

International responsibility and attribution of conduct

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Rules on the attribution of conduct determine whether conduct (be it an action or an omission) is considered an act of the State for the purpose of holding it responsible under international law. If conduct is attributed to the State and in breach of its international legal obligations, the State has committed an internationally wrongful act for which it must make full reparation. By the same token, there will no wrongfulness on the part of the State if conduct is not attributed to it.

The law of State responsibility is authoritatively laid down in the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts. These Articles, including the attribution rules therein, offer a general, default regime of international law that is applicable unless deviated from in special fields of law. The main objective of this thesis is to examine whether international courts, tribunals and other (quasi-)judicial bodies dealing with human rights and humanitarian law follow this general regime in their case law or, rather, whether they adopt special solutions to determine if conduct is an act of the State. This thesis also analyses the purpose for which attribution rules are used. Do such rules merely serve to hold a State responsible in the strict sense, or are rules on the attribution of conduct also relevant to establish the applicable international law in light of which conduct must be assessed? And in the latter case, could these rules be used by international courts and tribunals to enable the exercise of their jurisdiction over the conduct in question?

An analysis of the standard and function of attribution rules in human rights and humanitarian law is all the more important as a result of an erosion of the public-private distinction. States increasingly resort to private parties to carry out functions that are traditionally exercised by States. A possible effect of this development is the possibility of evading legal responsibility, given that States are still the most important actors with rights and obligations on the international plane. The lack of clarity with regard to attribution rules in human rights and humanitarian law contributes to a situation in which it is unclear if, and under what circumstance, a State is responsible for the actions of non-State actors. Any uncertainty in this regard may be an incentive for States to resort to non-State actors at the expense of legal protection for those who are adversely affected by such private conduct.

This thesis is intended to be of interest to academics who wish to study the reception of the rules on attribution of conduct in the case law of international courts and tribunals with jurisdiction over violations of human rights and humanitarian law. Moreover, this thesis will assist practitioners who are confronted with situations in which it is unclear whether and on what basis a State can be held responsible for a human rights violation as a result of the conduct of its own organs and agents or non-State actors acting on the State's behalf. One of the conclusions in this thesis is

that in their case law human rights courts and quasi-judicial monitoring bodies do not recognize the existence of any special rules on the attribution of conduct. Accordingly, litigants and adjudicators could apply the findings in this thesis to hold States responsible on the basis of the general rules of attribution as reflected in the Articles drafted by the International Law Commission. This thesis thus offers more certainty and legal clarity for practitioners and actual or potential victims of human rights violations seeking remedy for incurred harm.

With respect to humanitarian law, the importance of the research in this thesis lies predominantly in the area of clarifying the legal regime under which an accused can be held responsible. The statutes of international criminal tribunals distinguish between war crimes committed within the context of an international armed conflicts, and those committed within the context of non-international armed conflicts. Consequently, whether or not an alleged perpetrator can be found guilty of a particular crime depends first and foremost on the classification of armed conflict in which the violation took place. As this research demonstrates, the rules of attribution are of crucial importance in distinguishing international from non-international armed conflicts.