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State Responsibility under International Law

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ABSTRACT

In international law, responsibility follows from obligation; as a result, every time a subject violates its international commitments, that subject also bears international responsibility. Due to the structure of the international legal system and the theories of state sovereignty and state equality, state responsibility is a fundamental principle of international law. It stipulates that anytime when one state violates another state's international law, there is an international obligation between the two. A violation of an international agreement results in the need for compensation. The law of state responsibility outlines when an international duty is to be considered broken, together with the repercussions of such breach, including which States are allowed to retaliate and how.

International law does not concern itself with the source of the obligation that is breached, unlike national laws, where different rules frequently apply depending on the source of the obligation breached (e.g., contract law, tort law, criminal law), and in general (and unless otherwise specifically provided), the same rules apply to the breach of an obligation regardless of how the origin of the obligation is a treaty, customary international law, a unilateral declaration, or the judgement. The International Law Commission finished the ARSIWA, or Articles on the Responsibility of States for Internationally Wrongful Acts, in August 2001 after more than 40 years of effort. The goal of ARSIWA is to define the principles of State responsibility that apply widely around the world. This paper is thus determined towards discussing the concept of state responsibility, it's kinds , consequences and some important cases relating to the same.

Keywords: *Vicarious Responsibility, International Delinquency, Calvo Clause, ARSIWA, United Nations.*

I. INTRODUCTION

According to revised definition of Oppenheim, International Law is a law which is legally binding on all states in their intercourse with each other. It is thus a body of laws which govern relation between states however states are not the only subject of international law.

Starke has defined international law as ***"It is that body of law which states feel bound to be***

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observed as it contains principles and rules of conduct"[2]

The body of laws, principles, and guidelines that are commonly accepted as obligatory between states is referred to as international law, also referred as public international law and the law of nations. In a wide range of areas, including conflict, diplomacy, economic ties, and human rights, it creates normative norms and a shared conceptual framework for states.

II. KINDS OF INTERNATIONAL LAW

- ***Public & Private International Law*** – Public International Law deals with states, whereas private International Law deals with individual of states. It can be thus said that states are a subject of public International Law and individuals are a subject of private International Law.
- ***General & Particular International Law*** – General International Law is binding on many states however only few or some particular states come under the ambit of Particular International Law.

III. NATURE OF INTERNATIONAL LAW

International Law is a True Law

International Law is a true owing to following reasons:

- It is legally binding on states. Legally binding force of International Law has been asserted by states in various International forums, states also recognize it by requiring their officials & courts to act in conformity with International Law.
- Use of term in international law in UN Charter, Statute of ICJ & other International organizations make it true in sense.

International Law is a Weak Law

Starke has expressed that International Law is a weak law. According to him, International Law is weak owing to following reasons:

- Rules are not as effective as rules of municipal law.
- There's no court which could decide the dispute in true sense.
- Enforcement measures available are not effective much.

[2] An Appraisal of the Jurisdiction of International Criminal Tribunals Over International Crimes, September 2004 by Christopher Eche Adah, Thesis submitted to the University of JOS available online at https://www.academia.edu/865433/An_Appraisal_of_the_Jurisdiction_of_International_Criminal_Tribunals_over_International_Crimes accessed on 7th January 2023

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- Rules are frequently violated by states.
- Sanctions against breaches in municipal law are easy to maintain, however not in international law.

IV. BASIS OF INTERNATIONAL LAW

The origins of international law are deeply rooted in history, and there is evidence of treaties, ambassadorial immunity, the use of war, etc. in India, the Roman & Greek empires. The eminent jurist Grotius, whose De jure Belli ac Paces (1625) provided a legal foundation for many aspects of international relations, is responsible for the creation of modern international law. His central thesis is that there are some universal, unalterable, and autonomous laws that have their origins in human reason.

Naturalist theory : The international law is based on law of nature. There is a set of laws that come from morality, reason, or God. According to Hart, the minimal amount of law resulting from the unchangeable character of man is what is required for humanity to survive. All laws pertaining to it are therefore a part of the natural law because maintaining international peace and security is essential for the survival of humankind. The theory is criticized for being overly nebulous.

Positivist theory : Only those principles that have been established with the States' assent may be regarded as laws. Law is what is true in reality. It is that legislation that States enact or uphold (i.e., originate from their own free will), and as a result, is binding upon States. The express or implicit consent of States creates customs and treaties. However this theory is challenged on the basis that not all international legal principles are obtained through conventions and treaties. Additionally, a treaty may also bind third-party States, and in some circumstances, states may be bound by general international law against their will.

Eclectic theory: The naturalists' and positivists' positions are extreme positions. The idea that accords both points of view equal weight seems to be accurate. Modern sociological theories tend to favour Naturalism as the genuine foundation of international law because they contend that it is founded on social interdependence and seeks to achieve global social fairness. Natural law therefore governs everything, including positive law (customs and treaties), which is merely a manifestation of this interdependence.[3]

[3] International Law: Definitions, Nature And Basis By Mohd Aqib Aslam, Legal Service India – E Journal available online at https://www.legalserviceindia.com/legal/article-2167-international-law-definitions-nature-and-basis.html Accessed on 7th January 2023.

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V. CONCEPT OF STATE RESPONSIBILITY UNDER INTERNATIONAL LAW

A right of one state is the duty of another state. If a state violates it's duties, it becomes responsible to the former state and such a responsibility may be derived from a custom or a treaty. The state responsibility may occur during war or peace time. A state is not held responsible internationally if its actions were mandated by an overriding rule of international law, were carried out in accordance with the UN Charter's guarantee of the right to self-defense, were taken as a legitimate means of pressuring another state into abiding by its international obligations, were caused by a force majeure (French: "greater force" beyond the state's control, and were not reasonably avoidable in order to save a life.

In its 1996 proposal on state responsibility, the International Law Commission raised the controversial idea that states may be held accountable for "international crimes," which are defined as wrongdoing committed by state's head or official or any other subject of a state on a global scale as a result of a state's violation of an international obligation which is extremely crucial for safeguarding the fundamental interests of the international community and such acts are recognised as a crime by the international community as a whole, Aggression, colonial dominance, and genocide were used as examples. In addition to the claim that states (as opposed to individuals) could not be responsible for crimes as such, there were also severe definitional issues and worries about the repercussions of such crimes for states. As a result, the International Law Commission abandoned this politically controversial strategy in its draught articles that were ultimately enacted in 2001, but they kept the notion of a more serious type of international wrong. The commission placed special emphasis on the idea of grave violations of duties originating from an impermissible rule of international law i.e., the rules of ***Jus Cogens***. In such cases, all states are required to refrain from recognizing the situation and work together to put a stop to it.

The two basic theories that are attributed and which explain the core concept of State Responsibility are the Risk Theory and the Fault Theory.

Fault Theory- Fault theory is also known as the Subjective Theory of State Responsibility. It was given by Hugo Grotius. The theory states that the state shall be held accountable, if any intention or negligence will be shown by the State or any other person under its command or authorization. Due to the challenges in establishing the State's fault or liability, this theory has lost its relevance with due course of time.

Risk Theory- Risk theory is also known as the Objective Theory of State Responsibility. It was given by Dionisio Anzilotti as a rejection of fault theory. In accordance with this idea, the State

is accountable for the injury committed not due to direct or indirect harm, nor is it due to an individual's malice, but rather due to the State's breach of an obligation imposed on it by international law. According to this idea, the State is liable and not for the wrongdoing but for the fact that it violates international law. So, regardless of the existence of a "defect," the idea merely requires a wrongdoing that violates an international law to hold a State accountable. Therefore, even a minor violation of a contract makes the State accountable.

While there are several arguments for and against other theories' relevance to international law, the majority of jurists favour the risk theory of state liability.[4]

VI. KINDS OF STATE RESPONSIBILITY

The state responsibility may occur in two ways:

- **Original or Direct Responsibility**

When an act which constitutes breach of an international obligation is performed by government of a state or under its authorization by any other person at its command then original or Direct Responsibility of state arises. When a breach is caused by one state to another state then the state causing injury becomes responsible to another state whose rights have been infringed.

Responsibility of a state does not cease even if government official has performed an act in excess of its competence under domestic law or against instructions he has received. State performs it's functions through different organs & agencies and if any wrongful act is done by them then state becomes directly responsible. Such agencies and entities of the state for which state becomes responsible if any harm is caused by them to another state includes the following:[5]

1) Executive & Administrative Organs

A state becomes directly responsible for all the harmful and injurious acts caused by its executive or administrative organs to another state.

2) Acts of Diplomatic Envoys

A state becomes responsible for those injurious acts of envoys which are performed by then at the command or with authorization of his home state.

[4] State Responsibility in International Law, May 28 2021 By Harshitha Ulphas ,IRALR available online at https://www.google.com/amp/s/www.iralr.in/amp/state-responsibility-in-international-law accessed on 7th January 2023.

[5] State Responsibility under International law, June 29 2021, LawBhoomi available online at https://lawbhoomi.com/state-responsibility-under-international-law/ accessed on 7th January 2023.

3) Acts of Members of Armed Forces

A state becomes responsible for all injurious acts of members of its armed forces if performed with command & authorization of state, even if not authorized if soldiers perform any mistaken act or show reckless conduct, state becomes directly responsible.

4) Acts of Judiciary

If court gives any judgement contrary to an international obligation of state, state becomes directly accountable.

5) Constituent Units of Federal States

A federal state is generally responsible for wrongful acts of its constituent units.

- ***Difference between International Delinquency and International Crime***

When an act causing injury to another state is committed by the head of a state, any official of government or other individuals commanded / authorized by head of government to do such acts then state becomes responsible for such acts. This is called International Delinquency. It should be noted here that an act committed by a state in its self defence causing injury to another state does not come under the ambit of International Delinquency.

When any international wrongful act whose breach is recognised as a crime by international community as a whole, it is called International Crime. For example, breach of an obligation of prohibiting genocide, slavery, apartheid etc.

VII. INDIRECT OR VICARIOUS RESPONSIBILITY

A state becomes responsible for unauthorized acts of its agents, subjects or aliens living in its territory. A state has obligation to prevent its own as well as foreign subjects to commit any act which cause injury to other state. For instance, crime against foreign sovereigns or ambassadors, offences to flag of foreign state.

Indirect Responsibility for following wrongful acts of individual may arise on state:

1) Mob Violence

In the case of mob violence, responsibility of a state may arise in 2 ways – firstly when a state has not taken due diligence to prevent mob violence which damaged foreign or private property.

Secondly where mob violence takes place due to indifferent attitude of state i.e connivance of organs.

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United States vs Iran, 1980

Militants in USA embassy at Tehran (Iraq) were attacked. Iran was under an International obligation to protect the militants however it did not take any preventive steps to do so henceforth it was ordered by ICJ that Iraq has to make reparation to USA.

2) Violence in insurrections & civil war.

A state becomes responsible for injuries caused to an alien in consequence of civil war, responsibility of state for act of insurgents & rioters is same as that of other private individuals.

State Responsibility for acts of corporation

A state becomes responsible for wrongful acts of corporations on the basis of their nationality.

VIII. CONSEQUENCES OF STATE RESPONSIBILITY

Breach of an International obligation gives rise to 2 types of legal consequences – duties of cessation & duty to make full reparation. Reparation can be made by any of the following ways:

1) Restitution

To re establish the situation which would have been existed if wrongful act or omission had not taken place. Restitution in kind is a sensible way to make up for harm. Customary law or a treaty may establish duties with the right to seek specific restitution attached.

2) Indemnity

Arises when restitution is not possible. Indemnity in general means to make good the losses. Financial recompense is typically an acceptable and frequently the sole remedy for harm brought on by an illegal conduct. When restitution cannot be made, compensation, which includes “any financially determinable damage, including loss of profits,” becomes the norm under ARSIWA Article 36. The long-standing jurisprudence of international courts, tribunals, and claims commissions is compatible with this.

3) Satisfaction

Where material damage is not available, a state performs such acts which satisfy other state includes a public apology, punishment of guilty persons, special token of respect for injured states. In addition to restitution or compensation, satisfaction can be described as any action that the responsible state is required to do under international law, customary law, or a settlement agreement between the disputing parties. In the broad sense, satisfaction is a component of reparation.

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IX. RESPONSIBILITY OF STATE TO OTHER SUBJECTS OF INTERNATIONAL LAW

United Nations is also a subject of International Law. Other subjects of International Law can also advance an international claim against a state if latter commits an injurious act.

1. Nicaragua vs united states of america

Nicaragua v. United States, a case involving military and paramilitary activity in and around Nicaragua, is a historic one in this sense. It involved American assistance to rebel organizations fighting the Nicaraguan government. The United States "breached its obligations under customary international law not to employ force against another State" and "not to intervene in its affairs," the Court found in its ruling.

2. Corfu channel case- [6]

In 1946, 2 British warships were passing through Corfu Channel. When ships reached coastline of Albania, they were destroyed & crews were killed for explosion of mines. UK went before ICJ for compensation from Albania. Albania refused & said that UK violated it's so state sovereignty by passing warships.

Issues- Whether sovereignty of Albania was violated by UK?

Whether or not Albania is liable to provide compensation to UK for explosion?

Judgement – It was held in this case that UK didn't violate the sovereignty of Albania & Albania was responsible for explosion and shall compensate UK.

3. Concept of calvo clause

Developed in 1868 by Carlos Calvo, a legal scholar & diplomat from Argentina. Calvo Clause is nothing but a legal Principle which says that jurisdiction in international investment dispute lies with the country in which investment is located, thus a foreign investor has no recourse beyond the host country's local courts.

X. CONCLUSION

It can be thus said that state responsibility is very essential as violation of rights of either of an individual or a state should not be acceptable and in order to ensure the protection of rights of states, International law has made certain conventions and declarations for the same, there have been many instances in the past where right of one state was violated and only due to existence

[6] The Corfu Channel Case, United Kingdom of Great Britain and Northern Ireland v. the People's Republic of Albania, InforMEA available online at https://www.informea.org/en/court-decision/corfu-channel-case-united-kingdom-great-britain-and-northern-ireland-v-people%E2%80%99s accessed on 7th January 2023.

of the concept of state responsibility under International law, the state who infringed other state's rights paid compensation or made reparation to such an injured state. In the absence of state responsibility, it would have become extremely difficult for the whole International community to maintain peace and harmony as states without any fear would attack other state and not even provide any reparation against such an act. A state due to the concept of state responsibility is required to make up any damages if it violates a treaty and does so in a way that harms the other parties. A state's failure to uphold any of its responsibilities must be accompanied by reparation. If restitutio ad integrum cannot be achieved, the accused state shall be made to pay compensation to the injured state.

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