

Subject: Remarks on the Responsibility of States for Internationally Wrongful Acts, adopted in 2001 by the  
International Law Commission

1. The draft articles address the issue of contractual responsibility and responsibility for crime and tort. The scope of work should be identified, for the following two purposes: firstly, in order to exclude the criminal aspect, and secondly, in order to facilitate the designation of the judicial authority whose judgements will be definitive.
2. "Breach" (articles 2 and 15) has been used in order to determine responsibility, contrary to all the provisions of international law that are in force, which consider it to be less than a criminal matter. Not just intention must be present, but also purpose.
3. Article 3 gives international agreements [law] priority over internal law, albeit not all States, including Lebanon, recognize that priority, on the grounds that internal law must take precedence unless otherwise provided in the State constitution.
4. Article 4 provides that the conduct of any State organ shall be considered an act of that State, whether the organ exercises [legislative, executive, judicial or] "any other functions", which is incompatible with the principle of the sovereignty of States with regard to the identification of the person or body that may be assigned to undertake an act.
5. If, as article 5 provides, the conduct of an entity which is empowered to exercise elements of the governmental authority is considered an act of the State, it could lead in a State such as Lebanon to the State being held responsible for the consequences of the conduct of the religious authorities, which, under Lebanese law, are empowered to exercise legislative or judicial powers. Similarly, there is a possibility that the State would be held responsible for the consequences of decisions of the trustee or guardian of a minor or the trustee of a legally disqualified person.
6. Article 6 must be clarified because it is possible that it could apply to State forces such as those in Lebanon, which are not under direct State control but act independently, in coordination with the State.
7. Does the 'entity' referred to in article 5 [7] include a State that is occupying another State or a rebel organization that is subsequently suppressed?
8. Which is the body empowered to determine that the State or its organs has exceeded authority or contravened instructions, as mentioned in article 9?
9. What is understood by an insurrectional movement or other movement, for which provision is made in article 10?
10. What is the criterion for the international obligation provided for in article 12?
11. In article 17, what is the meaning of 'directs and controls another State '? Does it imply moral or material compulsion or refer to another act that leads to an unlawful act?
12. Pursuant to article 20, valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State. This means that the current draft articles are dealing with a relationship between two States. Such a relationship should, in principle, be in the diplomatic context and therefore not require any general regulation that conflicts with the Vienna Convention on Diplomatic Relations.

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13. In article 22, the provision that the wrongfulness of an act of a State is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations should further stipulate that the act should also be undertaken in conformity with the agreements concluded between the States concerned.

14. With regard to the determination of responsibility, what is the judicial or other authority that is competent to conclude that elements of responsibility exist, rank them and decide reparations?

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