

CONTROL TESTS IN DISPUTE BEFORE INTERNATIONAL TRIBUNALS; MODELING ATTRIBUTION IN THE LAW OF INTERNATIONAL RESPONSIBILITY

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「国際裁判所における紛争に関するコントロール・テストー国際責任法の文脈での帰属モデル」

区 分 : 甲

論 文 内 容 の 要 旨

The role of private actors is significantly increasing at the international level. International society concerns about such development because their relationship with states is leading to new threats to the global order. The most recent examples include terrorist attacks, and the states that indirectly back those terrorist groups, the increase in the number of cyber-attacks, and the existence of more contracts between private military and security companies.

In times of privatization of state functions and delegation of sovereign activities, it is crucial as it affects the States how to react to the impairment of their interest. In regard to emerging role of private actors in international level, the question is how does a change in the power distribution between states and other actors affect the responsibility of states? Are states also responsible for the private conduct? The law governs the responsibility of a state if only the wrongful conduct is attributable to that state. The conduct of any state organ is considered an act of that state under international law. The law also supposes the responsibility of states for the conduct of a person or entity which is not an organ of that state but considered an act of the state. There remains the question of how to differentiate state action from the one that is apparently private conduct. This has long been a concern for international tribunals. International tribunals utilized the doctrine of attribution in order to differentiate the public and private sphere. They propounded differing attribution tests to judge whether the respondent state is responsible for the conducts of private persons.

It has given rise to critical concerns that differing attribution tests enable states to elude responsibility by acting through private actors. Both in practice and in legal scholarship, holding states and individuals legally accountable for their conduct is deemed significantly valuable as part of a ‘general direction toward good governance and transparency’. However, the normative conflict between these control tests is considered in the literature as an example of fragmentation. Because such diverse applications triggered the problem of different attribution tests to apply to the same facts, as happened in the Bosnia War. The two courts; International Criminal Tribunal for Former Yugoslavia (ICTY) and International Court of Justice (ICJ) came to a decision with extremely different outcomes, exemplifying how critical the selection of an attribution test can be. Both courts, ICTY and ICJ, in accordance with their jurisdictional differences, propounded their own self-evident attribution tests.

I argue that doctrine of attribution should provide legally sufficient mechanisms for enhancing accountability. Consequently, in order to deal with today's needs, establishing efficient models in the law of attribution can increase the capacity of those standards.

My research aims to set up a categorical framework in order to validate legally consistent attribution standards. This approach would help not only to expand the competence of attribution standards but also to materialize objectively corrected standards. My approach advances a theoretical framework in accordance with practically applicable and adequate models of attribution.

My analysis first focuses on the concept of attribution in which I argue the theoretical and practical relevance of the principles of attribution. In second part, I employ a critical approach to the jurisprudence of international courts. I highlight the current legal models in the attribution doctrine corresponding with the case law of international tribunals. I further examine the codification work of the International Law Commission's (ILC) articles on responsibility of states for internationally wrongful acts. Although the attribution models advanced in this work are not exhaustive in international law, it provides normative grounds for general and applicable attribution models. Finally, I revisit the doctrine of attribution. Since my research pursues an objective of how to increase the capacity of attribution standards, in the last chapter, I conduct a categorical analysis on these normative perspectives to conclude legally adequate formula. Therefore, I formulate the models of attribution into two main settings called *de facto* organ theory (Agency-based Attribution) and global control theory (control-based attribution). In conclusion, my categorization brings a harmony to the conflict between attribution tests. This approach evidences that the principles of attribution has not been contended with any fragmentation rather having a heterogeneous nature to deal with today's needs.