STATE RESPONSIBILITY - A STUDY WITH RESPECT TO TREATMENT OF ALIENS

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ABSTRACT

The laws on State responsibility are the principles governing when and how a State is held responsible for a breach of an international obligation. The law on State responsibility was not developed until recently. But the draft articles on responsibility of States for internationally wrongful acts were adopted by the International Law Commission (ILC) at its 53rd session in August 2001, on their second reading, and were then submitted to the Sixth Committee of the General Assembly. The General Assembly subsequently adopted Resolution 56/83 (12 December 2001) and took note of the articles and recommended them to the attention of the governments. Every State is under an international obligation not to ill-treat foreign nationals. State responsibility arising from ill-treatment is one of the commonest forms of responsibility that arises in international law today. Whether or not a State is internationally responsible for the way it treats foreigners depends on the standard of treatment which international law obliges that State to adopt. It is only, if the State falls below the standard, that it becomes internationally responsible.

Keywords: Codification, State Responsibility, Aliens, Ill-Treatment

INTRODUCTION

One of the functions of the General Assembly of the UN is "encouraging the progressive development of international law and its codification".[1]

In pursuance of this provision, the General Assembly established the ILC in 1947. The commission has a separate statute.[2] This commission is charged with the task of progressive development and codification of international law.

At the time, the commission first began considering the topic in the 1950s; State responsibility was generally thought of as involving the responsibility of States vis-à-vis aliens. The post-World War II world was not an ideal time to try to codify or develop the law relating to such issues. Debates reged in the international community regarding claims of so called permanent sovereignty over natural resources, the proposition that any nationalization had to be for a public purpose, non-discriminatory, and accompanied by prompt, adequate, and effective compensation; and whether the law required merely non-discrimination against alien or adherence to certain global minimum standards.[3] Indeed, some even argued that seizure of property was the deserved consequence of colonialism.

LAW ON STATE RESPONSIBILITY

At its first session in 1949, the ILC selected the topic of State responsibility as one of its first 14 topics, selected from 22, suggested by Hersch Lauterpacht in a review for the ILC Secretariat under its mandate to promote the progressive development and codification of international law. The topic was not new, having been selected for codification by the League of Nations. Work commenced in 1956 under the first Special Rapporteur, F.V.Garcia Amador, who began work in 1956, departing in 1961. In the next 40 years he was succeeded as Special

[1] Art.3 (1) (a) Charter of the UN.
[2] Resolution 74(II), General Assembly, Dt.21-11-1947

[3] For a survey of some of the debate, see, Richard B.Lillich (Ed.)."The Current Status of the Law of Staqte Responsibility for Injuries to Aliens" in International Law of State Responsibility for Injuries to Aliens (University Press of Virginia, 1983) I.

Rapporteur by Roberto Ago (1963-1980), William Riphagen (1980-1986), Gaetano Arangio-Ruiz (1987-1999) and, finally, by James Crawford from 1997 to 2001. The Special Rapporteur produced some 32 reports between them, and the ILC provisionally adopted 35 articles making up Part One (Origin of State Responsibiliy) between 1969 and 1980, and 5articles from Part Two (content, Forms and Degrees of International Responsibility) between 1980 and 1986. Between 1992 and 1996, the ILC Drafting Committee worked on the rest of Part Two and Part Three (Settlement of Disputes), making it possible for the ILC to adopt a text with commentaries in 1996 which it aimed to finalise by the end of 2001. Between 1997 and March 2001, James Crawford produced 4 reports on the articles and the Drafting Committee completed a provisional second reading of the Draft Articles, taking into account, government comments, State Practice and jurisprudence.

The work on State responsibility was finally completed in August 2001 when the ILC, after some 40 years of work, adopted the Draft Articles on their second reading. The articles were then submitted to the Sixth Committee of the General Assembly. The General Assembly subsequently adopted Resolution 56/83(12 December 2001) which took note of the articles and recommended them to the attention of governments.

The articles on responsibility of States for internationally wrongful acts marks a major step in the codification and progressive development of international law, comparable in significance to the Vienna Convention on the Law of Treaties.

THE NATURE OF STATE RESPONSIBILITY

The essential characteristics of responsibility hinge upon certain basic factors, firstly, the existence of an international legal obligation in force as between two particular States; secondly, that there has occurred an act or omission which violates that obligation and which is imputable to the State responsible and finally, that loss or damage has resulted from the unlawful act or omission.[4]

[4] H.Mosler, the International Society as a Legal Community (Dordrecht 1980) 157.

These requirements have been made clear in a number of leading cases for instance, in the Chrozow Factory case (Germany v. Poland),[5]the Permanent Court of International Justice (PCIJ) said that "It is a principle of international law and even a greater conception of law, that any breach of a primary obligation gives rise, immediately by operation of the law of state responsibility, to a secondary obligation such as cessation, reparation…."

Article 1 of the international law commission, Draft Articles on State Responsibility reiterates the general rule, widely supported by practice[6] that every internationally wrongful act of State entails responsibility. Article 2 provides that there is an internationally wrongful act of a State when conduct consisting of an act or omission is attributable to the State under international law and constitutes a breach of an international obligation of the State.[7] This principle has been affirmed in the case-law.[8] It is international law that determines what constitutes an international unlawful act, irrespective of any provisions of municipal law.[9] Article 12 stipulates that there is a breach of an international obligation[10] when an act of that State is not in conformity with what is required of it by that obligation. When an act of that State is not in conformity with what is required of it by that obligation, regardless of its, origin or character.[11]

A breach that is a continuing nature extends over the entire period during which the act continues and remains not in conformity with the international obligation in question,[12] while a breach that consists of a composite act will also extend over the entire period during whih

[5] 1928 PCIJ (Series A) No.17, p.29.

[6] ILC Commentary (2001)63.

[7] ILC Yearbook (1976) Vol.2, 75ff; ILC Commentary (2001)68.

[8] PCIJ Series A.No.9 Chorzow Factory case, 21; ILR 82, Rainbow Warrior case, 499.

[9] Art.3 See generally, ILC Yearbook, Vol.2 (1979)90, 2ff; ILC Commentary (2001)74.

[10] By which the State is bound at the time the act occurs. Art.13 and ILC Commentary (2001) 133, this principle reflects the general principles of inter temporal law, See, Island of Palmas case, (1928) 2 RIAA 829.

[11] See,ICJ Reports, Gabcikovo-Nagymaros Project case (Hungary v. Slovakia) (1977)7,38;ILC Commentary (2001)124.

[12] See, Art, 14. See also, European Court of Human Rights Judgement, Loizidou v Turkey, Merits, Application No. 15318 of 1989, decided on 18-12-1996 and European Court of Human Rights Judgement, Cyprus V.Turkey, Case No.25781/94 (10-5-2001).

that act or omission continues and remains not in conformity with the international obligation.[13] A state assisting another State[14] to commit an internationally wrongful act will also be responsible, if it so acted with knowledge of the circumstances and where it would be wrongful, if committed by that State.[15]

GENERAL ISSUES OF STATE RESPONSIBILITY

State responsibility occurs when a State violates an international obligation owed to another State. In the words of Article 1 of the ILC Draft Articles, "every internationally wrongful act of a state entails the international responsibility of that state" and this cannot be avoided simply by reason of the fact that the act is lawful under International law. (Draft Art.3).

In general terms, State responsibility comprises two elements; an unlawful act, which is imputable to the State. Necessarily, responsibility may be avoided if the State is able to raise a valid defence (a "circumstance precluding wrongfulness"). If not, the consequence of responsibility is a liability to make reparation or suffer the consequences of being internationally responsible. (Draft Arts 28, 31) An example of this is Security Council Resolution 687, which creates a compensation fund, financed by Iraq's oil reserves, out of which payments are made for all damages caused as a result of Iraq's unlawful invasion of Kuwait in 1992.

It is clear, however, that injury or damage is not a precondition to a finding of responsibility, although it may well be a precondition to the obligation to make reparation. Thus, international responsibility not causing injury (moral or material) may still involve consequences for the delinquent State. For responsibility to arise, it is enough that there has been an internationally unlawful act attributable to the State For example, in the I' m Alone case, the Joint Arbitration Commission ordered the US to apologies to Canada and awarded a substantial sum in recognition of the unlawfulness of the act of sinking. In I'm Alone case even though no

[13] Art.15.

[14] Directing or controlling it; see, Art.17 or Art.18.

[15] Art.16.

compensation was payable in respect of the actual damage caused. Of course, in most practical examples, the Claimant State will be alleging actual damage and this is certainly true in the majority of the cases concerning injury to foreign nationals considered below.

STATE RESPONSIBILITY AND TREATMENT OF ALIENS

Although the field of injuries to aliens and their property was and remains important, and achieving any consensus on it, at the time when ILC began its work in 1956, was impossible which became clear on the occasion when the work of the first special Rapporteur F.V.Garcia-Amador was debated.[16] Clearly a strategic retreat was called for.

In General, every State is under an international obligation not to ill-treat foreign national present in its territory. If the State violates this obligation in any way, it may incur international responsibility to the State, of whom the person is a national. In fact, State responsibility arising from the treatment, or rather ill-treatment, of foreign nationals is one of the commonest forms of responsibility that arises in international law today. Herein, we will consider both the procedural and substantive rules applicable to this particular type of international responsibility.

Central aspects of the modern law of State responsibility have historically developed on the basis of cases concerning the unlawful treatment of aliens and the so-called international minimum standard.[17] This field is also the key to the understanding of the content of many of the ILC Draft Articles. So, here our concern is limited to the more general aspects.

As we know, the modern rules concerning human rights (which prohibit the ill-treatment of all individuals, regardless of their nationality) are of fairly recent origin. But for more than 200 years, international law has laid down a minimum international standard for the treatment of

[16] International Law Commission, UN Doc. A/CN:4'SER.A/1957 (1 Y.B. 413th 416th meetings (1957) 154-58).

[17] R.B.Lillich. The Human Rights of Aliens in Contemporary International Law (Manchester University Press, Manchester 1984) D.F.Vagts "Minimum Standard", EPIL 8 (1985) 382-85 S.M.Schwebel."The Treatment of Human Rights and of Aliens in the International Court of Justice" ion V.Low/M.Fitzmaurice (Eds), Fifty Years of the International Court of Justice (1996) 327-50.

aliens (i.e. nationals of other States),[18] States are not obliged to admit aliens to their territory, but, if they permit aliens to come, they must treat them in a civilisedmanner. A fortiori, a State is guilty of a breach of international law if it inflicts injury on aliens at a time when they are outside its territory (for example, if Utopia orders Utopian serviceman, stationed in Lusitania, to attack Ruritanian residents). Indeed, a State may not perform any governmental act whatsoever in the territory of another State, without and latter's consent.[19]

These obligations, in the terms of ILC, belong to the category of primary rules, to put it in technical terms, failure to comply with the minimum international standard "engages the international responsibility" of the Defendant State, and the national State of the injured alien may "exercise its right of diplomatic protection".[20] i.e., may make a claim, through diplomatic channels, against the other state, in order to obtain compensation or some other form of redress. Such claims are usually settled by negotiation; alternatively, if both parties agree, they may be dealt with by arbitration or judicial settlement.[21]

The defendant State duties are owed not to the injured alien but to the alien national State, the theory is that the Claimant State itself suffers a loss when one of its nationals is injured. Consequently, the Claimant State has complete liberty to refrain from making a claim or to abandon a claim; it may agree to settle the claim at a fraction of its true value; and it is under no duty to pay the compensation obtained to its national (although it usually does). In these respects, the injured individual is at the mercy of his/her national State. This aspects of diplomatic protection was clearly stated by the ICJ in the Barcelon Traction case in which it held that ;

[18] R.Arnols, "Aliens", (1992) I EPIL 102-07; K.Doehring, "Alien Admission:, (1992) I EPIL 107-09); "Aliens, Expulsion and Deportation", (1992) I EPIL 109-12; "Aliens, Military Service" (1992) I EPIL 112-16 I, Scid/Hoheveldern, "Aliens Property", (1992) I.EPIL 116-19.

[19] M.Akehurst, "Jurisdiction in International Law@. BYIL 46 (1972-73) 145-51.

[20] W.K.Geck, "Diplomatic Protection", (1992) I EPIL, 1045-67; R.Dotzer, @Diplomatic Protection of Foreign Nationals"1067-70.

[21] On methods of dispute settlement see, Chap 18, Akeburst's Modern Introduction to International Law, 272-305.

"Within the limits prescribed by international law, a State may exercise diplomatic protection by whatever means and to whatever extent it thinks fit, for it is its own right that the state is asserting. Should the natural or legal persons in whose behalf it is acting consider that their rights are not adequately protected, they have no remedy in international law. All they can do is resort to municipal law, if means are available, with a view to furthering their cause or obtaining redress…. The State must be viewed as the sole judge to decide whether its protection will be granted, to what extent it is granted, and when it will cease. It retains in this respect a discretionary power the exercise of which may be determined by considerations of a political or other nature, unrelated to the particular case. Since the claim of the state is not identical with that of the individual or corporate person whose cause is espoused, the State enjoys complete freedom of action".[22]

However, international law, does not entirely disregard the individual, the compensation obtained by the Claimant State is usually calculated by reference to the loss suffered by the individual, not by reference to the loss suffered by the claimant State. But not always, for instance in I'm Alone case[23] (Canada v. United States), the US sank a British ship smuggling liquor into the US. Although the arbitrators held that the sinking was illegal, they awarded no damages for the loss of the ship, because it was owned by US citizens and used for smuggling. But they ordered the US to apologise and to pay US $25m000 to the UK as compensation for the insult to the British flag.

EXAMPLES OF ILL-TREATMENT GIVING RISE TO RESPONSIBILITY

Mistreatment of foreign nationals giving rise to international responsibility can occur in any number of ways. For example, it can result from the mistreatment of foreign nationals in the custody of judicial authorities Roberts Claim (Paraguay v. USA)[24] from the unlawful

[22] ICJ Reports, Barcelona Traction, Light and Power Company Ltd., 3 (19770) 44-45.

[23] (1935) 3 RIAA 1609.

[24] (1926) 4 RIAA 77.

expropriation of foreign owned property Texaco v. Libya,[25] from a failure to punish those individuals responsible for attacks on foreign nationals United States vs. Mexico[26] (James Claim and Massey Claim), or from direct injury to foreign nationals by State Officials (United State V. Mexico[27] (Youmans Claim). In addition responsibility may arise by reason of a "denial of justice", as where a foreign national is denied due process of law in respect of a legal dispute arising in the State, whether civil or criminal. In B.E. Chattin V. United Mexican States[28] (Chattin Claim), Mexico was held responsible for inadequacies and unfairness in the trial and prosecution of Chattin on charges of embezzlement. It must be appreciated, however, that in respect of responsibility arising from an alleged denial of justice, not every defect in the administration of justice in the local State can give rise to international responsibility, so that, for example, mere error by the local court is insufficient. It seems that there has to be some element of arbitrariness or unfairness in the court's proceedings, such as refusal to afford the foreign national a right to be heard, corruption of the judge, deliberate manufacture of evidence and the like. According to Article 9 of the Harvard Research Draft on State Responsibility 1929, a denial of justice exists where there is a denial, unwarranted delay or obstruction of access to courts, gross deficiency in the administration of justice or remedial process, failure to provide those guarantees which are generally considered indispensable to the property administration of justice or a manifestly unjust judgement. An error of a national court which does not produce manifest injustice is not a denial of justice. "This may be a wider definition than some commentators are prepared to accept, but it does, at the very least, capture the essence of the doctrine. It should be noted; finally, that what constitutes a 'denial of justice' may well depend on the appropriate standard of conduct which international law requires a state to adopt in its dealings with foreign nationals."

[25] (1977) 3 ILR 389.

[26] (1927) 4 RIAA 155.
[27] (1926) 4 RIAA 110.

[28] (1927) 4 RIAA 282.

IMPUTABILITY

A State is liable only for its own acts and omissions; and, in this context, the State is identified with its governmental apparatus, not with the population as a whole. If the police attack a foreigner, the State is liable; if private individuals attack a foreigner, the State is not liable.[29] The governmental apparatus of the State includes the legislature and the judiciary, as well as the executive; and it includes local authorities as well as Central authorities.

The ILC Draft Articles on State responsibility make it clear that

1. Conduct of any State organ (including any person or entity having that status in accordance with the internal law of the State) shall be considered as an act of the State concerned under international law where the organ exercises legislative, executive, judicial or any other function, whatever position it holds in the organization of the State and whatever its character as an organ of the Central Government or of a territorial unit of the State (Draft Art.4).
2. Conduct of a person or of an entity not an organ of the State under Article 4 but which is empowered by the law of that State to exercise elements of governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance; (Draft Art.5).
3. Conduct of an organ placed at the disposal of a State by another State shall be considered as an act of the former State under international law, if that organ was acting in the exercise of elements of the governmental authority of the former State; (Draft Art.6).
4. Conduct of an organ or of a person or entity empowered to exercise elements of governmental authority shall be considered an act of the state under international law if acting in that capacity, even if it exceeds its authority or contravenes instructions (Draft Art.7).

In order for a State to be fixed with responsibility, not only must there be an unlawful act or omission, but that unlawful act or omission must be "imputable"(that is attributable) to the

[29] G.Sperduti, "Responsibility of States for Activities of Private Law Persons" EPIL 10 (1987) 343-50.

(European Journal of Int.Law)

State. It must be unlawful act of the State itself and not of some private individuals acting for themselves. In a simple case, as where a State refused to honour a treaty commitment, there may be no doubt that the act is an "act of the State". However, in cases where the acts complained of are committed by specific individuals or organs within the States it is essential to know whether they are acting (or are treated as acting) on behalf of the State so as to give rise to inter-national responsibility. If they are not, then no breach of international law has occurred.

Whether an act or omission perpetrated by organ or individuals is to be attributed to the State is a matter of international law. While international law may well use rules of national law to help make this decision (such as those natural rules defining the status of individuals or organs); the final determination is for the international systems. It is perfectly possible, therefore, for an act to be attributable to the State in inter-national law, even though in national law it would not be so regarded. Articles 4 to II of the ILC Draft deal with the question of attributablity and, on the whole, they reflect existing customary law.

The idea of attributability creates problems when officials exceed or disobey their instructions. Youmans Claim[30] is a striking example of the laws willingness to make the defendant State liable. In that case, Mexico sent troops to protect Americans from a mob, but, instead of protecting the Americans, the troops, led by a lieutenant, opened fire on them. Mexico was held liable, because the troops had been acting as an organized military unit, under the command of an officer, on the other hand, if the troops had been off duty, their acts would probably have been regarded merely as the acts of private individuals.[31]

The wording of ILC Draft Article 9 reflects this rule: "The conduct of a person or group of persons empowered to exercise elements of governmental authority in absence or default of official authorities and in circumstances such as to call for the exercise of those elements of authority, shall be considered as an act of the State under international law".

In principle, a State is not responsible for the acts of private individuals; unless they were in fact acting on behalf of that State or exercising elements of governmental authority in the

[30] (1926)4 RIAA 110.

[31] RIAA,Cf.Morton's Claim IV (1929) 428.

absence of government Officials and under circumstances which justified them in assuming such authority.[32] There are special rules concerning responsibility for acts of an insurrectional movement.[33] But the acts of private individuals may also be accompanied by some act or omission on the part of the State for which the State is liable.

THE APPROPRIATE STANDARD OF CONDUCT IN DELAING WITH FOREIGN NATIONALS

Whether or not a State is internationally responsible for the way it treats foreigners depends on the standard of treatment which international law obliges that State to adopt. It is only if the State falls below the standard that it becomes internationally responsible. Unfortunately, there is considerable debate as to the correct standard of treatment which international law does require.

On the one hand, many States, mostly those of the "developed" world, maintain that the treatment of foreign nationals is governed by an "international minimum standard". This means that every State must treat foreigners within its territory by reference to a minimum international standard, irrespective of how national law allows that State to treat its own citizens. Of course, the required standard of treatment will vary according to the facts of each case, but the important point is that the treatment must conform to an international norm. The standard is not satisfied by pleading the provisions of national law, unless they match up to the international minimum standard. The test of the international minimum standard has been applied in a number of cases, such as the Chattin Claim and the Neer Claim. The following is the quotation from the judgement in the Neer Claim: "The treatment of an alien, in order to constitute an international delinquency, should amount to an outrage, to bad faith, to willful neglect of duty or to an insufficiency of governmental action so for short of international standards that every reasonable and impartial man would readily recognize its insufficiency".[34]

[32] *Ibid*.

[33] ILC draft Arts, 14 and 15.

[34] RIAA, IV 60-62.

What critics of the minimum international standard are really opposed to is not the principle of having such a standard, but the content of some of the rules which are alleged to form part of the standard.

Some of the rules comprised in the minimum international standard are more widely accepted than others. For instance, few people would deny that a State's international, responsibility will be engaged, if an alien is unlawfully killed,[35] imprisoned,[36] or physically ill-treated,[37] or if his property is looted or damaged,[38] unless, of course, the State can rely on some circumstances justifying the act, such as the fact that it was necessary as a means of maintaining law and order (arrest and punishment of criminals, use of force to stop a riot, and so on). On the other hand, excessive severity in maintaining law and order will also fall below the minimum international standard (punishment without a fair trial, excessively long detention before trial, fatal injuries inflicted by policemen dispersing a peaceful demonstration, unduly severe punishment for a trivial offence, and so on).

There are also other ways in which the maladministration of justice can engage a State's responsibility-for instance, if the courts are corrupt, biased, or guilty of excessive delay, or if they follow an unfair procedure; these rules apply to civil proceedings brought by or against a foreigner, as well as to criminal proceedings.

In other areas, the content of the minimum international standard is much more controversial. Deportation is an example. Since 1914, most States have claimed wide powers of deportation. The UK recognizes that other States have a general right to deport UK citizens without stating reasons.[39] On the other hand, the UK has stated that the right to deport should not be abused by proceeding arbitrarily.[40]- a rather vague restriction on the right of deportation. It is often hard to prove that a deportation is arbitrary if no reasons are stated for it, but a statement of

[35] M.Akehurst's "International Law", Youmans Claim, 258.

[36] RIAA, Roberts Claim, 4 (1926) 77.

[37] Ibid.

[38] RIAA.R.Zafiro case (1925) 160.

[39] BPIL (1964)210.

[40] IBID, (1966) 115.

reasons given voluntarily by the deporting State may reveal that the deportation was arbitrary and therefore illegal, as was the case, for example, when the Asian were expelled from Uganda in 1972.[41]

PRELIMINARY OBJECTIONS

When a case involving the treatment of aliens is brought before an international tribunal, it may be lost on a preliminary objection,[42] before the tribunal is able to deal with the substantive issue of whether there has been a violation of the minimum international Standard. Although the term "preliminary objection" is a term of judicial procedure, the rules giving rise to preliminary objections are so well established that they tend to be observed in diplomatic negotiations as well as in proceedings before international tribunals. The principal factors which can give rise to a preliminary objection are as follows: non-compliance with the rules concerning nationality of claims; failure to exhaust local remedies; waiver; unreasonable delay; improper behavior by the injured alien.

THE CALVO CLAUSE

A Calvo clause is a clause inserted into an agreement between a foreign national and a State whereby the foreign national agrees in advance to submit all disputes to the local law and, furthermore, to forgo his right of diplomatic protection. The purpose of a Calvo clause (named after an Argentian jurist) is to prevent the state of nationality bringing a claim of State responsibility at international law due to an alleged waiver of such rights by the national.

Obviously, there is a close connection between such clauses and the exhaustion of local remedies rule. If the purpose of a Calvo clause is merely to reinforce the obligation to resort to the national law before an international claim is brought, then such clauses are both

[41] M.Akehurst, "The Uganda Asians", NLJ 8-11-1973, 1021.
[42] H.W.A. Thirlway,"Preliminary Objections" (1981) 1 EPIL, 183-87.

unobjectionable and unnecessary. However, if they purport to go beyond this and exclude diplomatic protection altogether, their validity (i.e., effrectiveness) is open to doubt.

In United States v. Mexico[43] (North American Dredging Co), a Calvo clause insisting on resort to local remedies and precluding the right of diplomatic protection was partially upheld. The Commision gave the clause effect insofar as it required the individual to resort to Mexican law. In the circumstances of this case, this was not surprising because the "local remedies rule" had already been excluded by treaty for cases within the Commission's jurisdiction. The Calvo clause merely reinstated the local remedies rules; it did not operate to deny the right of diplomatic protection. It is also clear that the Commission reiterated the general rule that diplomatic protection is based on an injury to the State of nationality, not to the national itself. Hence, an obligation entered into by the national (i.e. not to seek diplomatic protection) could not destroy the right of the State itself to seek, a remedy at international law.

CONCLUSION

The law on State responsibility exists for the peaceful settlement of disputes between States and their people. Treatment of aliens contains only a small part in the Draft Articles on responsibility of States for internationally wrongful acts. Therefore, there could be an assumption that States can only commit wrongful acts by mistreating aliens. But, at the same time, capacity of States to commit other forms of wrongful acts cannot be ignored as well; rather States should be made accountable for any violation of international law that causes injury.

[43] (1926)4 RIAA 26.