CHAPTER FOUR

THE VIOLATION OF INTERNATIONAL LAW AND ITS CONSEQUENCES

29. *The International Responsibility of States: a Controversial Issue*

The issue of State responsibility has received a great deal of attention from legal scholars since the beginning of the last century. Among the many contributions worth mentioning are the masterly works of Anzilotti,¹ Kelsen² and Ago,³ which have had a critical impact on understanding of the issue.⁴

These scholarly efforts are all the more remarkable in the light of the fragmentary and unsettled practice concerning responsibility, which makes the development of a theory valid for all violations of international law extremely difficult. This explains why, until quite recently, the topic was examined solely from the point of view of breaches of rules on the

³ See most importantly *RC* 68 (1939), 419-554, where Ago attempts to systematise the general characteristics of internationally wrongful acts. See also id., *Scritti sulla responsabilità internazionale degli Stati* (2 vols., 1978-1986).

treatment of foreigners, on which State practice was abundant and consistent. It also explains why the International Law Commission, which started to address State responsibility for the treatment of aliens in 1956 and later broadened its research to cover all violations of international law, completed its work only in 2001, after almost fifty years.\(^5\)

Questions relating to State responsibility can be divided into two groups, as the International Law Commission has substantially done. The first group concerns the internationally wrongful act of a State, i.e. the origins of responsibility, and covers issues relating to the elements of a wrongful act, such as the attribution of conduct to a State, the breach of an international obligation and the circumstances precluding wrongfulness. The second group concerns the legal consequences of an internationally wrongful act.

There is no need to explore matters relating to the first group. The First Part of the International Law Commission’s Draft Articles is, generally speaking, convincing. There exists, however, one significant point not explicitly addressed in the Draft Articles regarding the question of whether State responsibility is subjective, thus requiring a fault (faute) on the part of the State, or whether it is purely objective. This, then, is the only point relating to the origins of State responsibility which deserves attention here. More attention, however, will be given to the other parts of the Draft, dealing with the consequences of a wrongful act such as reparation and countermeasures.

30. *Fault as an Element of the Internationally Wrongful Act and the Essentially Objective Nature of International Responsibility*

Elements of general theory provide the background for an examination of whether fault is an element of the wrongful act of a State, or, in other words, whether State responsibility requires fault on the part of a State

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\(^5\) For the text of the 2001 Draft Articles (hereinafter: Draft Articles) with commentaries see *YILC 2001* (II, 2), 20-143. Currently, the Draft Articles have not been converted into a convention.