

## Summary

### Problems of Liability for Lawful Acts in Public International Law

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1. In its broadest sense and consistent with German juridical terminology, the topic of state responsibility also comprises the problem of liability for lawful acts.
2. Liability for lawful acts is to be distinguished from responsibility for unlawful acts committed without fault (*Erfolgshaftung*) and from responsibility for unlawful acts committed with fault (*Verschuldenshaftung*).
3. In contrast to German civil law the principle of culpa (fault) is not of predominant importance in the realm of state responsibility, and therefore does not exclude the recognition of the possibility of liability for lawful acts in public international law. On the other hand it is not possible to assume a special openness of public international law for liability for lawful acts as a consequence of its cooperative character.
4. There would be no necessity for liability for lawful acts in public international law, if every act causing damage would in itself be judged as being illegal; because then the problem of responsibility would be confined to unlawful acts. The theory of abuse of rights is no substitute for liability for unlawful acts.
5. The possibility of liability for lawful acts today is in principle accepted in legal literature, although there is still a lack of comprehensive treatment of the scope and content of the concept of liability for lawful acts. Literature especially dedicated to liability for lawful acts treats the problem only in connection with damages caused by the use of modern technology.
6. The cases of liability for lawful acts regulated, today, by multilateral treaties are in the main concerned with the use of technology, but are not restricted to this category.
7. The relevant multilateral treaties regulate liability for lawful acts in different ways. There does not exist a real common basis of liability. Risk is too ambiguous a notion to save as a common basis. Also inadequate is the idea that the one who has the benefit of a certain activity has to pay for resulting damage.

8. Liability for lawful acts and responsibility for unlawful acts do not in principle exclude each other as to their field of application. But that does not mean that in a specific case liability for lawful acts and responsibility for unlawful acts are jointly applicable. That would not be compatible with the supplementary function of strict liability. The difference between liability for lawful acts and responsibility for unlawful acts is not of only theoretical importance.
9. Liability for lawful acts, today, is not a rule of customary international law nor a principle of law generally recognized.
10. There is the danger that the attempt of the ILC to codify the law of liability for lawful acts may bring about an exaggerated extension of that principle. The better way would be to develop that principle by concluding further special treaties similar to those already in existence.