago, 1939-II, p. 450), (Anzilotti, 1929, pp. 254-255).

For example, in terms of natural causality, the author Ago (Ago, 1971, p. 229), considers, that it does not exist in international law state activities that could be considered directly *its own* because the "body" - the individual remains as a separate entity and is able to adopt certain behaviors that cannot be considered and reported as belonging to the state, but may be relate only to the individual in matter.

Author Anzilotti (Anzilotti, 1929, pp. 254-255) considers that imputation of a behavior to a state can *only* be done by applying rules of international law and excluding any appeal to the internal law of that State. According the same author, which makes it clear that "legal imputation of being a product (*fact*) of the rules it is carried out in all legal orders as based on internal legal rules of those legal orders and therefore in international relations based on international legal standards.

In order to constitute an international illicit act the *active or omisive behavior* fact or which can be can be *imputed to the state* must be contrary to a legal obligation which the State has assumed under international law. Even just as an idea, international liability should require the presence of two subjects of international

law: a subject author of the unlawful conduct and a subject whose rights are violated by this behavior (Favre, 1974, pp. 627-628) (Rousseau, 1983, pp. 9-10).

On the other hand a simple event that causes injury is not considered an illegal act if it is not related to breach of international legal obligations. In this respect, just the violation of international (Starke, 1984, p. 284) courtesy obligations is not enough to constitute the objective element of that international illegal act.

**4**. Some authors (Dupuy, 1977, p. 400) consider that more is needed than the two elements that must be met cumulatively, the subjective and objective, and evidence of injury as a condition for meeting a fact internationally illegal.

Author Ago (Ago, 1939-II, p. 486), raised the issue, in terms of subjective element of international illegal act, of *need or lack of need for a fault* of the body that has acted in the way incriminated. In the case of objective liability or liability related *to fault lato sensu*.

On the contrary, in the doctrine (Anzilotti, 1929, pp. 496-505) it is considered that international liability derives from the violation of an international obligation caused by an act or an omission which is charged to the state, without the need to prove the existence of an additional subjective element distinguished by the fault of the body. An act is considered illicit in the moment that the obligation is objectively violated, regardless of the author's initial intentions.

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