

# THE CIRCUMSTANCES PRECLUDING THE INTERNATIONAL RESPONSIBILITY OF STATES

Amanda Yamaguchi da SILVA<sup>1</sup>

**Abstract:** this paper aims to discuss, by means of the analyses of the International Law, through the deductive method and bibliographic research, about the institute of the International Responsibility of States and the circumstances precluding this international responsibility.

**Key-words:** International Responsibility of States. Draft Articles on the Responsibility of States for Internationally Wrongful Acts. Circumstances Precluding Responsibility.

## INTRODUCTION

With the developing of the International Law in 1945, the international responsibility started to suffer a lot of structural changes and a few parameters were defined, like the subjects of Public International Law, but just after the Second World War, indeed, the violation of international norms received attention.

Thereby, there is the necessity to implement regulations on the behavior of the States and sanctions that could account then for their acts. Then there is a consolidation of the international responsibility, that ends up being failure, with many gaps and very restricted.

Then the idea of a project about the international responsibility of States arised. The Draft Articles on Responsibility of States for Internationally Wrongful Acts, made by the International Law Commission, showing itself like a soft law document.

The International Responsibility of the State is the legal institute that seeks to hold States accountable for practicing acts that are illicit for the International Law, made

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<sup>1</sup> Discente do 4º termo do curso de Direito do Centro Universitário Antônio Eufrásio de Toledo de Presidente Prudente. Membro de grupos de estudo e pesquisa da mesma instituição. Endereço eletrônico: [amandayamaguchi3008@gmail.com](mailto:amandayamaguchi3008@gmail.com)

against the rights or the dignity of another State, aiming to repair the violated State. The ICJ is a very important court in this matter, since its first case, “Corfu channel case” in 1949, that established many of the Court’s parameters.

The International responsibility can be classified about the norm, the active subject or the nature of the act. International norms can be violated criminally or conventionally, the criminal violation is about violated norms that belongs to general principles of international law or custom, while the conventional violation infringes norms that belongs to conventions or international treaties.

In the matter of the active subject on the violation, the international responsibility can be direct, on the cases that the act is practiced by a state agent, but can also be indirect, when the violation is made by a private agent, also called as a non-State actor.

Also, the nature of the conduct can be commissive, when a norm is violated by an active action of the State, or can be omissive, when the violation results of and omission of the State.

Therefore, on the international responsibility of the State, it will be accountable for illicit acts, called the internationally wrongful acts in which the accountability will generate the obligation to repair and/or indemnify the State that were harmed.

## **1 CIRCUMSTANCES PRECLUDING RESPONSIBILITY**

On the domestic law of the States there are situations in which the responsibility and the obligation to repair and indemnify can be removed, in the same way, on the International Law, the responsibility and the obligation to indemnify also can be removed in some justifiable situations that allows the remoteness of the State’s responsibility.

However, none of these circumstances precluding responsibility can be applied to disregard jus cogens norms. These circumstances are the consent of the State, the self-defence, the countermeasures, the force majeure, the distress and the necessity.

## **1.1 Consent of the State**

The consent is in the article 20 of the Draft Articles and it's about the conduct made by a State to another that though it's illicit for the International Law, is made with the consent of the other State, therefore the unlawfulness is removed, since it obeys the limits of the consent. Also, to be valid, it has to be exteriorized by a authority that has power for this. Some examples are the authorization of the States of air travel through their airspace or the authorization of ships passing through its territorial waters.

## **1.2 Self-defence**

The self-defence is described in article 21 of the Draft Articles and it is an act destined to remove an aggression. Some requirements shall be completed on the self-defence, which are the existence of an armed attack, it can't be permanent, it has to obey the principle of subsidiarity and shall respect the principle of proportionality.

## **1.3 Countermeasures**

The countermeasures are illicit acts that are justified because they are the only way to depart an equally illicit act caused by an aggressor State. They will only be accepted if they are an answer to a previous attack from another State that violated their rights.

## **1.4 Force majeure**

The force majeure is in article 23 of the Draft Articles and it is related with independent facts that can't be controlled by humans, in general related to natural

phenomenons that prevent the execution of an international norm, it was claimed in many ICJ cases, as well as the Lighthouses (France vs. Greece) Case, in 1934.

### **1.5 Distress**

The distress is configured when it's done aiming to save the lives or another personal and essential legal assets from people that are in a very dangerous situation, in these cases, the State violates the International Law intending to avoid a tragedy involving people under its jurisdiction.

### **1.6 Necessity**

The necessity is very similar to the distress, it is configured in the cases that there is the disregard of the International Law aiming to protect very important interests of the State or of an international organization, however, the act has to be the only way to preserve an essential interest, respecting the principle of subsidiarity and the own State cannot have contributed to the necessity.

## **CONCLUSION**

Therefore, by the analyses of ICJ's jurisprudence and international conventions and treaties, it is possible to conclude that the international responsibility of the State is an extremely important institute to the International Law in virtue of the regulation upon the State's acts and international relations that this document allows. However, the circumstances precluding responsibility are also equally important to the States, since it guarantees the State's right of defense according to principle of the due process and prevents the State for being internationally accountable in cases that the internationally wrongful acts are justified.

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