

STATE RESPONSIBILITY – ANSWER SKELETON

(1) Determining State Responsibility

Issue: Is there conduct by act or omission that breaches an international law obligation arising out of CIL or treaty between the parties?

Article 1 ILC Convention: “Every internationally wrongful act of a State entails the international responsibility of that State.”

Article 2: “There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) Is **attributable** to the State under international law; and (b) **Constitutes a breach** of an international obligation of the State.

There is a bilateral agreement between Country X and Country Y that provides (obligation). Country Y by doing (acts) is can be argued that it is breaching its ILO.

(2) Wrongful Conduct which constitutes a breach of an IO

There must be conduct – an act or omission which is a violation of international treaty or an obligation under CIL, largely determinable by the relevant primary obligations by which the state is bound.

Article 12: a breach of an international obligation will occur when an act ‘is not in conformity’ with what is required by the international obligation, regardless of the ‘origin or character’ of that obligation.

Article 3: local law is irrelevant -

The characterisation of the act as wrongful in international law is notwithstanding the characterisation within the internal law of a state: *Art 3*

(3) Attribution

As a state is an abstract entity which cannot directly engage in conduct, the state will be responsible for the wrongful conduct of persons or entities that can be attributable to the state.

Links between the wrongful conduct of a person or entity, and the state can be made in two ways:

1. Considering the role/position that the person might hold
 - a. If they were in an official role within the Govt (eg. cabinet minister)
 - b. Then their actions are attributed to the State
2. Nature of the actions themselves/nature of the conduct
 - a. Person may not hold a particular position but are performing government duty/obligations

There is no requirement that damage be caused to another state: *ILC Commentary to Art 2*.

Attribution of the wrongful conduct to the state can occur if the act was carried out by: