

Research Article

International Responsibility of States for Wrongful Acts and Non-Prohibited Acts

Abdulrahman Karimi* 

Faculty of Law and Political Science, Hariwa Institute of Higher Education, Heart, Afghanistan

Abstract

The international responsibility of states is a key concept in international law that refers to how states are accountable for unlawful or wrongful acts and non-prohibited actions. Given the complexities of international relations and the profound impacts of state actions on global security and welfare, this issue holds special significance. The aim of this article is to closely examine the international responsibility of states concerning wrongful acts as well as lawful and non-prohibited actions that may harm other states and individuals. This article analyzes the criteria for identifying wrongful and non-prohibited acts of states and explores the methods for determining international responsibility. The research question is how to identify and determine the responsibility of states regarding wrongful and non-prohibited acts, and what methods exist for compensating for incurred damages. The findings of this research indicate that even when actions are lawful, states must be accountable for their consequences. Additionally, the role of international institutions in supervising these responsibilities and determining compensation in cases of violations of international obligations is crucial. This research utilizes a descriptive-analytical method and contributes to a better understanding of the international responsibilities of states.

Keywords

International Responsibility of States, Wrongful Acts, Non-prohibited Acts, Compensation, International Institutions

1. Introduction

When discussing international responsibility, the focus is on secondary rules, which differ from primary rules. Primary rules directly establish obligations (such as the law of treaties), while secondary rules relate to the implementation and conflict of primary rules. The international responsibility of states has been a longstanding concern for the international community, with early efforts dating back to the 1930s during the codification of international law at The Hague.

International responsibility is one of the most important and fundamental institutions of international law. This is because any violation of an international legal obligation by the sub-

jects of international law will entail their international responsibility.

According to Professor Brownlie's theory, international responsibility is a legal institution whereby if a state commits an act contrary to international law, it must compensate the resulting damage.

The importance and status of international responsibility is much greater than in the domestic community. The international community is an environment where states, based on their sovereignty, make decisions freely, and therefore come into contact with the freedom of other states. Therefore, in-

*Corresponding author: karimiabdulrahman205@gmail.com (Abdulrahman Karimi)

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ternational responsibility is an essential, fundamental, and legal mechanism in the international relations of countries.

The issue of international responsibility was first addressed in 1930 at the Hague Conference in an attempt to codify it, but it failed. In 1969, another attempt was made to address this issue, and finally, in 2001, the draft was adopted, although it has not yet become an international treaty.

Given the rapid development of relations between states after 1945, the growth of primary rules was significant. However, it became evident that the mere existence of primary rules would not create the necessary order, and in fact, the abundance of unorganized primary rules would further complicate the international legal system. Therefore, primary rules needed to be equipped with specific secondary rules that would ensure their proper implementation and address the existing problems [8].

Consequently, the rules of the law of treaties are considered primary rules, both in terms of timing ("time of application") and logic, while the rules of the law of responsibility constitute the secondary rules. Secondary rules are applied and enforced when primary rules are violated. [2].

According to international law, the responsibility of states is essentially established by the mere violation of an obligation by the violating state, and the occurrence of damage is not a condition for the realization of such responsibility. Therefore, when a state violates its international obligation, and the acts or omissions attributable to it have resulted in such a violation, the international responsibility of that state is realized, and that state is obliged to compensate the damage caused. However, the obligation to redress its violations is not the only effect of the international responsibility of states, but the state that is found responsible is also obliged to cease and not repeat the violation of its obligation.

The law of international responsibility is one of the main and fundamental branches of international law, which is closely related to all other branches of international law. It consists of a set of international regulations related to the responsibility of states and international organizations, and these laws have been formed based on custom.

Although the subject of international responsibility is focused on the relationship between countries, with the entry of international organizations with legal personality into the international arena and the effects of the performance of these organizations in relation to countries and other organizations, these organizations must be subject to the law of international responsibility so that their wrongful acts can result in international responsibility.

According to the view of the International Court of Justice, the United Nations has the right to file a claim against a member or non-member state that has caused damage to the organization or its officials due to the violation of international obligations. Therefore, based on the customary rule of international law, this view of the court is applicable to other organizations.

The rules of the law of responsibility are recognized as

secondary international obligations that arise as a result of the violation of primary obligations through specific acts or omissions. The reason why the violation of rules and regulations, especially human rights rules and obligations, has compensation is that it has certain objectives. The compensation of obligations also has a series of principles and rules that will be examined in this chapter. What criteria and conditions the compensation is based on will also be examined in this chapter.

The fundamental problem in this research is the determination and identification of the boundaries of international responsibility of states concerning wrongful acts as well as lawful and non-prohibited actions. In fact, there is a need to examine how to establish the responsibility of states in areas that may appear legal but have negative repercussions for other states and individuals.

The main research question is: "How can the international responsibility of states be identified and determined in relation to wrongful acts and also lawful actions that harm others?"

The aim of this research is to closely examine the criteria and methods for identifying and determining the international responsibility of states concerning wrongful and non-prohibited acts, as well as to analyze the methods of compensation in this context. Additionally, the role of international institutions in this process will also be addressed.

The significance of this research lies in the fact that by examining the international responsibility of states, a better understanding of international relations and the impacts of state actions on the global community can be achieved. This research can contribute to the formulation of more effective policies and regulations in the field of international law, and it can also assist international institutions in overseeing state responsibilities and compensating for incurred damages.

Research has been extensively conducted on wrongful acts in international law and the international responsibility of states within the international system. Notable contributions include:

Safari (2022) in an article titled "Legal Foundations of International Responsibility of States Regarding the COVID-19 Pandemic" examines the basis of state responsibility due to failure to exercise "due diligence" or to take necessary reasonable measures in combating the pandemic, as well as factors that may exempt the negligent state from liability. The findings indicate that violations of primary obligations by states, which lead to secondary obligations, demonstrate that to establish state responsibility, the breach of primary obligations must be accompanied by fault, negligence, and failure to adhere to the "due diligence" standard.

Khalifeh (2022) in an article titled "International Responsibility of States in Light of the December 11, 2020, Judgment of the International Court of Justice (Estonia's Complaint against France)" analyzes the international responsibility of states based on this ruling. The findings suggest that any action taken by a state in the external realm that contradicts its

binding obligations will result in international responsibility for that state.

This research aims to examine state responsibility concerning wrongful acts and non-prohibited acts. It is a developmental study that differentiates itself from previous research by providing a comparative analysis of state responsibility for wrongful acts and non-prohibited acts.

In this research, we seek to answer the following questions:

- 1) What criteria exist for identifying wrongful and non-prohibited acts of states?
- 2) How can the international responsibility of states be determined?
- 3) What methods are available for compensating damages incurred by other states and individuals?
- 4) What is the role of international institutions in overseeing state responsibilities?
- 5) What challenges exist in determining the international responsibility of states?

2. The Responsibility of States for Internationally Wrongful Acts and Internationally Lawful Acts

In English, the two terms "Responsibility" and "Liability" are used to refer to the concepts of "international responsibility for wrongful acts" and "international responsibility for acts not prohibited," respectively. However, in Persian, such a distinction has not existed so far, and the single term "responsibility" has been used for both concepts.

But since the predominance and majority is on the term "Liability," as a result, wherever the word "responsibility" has been used, the intention is responsibility for acts not prohibited, and wherever the intention is international responsibility in the conventional sense of the word, or responsibility for international wrongful acts, the Latin equivalent "Responsibility" has been used.

2.1. The Responsibility of States for Internationally Wrongful Acts

Essentially, every person is only responsible for their own actions, and must compensate for any harm they have caused to others. Therefore, if a person's act is not in line with the conduct of a reasonable person, it is considered a fault or error in conduct. [1]

Just as individuals are responsible in domestic law for behavior or actions that are not in line with the conduct of a reasonable person or are contrary to domestic rules and laws, this is also explicitly and clearly evident in international law. As clearly stated in the Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001), [10], states are responsible for acts that are contrary to the rules and regulations of international law. And states are obliged to compensate for their wrongful acts.

The responsibility of states for internationally wrongful acts refers to the responsibility that arises for states due to the violation of the rules and regulations of international law. In other words, the term "Responsibility" is used in relation to acts contrary to international law.

According to international law, the responsibility of states is primarily established by merely violating an obligation by the offending state, and the occurrence of damage is not a prerequisite for such responsibility. Therefore, when a state breaches its international obligation and an action or inaction is attributed to that breach, the international responsibility of that state is realized, and that state is obliged to compensate for the damages incurred. [11]

Article 1 of the Draft Articles on the Responsibility of States states that any internationally wrongful act of a state entails the international responsibility of that state. The content of this article forms the foundation of state responsibility law, such that other provisions of the Draft Articles on State Responsibility are built upon it. [12]

Article 2 of the Draft Articles presents the constituent elements of a state's international wrongdoing. An international wrongdoing by a state is established when the action or inaction constituting the act is: (a) attributable to that state under international law; and (b) constitutes a violation of an international obligation of that state. This article specifies the necessary conditions for establishing a state's international wrongdoing, composed of two elements: the action must be attributable to the state. To hold the state responsible, that action must result in the violation of a binding international legal obligation that was applicable to the state at the time of the action in question. [13]

Therefore, it can be said that the necessary conditions for establishing the elements of international wrongdoing by a state appear to be two fundamental elements: first, the action in question must be attributable to that state under international law. In the second stage, for that action to result in responsibility, it must entail a violation of a binding international obligation for that state at the time the action was committed. [14]

It is evident that the commission of an internationally wrongful act by a state leads to the establishment of international responsibility for that state. The fact that as a consequence of such an act, obligations will be imposed on the responsible state and rights will arise for the injured state is accepted by legal scholars. [15]

International responsibility, as a legal institution, refers to the obligation to compensate for material or moral damages inflicted on subjects of international law, which must result from an unlawful act or omission contrary to international law by one of the subjects or entities of international law. [16]

2.2. State Responsibility for Non-Prohibited Acts

Parallel to the classic (old) theories of international re-

sponsibility, a new and opposing theory has been presented today, known as the theory of liability for lawful acts. In contrast to the classic theories regarding fault and risk, which entailed compensation for damage, where first an international obligation must be violated, and then compensation must be provided. In the new theory, reparation and compensation are a primary obligation, and are not contingent upon the realization of an unlawful act. Therefore, the mere incurrance of damage by a country is sufficient to establish responsibility, even if the behavior or action taken is considered lawful under international law. The contributing factors that have given rise to this theory are its alignment with new conditions, the lawful activities of states, and environmental factors.

The commission of an international wrongful act entails international responsibility; however, this does not mean that only internationally wrongful acts are responsible. In specific cases, subjects of international law are also responsible for compensating for damages resulting from those of their activities that are not prohibited in international law. The peak of this view may lie in the draft being discussed by the International Law Commission. The Commission has been working since 1978 to draft a convention on the "responsibility arising from acts not prohibited in international law." It seems that "the main idea of the Commission in this action is to provide a compensatory basis for activities that, while harmful in a particular case, are generally and socially completely beneficial and necessary." [5].

In such cases, the legal rules have not generally been violated, and from this point of view, the cause of the damage cannot be held responsible for an internationally wrongful act; nevertheless, it is unfair to ignore the current situation of a person who has suffered damage without his own fault. [6].

This type of responsibility (Liability) relates to acts whose performance is not prohibited in international law. In this type of responsibility, there is a potential danger that causes a cross-border responsibility. In this type of responsibility, like domestic systems, the presumption is on the permissibility or legality of activities. The principle of permissibility is one of the relatively old and well-known principles in international law, which has been endorsed by international judicial practice for years.

Therefore, this type of responsibility is not due to wrongful behavior, but due to the incurrance of damage, for example, states may be responsible for issuing harmful permits. In this type of responsibility, the element of damage exists, which is tangible and results from positive or negative acts or permits issued by the state. It should be noted that this damage may be inflicted on individuals, property, or the environment.

The term "Liability" was first used by Mr. Kearney in 1973 during the 25th session of the International Law Commission. According to him, this responsibility relates to the consequences of negligence and failure in the performance of an obligation or failure to meet the established performance standards. [3].

The draft articles on the prevention of Trans boundary harm from hazardous activities (2001) were adopted at the 53rd session of the United Nations International Law Commission, but have not yet been approved by the UN General Assembly and are therefore not enforceable. [3].

Among such activities in which international organizations are involved are space activities. In this field, the 1972 Convention on International Liability for Damage Caused by Space Objects, in addition to states, places international organizations involved in space activities under its jurisdiction (Article 22, paragraph 1), provided that the organization in question adheres to the rights and obligations arising from this treaty and most member states of the organization are parties to this Convention and the Outer Space Treaty (1967). The Convention stipulates in Article 2 that the launching state (state or international organization) is absolutely liable for compensation for damage caused by its space objects on the surface of the Earth or to aircraft in flight.

International law has always spoken of the need to compensate for damage resulting from a breach of obligation, which is a fundamental principle and emanating from the nature of the international system. Therefore, the responsibility arising from acts not prohibited in international law may initially appear unfamiliar and even contradictory. There is no doubt that in the latter cases, the mere proof of damage and the causal relationship between the damage caused and the alleged act or omission requires international responsibility, even if the said act or omission does not in itself constitute a breach of an international obligation. The 1972 Convention on Liability has precisely this type of responsibility in mind, with an emphasis on full compensation for damage.

3. Distinguishing Features Between Wrongful Acts and Non-Prohibited International Acts

Scholars have enumerated the differences between wrongful international acts and non-prohibited acts, some of which we will examine in this section:

3.1. In Terms of Compensation

Responsibility arising from wrongful acts involves full compensation, i.e. restitution to the previous state in a way that erases all the effects of the unlawful act. Whereas, within the framework of non-prohibited acts, the perpetrator of the damage is not required to eliminate all the harmful effects of his act by paying compensation. [9].

Article 31 of the 2001 Draft Articles on the Responsibility of States for Internationally Wrongful Acts has referred to full reparation in relation to international wrongful acts. However, this type of reparation is not necessary in relation to liability arising from permissible acts, because this type of liability arises from lawful activities and it is not necessary to com-

pletely erase all the effects of that activity in the compensation. This is why, in the view of the International Law Commission, compensation under these two types of liability, i.e., liability for wrongful acts and liability for permissible acts, is different.

The second chapter of the 2001 Draft Articles of the International Law Commission attributes far-reaching consequences to an international breach. The injured state obliges the other state to (1) cease the wrongful act, (2) implement methods of domestic reparation, (3) restore the previous situation, otherwise pay appropriate compensation and provide guarantees against repetition.

While a more coherent and limited concept of reparation has been given in international law for liability arising from permissible acts, and there is no absolute obligation to cease the activity or in relation to the restoration of the previous situation or full reparation for the damage caused. [5]

Therefore, the responsibility of the state for international wrongful acts requires full reparation, which must erase all the effects of the unlawful or illegal act. But the reparation for permissible acts in international law is in the form of limited reparation or compensation.

The fundamental principle inherent in the nature of an unlawful act is that reparation must, as far as possible, eliminate all the effects and consequences of the unlawful act and establish a situation that, taking into account all aspects, would have existed if that unlawful act had not occurred.

3.2. In Terms of Self-inflicted Damage

In terms of self-harm, the other issue is the unpleasant label that the wrongful act carries with it, and the state that commits the international wrongful act actually damages its prestige in the international arena. On this basis, compensation for permissible acts is more readily accepted, as this does not imply an admission of wrongdoing. [7]. this unpleasant label does not exist in permissible acts in international law, and does not cause significant damage to the perpetrator.

3.3. In Terms of Continuity and Non-continuity

In terms of continuity and non-continuity, if an obligation is violated through a continuous act, the rules of liability arising from unlawful acts imply that the said act must be stopped, while in the realm of liability arising from permissible acts, the continuity of the activity is not problematic and only compensation is paid.

3.4. Regarding the Time of Liability Creation

The element of damage entry plays a different role in each case. According to the draft proposal of the International Law Commission on the responsibility of states in the field of wrongful acts, liability is created as soon as the obligation is violated (Article 1); while liability towards acts that are not prohibited inherently requires the entry of damage. [9].

3.5. In Terms of Position

In the international legal system, liability based on international wrongful acts has a lofty and firm position, while liability arising from acts that are not prohibited is merely a contractual framework.

3.6. In Terms of the Responsible Party

The approach that is clearly visible for liability towards acts that are not prohibited is the approach of privatizing liability. This means that according to the rules of classical international responsibility or responsibility for international wrongful acts, liability is raised at the state level, but in international responsibility arising from acts that are not prohibited, liability is not only raised at the state level, but liability has also taken on a private character. This privatization of liability in acts that are not prohibited has been realized in two ways: first, accepting the primary responsibility of the operator instead of the responsibility of the source state [4], which is also called channeling responsibility towards the operator, and second, reducing responsibility from the inter-state level to the internal law level of the source state of the damage.

4. Discussion

The origin of the international responsibility of states must be sought in their international obligations. When a state violates its obligations or engages in unlawful activities, the international responsibility of that state is incurred. International law has well accepted this principle.

Regarding wrongful acts, the principle is that the violation of international obligations by states results in their international responsibility. These obligations can arise from international treaties, the customary international law, or general principles of law. In such cases, the defaulting state must compensate the damages incurred by other states.

However, with regard to the lawful but potentially harmful acts of states, the issue is more complex. In these cases, the principle is that states must keep themselves within the framework of international law and refrain from acts that are harmful to others. If such acts occur, the affected states can demand compensation from the responsible state.

Therefore, international law seeks to strike a balance between the freedom and sovereignty of states and their responsibility towards other states and individuals. The international responsibility of states can be determined and enforced through international institutions such as the International Court of Justice or international arbitration.

In summary, the international responsibility of states is a key concept in international law that helps maintain order and stability in international relations. The determination and enforcement of this responsibility must be done while respecting the principles of state sovereignty and freedom.

5. Conclusion

The international responsibility of states for wrongful acts and lawful but harmful acts is a key concept in international law that plays an important role in maintaining order and stability in international relations.

Regarding wrongful acts, the principle is that a violation of international obligations by states results in their international responsibility. In such cases, the violating state must compensate the damages incurred by other states.

However, regarding lawful but potentially harmful acts of states, the issue is more complex. In such cases, states must act within the framework of international law and refrain from taking actions that are harmful to others. If such problems arise, the harmed states can claim compensation from the responsible state.

In cases where the acts of states, though lawful, result in damage and harm to others, the issue will be even more complex. In these cases, although the state committing such acts does not have direct legal responsibility, it must act within the framework of international law and refrain from taking harmful actions towards others. In other words, states must abstain from actions that result in harm to others, in observance of the principle of good faith in international relations.

In the event of such problems, the harmed states can file a claim and demand compensation from the responsible state. In this regard, international institutions such as the International Court of Justice or international arbitration bodies play an important role in determining and enforcing these responsibilities. Thus, international law seeks to establish a balance between the freedom and sovereignty of states and their responsibility towards other states and individuals.

In summary, international law seeks to establish a balance between the freedom and sovereignty of states and their responsibility towards other states and individuals. The determination and enforcement of this responsibility must be carried out in accordance with the principles of state sovereignty and freedom, and through international institutions such as the International Court of Justice or international arbitration.

Abbreviations

UN United Nations

Author Contributions

Abdulrahman Karimi is the sole author. The author read and approved the final manuscript.

Conflicts of Interest

The author declares no conflicts of interest.

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