

ACADÉMIE DE DROIT INTERNATIONAL
FONDÉE EN 1923 AVEC LE CONCOURS DE LA
DOTATION CARNEGIE POUR LA PAIX INTERNATIONALE

RECUEIL DES COURS

COLLECTED COURSES OF THE HAGUE
ACADEMY OF INTERNATIONAL LAW

2018

Tome 399 de la collection

BRILL | NIJHOFF

Leiden/Boston

TABLE OF CONTENTS

Introduction	19
I. Characteristics regarding acts of non-State actors in the current international society	19
II. Purpose of this course	22
1. Terminology	26
2. Coverage of this course	28
III. Structure of this course	35
Chapter I. Analysis of the fundamental principle of the attribution of acts to States.	39
I. Fundamental principle of the attribution of acts to States: "the State organ principle"	39
1. Idea of the attribution of acts to States	39
2. "The State organ principle"	42
3. Dualism relating to a relationship between international law and domestic laws as a theoretical background for the State organ principle	44
4. Theory concerning the attributability to States of the <i>ultra vires</i> acts of State organs and their acts that are contrary to domestic laws	48
5. Risk allocation theory	56
6. Critique against the public/private dimension	61
II. Suggestions derived from theories that have the potential to depart from the State organ principle.	65
Chapter II. International practices with regard to the attribution to States of the acts of non-State actors	71
I. International practices to be dealt with in Chapter II and its purpose	71
II. ARS and its drafting process	73
1. Draft articles on State responsibility adopted in 1996	73
2. ARS.	77
III. Decisions rendered by the ICJ.	91
1. <i>United States Diplomatic and Consular Staff in Tehran</i> (the <i>Hostage</i> case).	91
2. Case concerning <i>Military and Paramilitary Activities in and against Nicaragua</i> (the <i>Nicaragua</i> case)	95
3. Case concerning the <i>Application of the Convention on the Prevention and Punishment of the Crime of Genocide</i> (the <i>Genocide Convention</i> case)	103
4. Basis of attribution and issues to be examined in the following chapters.	108
Chapter III. Examination in detail of the standards of the attribution to States of the acts of non-State actors for bridging any gaps in attribution to States of the acts of non-State actors and the determination of violations of the due diligence obligation and possible reappraisal of the concept of complicity	114
I. Purpose and significance of the analysis of Chapter III	114

II. Examination in detail of the two attribution standards	117
1. Basis of attribution under the two attribution standards	117
2. Different nature of the two standards and the range of the acts of non-State actors to be attributed to States	122
3. Contents of the two standards	127
4. Thresholds that the two attribution standards set forth	137
III. Development of attribution standards in individual fields of international law	145
1. Coverage of the examination	145
2. <i>Prosecutor v. Tadić</i>	147
3. Combating international terrorism and the law of State responsibility	152
4. International practice in the field of human rights protection.	164
Chapter IV. Alternative or seamless applications of the attribution theory and the theory of the due diligence obligation to entail responsibility on States relating to the internationally harmful acts of non-State actors	174
I. The purpose of Chapter IV	174
II. The theoretical framework of State responsibility in relation to the acts of non-State actors	175
III. The alternative applications of the attribution theory and the due diligence theory	176
1. The alternative applications of the two theories that are theoretically found	176
2. Requirements derived from the current situations of the attribution standards.	179
IV. The standard to determine the subjects that owe the due diligence obligation and the effective control standard for the attribution of acts to States: the connection sought between the applications of the attribution theory and the due diligence theory	182
1. The obligation of territorial States and the principle of the prevention of international environmental harm.	182
2. The standard for the determination of the subject of the due diligence obligation to protect human rights	184
3. Lowering the threshold in the standard of the determination of a subject of the due diligence obligation: influence	191
V. The extent and contents of the due diligence obligation	195
1. Does a State owe the due diligence obligation under general international law in relation to an internationally harmful act of a non-State actor?	195
VI. Developments in the theory of the due diligence obligation	202
Chapter V. Complicity	206
I. Purpose of Chapter V	206
II. Backgrounds against which the introduction of complicity has been argued in the law of State responsibility	209
1. The common backgrounds for the arguments of complicity both in State-to-State relationships and relationships between States and non-State actors	209
2. Reflection of the modern relationships between States and those between States and non-State actors.	210
III. Significance of the secondary rules in regulating complicity: with consideration of the argument on the issue as to whether it is regulated by the primary rules or the secondary rules	216

1. The argument that complicity is a matter to be regulated by the primary rules	216
2. Distinction between the primary rules and the secondary rules reconsidered	223
IV. Is complicity an attribution standard, a form of a breach of the due diligence obligation, or an independent reason for State responsibility?	227
1. Is complicity a standard of attribution?	227
2. The place that complicity holds in the law of State responsibility in relation to acts of non-State actors	237
V. Requirements for complicity	239
1. Facilitation	239
2. A subjective requirement for complicity	240
3. Whether the same obligation needs to be imposed on an accomplice State as on principal offenders (Article 16 (b) of ARS)	241
4. The extent of remedies that an accomplice State is required to provide	243
Conclusion	245
Bibliography.	252