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Kiadja

A Szegedi József Attila Tudományegyetem Állam- és Jogtudományi Kara
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Responsibility is one of the legal institutions that is to be found in any domain of the legal system and in every branch of law. The institution of legal responsibility is closely connected with observing the legal rules because in every field of law the declaration of responsibility enables sanctions to be applied against persons committing a violation of a law.

The same establishment refers to the institution of the responsibility of States according to international law, as well, its norms being to be considered as a guarantee of observing generally the other norms of international law. At the same time, the responsibility according to the rules of international law, as a legal institution comprehending the whole field of international law, raises several theorectical and practical questions in which there could not be formed any uniform view either by theory or by state practice, as yet. The problem of responsibility in international law can be raised not only in connection with the injurious behaviour of States but also with that of other subjects of international law. The present paper is not treating of the questions connected with the latter ones. It raises even in connection with the international responsibility of States only a few questions, first of all how far the general notion of the legal responsibility developed in the municipal law can be applied to the international relations and if this international liability belongs to the category of delictual or to that of objective liability.

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The responsibility of States according to international law has developed in its present form comparatively late. That does not mean that the States in the past have not avenged any presumed or true insults or injuries they had sufferred. But they could reconcile with the concept of sovereignty only with difficulty that a State can incur liability for any action towards the other States on the basis of international law. This idea has arisen also in the science of international law where, at the end of the last century we still met the opinion that "... les Etats ne sont responsables que devant aux-même. L'idée d'une responsabilité réciproque des Etats est contradictoire avec l'idée de souveraineté".[1] This refusal of the international responsibility of States could not be considered, at any rate, as general and did not mean even then the assertion that, in some cases, the violation of international law did not involve an obligation of the injurious State according to international law. It refers

[1] *Th. Funck-Brentano et A. Sorel:* Précis de droit des gens. 3e éd., Paris, 1900. pp. 224—225.

rather to a terminological crudeness. From among the older Hungarian authors, *e. g.,* Pál Tassy is establishing: "Although international law does not know in international relations any injurious acts for which the committer could be called to account and punished by a certain authority, there are, according to international law, as well, wrongful acts that committed without violating antecedents bring about the obligation of satisfaction."[2] The concept of international injury and connected sanctions was therefore known by the old literature of international law, too, only the expression international responsibility whose notion and content have gradually developed was applied not very often.[3] In the institution of international responsibility dominated for a long time, mainly at the end of the Nineteenth Century and at the beginning of the Twentieth one, as referred to by several scholars, the civil-law conception,[4] that is to say, it was first of all emphasized that the State was obliged to compensation for any material and moral damages caused to other States. This idea dominated for a long time strongly in the bourgeois jurisprudence and the partisans of this opinion can be found even at present. Thus for example, in connection with the source of responsibility in international law, a French expert of international law, L. Cavaré establishes: "La responsabilité internationale a en générale pour source un dommage causé soit à un Etat, soit à un individu."[5] The opinion quoted narrows down in itself the sphere of international responsibility considerably, by limiting it only to damages. A further limitation is brought about by Cavaré's following establishment: "Mais le plus habituellement l'origine des questions de responsabilité réside dans des dommages causés à des individus nationaux d'un Etat se trouvant établis sur le territoire d'un autre Etat, par les autorités de ce dernier (autorités législative, gouvernementale, administrative, judiciaire)."[6] The restriction of the responsibility of State to a compensation for damages caused to foreigners is particularly wide-spread in the American literature of international law. For instance Ch. G. Fenwick, in his Manual published in 1965, is interpreting the responsibility expressly as a relation between the State and the foreign citizens.[7] As even at the beginning of the codification carried out by the League

[2] *Tassy, Pál:* Az európai nemzetközi jog vezérfonala (A guide to the European international law). Kecskemét, 1887. p. 103.

[3] Thus *e. g.,* from among the older Hungarian experts of international law István Apáthy is speaking about "Obligations originating from prohibited acts and situations" (Cf.: *Apáthy,* I.: Tételes európai nemzetközi jog [Positive European international law]. Budapest, 1888. 2d ed. pp. 229—232). Others, *e. g. F. Despagnet,* are speaking about non-contractual obligations between States (des obligations non-contractuelles entre les Etats) but already using the expression "responsibility", as well. (Cp. *F. Despagnet:* Cours de droit international public. 3° éd. Paris, 1905. pp. 563—566.)

[4] Cf., *e. g., G. Tunkin* A nemzetközi jog elméletének kérdései (Problems of the theory of international law). Budapest, 1963, especially: pp. 249—250.

[5] *L. Cavaré:* Le droit international public positif. 2° éd., Paris, 1962, tome II. p. 342.

[6] Ibidem.

[7] Cf.: Ch. *G. Fenwick:* International Law. New York, p. 328. Speaking about the responsibility of State, the American expert of international law, W. W. Bishop, too, takes the opinion that it is a field of law that is in connection with the violation of the law of foreigners ("This field of law, roughly corresponding to the private law of tort or delict, may be thought of as the protection of nationals abroad or as the law of international claims"). *W. W. Bishop:* International Law: Cases and Materials. Boston, 1954, p. 464.

of Nations and later under the auspices of the United Nations Organization the responsibility of the State was regarded first of all as a liability for the damages caused to the foreigners on its territory, the responsibility of State according to international law, as a general legal institution relating to the whole of the international law, is containing at present, too, a number of unsettled, controversial problems concerning which innumerable, antagonistic opinions have arisen.

In connection with the responsibility of the State according to international law it is first of all to be clarified: what is its relation to the general legal concept of responsibility, resp. is there at all a notion of responsibility like this, comprehending both the domains of internal and of international laws?

The legal system, as a concrete system of valid legal norms connected with a State, contains two separable normative systems: internal law and international law. These two normative systems differ from each other in several relations, thus first of all in the way of their origin but both of them are representing the law of State, subjected to the general notion of law, according to which there are to be understood by law the rules of behaviour expressing class interest, induced by the will of State and arranging the mutual relations of the subjects of law the observance of which is ensured, if needed, by the constraint of State.[8] Both normative systems know the institution of the violation of law and the responsibility for it. The violation of law involves in both laws the possibility of applying sanctions. There can exist, therefore, on principle a general notion of legal responsibility that applies to the legal branches of both normative systems of the legal order. For solving the question, it is advisable to investigate first the systems of responsibility developed in the several branches of the internal law, partly because internal law is much more developed than international law and also the problem of responsibility was, therefore, elaborated in its framework earlier, partly because the theory of responsibility of the State in international law has borrowed very much from the internal law.

Examining the expression "responsibility" in the etymological sense of the word, it originates from the verb "to respond". To be responsible means that we have to face the consequences for certain actions. Responsibility, in this widest sense of the word, is brought up concerning any rules of human conduct in society. We are responsible for violating the conventional norms and can speak of moral, political, etc. responsibilities, as well. Responsibility, in this widest sense, too, is usually composed of two components:

(1) First of all, it is necessary to find a conduct that is in contradiction with the conventional, moral, party-disciplinary, sport-association, etc. norms, violating them;

(2) It is also necessary to responsibility that the behaviour contested should be attributable, imputable to the committer that means that the liability may be influenced, mitigated, and even excluded by certain conditions.

The behaviour that contravenes the mentioned norms can be expressed not only by an action or an omission. There may be reproved morally some

[8] Cf. in details at *Károly Nagy:* A nemzetközi jog jogrendszerbeli helyének és tagozódásának néhány kérdése a jog általános fogalmának tükrében (Several problems of the place in the legal system and the structure of international law in the light of the general concept of law). In: „Jogtudományi Közlöny" (Journal of Jurisprudence, Budapest), 1972. Nos. 1—2, particularly pp. 39—45.

emotion or thought, as well as that is expressed in a way noticeable by others. Legal responsibility, on the other hand, comprises a more restricted domain than moral responsibility.[9] Here is the basis of responsibility an action or omission manifested in the external world, as well,[10] that is dangerous for the society and that is illicit and imputable to the perpetrator. The legal responsibility contains, therefore, essentially the same elements as the responsibility originating from the violation of other norms, its consequences are, however, prescribed by legal rules. But the internal legal normative system controlling the behaviour of individuals is not uniform, legal branches are formed inside it with own content, method and formations of responsibility corresponding to them.[11] The legal responsibility always appears, therefore, in a concrete case in the relation of some branch of law. An individual is liable not according to the law generally but to the labour law, criminal law, etc. It is, of course, not impossible that the same action can involve legal consequences on the basis of more branches of law at the same time:[12] somebody may be responsible for the same action according to civil law and criminal law, as well. The responsibility formations of the single branches of law have a number of special peculiarities inducing considerable differences, legal isolation in these responsibility formations. *E. g.*, in civil law illegality may be imagined in some cases without any liability,[13] what is unknown in the domain of criminal law. The delimitation of malice and negligence that is so relevant in criminal law as well as in the labour law and of the agricultural cooperative law, has a much lower importance in civil law owing to the reparative character of sanctions there. The consequences of injury are of different character in the administrative law, civil law or criminal law. In the administrative law, responsibility exists first of all to an administrative organ; in civil law, to the person whose rights were prejudiced; while in criminal law, responsibility is immediately valid towards the whole of society, etc.[15]

In all these there are manifested the non-insignificant differences existing between the single formations of responsibility. But in the last resort there exists an — anyway very general — concept of responsibility comprehending all the liability formations in internal law,[16] the most general elements of which

[9] Cf.: *Gyula Eörsi:* A jogi felelősség alapproblémái, a polgári jogi felelősség. (Fundamental problems of legal liability; liability in civil law.) Budapest, 1961, p. 45.

[10] Cf.: *Gy. Eörsi:* Op. cit., p. 43.

[11] Cf.: *Mihály Samu:* A szocialista jogrendszer tagozódásának alapja. (Structural basis of the socialistic legal system.) Budapest, 1964, p. 192.

[12] Cf., *e. g., László Nagy:* Anyagi felelősség a munkaviszony keretében okozott károkért (Material liability for damages caused in a labour relation). Budapest, 1964, pp. 11—12; also Gy. Eörsi is writing similarly: "The single social relations, however, do not become isolated from one another, and they do particularly not become isolated correspondingly to the structure of the legal system. Each kind of behaviour may, therefore, fall under the prohibition of more branches of law and elicit several kinds of santions" (Op. cit., p. 72).

[13] *Gy. Eörsi* is bringing forward in this connection as an example a contract concluded by a person incapable of action that is invalid without the existence of imputability and, therefore, of liability. (Cf.: Op. cit., p. 66.)

[14] *Gy. Eörsi:* Op. cit., pp. 11—113.

[15] *Gy. Eörsi:* Op. cit., p. 206.

[16] This is *László Nagy's* opinion, too, who establishes: "We ought to speak, therefore, of legal liability as a comprehensive category comprising the criminal, disciplinary and material liability or, categorizing in another way: the liability in civil law, criminal law, law of work, etc." (Op. cit., p. 27.)

are, according to Gyula Eörsi: "(a) illegality, (b) imputability, (c) state repression".[17]

The normative system of international law — in contradistinction to the law inside the State — cannot be divided, as yet, into special branches of law arranging different relations of life, with a peculiar content, method and with special formations of responsibility.[18] That involves a number of difficulties. The condition, namely, that in international law there are not, as yet, any separate branches of law does not mean at all that its rules are arranging conditions of the same type and importance the violations of which are to be qualified in the same way. For instance, the responsibility of a State violating with its action an international obligation originated from a reciprocal agreement entered into with an other State (*e. g.*, not fulfilling a commercial treaty may differ from a case where it violated a cogent norm of international law, for example making war. It is not indifferent, either, if the immediatley offended party is a foreign State or a foreign citizen. It is important, as well, from the point of view of the culpability of a State, whether the injury was committed by its Government or only a mistake of a judicial organ is in question opposite to a foreign citizen, etc. All these enable us to make some distinctions inside the responsibility according to international law, and these distinctions are actually necessary. To be sure, the responsibility according to international law is to be investigated, for the time being, as a whole as the exact differences inside international law between the single formations of liability have not been elaborated, as yet, either by the theory or by the state practice. We cannot even say, as yet, that some majority or generally accepted accord has been arrived at in all the major, general theoretical questions of the responsibility in international law. That means, at any rate, that speaking about the notion of responsibility in international law *we think, in fact, of a concept as general as that of the legal responsibility in internal law as an institution relating to the entirety of the law within a State.* In the liability according to international law, the various responsility formations developing in the frame of international relations are, therefore, manifested together, and even some components taken over from the responsibility types developed in internal laws are mixed with them. The elaboration of the exact content and possible variants of the responsibility in international law is rendered more difficult by another circumstance, too, namely that a considerable part of international law are arranging relations between States of bourgeois and socialistic types. The theory of responsibility can, therefore, take shape — both in jurisprudence and in the codification of States — only after these different legal conceptions being harmonized. Returning to the investigation of the problem, to what extent the concept of the general legal responsibility is to be applied to the responsibility in international law, we have to examine the single components of that. As seen, one of the components of the legal responsibility is illegality. In this connection the international jurisprudence is by and large uniform, *i. e.*, it requires for the responsibility of a State according to international law first of all some international illegality, that is to say, the breach of a duty prescribed by international law. This standpoint is represen-

[17] *Gy. Eörsi:* Op. cit., p. 60.
[18] Cf. about that: *Károly Nagy:* Op. cit.

ted by A. Ulloa,[19] R. Ago,[20] C. Parry,[21] R. Monaco,[22] A. P. Sereni,[23] H. Kelsen,[24] G. Geamanu,[25] V. I. Lisovsky,[26] and by others, too. The breach of an international duty is regarded as the basis of responsibility by the various codification projects, as well, thus *e. g.*, Article One of a Draft adopted in first reading at the Codification Conference of The Hague in 1930,[27] Article One of a Draft prepared by the Deutsche Gesellschaft für Völkerrecht[28] and this standpoint is accepted also by Roberto Ago in his Report Two presented to the International Law Commission.[29]

The violation of international law is therefore, according to the generally accepted opinion, an element of responsibility, and even its basis. The commission of a violation of international law, as a behaviour opposite to international law, induces an international legal relation. In the question, however, between whom this relation takes place, and in other questions, too, in connection with that relation, the opinions vary.

According to the traditional doctrine, the international responsibility means a bilateral legal relation between the offening and offended States. E. Jimenez de Aréchaga is writing about that in this way: "Whenever a duty established by any rule of international law has been breached by act or omission, a new legal relationship automatically comes into existence. This relationship is established between the subject to which the act is imputable, who must "respond" by making adequate reparation, and the subject who has a claim to reparation because of the breach of duty."[30] A similar point of view is represented in connection with responsibility as legal relation by A. Verdross too, who establishes: "Die völkerrechtliche Verantwortlichkeit besteht grundsätzlich *nur denjenigen Staaten gegenüber*, die *unmittelbar* durch das völkerrechtswidrige Verhalten verletzt wurden. Es können daher auch bei der Verletzung einer gewohnheitsrechtlichen Norm oder eines Kollektivvertrages grundsätzlich nur jene Staaten einschreiten, die durch das völkerrechtliche Unrecht geschädigt wurden. Das blosse ideelle Interesse der übrigen Staaten an der Einhaltung der Völkerrechtsordnung reicht somit nicht hin um einen solchen Anspruch zu

[19] *A. Ulloa:* Derecho internacional publico. Madrid, 1957. Tomo II, p. 251.

[20] *R. Ago:* Le délit international, Recueil des Cours, 1939. Tome 68, pp. 450 sqq.

[21] *C. Parry:* Some considerations upon the protection of individuals in international law. Recueil des Cours, 1956. Tome 90, particularly pp. 672—673.

[22] *R. Monaco:* Manuale di Diritto Internazionale pubblico e privato. Torino, 1949, p. 328.

[23] *A. P. Sereni:* Diritto internazionale. Milano, 1962. III. pp. 1503 sqq.

[24] Cf.: Théorie du droit international public, Recueil des Cours, 1953. Tome 84, p. 88; or: Principles of International Law. New York, 1956, p. 9.

[25] G. Geamănu: Dreptul international contemporan. Bucuresti, 1965, p. 216.

[26] V. I. Lisovsky: Mezhdunarodnoe pravo. Kiev, 1955, p. 94.

[27] "Tout manquement aux obligations internationales d'un Etat du fait de ses organes qui cause un dommage à la personne ou aux biens d'un étranger sur le territoire de cet Etat entraîne la responsabilité internationale de celui-ci."

[28] "Jeder Staat ist den anderen Staaten gegenüber für den Schaden verantwortlich die auf seinem Gebiete fremden Staatsangahörigen an ihrer Person oder an ihrem Vermögen dadurch erwächst, dass er eine ihm anderen Staaten gegenüber obliegende völkerrechtliche Pflicht verletzt."

[29] Cf.: A/CN. 4 § 233. 20 avril 1970, p. 48.

[30] *E. Jimenez de Aréchaga:* International Responsibility. (In: Manual of Public International Law, Edited by M. Sørensen.) London—Melbourne—Toronto, 1968. p. 533.

begründen."[31] The responsibility is regarded also by M. Sibert,[32] Ch. Rousseau[33] as a relation between the States committing and suffering injury. And even, this opinion appeared in the old practice of international legal courts, as well; thus the judgement of the Permanent Court of International Justice of June 14th 1938 declared: "S'agissant d'un acte imputable à l'Etat et décrit comme contraire aux droits conventionnels d'un autre Etat, la responsabilité internationale s'établirait directement dans le plan des relations entre ces Etats."[34] This theory is related in details in a very through-going monograph of D. Anzilotti. In his opinion, the violation of international law, if considered as a violation of the objective law (diritto oggettivo), cannot induce any legal connection between the States because there doesn't exist any legally organized superior power above the single States, having authority to invest the norms of international law with a legally binding force and to retaliate the violation of these norms only because they belong to international law.[35] If, however, the violation of the norms of international law violates, at the same time, the subjective right of the States, as well, then the injured State itself can raise a claim against the offending State with the means ensured by international law, failing a supernational organization above the States.[36] There comes, therefore, from the violation of a legal norm a relative right for the State that suffered the injury. This right is valid exclusively against the offending State.[37] Moreover, to regard the international responsibility as a legal relation between two States may often mean that it is only a responsibility of the offending State for repairs. An interpretation of responsibility like that is widely accepted in the international literature. In this opinion is, *e. g.*, F. Berber according to whom from the violation of the primary legal relation there is induced a new legal relation, being aimed first of all at repairing the damage caused.[38] The responsibility in international law is regarded as an obligation for repairing the damage by C. Eagleton[39] and others, too. In addition, as the

[31] A. Verdross: Völkerrecht. 4. Aufl. Wien, 1959. p. 297.

[32] Cf.: Traité de Droit International Public. Tome I. Paris, 1951, p. 310.

[33] Suivant la doctrine ordinairement admise, la responsabilité internationale est toujours une relation d'Etat à Etat" (*Ch. Rousseau:* Droit international public. 3e. éd 1965, p. 104).

[34] C. P. J. I. Phosphates du Maroc, série A/B, N° 74, p. 28.

[35] Cf.: *D. Anzilotti:* Teoria Generale della Responsabilità dello Stato nel Diritto Internazionale. Firenze, 1902, p. 82.

[36] *D. Anzilotti:* Op. cit., p. 83.

[37] *D. Anzilotti:* Op. cit., p. 100. A similar standpoint is expounded in the Manual of the author, as well: "Au fait illicite, c'est-à-dire, en formule générale, à la violation d'un devoir international, se rattache ainsi la naissance d'un nouveau rapport juridique entre l'Etat auquel est imputable le fait dont il s'agit, qui est tenu à réparation, et l'Etat envers lequel existait le devoir non exécuté qui peut exiger la réparation." (Cours de Droit International, Paris. 1929, p. 467.)

[38] "Kraft der Haftung entsteht bei Verletzung der primären Rechtspflicht ein neues Rechtsverhältnis, das den Haftenden, den Verantwortlichen verpflichtet, den früheren Zustand wiederherzustellen oder wo dies nicht möglich oder nicht zumutbar ist, den durch die Rechtsverletzung entstandenen Schaden zu ersetzen" (*F. Berber:* Lehrbuch des Völkerrechts. Bd. III. München und Berlin. 1964, p. 2). Almost the same idea is expressed in *G. Dahm*'s Manual, as well: "Die Verletzung der primären Rechtspflicht also ruft sekundäre Rechtspflichten hervor, Pflichten nämlich zur *Wiederherstellung* (Restitution) und zur *Entschädigung des Verletzten*..." (Author's italics). Cf.: *G. Dahm:* Völkerrecht. Bd. 3. Stuttgart, p. 178.

[39] *C. Eagleton:* The Responsibility of States in International Law. New York, 1928, p. 3.

State and private codifications have endeavoured to regulate the liability as regards the damages caused to foreigners in the state territory, in the course of these there was emphasized similarly mainly the liability for damages. In this way, for example, it was declared in Article One of a Draft of Harvard Law School in 1929: "A State is responsible, as the term is used in this convention, when it has a duty to make reparation to another State for the injury sustained by the latter State as a consequence of an injury to its national."

Other opinions that otherwise do not restrict the responsibility of State to an obligation of indemnification see in responsibility a general commitment of reparation. This opinion is represented by a Brazilian expert of international law, H. Accioly,[40] also the Permanent Court of International Justice held in the dispute of the Chorzow Factory Case in its judgement of September 13th 1928 that "... la Cour constate que c'est un principe du droit international voire une conception générale du droit, que toute violation d'un engagement comporte l'obligation de réparer".[41] The opinions quoted that concern the essence of responsibility emphasize rightly one of its elements, namely that the violation of law induces a secondary legal relation. They have, however, two fundamental deficiencies: (a) As referred to rightly by the Soviet professor G. Tunkin, if the violation of an international obligation brings about a new obligation and it is not met by the State, either, then a further newer obligation comes about according to this opinion, in case of breaching this liability, too, a newer one more, and this process could be continued in this way *ad infinitum.*[42] (b) On the other hand, the responsibility of State cannot be restricted to a unilateral obligation of reparations of the State committing the violation of law if only because, howerer an obligation like that is actually brought about by the responsibility in international law, — as the Societ experts of international law, as well, refer to — *the responsibility also enables sanctions to be applied against the State violating law.*[43] The sanction is a general natural consequence of the violation of law. And this right supposes, too, on the other hand, that the State violating the law, apart from its obligation of reparations, has another duty, as well: it must endure the sanctions applied against it. Had it not been obliged to tolerate that then it could regard the coercive actions executing the sanctions against it as illegal measures and take legal steps against them.[44] *The responsibility of a State in international law brings therefore about a double obligation of the violating State, partly an obligation to repair, partly an obligation to tolerate the sanctions.* But if responsibility induces also an obligation to tolerate the sanction then it is logical that, *on the other hand, it creates a subjective right, as well,* for the State or other subject of international law violated, *to apply the sanction.* This, however, does not mean necessarily that this bilateral legal relation has only two subjects, coming about always between the violating and violated States. The conception of

[40] *H. Accioly:* Principes généraux de la responsabilité internationale d'après la doctrine et la jurisprudence. Recueil des Cours, 1959. Tome 96, p. 353.

[41] Publications de la Cour Permanente de Justice Internationale, Série A—N° 17, p. 29.

[42] *G. Tunkin:* A nemzetközi jog elméletének kérdései (Problems of the theory of international law). Budapest, 1963, p. 254.

[43] Cf.: *D. B. Levin:* Otvestvennosty gosudarstv v sovremennom mezhdunarodnom prave. Moskva, 1966, pp. 10—11.

[44] Cf.: *G. Tunkin:* Op. cit., p. 296.

responsibility as a legal relation between two States was suitable for the old theory of international law where in individual interest was predominant and any international conflicts included also the armed ones, were considered, therefore, as the private affairs of the States interested. Since then, however, radical changes have taken place in international law and the idea of public interest has come more and more into prominence besides the individual interests.[45] Since the Charter of the U. N. O. being created, the war definitely ceased to be a private affair of the touched States, it is qualified as an international delict, and the States may raise a claim against the committer, acting unitedly and is concert, through the Security Council, taking no regard to against which ever and how many of them it was directed. Under the present conditions, every war touches more or less immediately the interests of all the other States. In connection with that it was established by the Soviet Minister of Foreign Affairs, A. A. Gromiko in 1960: "If already a quarter of a Century ago we had any legal basis to recognize that peace is indivisible then it is much more valid for our days, for the age of the modern armaments of an up-to-date warfare when only some minutes are needed for getting over the distances between the countries of the world lying even the farthest from each other."[46] The problem of state liability is raised in a general sense by the Draft of the Czechoslovak Government submitted at the Seventeenth Session of the General Assembly of the U. N. O., in the course of the debate as regards the fundamental principles in international law concerning the amicable connections and co-operation of States: "L'Etat est responsable de la violation des normes du droit international, surtout s'il s'agit d'actions mettant en danger la paix et la sécurité et les relations amicales entre les peuples, de même qu'en cas d'actions violant les droits légitimes d'autres Etats et de leurs citoyens."[47] The responsibility for violating peace cannot be considered, therefore, in our days any more as a relation between the aggressor and the attacked State. That is, to be sure, not the single case as an international delict is directed against the community of States, the whole international community. In opposition to the older conception in international law — according to which the State is only bound by norms accepted by it by express terms or by implication — there has appeared the concept of *ius cogens* (peremtory norm) in international law, touching the problem of international responsibility, as well. The contraposition of cogent and dispositive norms applies some notions borrowed from internal law, first of all from civil law. The cogent law in civil law means that the validity of rules like these cannot be excluded by the contracting parties, they are compulsory without any condition, being valid independently of the agreement of parties. The dispositive rules, on the other hand, are only valid if the parties did not give another order, their validity can therefore be excluded

[45] Cf. *László Buza:* "In the international law of new spirit, opposite to the old, so-called classic internationnal law, the *public spirit* prevails (L. Buza's italics); this means the principle that in the course of creating and applying the norms of international law the public interests of community are to be taken as a basis and not the separate interests of the single States." (A nemzetközi jog fő kérdései az új szellemű nemzetközi jogban) (Principal problems of international law in the international law of new spirit). Budapest, 1967, p. 17.

[46] Quoted by *G. Tunkin:* Op. cit., p. 289.

[47] Documents officiels de l'Assemblée générale dix-septième session, A/G. 6./L, 505.

with a different agreement.[48] To apply the concepts of internal law to international law relations without any change is mostly not without any problem. The concept of dispositive and cogent norms in internal law is not an exception of that, either.[49] In the municipal law, above the subjects of law there is a legislator that can prescribe a conduct compulsorily or can complete any deficiensy of law. The dispositive or cogent character of the manifestation of its will asserts itself in the course of the application of law. Thus, *e. g.*, a legal court will regard as valid the disposition of a contract in civil law that departs from that of a legal norm depending on whether that norm is of dispositive or cogent character. In international law there is no power like that above the States. The States may bring about, on principle in any problem, with bilateral or particular provisions special legal norms that are binding them similarly to the norms of the universal international law and, in the course of the execution of international law, are to be considered both by the single States and by the international courts of justice as positive rules that cannot be departed from. In this sense Ferenc Márkus is right as he writes that "the fundamental method of regulation (in international law) is to establish the cogent norms".[50] In international law, however, if we apply correctly the analogy obtained from the internal law, the existence of ius cogens arises not on the level of execution but on that of *legislation*. That is to say, it raises the problem if there are rules of the universal international law that cannot be overruled by a bilateral or particular creation of law. The existence of ius cogens means, therefore, that there are some norms in international law obligating the States even in spite of their will, without their consent by express terms or by implication. And if they depart from these norms in their bilateral relations then these departing norms will be null and void and the norms of cogent character will take up the place of them. The existence of ius cogens manifests itself, therefore, in the restriction of the freedom of treaty making by States. This freedom, however, is to be considered as one of the fundamental manifestations of State sovereignty. Accordingly, it is easy to understand that the international jurisprudence for a long time definitely opposed the existence of ius cogens, seeing in it a serious restriction of State sovereignty. Thus for instance, G. Guggenheim was establishing: "Entsprechend dem bereits an anderer Stelle erwähnten grundsätzlich-dispositiven Charakter allen Völkerrechts, besteht keinerlei Begrenzung des möglichen Inhalts völkerrechtlicher Verträge. Es gibt keine Regel, auf deren Grundlage zwingendes von nicht-zwingendem Völkerrecht unterschieden werden könnte oder der zufolge ein Verstoß gegen die guten Sitten als Völkerrechtsverletzung zu betrachten wäre."[51] The existence of the ius cogens is rejected also by G. Schwarzenberger with the explanation that "... *jus cogens*, as distinct from *jus dispositivum*, presupposes the existence of

[48] Cf.: *Világhy—Eörsi:* Magyar polgári jog (Hungarian civil law), vol. I. Budapest, 1962, p. 73.

[49] *Ferenc Márkus* puts it still more sharply, establishing that "... the internal legal concept of dispositive and cogent norms cannot be applied in international law at all or only with some reservations". (Cf.: Jus cogens and jus dispositivum a nemzetközi jogban [Ius cogens and ius dispositivum in international law]). In: "Állam- és Jogtudomány" (Political Science and Jurisprudence. Budapest), 1967, vol. X, pp. 212—213.

[50] Op. cit., p. 213.

[51] Lehrbuch des Völkerrechts. Basel, 1948, Bd. I, p. 56.

an effective *de jure* order, which has at its disposal legislative and judicial machinery able to formulate rules of public policy, and, in the last resort, can rely on overwhelming physical force. Unorganised international society lacks such organs".[52] The restriction of the freedom of treaty of States is rejected by the Havanna Convention on treaties, 1928. as well, its Article 18 declaring: "Two or more States can agree that their relations are to be governed by rules other than those established in general conventions celebrated by them with other States."[53] The traditional conception sees, therefore, in the norms of universal character in international law exclusively dispositive rules that are effective only if there is no conflicting particular or regional legal norm. László Buza is writing, in connection with that, as follows: "In international law, by the nature of that law, their is no ius cogens . . . The States, as a result of their sovereignty, may arrange freely their mutual connections between themselves provided that the arrangement does not violate any obligations of them existing in the relation of a third State."[54] This point of view involves, however, some inconsistency. It is namely questionable what is the nature of the rule which the prohibition of some obligation subsisting towards a third State is based upon. Although in this connection the author is thinking that "the restriction isn't a result of a higher ius cogens in this case, either, but it is based on the prohibition of violating an obligation accepted legally by the State itself"[55] — it is probable that a treaty that is in contradiction with an obligation based on a treaty or the customary law for a third State, must be regarded as illegal even if this previously created legal rule does not contain any disposition depriving the contracting parties of the right to undertake any contrary obligations in international law towards other States. In a case like that — if there is at all a rule forbidding the creation of a law that is at variance with a legal obligation towards a foreign State — that prohibition can be cased only on a cogent norm of general character that cannot be excluded with a bilateral legislation. The possible existence of norms of this nature has appeared, in fact, in the jurisprudence of international law very early. To be sure, the theory of natural law did not distinguish, as yet, cogent norms from those of other character, the unchangeability of international law considered to have the character of natural law was self-evident.[56] A later opinion that deduced international law from the agreement of the States is starting, as mentioned before — from the (in principle unrestricted) freedom of the States to enter treaties, considering that to be a criterion of sovereignty and, sometimes, even to be a State.[57] Sometimes, howerer, like a remainder of the conception of natural law, we meet not only in the jurisprudence but also is the international jurisdiction, some opinions that, starting from certain (often moral) bases,

[52] A Manual of International Law. London, 1967, pp. 29—30.

[53] Cf.: American Journal of International Law, 1935. Supplement, pp. 1205 sqq.

[54] Op. cit., p. 36.

[55] *L. Buza:* Op. cit., p. 36.

[56] Cf.: *M. Schweitzer:* Jus cogens im Völkerrecht. Archiv des Völkerrechts. 15. Bd., 1971. p. 198.

[57] Cf., *e. g., A. S. Bustamante y Sirven:* ". . . on doit considérer comme personne juridique internationale toute société humaine civilisée, souveraine d'un territoire, avec un gouvernement propre organisé qui ait dans ses fonctions la représentation extérieure et le droit de conclure des traités internationaux." (Droit International Public. Tome I, Paris, 1934, p. 121.)

establish some obligations of States even without the manifestation of their will. For example, W. Schücking, in his dissenting opinion delivered in the Oscar Chin-case, 1934, emphasized the possibility of the existence of rules of cogent nature, establishing in the event, so to say for an example: "The Court would never, for instance, apply a convention the terms of which were contrary to public morality."[58] The attitude of the International Court of Justice concerning the ius cogens is ambiguous. First it established in an advisory opinion about some reservations connected with the Convention of Genocide: "Il est bien établie qu'un Etat ne peut, dans ses rapports conventionnels, être lié sans son consentement et qu'en conséquence aucune réserve ne lui est opposable tant qu'il n'a pas donné son assentiment."[59] Later on, in the same opinion the Court held that "... les principles qui sont à la base de la Convention sont des principles reconnus par les nations civilisées comme obligeant les Etats même en dehors de tout lien conventionnel".[60] And of late, Justice Kotaro Tanaka assumed the point of view in the Continental Shelf Cases that the principle of equal distance was of cogent character as a principle of delimitation.[61] The recognition of the existence of ius cogens keeps spreading more and more in the international jurisprudence, as well.[62] And since the Vienna Convention, 1969, codifying the law of treaties, the problem has left the domain of the theory of law and jurisprudence, and has become a rule of positive law. Article 53 of the Convention mentioned is namely declaring: "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law." The existence of the ius cogens is referred to also by Article 64 of the Convention mentioned.[63] The discussion about the existence of legal rules with the nature of ius cogens has, therefore, already been decided by the positive international law. But a number of problems has nevertheless remained open. It is true, for example, that the Convention mentioned is declaring that "... a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character"[64] —

[58] PCI, Series A/B, No. 63, 1934, p. 150.

[59] Réserves à la Convention sur le génocide, Avis consultatif: C. I. J. Recueil 1951, p. 21.

[60] Op. cit., p. 23.

[61] "However, if a reservation were concerned with the equidistance principle, it would not necessarily have a negative affect upon the formation of customary international law because in this case the reservation would in itself be null and void as contrary to an essential principle of the continental shelf institution which must be recognized as jus cogens" (North Sea Continental Shelf, Judgment, I. C. J. Reports. 1969, p. 182).

[62] Cf. *e. g., G. Fitzmaurice:* The General Principles of International Law considered from the Standpoint of the Rule of Law. Recueil des Cours 1957. Tome 92, p. 120, *J. H. W. Verzijl:* International Law in Historical Perspective. Leyden 1968. Vol. I, pp. 77 sqq., *A. Verdross:* Jus dispositivum and Jus cogens in International Law. AJIL 1966, pp. 55 sqq., *M. Virally:* Réflexions sur le "jus cogens". Annuaire Français de Droit International. 1966, pp. 5—29, *G. Tunkin:* Op. cit., pp. 116—122, *Hanna Bokor —Szegő:* New States and International Law. Budapest, 1970, pp. 64—70.

[63] "If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates. (As to the text of treaties, cf.: AJIL. 1969, pp. 875—903.)

[64] See Article 53 of the Treaty.

but it does not enumerate these norms in a concrete way, and also the special literature of international law is very careful with enumerations.[65]

But for investigating the responsibility in international law, it is not necessary to go into further details of this question. The fact itself that there are norms of cogent nature answers the question why we cannot regard the responsibility in international law as a legal relations merely between two States, resp. why it cannot be identified with either the liability in civil law or that in criminal law. The norms of international law with the nature of ius cogens — as referred to by the jurisprudence, as well — are eventually no rules of superior quality. They are quite simply some norms expressing the public interest of States that cannot be amended with a praticular or bilateral creation of law, that is to say, their amendment can take place only with norms of general character.[66] In case of violating the norms considered to be cogent, the offending State finds itself face to face with the whole international community. It is something similar to the social dangerousness in criminal law. In that case, the violation of law is no more the affair of the violating and violated States. It is an international delict that violates the common interest of every State. Therefore, on one side of the legal relationship there is standing the whole international community.[67] And in the gravest case — *viz.* if the violated rule is a cogent norm prescribing the prohibition of war — also the procedure against the violating State has the character of public force. On the other hand, if the illegal behaviour has violated for example a bilateral commercial agreement and, as a result of that, the other party has suffered some material damage then the responsibility for that is much more similar to the liability in civil law without being identical with it. As in the normative order of international law the single formations of responsibility are not separated from one another, as yet; and what in internal law are manifested separately as liabilities of civil law, labour law, criminal law, etc., in international law do appear for the time being as a uniform system of responsibility: it is obvious that it would be thoroughly needless to insist on any analogy with the peculiar responsibility formation of any branch of internal law. We must agree with D. Anzilotti who sees being some similarity to the responsibility types occurring in internal law but, he writes, "... la verità à che nei rapporti interstatuali

[65] Thus, *e. g.*, according to *I. Brownlie* there are like these the rules prohibiting aggressive war, the law of genocide, trade in slaves, piracy, other crimes against humanity, and the principle of self-determination. (Cf.: Principles of Public International Law. Oxford, 1966, p. 417.) It is rightly established by *Hanna Bokor—Szegő*, mentioning similar principles (the principle of non-aggression, the peaceful settlement of disputes, the freedom of the high seas) that the norms of this nature also may change in their content (Cf.: Op. cit., p. 70), that is to say, there would be not possible at all to give an enumeration valid for any time.

[66] Cf., *e. g.*, the statement of *Géza Herczegh* who is declaring, speaking of the jus cogens: "Here is a case not of principles or rules of a superior order, or legally stronger, but one of the settlement of problems of universal interest, which can be brought under regulation only by universal rules." (General Principles of Law and the International Legal Order. Budapest, 1969, p. 77.)

[67] A similar point of view is contained in a Manual of International Law, published in the U. S. S. R., dividing the violations of international law into two groups: those violating only the rights of a single State, and those graver violations of law that are directed against all the States. (Cf.: Kurs mezhdurarodnogo prava. Moskva. 1969, vol. V, pp. 420—421 and 434—435.) The same opinion is represented by *D. B. Levin:* Op. cit., pp. 20—21 and 38—39, *G. Tunkin:* Op. cit., pp. 288—289.

non abbiamo nè una responsabilità penale nè una responsabilità civile; abbiamo semplicemente una responsabilità di diritto internazionale".[68]

Another component of the legal liability is that the responsibility only takes place if the violation of law can be imputed to a subject of law. The problem to be examined is, therefore, what imputability means in international law. Imputability in the internal law of States is mostly based on culpability. In connection with the responsibility of States in international law, the international jurisprudence could not bring about sofar a uniform point of view. Both the theory of culpability and that of objective liability have their own partisans.

The problem of culpability — as noticed by the Italian expert of international law, R. Ago — is one of the most interesting and most complicated problems of the general theory of international law.[69] The founding of the theory of culpability is generally attributed to H. Grotius who made it clear that the communities — both States and other communities, as well — are not responsible without their own action or omission for the acts of the individuals.[70] This opinion, that is reflecting the influence of Roman law, predominated in the field of the international jurisprudence till the Nineteenth Century and was represented by Pufendorf, Ch. Wolff, E. Vattel, and others. The principle of culpability is accepted by H. Triepel, too, according to whom the state responsibility for the acts of individuals can belong to two types lying on thoroughly different bases: one of them is the obligation to repair, the other one the obligation to give statisfaction to the offended party,[71] the latter one, however, can take place without culpability, too.[72] Thus Triepel, even if he has not thoroughly abandoned the conception of culpability, made some concession for objective liability. Anzilotti, on the other hand, criticizing the theory of culpability, referred to that the theory of culpability in international law is a result of the influence of Roman law. But as we can only speak of malice or negligence in connection with individuals, both of them can be connected only with persons or organs acting for the State.[73] An act of a state functionary, on the other hand, may be qualified in a given case as a violation of international law, the State being responsible for it, although the functionary is not guilty and his act does not violate any internal law, either.[74] Anzilotti's theory of objective responsibility has gained several adherents. Thus it is

[68] *D. Anzilotti:* Teoria Generale della Responsabilità, p. 101.

[69] *R. Ago:* Das Verschulden im völkerrechtlichen Unrecht. Zeitschrift für öffentliches Recht. Bd. 20. 1940, p. 449.

[70] *Hugo Grotius:* A háború és béke jogáról (De iure belli ac pacis), vol. II. Budapest, 1960, p. 471. Grotius declares in a similar way in another place of his quoted work, as well: The rule that somebody is responsible without his own culpability, as well, for the acts of his personnel, is not based on international law... but on the positive internal law. (Op. cit., p. 353.)

[71] *H. Triepel:* Völkerrecht und Landesrecht. Tübingen, 1907, p. 334.

[72] "Aus der Handlung des Individuums kann nun aber dem Staate neben der Pflicht zur Reparation oder ohne sie die Pflicht erwachsen, den verletzten Genugtuung zu verschaffen. Diese Leistung ist nicht Inhalt einer Deliktsobligation; sie entsteht auch ohne Schuld" (*H. Triepel:* Op. cit., p. 335).

[73] Cf.: *D. Anzilotti:* Cours de Droit International Tome I. Paris. 1929, pp. 497—498.

[74] *D. Anzilotti:* Cours de Droit International, p. 500.

accepted by P. Guggenheim[75] or the Hungarian István Kertész,[76] as well, while others adopt certain intermediate points of view. Thus for example I. Münch entering into the details of the problem in his very fundamental and excellent work, takes the responsibility without culpability to be possible, too,[77] establishing also that "... es andererseits jedoch Fälle gibt, in denen erst das Vorhandensein von Schuld ein Verhalten zum völkerrechtlichen Delikt werden lässt".[78] A similar mediatory standpoint is accepted by K. Furgler; according to his opinion: "Das Völkerrecht ... kennt weder eine reine Schuldtheorie, noch eine ausschliesslich objektive Verantwortlichkeit der Staaten."[79] The debate is, anyway, not decided et all by setting up the theory of objective responsibility. In literature rather the adherents of the theory of culpability have so far been in majority. That is the opinion, for example, of A. Verdross,[80] G. Dahm[81] Oppenheim-Lauterpacht[82] and of others,[83] as well.

The International Court of Justice — although not quite unequivocally — assumed the point of view of culpability. In the Korfu Channel Case — investigating the problem if Albania is responsible for the explosion on mines of the English warships in the Albanian territorial waters — The Court held: "Il est vrai, ainsi que le démontre la pratique internationale, qu'un Etat, sur le territoire duquel s'est produit un acte contraire en droit international, peut être invité à s'en expliquer. Il est également vrai qu'il ne peut se dérober à cette invitation en se bornant à répondre qu'il ignore les circonstances de cet acte ou ses auteurs. Il peut, jusqu'à un certain point, être tenu de fournir des indications sur l'usage qu'il a fait des moyens d'information et d'enquête à sa

[75] Die Organhaftung ist stets Kausal — und nicht Schuldhaftung (*P. Guggenheim:* Lehrbuch des Völkerrechts. Basel. 1951. Bd. II, p. 558.)

[76] "Although we may reason about that a State may or may not be blamed because of an error, ommission or, if you like it, guilt at, or because of, the violation of an international obligation. But the international responsability is not induced by the error, the ommission but by the objective fact of having violated the norms of international law." (*István Kertész:* Az állam nemzetközi jogi felelőssége.) (Responsibility of the State in international law.) Budapest, 1938, p. 193.

[77] "Ein völkerrechtliches Delikt kann durchaus auch dann gegeben sein, wenn kein Verschulden vorliegt" (*Ingo von Münch:* Das völkerrechtliche Delikt. Frankfurt am Main, 1963, p. 163).

[78] Op. cit. pp. 160—161.

[79] *K. Furgler:* Grundprobleme der völkerrechtlichen Verantwortlichkeit der Staaten unter besonderer Berücksichtigung der Haager Kodifikationskonferenz, sowie der Praxis der Vereinigten Staaten und der Schweiz. Zürich, 1948, p. 96.

[80] "Nach den allgemeinen Rechtsgrundsätzen besteht aber kein Zweifel darüber, dass die Erfolgshaftung nur für einzelne Arten von Beschädigungen anerkannt ist, während grundsätzlich eine Verantwortlichkeit nur angenommen wird, wenn der Schaden entweder vorsätzlich oder fahrlässig verursacht wurde" (*A. Verdross:* Völkerrecht, Wien, 1959, p. 300).

[81] "Sofern nichts anderes vertraglich vereinbart worden ist, sind die Staaten nur dann zur Entschädigung und Wiedergutmachung verpflichtet, wenn ihre Organe vorsätzlich oder fahrlässig handeln" (*G. Dahm:* Völkerrecht. Stuttgart, 1961. Bd. III, p. 228).

[82] "An act of a State injurious to another State is nevertheless not an international delinquency if committed neither wilfully and maliciously nor with culpable negligence." (International Law. London—New York—Toronto. Seventh ed. Vol. I, p. 311.)

[83] Thus, *e. g.,* culpability is considered to be necessary by *P. Fauchille:* Le fait d'un Etat n'entraine la responsabilité de celui-ci que s'il constitue une faute, c'est-à-dire s'il est illicite." (Traité de Droit International Public. Tome Ier, part 1. Paris, 1922, p. 515.)

disposition. Mais on ne saurait conclure du seul contrôle exercé par un Etat sur son territoire terrestre ou sur ses eaux territoriales que cet Etat a nécessairement connu ou dû connaître tout fait illicite international qui y a été perpétré non plus qu'il a nécessairement connu ou dû connaître ses auteurs. En soi, et indépendamment d'autres circonstances, ce fait ne justifie ni responsabilité prima facie ni déplacement dans le fardeau de la preuve."[84] The Court, therefore, did not establish the responsibility of Albania on the basis of the mere fact that the accident had taken place on the territorial waters of Albania but it presumed that Albania should have known about the existence of the minefield,[85] and as she had omitted to warn the English ships, "ces graves omissions engagent la responsabilité internationale de l'Albanie".[86] To be sure, in the decision of the Court it was not declared expressis verbis that the basis of the responsibility was the culpable behaviour of Albania, it could be concluded from the formulations quoted. On the other hand, although it was not proved that Albania had actually know about the existence of minefield, that was nevertheless presumed from the fact of the Albanian sovereignty over the territory. This comprises implicitely that the responsibility may be established on the basis of the fact of territorial sovereignty, even without the culpability being proved. The decision of the Court is, therefore, not entirely unequivocal as to the problem of culpability. In some dissenting opinions annexed to the decision is, however, quite unequivocally expressed the principle that the responsibility of a State can only be established on the basis of culpability. Thus, *e. g.*, it is established in the dissenting opinion of the Soviet Judge of the International Court of Justice, S. Krylov: "La responsabilité de l'Etat résultant d'un délit international présuppose au moins une faute de la part de cet Etat. On ne peut pas baser la responsabilité internationale de l'Etat sur l'argument qu'un fait imputé à cet Etat a eu lieu sur son territoire — terrestre, maritime ou aérien. On ne peut pas transposer dans le domaine du droit international la théorie du risque développée dans le droit civil interne de plusieurs pays. Pour fonder la responsabilité de l'Etat, il faut donc recourir à la notion de faute."[87] The principle of objective liability was refused by B. Winiarski, as well, establishing in his dissenting opinion that a State cannot be held responsible only for on its territory an act violating international law was committed.[88] In his opinion, a State is only responsible for an illegal act if it was committed by it, if it left undone the precautionary measures necessary to prevent the illegal act, or if it omitted to make a search for, and to punish, the perpetrators of acts like these.[89] Similarly, the culpability is held to be the basis of responsibility by the dissenting opinions of Justices Ph. Azevedo,[90] Badawi,[91] and

[84] Affaire du Détroit de Corfou. Arrêt du 9 avril 1949, C. I. J. Recueil, 1949, p. 18.

[85] "... la Cour tire la conclusion que le mouillage du champ de mines, qui a provoqué les explosions du 22 octobre 1946, n'a pas pu échapper à la connaissance du Gouvernement albanais. (Ibid., p. 22.)

[86] C. I. J. Recueil, 1949, p. 23.

[87] C. I. J. Recueil, 1949, p. 72.

[88] C. I. J. Recueil, 1949, p. 53.

[89] C. I. J. Recueil, 1949, p. 52.

[90] According to Azevedo, the negligence of the riparian State is involving its responsibility. (C. I. J. Recueil, 1949, p. 94.)

[91] Badawi declares: "... il n'existe pas à la charge de l'Albanie une faute quelconque qui aurait causé l'explosion et sur laquelle serait éventuellement fondée sa responsabilité internationale pour le dommage subi." At the same place he declares

Ečer,[92] as well. As the International Court of Justice has not taken the part unambiguously either *pro* or *contra* the culpable responsibility and, overmore, the problem has not been interpreted quite unequivocally in the practice of States, either, it is easy to understand that it led to serious debates in the course of codification, as well.

At the session of the International Law Institute at Lausanne, 1927, in the course of negotiating the Draft about the responsibility of States, the reporter of the Draft took the view that a State is only responsible if the violation of an obligation in international law resulted from the culpability of its organs,[93] while N. Politis, A. de Lapradelle, Le Fur and others were of the opinion that they should not take sides in this question as the legal science itself was divided in that respect.[94] Ch. De Visscher thought that the theory of culpability was saturated with psychological elements that were to be excluded from the domain of international law; the theory of risk, however, would go too far in his opinion; therefore, he considered to be the best solution to presume generally the responsibility of State, determining anyway the exact conditions of its being exempted from the responsibility.[95] In the course of the codification procedure of the League of Nations, neither the Guerrero-Report nor the so-called "Bases of discussion" took the part of the culpability or the objective liability. They simply confined themselves to declare that the international responsibility was the consequence of an illegal act originated from the violation of a treaty or of the international customary law.[96] This solution — as it does not examine the existence of culpability — is leaning rather to the objective liability while other drafts, mainly those of private character, in connection with the responsibility in international law do require, on the contrary, the culpable liability. The situation is like this in case of the Draft made by the Japanese section of ILA.[97] And a chapter of the Draft made by the Inter-American Law Commision in 1962 expressly rejects the objective responsibility.[98]

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further: "... le droit international ne connait pas la responsabilité objective ..." (C. I. J. Recueil, 1949, p. 65).

[92] According to the opinion of the Czechoslovak Justice, B. Ečer, the judgement would have had to declare that "... la responsabilité d'un Etat suppose de sa part soit *dolus* soit *culpa*" (Italics in the original text. C. I. J. Recueil, 1949, p. 127).

[93] See Article 3 of the original Draft of Strisower: „L'Etat n'est responsable que si l'inobservation de l'obligation internationale est la conséquence d'une faute de ses organes" (Annuaire de l'Institut de Droit International, Session de Lausanne, 1927. Tome III, p. 103).

[94] Cf.: ibidem, p. 103—106.

[95] Cf.: Annuaire, p. 106.

[96] Cf., *e. g.*, Item 1 of the Conclusions summed up by G. Guerrero or the Basis of Debate No. 7 (Annuaire de la Commission de droit international, 1956. Vol. II, pp. 222—223).

[97] "A State is responsible for injuries suffered by aliens within its territories, in life, person or property through wilful act, default or negligence of the official authorities in the discharge of their official functions, if such act, default or negligence constitutes a violation of international duty resting upon the State to which the said authorities belong" (The International Law Association, Report of the thirty-fourth Conference, London, 1927, p. 382).

[98] "La théorie du risque n'est pas admissible comme fondement de la responsabilité internationale" (Annuaire de la Commission du droit international, 1969. Vol. II, p. 159).

The problem of culpability was under a great discussion in the International Law Commission of the U. N. O., as well, in the course of codification. Although the reporter of the question, Garcia Amador, qualified the problem of the culpability — together with other problems — a pure theoretical problem,[99] but that was strongly discussed by some members of the Commission. Thus for example the Japanese member of the Commission, K. Yokota saw the problems of culpability and causality being important for solving the concrete questions,[100] as "... dans la plupart des causes la responsabilité internationale résulte d'une faute. Inversement, c'est un principe de droit international bien établi que toutes les fois, où une faute est imputable à un Etat, sa responsabilité internationale est engagée".[101] In the course of the debate, the culpability was considered necessary for establishing the responsibility of State by S. B. Krylov[102] and C. Salamanca,[103] as well, while others, *e. g.*, Padilla Nervo were of a different opinion. They thought that it would be a wrong idea to maintain the traditional theory of culpability in the age of the manufacture of nuclear weapons because, for instance, the damages caused by the experimental explosions involve the international responsibility of States without speaking of culpability and even of the violation of an international obligation.[104] E. Sandström suggested a mixed system, similarly to the solution of the internal laws in the most States[105] while according to Sir Gerald Fitzmaurice it would be the best to speak, instead of culpability, of imputability (l'imputabilité).[106]

It is actually not easy to apply the concept of culpability or — using the expression of criminal law — of guilt in international law. As culpability or guilt means a psychic connection between the individual and the act of offender, a psychic connection because of which the illegal act can be imputed to him:[107] this concept may be raised, therefore, only in the relation of physical persons. As regards the responsibility of State, there arises the problem, whether or not the State as an abstract juristic person, as a geographico-political unit can be declared guilty in the violation of an international legal norm, taking into consideration that the violation of the international obligation is usually committed by some state organ as a public body or by some functionary.[108] If we consider the State to be responsible only if the person acting in its name committed a voluntary or negligent violation of law, immediately arises the question, too, on the basis of which law the responsibility is to be

[99] Cf.: Annuaire de la Commission du droit international, 1957, I, p. 164.
[100] Cf.: Annuaire, 1957, I, p. 170.
[101] Ibidem.
[102] Cf.: Annuaire de la Commission du droit international, 1956, I, p. 261.
[103] Ibidem.
[104] Annuaire, 1957. I, p. 166.
[105] Annuaire, 1956. I, p. 261.
[106] Annuaire, 1957. I, p. 174.
[107] "Culpability is accordingly a psychic relation connecting the perpetrator to the socially dangerous act committed by him, expressed in the form of deliberateness or negligence, because of which his act is imputable to him" (*Kádár, M.—Kálmán, Gy.:* A büntetőjog általános tanai [General theory of criminal law]. Budapest, 1966, p. 416).
[108] This thought is conceived by *H. Kelsen* as follows: "Schuld des Staates kann immer nur Schuld von Menschen sein, deren schuldhaftes Verhalten dem Staat zugerechnet wird." (*H. Kelsen:* Unrecht und Unrechtsfolge im Völkerrecht. Zeitschrift für öffentliches Recht. Bd. XII. 1932, p. 538.)

investigated first: the internal or international law. The act of an individual acting for the State can violate the law on principle in three ways:

(1) The act is violating only the internal law of a State. This case does not belong to our interests, being not evaluative according to international law.

(2) The act is conflicting both with the internal and the international law.

(3) The act (behaviour) is a violation of international law without conflicting with the internal law of a State.

Let us see the second case when a state functionary is voluntarily violating his official duties prescribed by the internal law committing, at the same time, by that act also the violation of international law against a foreign State. (Supposing that in a typical case the internal law of a State is not conflicting with the obligations undertaken by the State in international law then this is the most frequent case because, in case of a harmony between the two laws, the internal law of a State must not prescribe any conduct that is lawful according to the internal law but prohibited by international law.) In a case like this, the culpability of the State could only, be established on the basis of culpa in eligendo the act of the functionary being not identical with the state will or his culpability with that of the State. The state will is otherwise not expressed by the individual decisions but by the legal rules that these decisions are based on. If, therefore, a State is prohibiting its authorities from billeting its troups on the residences of foreign diplomats in times of war but that is nevertheless ordained in a concrete case by an official, on what basis the State should be responsible for an act that is prohibited by its own internal law, taking therefore place in spite of its general will. A State can be held responsible on principle for the state acts carried out by its organs, the illegal acts are, however, no state acts — as it is established by H. Kelsen.[109] Leaving now out of consideration the application of culpa in eligendo, that is of higly equivocal value in international law (as to be seen later on), then the acts attributable to the State must be restricted to the acts carried out in a way prescribed by the internal law by a person acting for the State that, however, mean, at the same time, the violation of an obligation in international law towards foreign States. This supposes, at any rate, an internal legislative procedure that is in contradiction with the rules of international law, at which an individual decision inducing a concrete violation of law is, in fact, not necessary any more. If, namely, there is prescribed or made possible a procedure for a state organ by the internal law of a State the performence of which is resulting necessarily in the violation of an international obligation, it is in itself a basis for the responsibility of the State in international law.[110]

The theory exposed above is, however, not followed unequivocally by the

[109] Unrecht und Unrechtsfolge im Völkerrecht, p. 539.

[110] As referred to also by the literature of international law, if the State is responsible for the acts carried out by its organs, then it follows of that logically that the State is responsible for the acts of legislation, as well. (Cf.: *E. Vitta:* La responsabilità internazionale dello stato per gli atti legislativi. Milano, 1953, p. 25.) The responsibility of State for the legislative acts is declared also in the Basis for debate No. 2 elaborated at the Conference of The Hague: "La responsabilité de l'Etat se trouve engagée si le dommage subi par un étranger résulte soit du fait que l'Etat a adopté des dispositions législatives incompatibles avec les obligations internationales existant à sa charge, en vertu de traités ou un autre titre, soit du fait que l'Etat a négligé d'adopter les dispositions législatives nécessaires à l'exécution de ces obligations."

practice of States. According to this theory, namely, if a functionary acting as a state organ, transgressing its competence, that is acting in a way contrary to the internal law is performing a conduct that is, at the same time, a violation of an obligation towards a foreign State in international law, then this fact in itself would release the State from its obligation, taking into consideration that the state functionary has acted contrary to the law of the State, that is to say, contrary to its expressed will. In the literature of international law we are actually finding the adherents of this — from theoretical point of view — attractive and plausible opinion,[111] but it is hotly debated in the legal literature, as well[112] and there wasn't assumed, so far, any unequivocal position either by the international practice or the codification in this question.

In the state practice there may be found several cases where no responsibility was accepted by a State for acts inducing a violation of the law of other States, committed by their functionaries illegally, transgressing their competence or abusing their authority. The acts of this nature are named ultra vires acts in the literature of international law.[113] As for instance an English subject, named Tunstall, was illegally shot by a sheriff, the American Secretary of State, Bayard, answering the British diplomatic step, declared: "The United States could not be responsible for what was not an act of the Government. It was executed ... in opposition to its laws and in violation of its peace".[114]

On the other hand, there are in the practice also cases where the state official acted obviously unlawfully, his State nonetheless accepted the responsibility. Thus for instance, a Bavarian revenue officer, M. Brandner, persuaded some juvenile persons to kidnap a German citizen a warrant for the arrest of whom had been issued in the German Federal Republic for stealing a motor-car but who was then staying in Austria. The wanted thief was really kidnapped in Austria, carried through the border into the German Federal Republic and then arrested by Brandner. An official exchange of diplomatic notes took place between Austria and the German Federal Republic, Austria qualified the act kidnapping and the GFR apologized[115] what proves, at any rate, that the German Federal Republic accepted the responsibility for an unauthorized act committed obviously illegally by a functionary of it.

A similar uncertainty manifested itself in this question in the course of the codification, too. G. Guerrero, in his Report made for the Codification Conference at The Hague, is essentially excluding a responsibility for the ultra

[111] Here is first of all *H. Kelsen* to be mentioned. See, for instance, apart from his works quoted, his paper "Collective and individual responsibility for acts of State in international law" (The Jewish Yearbook of International Law. Jerusalem, 1948).

[112] Thus, *e. g.*, it is established by *K. Strupp:* "Ein Staat haftet für die kompetenzwidrigen Handlungen seiner Organe ohne Rücksicht auf deren Verschulden, nach dem Prinzip der Erfolgshaftung." (*K. Strupp:* Das völkerrechtliche Delikt. Handbuch des Völkerrechts. Bd. III. Berlin, 1920, p. 52.) *I. Kertész* is similarly declaring: "Besides emphasizing the previous and compulsory applying for every internal legal sid, we find that the establishment of international responsibility in case of the ultra vires actions of the functionaries committed in their official quality is in full harmony with the general principles of international law." (Op. cit., p. 144.) *K. Furgler* has a similar opinion, as well (Op. cit., pp. 25—26).

[113] Cf. connectedly: *Th. Meron:* International responsibility of States for unauthorized acts of their officials. The British Year Book of International Law. Oxford, 1957, p. 86.

[114] Cf. the case quoted and other examples: *Th. Meron:* Op. cit. pp. 90—92.

[115] Cf.: *Ingo Münch:* Op. cit., pp. 176—177.

vires acts. The State is only responsible for these: (1) if it had known about the preparations and did not prevent them, (2) if it has omitted to call his functionary to account for the illegal act executed, and finally (3) if the offended foreign citizen has no possibility for a legal procedure against the guilty functionary, resp. if the local legal courts denied him the possibility of legal remedies preseribed by the internal law.[116]

It is quite abvious that the basis of responsibility in the three cases mentioned is no more the (ultra vires) act committed illegally by the functionary but the omission of the State failing purposely to impede him in doing it or omitting to punish him for it, etc.

"Base de discussion" No. 12 is restricting the responsibility to the acts committed within the competence if they are at the same time violations of international law, as well.[117] At any rate, Base of discussion No. 13 is declaring: "La responsabilité de l'Etat se trouve engagée si le dommage subi par un étranger résulte d'actes accomplis par ses fonctionnaires, même en dehors de leur compétence mais en s'autorisant de leur qualité officielle lorsque ces actes sont contraires aux obligations internationales de l'Etat."[118]

The Draft prepared in the Conference of The Hague, however, is expressly holding the State liable for a violation of international law committed against a foreigner by a state functionary outside his competence but pretending to act in official quality except the case "si l'incompétence du fonctionnaire était si manifeste que l'étranger devait s'en rendre compte et pouvait de ce fait, éviter le dommage".[119] Similarly, also the Draft of the International Law Institute from 1927 is holding the State responsible for the acts ultra vires, declaring in Article One: "Cette responsabilité de l'Etat existe, soit que ses organes aient agi conformément, soit qu'ils agi contrairement, à la loi ou à l'ordre d'une autorité supérieure." — "Elle existe également lorsque ces organes agissent en dehors de leur compétence en se couvrant de leur qualité d'organes de l'Etat et en se servant des moyens mis, à ce titre, à leur disposition." In the course of the codification continued in the framework of the United Nations Organization, G. Amador was repeating in his Report Two essentially the Draft of The Hague, *viz.* that the State is responsible for the acts of its functionaries committed outside of their competence, as well, if they committed them by pretending the official quality of their procedure, except if the lack of competence is quite obvious.[120]

But if the State could always be held responsible for the acts of its functionaries that mean a violation of international law but are legal according to the internal law and in some cases even for their illegal acts, too, then the theory of pure culpability could be upheld in the latter case on the basis of the principle culpa in eligendo. That means that the State is obliged to choose the persons performing the state acts in a way that they, acting in the state organs, always proceed in compliance with the legal rules. But with what can it prove that it proceeded with due foresight at selecting the persons? That can only be proved if the functionary in question proceeded lawful that is to

[116] Cf.: Conclusions du rapport de M. Guerrero, Item 4. (Annuaire de la Commission du droit international, 1956, Vol. II, p. 223.)
[117] Cf. the Annuaire, quoted previously, Ibidem.
[118] Annuaire, Ibidem.
[119] Annuaire de la Commission du droit international, 1956. Vol. II, p. 226.
[120] Annuaire de la Commission du droit international, 1957, II, p. 123.

say, it did not commit any violation of law. If the functionary committed a violation of international law that can be imputed to the State, so it is proved by that that the State had committed an error in selection of that person.[121] But if we presume in any case like that the culpability in selection of the State, that is if we don't allow the State to exculpate iself from the responsibility by proving that it did everything for selecting the most suitable person, then it seems to be needless to emphasize culpability. It is namely thoroughly improbable that a State could exculpate itself in this way from a violation of international law committed by an ambassador, a police official or other organ of it, committed by the mentioned person using his official quality, by proving to have been maximum careful in the selection of that person. If in peace-time a war ship is cannonading a foreign ship, if a bomb-carrier is bombing a foreign State, if a military unit is crossing the border, it is hardly to be disputed that the State is responsible for that and there is, therefore, no room for exculpating it even if it proved any degres of diligence in selection and having actually no culpability, its organs acted quite independently of it and thoroughly arbitrarily. Consequently there seem those to be right in whose opinion not the concept of culpability is to be investigated first of all but instead of it the expression "imputability" is to be used.

When is a violation of international law imputable to a State?

(1) If the violation of law in question has been committed by an organ of the State, and

(2) if the committing functionary acted in his official quality or the act violating the international law was pretending that quality or misusing it.

(3) There does not exist any circumstance excluding imputability. (A circumstance like that is *e. g.*, if the official person acted as a private person, if the lack of acting legally is quite obvious.) *Imputability is, therefore, essentially the legal connection that exists between the State and its organs.* Is the violation of international law moreover also a material damage, for establishing the responsibility for the damage is not enough to ascertain by the organ of which State the violation was committed. It is also necessary that a *causal relation* should exist between the violations of international law committed by the state organ and imputable to the State. The responsibility because of the violation of international law exists even if a causative relation is lacking but then there is no responsibility for damages (*e. g.*, the damage was brought about by an elemental disaster, vis maior).

In some exceptional cases the responsibility of State is absolute (*e. g.*, making use of atomic energy or in connection with space exploration) when there is needed no violation of law at all. Also in cases like these is causal relation necessary, and even it is of decisive importance. As, however, responsibility takes place in absence of a violation of international obligations, as well, the causal relation can therefore exist between the damage and a conduct that is not qualified as a violation of international law. This happens, for instance, in connection with the use of atomic energy where it is declared by Item One, Article IV of the Vienna Convention on civil liability for nuclear

[121] *D. Anzilotti,* criticizing the theory of the principle of culpa in eligendo, is rightly establishing that if a State committed a culpability like this in the election that is such a defect in the structure of the State for which it is anyway responsible. (Teoria Generale della Responsibilità, p. 168—173.)

damage, 1963, that: "The liability of the operator for nuclear damage under this Convention shall be absolute."[122] In cases like this, even if there is no violation of law, the imputability is based on the connection between the nuclear activity and the damage what is proved suggestively by the continuation of Article IV of the Convention mentioned according to which the operator is relieved of the compensation if it is proved that the damage took place (1) owing to the negligence of the person damaged, (2) as a result of a military conflict, civil war, (3) due to elemental disasters, (vis maior).[123]

Although the dispositions of the Convention mentioned are arranging, in fact, not a responsibility in international law but one in civil law, also the procedure takes place before the competent legal court the territorial State according to the rules of the domestic law applied of the country, all this being prescribed by an international convention, it has yet an indirect influence on the responsibility in international law, as well. If, for instance, a State does not execute the Convention and a foreign State of citizen is injured then the debate can be transferred to international level becoming a discussion of States that must eventually be decided nevertheless only on the basis of the Convention mentioned.

A similar objective liability is brought about also by a Convention at Brussels, 1962, on the liability of operators of nuclear ships.[124] There is similarly an objective liability in connection with the space exploration, as well, as it can be established already from the first Convention concerning space research.[125] The imputability is therefore based on two facts in the exceptional cases when on the analogy of a dangerous service in the internal law an objective liability is prescribed by international law. The damaged party, for example in case of a damage originated from a nuclear activity has to prove: (1) That the damage is connected with the functioning of a nuclear institution, (2) that that institution is functioning on the territory of State X, and then the responsibility of State X has already come about.

In other cases of the international responsibility, the causal relation has generally no importance because the violation of international law is brought about by the state act itself or by the illegal act of a state organ acting in a lower instance.

[122] See the text of Convention in: International Atomic Energy Agency, CN—12/46, 2oth May 1963.

[123] Article IV, par. 2: "If the operator proves that the nuclear damage resulted wholly or partly either from the gross negligence of the person suffering the damage or from an act of omission of such person done with intent to cause damage, the competent court may, if its law so provides, relieve the operator wholly or partly from his obligation to pay compensation in respect of the damage suffered by such person. 3) (a) No liability under this Convention shall attach to an operator for nuclear damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war or insurrection. (b) Except in so far as the law of the Installation State may provide to the contrary, the operator shall not be liable for nuclear damage caused by a nuclear incident directly due to a grave natural disaster of an exceptional character."

[124] Article II, par. 1: "The operator of a nuclear ship shall be absolutely liable for any nuclear damage upon proof that such damage has been caused by a nuclear incident involving the nuclear fuel of, or radioactive products or waste produced in, such ship" (Cf. the Convention in: AJIL Vol. 57, 1963, pp. 268—278).

[125] Cf.: Articles VI and VII of the Treaty on principles governing the activities of States in the exploration and use of outer space, including the moon and other celestial bodies. (The American Journal of International Law, 1967, p. 646).

All this does not mean that the problem of culpability in international law is unimportant or even indifferent. In a given case, it may exert an influence on the severity, juridical estimation of the violation of law in a decisive way. There are namely some international delicts the commitment of which could not be restricted to a single organ of State. Thus, for instance, a war of aggression can be launched and made only with the deliberate decision of the State and there is no reason to investigate that this act was committed by Ruler, Government, Parliament, the Army or some commanding officers, etc. To be sure, the State can only act through its organs. But in the example mentioned, this act is that of the whole of the state organization, it can take place only by the decision of the State. Using an analogy from the criminal law, it is an international delict that can only be committed deliberately. Here it is very important, almost of decisive significance to investigate the culpability of State. Let us take the above-mentioned example: the commander of a warship, while of unsound mind, has a foreign merchant ship shelled. The ship is hit and sinks. The State under the colours of which the warship sailed is doubtless responsible for the action — even if the captain is not responsible for his actions owing to his moral irresponsibility — it must indemnity for the damages induced, apoligize, etc. The responsibility of the State in this case does not mean obviously any responsibility for the aggression: it is simply obliged to pay for the damages caused and to call the perpetrators to account. If, however, the war ship executed the action by higher order and her action was but the first step of an attack decided by the State, then that State committed an aggression and will be responsible for that. The legal consequences will ten be, of course, quite different from those in the first case. The responsibility of State can be extenuated and even declined by a subsequent action of the State, by punishing the person who violated the law, by repairing the damage induced, etc. This is the situation particularly if the state organ committing the violation of law is not qualified to represent the State in international relations and the violation was committed against a foreign citizen. In that case the violating act becomes relevant in international law only indirectly, to wit if the foreign State undertakes the diplomatic protection of its own citizen and with this act quasi takes the offence upon itself. The precondition of that is, on the other hand, that the foreigner had previously exhausted all the possibilities of the local legal remedies.[126] If, however, in a multiple-

[126] That is expressed very strongly in the various Drafts. Thus, *e. g.*, a decison of the International Law Institute from 1956 is declaring: "Lorsqu'un Etat prétend que la lésion subie par un de ses ressortissants dans sa personne ou dans ses biens a été commise en violation du droit international, toute réclamation diplomatique ou judiciaire lui appartenent de ce chef est irrecevable, s'il existe dans l'ordre juridique interne de l'Etat contre lequel la prétention est élevée des voies de recours accessibles à la personne lésée et qui vraisemblablement sont efficaces et suffisantes et tant que l'usage normal de ces voies n'a pas été épuisé. (Résolution sur "la règle de l'épuisement des recours internes". Annuaire de l'Institut de droit international, 1956, vol. 46, p. 358). The same principle is expressed in the Draft made by Harvard Law School, in 1961: Article 1.2. (a): "An alien is entitled to present an international claim under this convention only after he has exhausted the local remedies provided by the State against which the claim is made." (Draft convention on the international responsibility of States for injuries to aliens. Yearbook of the International Law Commission, 1969, Vol. II, p. 143.) Making use of the available local remedies is considered to be a precondition of any claim in international law by G. Amador's Draft, too. (Cf.: Annuaire de la Commission du droit international, 1961. Vol. II, p. 50.)

instance system of remedies the grievance is not repaired, if *e. g.*, the ultra vires, *i. e.* illegal act of the functionary proceeding in the first instance is followed by a similar act of another authority in a higher degree, and in a possible procedure in the third instance this is repeated, all this is referring to a so much defecting functioning of the state administration or jurisdiction where it is already difficult to deny certain culpability of the State. If, however, in the course of the procedure in the second instance the grievance was redressed, the possible damage compensated for, then in the event there is no violation of international law. It appears of that, on the other hand, that it is not an indifferent circumstance, by authorities of which instance the act of violation was committed. As long as the grievance can be remedied according to the internal law of the country, the affair remains on the level of the internal law.[127]

In a case where the immediately offended party of an international delict is another State, then in the majority of cases the organ violating the international obligation is of that kind that its acts are to be considered as the facts of the State. Thus apart from the affair of agression already mentioned, if a State does not perform a valid treaty of extradition towards another State, for instance serially refusing the extradition of war-criminals, that cannot take place without the knowledge of the Minister of Justice, of Foreign Affairs, and even of Government. The imputability is therefore not excluded, as a rule, by the lack of culpability of the State, but gravity and consequences of the violation of international law are decisively influenced by the investigation of culpability.

A third component of the general legal concept of responsibility is the repression of the State. As responsibility — as already mentioned — presupposes in international law, too, the possible application of sanctions, applied by single States or by a collectivity of them: thus it may be established the concept of the general legal responsibility can be applied on the responsibility in international law. Within that, it means a peculiar kind of responsibility that is specific and prevailing in the international connections.

[127] It is connectedly established by *E. M. Borchard*, who distinguishes between the acts of state functionaries of higher and lower ranks, that an illegal act committed by a state functionary of lower rank does not give in itself a basis to the responsibility of State. For that a further condition is still necessary, namely that the retraction of the illegal act and making responsible the perpetrator are omitted to be done by the State. (*E. M. Borchard:* The Diplomatic Protection of Citizens Abroad, or the Law of International Claims. New York, 1927, pp. 189—190.) In my opinion, at any rate, is not absolutely important whether or not the state functionary has a higher position. In certain cases there may be made non-appealable decisions by local authorities, too, that, if violating international obligations, give a basis to the responsibility of the State.