



PUBLIC INTERNATIONAL LAW

BY –

SURBHI WADHWA


Assistant Professor (Law)


Jiwaji University,


Gwalior

State Responsibility

- The law of State responsibility is the chapter of international law that concerns the breach by a State of one or more of its international obligations.
- In international law, responsibility is the corollary of obligation; every breach by a subject of international law of its international obligations entails its international responsibility.
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- The law of State responsibility defines when an international obligation is to be held to have been breached, as well as the consequences of that breach, including which States are entitled to react, and the permissible means of that reaction.


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- Unlike national laws, wherein different rules often apply according to the source of the obligation breached (e.g., contract law, tort law, criminal law), international law does not concern itself with the source of the obligation that is breached;


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- in principle (and unless otherwise specifically provided) the same rules apply to the breach of an obligation whether the source of the obligation is a treaty, customary international law, a unilateral declaration, or the judgment of an international court.


The Elements of State Responsibility


- The starting point of the articles is that “every internationally wrongful act of a State entails the international responsibility of that State”.
- The act or omission of a State will qualify as an “internationally wrongful act” if two conditions are met.


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- First, the act or omission must constitute a breach of an international obligation, or, as the articles put it, must be “not in conformity with what is required” by the international obligation.
 - This implies that the obligation in question must be binding on the State at the time of the conduct, which is said to constitute a breach. Second, the act or omission must be “attributable” to the State.


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- The general rule is that a State is not responsible for the acts of private individuals. The State is of course an abstract entity, unable to accomplish any physical act itself. Just as in domestic law corporations act through their officers and agents, so in international law the State normally acts through its organs and officials.


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- The first, and clearest, case of attribution is that of the organs of the State (e.g., police officers, the army) whose acts are attributable to the State even in instances where they contravene their instructions, or exceed their authority as a matter of national law.

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- No distinction is made based on the level of the particular organ in the organizational hierarchy of the State; State responsibility can arise from the actions of a local policeman, just as it can from the actions of the highest officials, for instance a head of state or a foreign minister.

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- Nor is any distinction made upon the basis of the separation of powers; State responsibility may arise from acts or omissions of the legislature and the judiciary, although by the nature of things it is more common that an internationally wrongful act is the consequence of an act or acts of the executive.

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- Second, the rules of attribution cover situations in which individuals, not otherwise State organs, are exercising “elements of governmental authority” at the time that they act.

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- Third, acts of private individuals are attributable to the State if those individuals are acting on the instructions of the State, or under its effective direction or control.

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- Fourth, in exceptional circumstances in which there is an absence or default of governmental authority, the acts of private individuals may be attributable to the State if those individuals, in effect, step into the breach and perform necessary governmental functions.

Thank You!