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State responsibility

Draft articles provisionally adopted by the Drafting Committee

Part One ...

Chapter I. General principles

Article 1

Responsibility of a State for its internationally wrongful acts

Every internationally wrongful act of a State entails the international responsibility of that State.

[Article 2]

[Possibility that every State may be held to have committed an internationally wrongful act]

[deleted]

Article 3

Elements of an internationally wrongful act of a State

There is an internationally wrongful act of a State when conduct consisting of an action or omission:

- (a) Is attributable to the State under international law; and
- (b) Constitutes a breach of an international obligation of the State.

Article 4

Characterization of an act of a State as internationally wrongful

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.

Chapter II. The act of the State under international law

Article 5

Attribution to the State of the conduct of its organs

1. For the purposes of the present articles, the conduct of any State organ acting in that capacity shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State.

2. For the purposes of paragraph 1, an organ includes any person or body which has that status in accordance with the internal law of the State.

[Article 6]

[deleted]

Article 7

Attribution to the State of the conduct of entities exercising elements of the governmental authority

The conduct of an entity which is not an organ of the State under article 5 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the entity was acting in that capacity in the case in question.

Article 8

Attribution to the State of conduct in fact carried out on its instructions or under its direction or control

The conduct of a person or group of persons shall be considered an act of the State under international law if the person or group of persons was in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

Article 8 bis

Attribution to the State of certain conduct carried out in the absence of the official authorities

The conduct of a person or group of persons shall be considered an act of the State under international law if the person or group of persons was in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority.

Article 9**Attribution to the State of the conduct of organs placed at its disposal by another State**

The conduct of an organ placed at the disposal of a State by another State shall be considered an act of the former State under international law if the organ was acting in the exercise of elements of the governmental authority of the State at whose disposal it had been placed.

Article 10**Attribution to the State of the conduct of organs acting outside their authority or contrary to instructions**

The conduct of an organ of a State or of an entity empowered to exercise elements of the governmental authority, such organ or entity having acted in that capacity, shall be considered an act of the State under international law even if, in the particular case, the organ or entity exceeded its authority or contravened instructions concerning its exercise.

Articles 11 to 14

proposed deletion

Article 15**Conduct of an insurrectional or other movement**

1. The conduct of an insurrectional movement, which becomes the new government of a State shall be considered an act of that State under international law.
2. The conduct of a movement, insurrectional or other, which succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered an act of the new State under international law.
3. This article is without prejudice to the attribution to a State of any conduct, however related to that of the movement concerned, which is to be considered an act of that State by virtue of articles ... 5 to ... 10.

Article 15 bis**Conduct which is acknowledged and adopted by the State as its own**

Conduct which is not attributable to a State under articles 5, 7, 8, 8 *bis*, 9 or 15 shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.

Article A**Responsibility of or for conduct of an international organization**

These draft articles shall not prejudice any question that may arise in regard to the responsibility under international law of an international organization, or of any State for the conduct of an international organization.