

## **CAN CHINA BE HELD RESPONSIBLE FOR ITS ROLE IN THE OUTBREAK OF COVID-19 PANDEMIC?<sup>1</sup>**

*Çin, Kovid-19 Pandemisinin Yayılmasından Sorumlu Tutulabilir mi?*

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### **Abstract**

A breach of an international obligation entails that State's international responsibility, which entails a reparation obligation of that State or the right of the injured State to seek redress or to resort to countermeasures, or, in certain cases, the international community as a whole to respond by certain means to this unlawful act. The most usual consequence of an act contrary to international law is that the state that suffered from this act automatically resorted to the measures and procedures stipulated in international law in order to fulfill the obligation violated by the state that came into effect or to obtain redress from that state.

When we look at the studies on the concept of state responsibility in the literature, it is seen that there is a violation of the obligation

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<sup>1</sup> This study is derived from the paper entitled “The Concept of State Responsibility and COVID-19 Pandemic” presented by the author at Selcuk Law Congress 2020 held in Konya / Turkey between 17-19 December 2020

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in the regional sense due to the arrangement of the damages caused by the neighboring states to each other or the damage of more than one state as a result of an event. In this regard, within the scope of the concept of state responsibility, it is seen that a phenomenon such as the pandemic, which affects all the states of the world globally, is not discussed much. Although the studies on COVID-19 so far have generally dealt with the economic, political, psychological, sociological and health services dimensions caused by the pandemic, it is seen that the issue has not been examined much from the international law dimension.

This is also valid for the COVID-19 Pandemic, which affected the whole world and caused more than 4.5 million deaths and nearly 1 billion people to become ill. At this point, people and governments are trying to find the answer to the question of who is or should be responsible for this global epidemic. In a way, everyone is looking for a scapegoat. In particular, the USA and European states expect China to take full responsibility as a state and compensate for its losses on the grounds that it does not fulfill its international obligations and causes the spread of the COVID-19 pandemic to the world. In this respect, this study explains the concept of state responsibility in international law in general and examines the approaches to the COVID-19 pandemic through this concept. Although the studies on COVID-19 so far have generally dealt with the economic, political, psychological, sociological and health services dimensions caused by the pandemic, it is seen that the issue has not been examined much from the international law dimension.

In the study, the basic principles regarding the concept of State Responsibility were explained using the literature review method, and then the problem of whether the Chinese government fulfilled its responsibilities and international obligations in the spread of the COVID-19 epidemic to the whole world was tried to be examined. Although the concept of state responsibility is one of the basic principles of international law, there are not many academic studies directly examining this issue in the literature, since the pandemic, which

has been affecting the whole world for about two years, is relatively new. In this respect, it is expected that this study will contribute to the literature.

**Key Words:** International Law, State Responsibility, COVID-19 Pandemic, International Wrongful Act, Breach of International Obligation,

## **Özet**

Uluslararası bir yükümlülüğün ihlali, o Devletin uluslararası sorumluluğunu gerektirir, bu da ilgili devletin tazminat yükümlülüğünü veya zarar gören devletin tazminat arama ya da karşı önlemlere başvurma hakkını veya bazı durumlarda belirli yollarla bu yasa dışı eyleme karşı uluslararası toplumun bir bütün olarak yanıt verme hakkını gerektirmektedir. Uluslararası hukuka aykırı bir fiilin en olağan sonucu, bu fiilden zarar gören devletin, ihlal ettiği yükümlülüğünü yerine getirmek veya tazminini sağlamak için otomatik olarak uluslararası hukukta öngörülen tedbir ve usullere başvurusudur.

Literatürde devlet sorumluluğu kavramı ile ilgili çalışmalara bakıldığında genel itibariyle çalışmaların komşu devletlerin birbirlerine verdikleri zararların tanzim edilmesi veya meydana gelen bir olay neticesinde birden fazla devletin zarar görmesi nedeniyle bölgesel anlamda oluşan bir yükümlülük ihlalinin olduğu görülmektedir. Bu bakımdan devlet sorumluluğu kavramında küresel olarak tüm dünya devletlerini etkileyen pandemi gibi bir olgunun pek fazla tartışılmadığı görülmektedir.

Bu durum tüm dünyayı etkileyen ve 4,5 milyondan fazla insanın ölmesine ve yaklaşık 1 milyar insanın hasta olmasına neden olan COVID-19 Pandemisi içinde geçerlidir. Geline nokta insanlar ve hükümetler sözkonusu bu küresel salgından kimin sorumlu olduğu veya olması gerektiği sorusunun cevabını bulmaya çalışıyorlar. Bir bakıma aslında herkes bir günah keçisi arıyor. Özellikle ABD ve Avru-

palı devletler, Çin'in uluslararası yükümlülüklerini yerine getirmediği ve COVID-19 pandemisinin dünyaya yayılmasına neden olduğu gerekçesiyle devlet olarak tüm sorumluluğu üstlenmesini ve meydana gelen zararlarının karşılanmasını bekliyorlar. Bu bakımdan bu çalışma genel olarak Uluslararası hukukta yer alan devlet sorumluluğu kavramını açıklayarak bu kavram üzerinden COVID-19 pandemisine yönelik yaklaşımları incelemektedir. Şimdiye kadar yapılan COVID-19 ile ilgili çalışmalar genel olarak pandeminin neden olduğu ekonomik, siyasi, psikolojik, sosyolojik ve sağlık hizmetleri boyutuyla ele alsalarda konunun uluslararası hukuk boyutundan pek fazla incelenmediği görülmektedir.

Çalışmada literature taraması yöntemi kullanılarak Devlet Sorumluluğu kavramına ilişkin olarak temel prensipler açıklanmış ve sonrasında ise Çin hükümetinin COVID-19 salgının tüm dünyaya yayılmasındaki sorumlulukları ve uluslararası yükümlülükleri yerine getirip getirmediği sorunsalı incelenmeye çalışılmıştır. Her he kadar devlet sorumluluğu kavramı uluslararası hukukun temel prensiplerinden biri olsa da yaklaşık 2 yıldan beri tüm dünyayı etkileyen pandeminin göreceli olarak yeni olması nedeniyle literatürde doğrudan bu konuyu inceleyen pek fazla akademik çalışma bulunmamaktadır. Bu bakımdan bu çalışmanın literature katkı sağlayacağı beklenmektedir.

**AnahtarKelimeler:** Uluslararası Hukuk, Devlet Sorumluluğu, COVID-19 Pandemisi, Uluslararası Haksız Eylem Uluslararası Yükümlülüğün İhlali

## **Introduction**

While state responsibility as a concept that comprises the conditions and consequences of a wrongdoing has become dominant in international law, for a long time this concept was given scant scholarly attention. International responsibility is a regime of responsibility of international law. However, in order to understand this respon-

sibility regime, the basic concepts of general liability law must be known. Defining and naming international law concepts and rules by analogy with the concepts and rules in the domestic law order often yields unhealthy results. Because the international law regulates relationships with its own material conditions and is a separate legal system from domestic law.

According to the current international law, the international liability is an international law institution aimed at eliminating the effects of acts contrary to international law caused by an international law person or certain damages arising from their activities in accordance with international law. Thus, a damage done through the international responsibility institution is eliminated in an international order. Thus, it is ensured that any damage done through international responsibility is eliminated in an international order.

“The present structure of international responsibility is based on the premise of individual attribution of wrongfulness. The elements of the internationally wrongful act have proven to be sufficient for the purposes of establishing the responsibility of a State.”<sup>2</sup> In this respect “State responsibility is a fundamental principle of international law, arising out of the nature of the international legal system and the doctrines of state sovereignty and equality of states. It provides that whenever one state commits an internationally unlawful act against another state, international responsibility is established between the two.”<sup>3</sup> International law also imposes such liability on its subjects, principally on states. The law of state responsibility occupies a central place in international law. Its basic principle, now well-established, provides that every internationally wrongful act entails the responsibility of the state involved. This liability is known as state responsibility. Besides states, other international persons such as international

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<sup>2</sup> León Castellanos-Jankiewicz, **Causation and International State Responsibility**, SHARES Research Paper 07, ACIL 2012-07, p.64

<sup>3</sup> Malcolm N.Shaw, **International Law**, 6.th Edition, New York: Cambridge University Press, 2008, p.778

organizations are also responsible for their wrongful acts. A breach of an international obligation gives rise to a requirement for reparation

While not all definitions of law require that a breach necessarily be sanctioned, this idea at the core of state responsibility does support international law's normative character. A breach of an international obligation entails that State's international responsibility, which entails a reparation obligation of that State or the right of the injured State to seek redress or to resort to countermeasures, or, in certain cases, the international community as a whole to respond by certain means to this unlawful act. The most usual consequence of an act contrary to international law is that the state that suffered from this act automatically resorted to the measures and procedures stipulated in international law in order to fulfill the obligation violated by the state that came into effect or to obtain redress from that state.

## **I. EMERGENCE OF STATE RESPONSIBILITY**

The source of the rules on international responsibility is the international customary law rules. Discussions of the law of state responsibility have become inextricably linked to the work of the United Nations International Law Commission (ILC). In 1949, the General Assembly referred state responsibility to the Commission as one of its initial topics for discussion and resolution, and it remained part of the Commission's work until 2001.<sup>4</sup> This work of the commission not only provides extremely valuable information but also provides basic principles in case of wrongful acts of states.

Until recently law on state responsibility was not well developed, nor was it codified. In 2001, the UN General Assembly adopted the Draft Articles on Responsibility of States for Internationally Wrongful Acts (the Draft Articles), prepared by the International Law Commission (ILC). The possible adoption of the Draft Articles as a Convention was left unresolved.

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<sup>4</sup> René Provost, Introduction: State Responsibility in International Law State, Ashgate, 2002.p. 3,

According to the United Nations International Law Commission ('ILC'), causation is not necessary aspect to be able to determine existence of an internationally wrongful act. Moreover, no need to attributing wrongful acts to a State concerning its damage. The reason for that coming from the internationally wrongful act, which is primarily based on with the new legal relationships emerging from a determination of State responsibility. However the early perception of 'international wrongfulness' based on the function of international responsibility in which state interact. However the early introduction of 'international wrongfulness' primarily oriented the function of international responsibility towards redressing the international legal order in which States interact.<sup>5</sup>

As a result of the codification and development by the ILC and a relatively wide practice of international courts, the concept of responsibility has now acquired a meaning which goes well beyond that of a simple connector between a wrong and its consequences. Depending on the context, saying that a state is responsible may reflect certain understandings of the nature of attribution, the role of "defences", and the specific content of reparation, as well as the way in which responsibility is or ought to be given effect.<sup>6</sup>

The structuring role of the concept of responsibility faces certain challenges. The ongoing changes and transformations in the international legal system inevitably change the sovereign interstate system and the international responsibilities of states. The work of the ILC was a feature that characterized a particular stage in the evolution of international law, roughly corresponding to the dominant period of the interstate system, which may lose its central position once that interstate system loses its dominant role. However, due to globalization process the dominant interstate system has been changing and the international legal system evolved in the face of recent threats and developments.

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<sup>5</sup> Jankiewicz, 2012, p.11-12

<sup>6</sup> Andre Nollkaemper, "Responsibility", Amsterdam Center for International Law, No. 3, 2017, p.4, <http://dx.doi.org/10.2139/ssrn.2914250>

“A key function of the internationally wrongful act is to reinforce the public order international, and its legal content is more akin to that of a sanction restoring international equilibrium. Obligations of this type are not reciprocal: sanctions arise primarily from wrongful conduct which destabilizes the international system of rules and not primarily from failure to observe contractual obligations. Therefore, damage, fault and the accompanying causal analysis to determine breaches of primary rules are not a necessary element of international responsibility, which is mainly concerned with spelling out the secondary rules which will restore the breached legal order. Thus, the public purpose of international responsibility overshadows its elements pertaining to private restorative justice. In sum, the absence of damage, fault and causal analysis are explained through the functions of the overarching concept of ‘internationally wrongful act.’”<sup>7</sup>

## II. BASIC PRINCIPLES OF STATE RESPONSIBILITY

The concept of responsibility is a fundamental notion of international law. In this respect, there is a close relationship between responsibility and law. Therefore, it is possible to say “state responsibility” is required aspect of international law as a whole.<sup>8</sup> In other words, if there is no responsibility, there is no law. Accordingly, in the international legal system, responsibility corresponds to the result of the law itself.<sup>9</sup>

The Draft Articles lay down the basic rules on state responsibility by way of both codification and progressive development. In general term, State responsibility arises because of the breach of an obligation or a legal duty owed by a state under international law. This rule has been regulated by the ILC as the first article of the draft as follows:

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<sup>7</sup> Jankiewicz, 2012, p.11

<sup>8</sup> Martti Koskenniemi, “Doctrines of State Responsibility” in *The Law of International Responsibility*, Eds. James Crawford, Alain Pellet and Simon Olleson, New York, OUP, 2010, p.45-46

<sup>9</sup> Alain Pellet, “The Definition of Responsibility in International Law” in **The Law of International Responsibility**, Eds. James Crawford, Alain Pellet and Simon Olleson, New York, OUP, 2010, p.4-5



“A breach of international law by a State entails its international responsibility. An internationally wrongful act of a State may consist in one or more actions or omissions or a combination of both. Whether an act is an international tort depends primarily on the requirements of that obligation. ...In this aspect the term “international responsibility” refers to the new legal relations which emerge the internationally wrongful act of a State under international law.”<sup>10</sup>

This rule was acknowledged by the Permanent Court of International Justice (PCIJ) in a number of cases. For example, in *The Factory at Chorzow* case (Germany vs. Poland, 1928), the “Court stated that it is a principle of international law that the breach of an engagement involves an obligation to make reparation.”<sup>11</sup>

“It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself”<sup>12</sup>

With a requirement to undo the wrong—responsibility does not flow from all conduct in contravention of international law, but only from a breach of obligations that by their nature lend themselves to such responsibility.<sup>13</sup> It can be said that all subsequent rules are built on this ground and basic rule. According to this rule, there is no “culpability” among the elements of international responsibility.

The Articles, however, do not attempt to define “the content of the international obligations, the breach of which gives rise to re-

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<sup>10</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries, 2001, Yearbook of the International Law Commission, Volume II, Part Two, 2001, p.32, <https://legal.un.org/ola/Default.aspx> Erişim Tarihi: 4 Haziran 2021

<sup>11</sup> Summaries of Judgments, Advisory Opinions and Orders of the Permanent Court of International Justice. New York: United Nations, 2012, p.157

<sup>12</sup> *Factory at Chorzow* (Germany v. Poland), 1927 PCIJ (ser. A) No. 9 5, 21, para 55

<sup>13</sup> Daniel Bodansky, *The Art and Craft of International Environmental Law*, Cambridge: Harvard University Press, 2010, p.88

sponsibility.” They are generally focused on the general conditions of wrongful actions.

These rules are thus concerned with the secondary rules of state responsibility. The Draft determines, “in general, when an obligation has been breached and the legal consequences of that breach. In this way the Draft Articles are (secondary rules) that address basic issues of responsibility and remedies available for breach of primary (substantive) rules of international law, such as with respect to the use of armed force. The Draft establishes the following:

- Conditions for an act to qualify as internationally wrongful act
- Circumstances under which actions of officials, private individuals and other entities may be attributed to the state
- General defenses to liability
- The consequences of liability
- Admissibility of claims.”<sup>14</sup>

The Draft deals only with the responsibility of states for conduct that is internationally wrongful acts. It does not deal with the obligations of states arising out of acts that are not prohibited and that may have been expressly permitted under international law (such as compensation for property duly taken for a public purpose). The Draft also does not deal with the responsibility of international organizations or of other non-state entities, including individuals. The applicable rules of international law will continue to govern questions of state responsibility not regulated by Draft Articles (Art. 56). Thus, the Draft leaves a wide area of state responsibility to be governed by the customary rules on state responsibility.

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<sup>14</sup> Saurabh Chopra, Basis of International Responsibility, <http://esaurabhchopra.blogspot.com/2012/05/>? Erişim Tarihi: 5 Haziran 2021

### **i. The Subject of State Responsibility**

The close connection between the concept of responsibility and the concept of international obligations also indicates that the role of responsibility in international governance ultimately depends on the relative significance of law in global governance. When the role of law declines and relevant actors opt for different modes of regulation, the role of responsibility changes.<sup>15</sup>

The Draft Articles deal only with the responsibility of states. Therefore, the position of individuals, corporations, and other groups is not as clear as that of states. However, since the end of the World War II, international responsibility of individuals in the criminal field has witnessed remarkable development. The Nuremberg and Tokyo trials, the establishment of the International Criminal Tribunals for Yugoslavia (1993) and Rwanda (1994), the Special Court for Sierra Leone (2002), and the establishment of International Criminal Court (2002) have established the responsibility of individuals for their criminal acts.

Article 58 of the Draft Articles makes it clear that the “individual responsibility under international law of any person acting on behalf of a State” is distinct from the State responsibility. It is not limited to criminal responsibility and thus civil responsibility of an individual cannot be ruled out. However, where individuals have committed the wrongful acts as state officials, the state will also be internationally responsible for its failure to stop those acts. So far there has been practically no development on the civil responsibility of individuals or corporations for breaches of international law.<sup>16</sup>

In other words, every wrongful act of a state causes state responsibility but the trial for the most serious crimes related to the international community has been limited to "real persons" only and it has

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<sup>15</sup> Nollkaemper, 2017, p.7

<sup>16</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries, 2001, Yearbook of the International Law Commission, Volume II, Part Two, 2001, p.139, <https://legal.un.org/ola/Default.aspx> Erişim Tarihi: 4 Haziran 2021

been ruled that the criminal liability of individuals will not affect the responsibility of the state under international law.<sup>17</sup> For instance, in 1946, the Nuremberg International Military Criminal Court stated that international crimes can be committed by individuals, not by abstract institutions, that states cannot have criminal responsibilities in their judgment that the punishment of individuals who commit such crimes is the principle of international law.<sup>18</sup> Similarly in the Article 25/1 Rome Statute of the International Criminal Court, the trial for the most serious crimes related to the international community as a whole was limited to “real persons” and it was ruled that the criminal liability of individuals would not affect the responsibility of the state under international law.<sup>19</sup>

When the state practices regarding the criminal liability of the states are examined, it is seen that the states can be found guilty, but abstaining from punishment. For example, according to French law, the state is independent of the penal rules to which other institutions are bound due to its special duty as a protector of public interest.<sup>20</sup> Similarly, under Belgian law, an institution (state) may commit a crime, but it cannot be the subject of criminal sanction. Therefore, throughout the history of international law, it is stated that the acts that are considered as state crime today are committed by individuals

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<sup>17</sup> Ummuhan Elcin Ertuğrul, *The Responsibility of States for Breaches of Obligation under Peremptory Norms of International Law*, Unpublished PhD Dissertation, Gazi University Institute of Social Sciences, Ankara, 2011, p.26

<sup>18</sup> Philippe Kirsch, *Applying the Principles of Nuremberg in the ICC*, Keynote Address at the Conference “Judgment at Nuremberg” held on the 60th Anniversary of the Nuremberg Judgment, Washington University, St. Louis, USA, 30 September 2006, p.2

[https://www.icc-cpi.int/NR/rdonlyres/ED2F5177-9F9B-4D66-9386-5C5BF45D052C/146323/PK\\_20060930\\_English.pdf](https://www.icc-cpi.int/NR/rdonlyres/ED2F5177-9F9B-4D66-9386-5C5BF45D052C/146323/PK_20060930_English.pdf) Erişim Tarihi: 7 Haziran 2021

<sup>19</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries, 2001, Yearbook of the International Law Commission, Volume II, Part Two, 2001, p.142, <https://legal.un.org/ola/Default.aspx> Erişim Tarihi: 7 Haziran 2021

<sup>20</sup> Nina H.B. Jorgensen, “The Responsibility of States for International Crime”, **Oxford Monographs in International Law**, Oxford: Oxford University Press, 2000, p.78

under the authority of the state and accepted as the crime of individuals.<sup>21</sup>

As for the criminal responsibility of States under international law, it has not been clearly established or accepted, even though the act is criminal in nature such as genocide or war crimes. In such cases, individuals are made criminally liable, even if they may be acting in their official capacity and on the perceived interests of the state (Rome Statute of the ICC, Articles 27, 33). However, individuals may seek remedies against states that are responsible for serious breaches of international law such as genocide, war crimes, or denial of fundamental human rights.<sup>22</sup>

#### **ii. Existence of Unlawful Action and Conduct Attributable to the State**

The international responsibility of the state arises from the violation of an international obligation and the imposition of this violation in the state. In that case, in attributing responsibility to a state for the breach of an international obligation, fault or culpa is a debatable issue. According to the supporters of 'objective responsibility' doctrine, there should be a casual connection between the act and the breach by the state or by its organs.<sup>23</sup>

In addition to finding an act that violates international law or an activity for which responsibility is envisaged, this action or activity must belong to an international legal person. Being able to speak of an act contrary to international law or an activity for which liability is assumed as a result of loss necessitates their attachment to states or international organizations.

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<sup>21</sup> Ertuğrul, 2011, p.26-27

<sup>22</sup> Surinder Kaur Verma, State Responsibility, in **Public International Law I**, Eds. Nejat Doğan, Faculty of Open Education Publication No: 2629, Eskisehir, 2017, p.153

<sup>23</sup> Ian Brownlie, **Principles of Public International Law**, Oxford: Oxford University Press, 2008, p. 437

The general rule is that the only state organs or other state agents have responsibility at the international level. In other words, it is the responsibility of persons and bodies acting on behalf of the state for the work and actions performed. The scope of state responsibility for official acts is very large; therefore, the definition of 'organ' for this purpose is more comprehensive and suitable. As a rule, in order to be able to talk about the international responsibility of the states, while seeking for the existence of an act contrary to international law, some specific treaties can also envisage objective responsibilities. It is possible to consider the damages that may arise due to the use and transportation of nuclear materials within this scope.

The international responsibility of a state results from an omission or commission of an internationally wrongful act. An internationally wrongful act of a state presupposes that there is a conduct consisting of an action or omission: (Draft Article 2)

a) "is attributable to the State under international law and

b) constitutes a breach of an international obligation of the State"<sup>24</sup>

In principle, the presence of these two elements will entail the international responsibility of a state. It is international law that determines what constitutes an internationally unlawful act, irrespective of any provisions of municipal law.

Conduct attributable to the state may consist of actions or omissions. For a particular conduct to be characterized as an internationally wrongful act, it must first be attributable to the state to create its responsibility either generally or specifically in certain circumstances. In order for an act of the state to be attributable, it must involve some action or omission by its actor or actors. "Once an unlawful act has taken place, which has caused injury and which has been committed by an agent of the state, that state will be responsible in international law to the state suffering the damage irrespective of good or bad

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<sup>24</sup> Pellet, 2010, p.9

faith.”<sup>25</sup> Then the question remains as to which persons should be considered as acting on behalf of the state. In this context, the unjust actions of the organs that make up the state and act on behalf of the state, individuals and institutions under the authority of the state may be imposed on the state.<sup>26</sup>

In this regard, there is no distinction between the legislative, executive, or judicial organs of the state (Art. 4 /2, Draft Articles). No matter whether the act is a “commercial act” (*acta jure gestionis*) or an “act of State” (*acta jure imperii*), the responsibility may arise.<sup>27</sup>

“Acts or omissions of any state organ or an entity empowered to exercise elements of the governmental authority, acting in its official capacity, are attributable to the state even if the organ or entity in that capacity may have acted in excess of authority or contrary to instructions (*ultra vires* of its authority). A State may be responsible for the conduct which is clearly in excess of authority if the official has used his/her official position. This approach brings us reveals that the governing principles are:

- The state is responsible for its own acts, i.e., the acts of its organs or agents.
- The state is not responsible for the acts of private parties, unless these acts can be attributed to the state due to special circumstances warranting such an attribution.”<sup>28</sup>

“Attribution in international State responsibility is the process whereby wrongful conduct is ascribed to a State. Since ‘there are no activities of the state which can be called “its own” from the point of view natural causality’, the theory of attribution has been resorted to, in order to ascribe the conduct of State agents to the State”<sup>29</sup>

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<sup>25</sup> Shaw 2008, p.783

<sup>26</sup> Melda Sur, **Uluslararası Hukukun Esasları (Principles of International Law), 2. Edition**, İstanbul: Beta Yayınları, 2006, p. 237-239

<sup>27</sup> Verma, 2017, p.154

<sup>28</sup> Verma, 2017, p. 155-156

<sup>29</sup> Jankiewicz, 2012, p.16

In this context, of course, the Chinese government cannot be held guilty of the actions of private parties regarding the spread of the New Type of Corona Virus, but it is possible to say that the Chinese government officials have a responsibility for the spread of the disease to the world. Because, although the virus that caused the pandemic did not knowingly and willingly spread to the world by the Chinese government, it should be said that some Chinese government bodies and employees working in these organs are responsible for the delay in spreading this virus all over the world or at least reporting it to WHO.

### **iii. Loss and causal link**

The concept of "loss", which normally means "reduction in assets", is far from possessing the importance and independence it has in private law as an element in international liability law. The most fundamental element of the relations between the states is not only the economic (material; patrimonial) element, but rather the intellectual elements such as the honor, dignity and moral value of international law persons, even if, in a final analysis, they often form the basis of these relations.<sup>30</sup> In that case, the violation of a state's right by another state will cause a damage that we cannot deem necessary to bear, even if it does not have material consequences. Based on this, we can say that any violation of a right is a compensation obligation, even if the convicted state does not cause a material or pecuniary damage to the state.<sup>31</sup>

In order to establish responsibility in international law, there must be a causal link between a breach of an obligation and the alleged damage. Another condition for the emergence of international responsibility is the existence of loss. It means, harm must occur with an illegal act. In terms of international law, loss can be defined as the decrease in the area covered by the rights of states law subjects.

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<sup>30</sup> Göran Lysén, **State Responsibility and International Liability of States for Lawful Acts: A Discussion of Principles**, Uppsala 1997, p.97-98

<sup>31</sup> Aréchaga Eduardo de Jiménez, Attila Tanzi, "International State Responsibility", In **International Law: Achievements and Prospects**, Ed. Mohammed Bedjaoui, Paris UNESCO, 1991, p.348



Damage for the emergence of international accountability may be damages to subjects of state law subjects. However, there may also be losses for states, citizens, companies and officials for international organizations.<sup>32</sup> (Pirim 2016, 359)

The relations between damage and causal link explained in Draft Article 31. It is regulated that the responsible state has a full remuneration liability for damage caused by an act contrary to international law. The responsible state for an act contrary to international law is under the obligation to pay compensation for "damage caused". The term "damage caused by" in the article refers to the situation where there is a causal link between the verb we have examined and the damage. The term "loss caused by" in the related articles states that there is an obligation to eliminate all the consequences resulting from the act contrary to international law, and to incur losses arising from the act contrary to international law.<sup>33</sup> In terms of the causality link, the issue of the extent of responsibility, especially in the case of distant events and intervening causes, has been a subject discussed in every legal system. These issues will in a way depend on the assessment of different obligations by practitioners.<sup>34</sup> Because the need for a causal link, it may not be in the same relationship with every violation of an international obligation.

The peculiarization of harm to an illegal act is not only related to historical and causal transactions, but also to legal transactions. Various expressions have been used to describe the link between harm and unlawful verb in order for the expense obligation to arise. For instance, attributable to the wrongful act as a proximate cause, in some cases, "directness, "foreseeability" and "remoteness" criteria

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<sup>32</sup> Ceren Zeynep Pirim, "Uluslararası Hukukta Manevi Zarar," **Türkiye Barolar Birliği Dergisi**, No. 127, 2016, p.359

<sup>33</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries, 2001, Yearbook of the International Law Commission, Volume II, Part Two, 2001, p.92, <https://legal.un.org/ola/Default.aspx> Erişim Tarihi: 11 Haziran 2021

<sup>34</sup> Dinah Shelton, "Righting Wrongs: Reparations in The Articles on State Responsibility", **The American Journal of International Law**, Volume. 96, No. 4, 2002, p. 846

could be taken into consideration in terms of the event encountered. Although there is a connection between action and result in many ways, rather, it can be said that the efficient causal link is accepted.<sup>35</sup>

“The vital question for this approach is whether the conduct or event founding liability was necessary for the production of the harm. In a nutshell, it determines,

a) which actions or interventions are attributable to an agent, and

b) whether they are sufficiently relevant to count as causal”<sup>36</sup>

“Also known as ‘cause-in-fact’, this theory is expressed in three variants. A first group believes the action must in the circumstances be necessary for the outcome (but-for condition). For others, it must form a necessary part of a complex of conditions sufficient for the outcome (necessary element of a sufficient set or NESS). Finally, some describe the required connection in a quantitative mode by requiring that the action be a ‘substantial factor in’ or ‘contribute to’ the outcome.”<sup>37</sup> While casual link refers to the link between act and consequence (often loss); the attribute refers to the link between the action and the perpetrator.<sup>38</sup>

#### iv. Liability Arising From Imperfection

Imperfection is one of the primary sources of responsibility. Unfair action liability is based on the fault. For this reason, the liability of unfair action is also called the liability of imperfection. Generally, it does not show the behavior expected from a normal and cautious person in order to prevent the illegal result or to prevent the illegal

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<sup>35</sup> Ali Bal, “Born of The State’s International Responsibility (Devletin Uluslararası Sorumluluğunun Doğması)”, Unpublished Graduate Dissertation, **Dokuz Eylül University Institute of Social Sciences**, Izmir, 2006, p.182

<sup>36</sup> Michael Moore, “Causation in the Law”, The Stanford Encyclopedia of Philosophy (Winter 2019 Edition), Eds. Edward N. Zalta <https://plato.stanford.edu/archives/win2019/entries/causation-law/> Erişim Tarihi: 12 Haziran 2021

<sup>37</sup> Jankiewicz, 2012, p.9

<sup>38</sup> Moore, 2019

result. In other words, anyone who does not make every effort to prevent illegal action is deemed defective. The defect can be divided into two as intent or neglect depending on the degree of lack of will. In order for the fault-based liability to be the case, anyone who is claimed to be responsible must harm someone else with an illegal and defective act.<sup>39</sup>

In order for responsibility to arise due to unlawful action, four conditions must be fulfilled. These are as follows:<sup>40</sup>

**Unlawfulness:** Violations of the rules of the law order that are directed towards protecting the assets of people or persons are considered illegal actions. Behavior that is considered illegal action, for example: action against the contract or it can be an “active” action, such as injuring someone or destroying his property, it may also be a “passive” behavior, such as the construction person not taking the necessary protective measures.

**Harm:** In order to the fault to arise, a loss must have occurred from unlawful action. “In private law, any act causing damage involves the responsibility of the person committing the act, and requires reparation to be made. In international law, a wrongful act entails the responsibility of the State, but reparation does not automatically follow. As noted by Brownlie, ‘the idea of reparation...tends to give too restrictive a view of the legal interests protected [by the law of state responsibility]. The duty to pay compensation is a normal consequence of responsibility, but is not conterminous with it.”<sup>41</sup> However, if no harm has occurred from the unlawful action, compensation will not be in question.

**Imperfection:** In order for someone who harms someone else to be responsible in an illegal act, it should also be “defective”. Generally, anyone who requests an illegal result or does not take the necessary

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<sup>39</sup> Erkiner, 2010, p.29

<sup>40</sup> Şeref Gözübüyük, **Hukuka Giriş ve Hukukun Temel Kavramları (Introduction to Law and Basic Principles of Law)**, Ankara: Turhan Kitapevi, 2001, p. 187

<sup>41</sup> Brownlie, 2008, 421; Jankiewicz, 2012, p.64

effort to prevent an illegal result is deemed defective. The defect manifests itself in two forms: haste and neglect. In case an illegal result is desired, it can be mentioned intent. If an unlawful outcome is not requested, negligence is mentioned if an unlawful outcome is caused by not taking the measures required by the situation

**Causality:** In order to responsibility to arise, there must be a causal link between unlawful action and harm. Causality link should be considered as cause-effect relationship. Loss, as a result of the allegedly responsible event must have been born. This incident must be the cause of the damage. In determining the causality link, ordinary life flow and general life experiences are used. The causal link element is also not regulated, in line with the fact that the existence of damage is not mentioned as a condition in the 2001 Commission Draft. But in the article 31 / II, it is regulated that the responsible state has a full reparation obligation for the damage caused by the act contrary to international law. In addition to that, according to the article 36/I, The responsible state for an act contrary to international law is under the obligation to pay compensation for "damage caused". The term "damage caused" in the article refers to the situation that there is a causal link between the act we are examining and the harm. However, this expression (damage caused) refers to just an obligation to compensate for damages arising from an act contrary to international law, not all consequences arising from an act contrary to international law.<sup>42</sup> In this respect, although a link can be established between the verb and the result, it can be said that the more appropriate causal link is accepted. According to the theory of appropriate causality link, "between the necessary condition which is generally favorable to bring about a result of the kind that occurs in the concrete event, according to the normal course of events and life experiences, by its nature and main tendency, or which objectively increases the likeli-

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<sup>42</sup> Bal, 2006, p.181-182

hood of such an outcome and the outcome in question the connection is called the appropriate causal link.”<sup>43</sup>

#### **v. Breach of an International Obligation**

At the international level, the responsibility is an inevitable consequence of the existence of liability. This is because the violation of an international legal person's international obligation requires her international responsibility. In this respect, to be able to determine the responsibility of a state, it is necessary to establish that the given conduct attributable to a state constitutes a breach of its international obligations. “There is a breach of an international obligation by a state when an act of that state is not in conformity with what is required by that obligation, regardless of its origin or character.”<sup>44</sup>

The reason why an internationally wrongful act is wrong is that the relevant state does not comply with the behavior it should display. The negligence or executive behavior of the states may be the source of the responsibility arising from the failure to fulfill the international obligation. For the international responsibility of states, the source of the obligation does not matter. The obligation may arise from a violation of customary international law, as well as from an agreement, general principles of law, unilateral actions of states or other rules of international law.<sup>45</sup> A breach by a state of its international obligation gives rise to its international responsibility.

Determination whether a particular course of action is found to be against the international obligations of the state, means comparing the action that actually took place with the action that should be taken. Appreciation of an emerging course of action is a matter of fact;

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<sup>43</sup> Eren, Fikret **Borçlar Hukuku Genel Hükümler Cilt I, (Law of Obligations General Provisions Volume I)**, İstanbul 1998, p.509

<sup>44</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries, 2001, Yearbook of the International Law Commission, Volume II, Part Two, 2001, p.54, <https://legal.un.org/ola/Default.aspx> Erişim Tarihi: 12 Haziran 2021

<sup>45</sup> James Crawford, **The International Law Commission's Articles on State Responsibility**, Cambridge: Cambridge University Press, 2002, p.126

the legal issue consists of the interpretation of the rule of law that imposes the alleged breach of liability. In general, it cannot be said which acts are against international law; however, it can be said whether a certain action is against a certain rule or not. In each case, then, the act in fact committed by the state in each case must be compared with the style of behavior legally determined by the international obligation.<sup>46</sup>

#### **vi. Obligation in Force, Continuing Wrongful Acts, and the Time Factor**

The time is also very important factor to be able determine effect of wrongful acts. In this respect, Article 13 of the Draft Articles states the basic principle: "An act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs."<sup>47</sup> If the State is not bound by the obligation at the time of the act, it does not constitute a breach of the State's de facto international obligation. According to Article 13, emerging of a state's responsibility, when the violation occurs, the State must be bound by the obligation that has been violated. This principle is an established principle in the field of liability law.

Article 13 states another basic principle. In order for State responsibility to exist, it must be bound by the obligation that the State has allegedly violated at the moment of committing the act that caused the alleged violation. This principle provides an important assurance to States. International law does not work backwards in the field of State responsibility. That's why, it is important to examine at what point an obligation entered into force for the state, when it ceased to bind the state, or when it was terminated. It is, however, not easy to determine the time when the obligation came into force under customary international law. Another problem is to determine exactly

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<sup>46</sup> LYSÉN,1997, p.62

<sup>47</sup> Article 13, Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries, 2001, Yearbook of the International Law Commission, Volume II, Part Two, 2001, p.57, <https://legal.un.org/ola/Default.aspx> Erişim Tarihi: 16 Haziran 2021

when, or during what period, a wrongful act occurred and how long it continued. Wrongful acts may continue over a period of time such as the COVID-19 pandemic.

Every act against international law occurs over time. In this respect, firstly, the moment of breach of the international obligation and secondly, the time of commission of the wrongful act (extending from its commencement to its cessation) should be determined. This second aspect of the time factor is related to the duration of breach. In both ways, the subject can be expressed in the term “when the illegal act (or crime) was committed (or committed)” (*tempus commissidelicti*). Here, not only the illegal act itself, but also the “law” that renders an act unlawful constitutes an aspect of the time factor.<sup>48</sup>

A continuing wrongful act “occupies the entire period during which the act continues and remains not in conformity with the international obligation, provided that the state is bound by the international obligation during that period.”<sup>49</sup> In this respect, Article 14 of the Draft Articles states that “the breach of an international obligation by an act of a State not having a continuing character occurs at the moment when the act is performed, even if its effects continue.”<sup>50</sup> Because the effects and consequences of an action change and expand over time, it does not have a static structure. For this reason, the action must continue over time in order to be expressed as a wrong action. In order to determine the responsibility in these cases, the continuance in force of the obligation breached is taken into account.

The aim of Article 14 is to distinguish between a continuing violation and a violation that has been committed and completed. It happened at the moment act was made. Although its results and effects continue, the act has been committed. The phrase “when it is done” of

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<sup>48</sup> Bal, 2006, p. 132

<sup>49</sup> Article 13, 2001, p.59

<sup>50</sup> Article 14, Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries, 2001, Yearbook of the International Law Commission, Volume II, Part Two, 2001, p.59, <https://legal.un.org/ola/Default.aspx> Erişim Tarihi: 15 Haziran 2021

course indicates the time interval required for the act to be done. According to that, if the claims are true about China, hiding corona virus from the world then the Chinese government must take responsibility for the moment the virus first appeared and spread around the world. The breach of this international obligation in a particular event that a state must prevent extends to the entire period of time during which the event continues and remains in breach of its obligation. It is clear that there is continuity of inactivity (neglect) here.

### **III. THE RESPONSIBILITY OF CHINESE ADMINISTRATION FROM OUTBREAK OF COVID-19**

Whether the act or negligence committed by individuals or institutions can be attributed to the state is the subject of international law, just as in unfair acts. It is not important whether the act of being unfair is accepted as the act according to the national law of the state concerned. While international law defines the status of individuals and organs, they can benefit from the rules of domestic law, but the final decision will be determined according to international law.<sup>51</sup> In this respect, Draft Articles on Responsibility of States for Internationally Wrongful Acts the articles 4-11 pointed out acts of the state in the context of responsibility as follows:

- ✓ Behavior of state bodies: The state bodies of China related with public health and epidemic disease unit is responsible from not informing authorized state branch or WHO about new type corona virus. If – during this outbreak – The Chinese administration and especially Public Health Unit or Ministry of Health had fulfilled its obligations under the International Health Regulations (IHR), “much of the current disaster could have been avoided. But it seems that the Chinese administration has not learned the lessons of SARS. Time and again throughout the early stages of the initial outbreak, Chinese authorities lied about the situation. They cracked down on doc-

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<sup>51</sup> Martin Dixon, **International Law**, Fifth Edition, Oxford: Oxford University Press, 2005, p.232



tors discussing the virus, and some were detained by the police. Even when the Chinese authorities declared the outbreak to the WHO on 31 December 2019, they gave no detail of the evidence they held on human-to-human transmission, and continued to suppress explicit data on this point until they quarantined Wuhan on 23 January 2020, by which time five million locals had been allowed to travel out of the city.”<sup>52</sup>

- ✓ Behavior of the person or state unit using public power: At the beginning of the pandemic, the reaction of Chinese administration was unreasonable. At the beginning of the pandemic process, the authorities of China tried to hide this disease from the world and its own public as much as possible. In this context, the doctor Li Wenliang, was a good example of the wrong attitude of the regional authorities in the days when corona virus cases first started to appear in Wuhan. Who made the first warnings about the corona virus epidemic and who also caught the virus in the hospital where he worked, was tried to be silenced for a long time. On December 30, 2019 Dr. Li sent a message to a social media group that he was in contact with his colleagues about the epidemic and suggested that they wear protective clothing to avoid contamination. Four days later, officials from the Public Security Department came and asked him to sign a letter. The letter accused him of "making false claims that violently shake the social order." "We warn you: If you continue this illegal activity with the same arrogance and stubbornness, you will be taken into action - understood?" he was writing. Below is Dr. Li handwritten, "Understood." Dr. Li was one of eight people the police accused of "spreading rumors" and investigated. At the end of January, Dr. Li posted a copy of the letter on his blog on Weibo and described what happened. In the first weeks of

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<sup>52</sup> Matthew Henderson, et all., Coronavirus Compensation? Assessing China's Potential Culpability and Avenues of Legal Response, The Henry Jackson Society, 2020, p.7

January, officials in Wuhan claimed that the virus could only be transmitted in contact with animals. No guidelines were prepared to protect doctors. Meanwhile, the authorities apologized to him, but it was a bit late now.<sup>53</sup>

- ✓ The behavior of an organ placed in another state order
- ✓ Exceeding of authority or behavior contrary to instructions
- ✓ Behavior under the direction or control of the state: “Dr. Li and seven other doctors were quickly summoned by Chinese authorities for propagating “rumors” about SARS-like cases in the area — but their warnings were prescient. Soon, health officials worldwide would be scrambling to combat a novel virus with a striking genetic resemblance to SARS. The outbreak in Wuhan has exploded to more than 20,000 confirmed cases just in China.If society had at the time believed those ‘rumors,’ and wore masks, used disinfectant and avoided going to the wildlife market as if there were a SARS outbreak, perhaps it would’ve meant we could better control the corona virus today,”<sup>54</sup> However, it should be keep in mind “this is not China’s first experience of a lethal influenza epidemic. COVID-19 is related to the SARS virus which caused an epidemic in China and overseas in 2002 and 2003.The Chinese administration attempted to cover up evidence of this for months, resulting in avoidable deaths and disruption at home and abroad.”<sup>55</sup>
- ✓ Riot movements or similar behavior

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<sup>53</sup> Stephanie Hegarty, “Chinese doctor LiVenliang, who was wanted to be silence dafter coronavirus warning, died” 4 February 2020, <https://www.bbc.com/turkce/haberler-dunya-51370050> Erişim Tarihi: 8 Haziran 2021

<sup>54</sup> Gerry Shih, and Hannah Knowles,, A Chinese doctor was one of the first to warn about coronavirus. Hegotdetained—andinfected, 4 February 2020, <https://www.washingtonpost.com/world/2020/02/04/chinese-doctor-has-coronavirus/> Erişim Tarihi: 8 Haziran 2021

<sup>55</sup> Henderson, 2020, p.7

- ✓ Behaviors that are recognized and adopted by the state as their own behavior

On the other hand, the articles 16-18 are regulated as unfair acts attributed to the state because of the action of another state which is as follows:

- ✓ Helping to occurrence of international unfair action: Chinese government officials mediated the spread of the corona virus from Wuhan to other parts of China, even if it was not intentional. If officials from the Chinese Public Safety Department had taken the necessary precautions and informed the World Health Organization and other countries in time, perhaps the virus would not have turned into a global pandemic. For this reason, in fact, the Chinese state authorities help to occurrence of international unfair action by the methods they apply and by hiding information about the virus.
- ✓ Instructing and controlling international unfair act
- ✓ Forcing another state

The Draft Article 12 stipulates that “there is a breach of an international obligation when an act of that state is not in conformity with what is required of it by that obligation, regardless of its origin or character. A breach that is of a continuing nature extends over the entire period during which the act continues and remains not in conformity with the international obligation in question.”<sup>56</sup> This has been affirmed by the Court in a number of cases. However, the respondent state may justify its action by claiming self-defense or force majeure (superior or irresistible force) for its non-performance. There are three important elements regarding state responsibility: attribution (imputability), breach (causation), and the absence of any valid justification or legal excuse.<sup>57</sup>

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<sup>56</sup> Shaw, 2008, p.782

<sup>57</sup> Verma, 2017, p.154

In order an international unfair act to exist, it is not necessary that a behavior attributable to the State must have caused harm. According to the International Law Commission, “any act contrary to international obligation” is “an international unlawful act”, whether it causes harm or not, and the “international responsibility” of the State that is the offender occurs. The point to be noted here is that the importance of the damage is not removed from the liability law; however, the harm has been removed from being a factor to be looked for. Loss is important in determining the type and form of repair, especially in calculating compensation. In fact, the damage plays a determining role in the issue of responsibility and the determination of the victim. The existence of harm is necessary for the State, whose responsibility arises due to the violation, to occur in a concrete way and to fulfill these obligations arising from its responsibility. In other words, if the damage is not concretely present, the State's responsibility exists in an abstract manner, but in the event of a tangible damage, the obligation to repair arising from the state's responsibility may be tangible.<sup>58</sup>

The condition for a breach of an international obligation in terms of liability is the non-fulfillment of an obligation prescribed by a rule of international law, which is deemed to have been caused by a state as a result of the actions or omissions of certain persons or groups of individuals. In this respect, the individuals are generally not subject to international obligations, and they cannot commit acts that would make them responsible outside the penalty area for acts that would be deemed contrary to international law. Therefore, the correct criterion for the emergence of responsibility is not merely the existence of some acts (violation of obligations) that are contrary to international law which are accepted to be responsible for the state; If it can be accepted that the situation arising from the acts of individuals and

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<sup>58</sup> Hakki Hakan Erkiner, “State's International Responsibility From Unfair Act (Devletin Haksız Fiilden Kaynaklanan Milletlerarası Sorumluluğu)”, Unpublished Phd Dissertation, **Marmara University Institute of Social Sciences**, Istanbul, 2010, p.10-11

groups of persons is caused by the state, this should be qualified as illegal according to international law.

According to Article 14 of the Draft Article/3, “the breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.”<sup>59</sup> However, the consequences of a continuing wrongful act will depend on the context as well as on the duration of the breach. Accordingly, if it is proven that China did not inform the WHO organization about COVID 19 in a timely manner and it becomes clear that this epidemic occurred before the time reported by China, then China will face a major legal problem.

Breach of an obligation under international law is generally found to be equal to act contrary to the rights of others. In normal circumstances, international law person cannot have an international obligation that does not match an international right of another person of international law, or even the international community as a whole. For example, when considered in the context of COVID-19, when the epidemic first occurs, the Chinese government urgently needs to inform especially WHO and all relevant international organizations and other states as well. Because “China owed an international obligation under the International Health Regulations, 2005 to report timely, accurate and sufficiently detailed public health information about the events happening in its territory to the WHO. But China failed to perform its obligations and therefore, it is responsible for an international wrongful act.”<sup>60</sup>The failure of the Chinese government to fulfill this obligation not only harmed the economic conditions of the states, but also caused many people to die because of new type of corona virus.

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<sup>59</sup> Article 14, 2001, p.59

<sup>60</sup> Global Economic Impact of the COVID-19 In the Context of International Law, <https://www.hukukcular.org.tr/global-economic-impact-of-the-covid-19-in-the-context-of-international-law/> Erişim Tarihi: 12 Haziran 2021

The illegality can occur in the form of doing something that the state should or should not do. An illegal act can occur either through an action or through omission. In some cases, a specific behavior is expected from the state concerned. In some cases, a minimum standard of liability is set and the state is free to do more. The mention of an act not in conformity with the obligation in Article 12 of the draft has a flexible nature that covers the various forms that the violation can take.<sup>61</sup> Concerning “COVID-19 pandemic, the only binding legal regulation which addresses the prevention, protection and control of the international spread of disease is the International Health Regulations, 2005. According to Article 6”<sup>62</sup>

“Each State Party shall assess events occurring within its territory by using the decision instrument in Annex 2. Each State Party shall notify WHO, by the most efficient means of communication available, by way of the National IHR Focal Point, and within 24 hours of assessment of public health information, of all events which may constitute a public health emergency of international concern within its territory in accordance with the decision instrument, as well as any health measure implemented in response to those events.”<sup>63</sup>

“Following a notification, a State Party shall continue to communicate to WHO timely, accurate and sufficiently detailed public health information available to it on the notified event, where possible including case definitions, laboratory results, source and type of the risk, number of cases and deaths, conditions affecting the spread of the disease and the health measures employed; and report, when

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<sup>61</sup> Article 12, Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries, 2001, Yearbook of the International Law Commission, Volume II, Part Two, 2001, p.54, <https://legal.un.org/ola/Default.aspx> Erişim Tarihi: 15 Haziran 2021

<sup>62</sup> Global Economic Impact of the COVID-19 In the Context of International Law, <https://www.hukukcular.org.tr/global-economic-impact-of-the-covid-19-in-the-context-of-international-law/> Erişim Tarihi: 15 Haziran 2021

<sup>63</sup> International Health Regulations, 2005, World Health Organization, p.12, <https://www.who.int/ihr/publications/9789241580496/en/> Erişim Tarihi: 15 Haziran 2021

necessary, the difficulties faced and support needed in responding to the potential public health emergency of international concern.”<sup>64</sup>

As can be clearly seen from the statement here, International Health Regulations obliges member states to notify WHO within 24 hours of an emergency situation threatening public health within their borders. Failure to comply with this situation clearly means a violation of an international obligation. At this point, it is important to note that according to Article 6 of International Health Regulations member states are obliged to notify WHO about an emergency situation threatening public health within their borders at least 24 hours. However, the People's Republic of China is subjected to serious criticism that it has concealed the developments related to COVID-19 for a long time. In fact, the point where other states criticize the Chinese administration is that the Chinese administration did not take the necessary precautions when the Corona Virus first appeared in Wuhan, and in this context, it did not prevent the entrance and exit to the region, causing the epidemic to spread to other countries. According to some sources, although COVID-19 actually appeared in August (New coronavirus may have emerged in summer 2019) or October 2019<sup>65</sup> the Chinese government reported this development to WHO on December 31, 2019, causing a delay of about 4 months and the spread of the new type of Corona Virus to other countries.<sup>66</sup>

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<sup>64</sup> International Health Regulations, 2005, p.12

<sup>65</sup> Morgan Mc Fall/Johnsen, Satellite image sand internet trend ssuggest the corona-virus may have emerged months before Chinareported it, <https://www.businessinsider.com/coronavirus-in-wuhan-fall-satellite-data-internet-searches-2020-6> Erişim Tarihi: 17 Haziran 2021

<sup>66</sup> Timeline of ECDC'sreponseto COVID-19, <https://www.ecdc.europa.eu/en/covid-19/timeline-ecdc-response> Erişim Tarihi: 17 Haziran 2021

## **CONCLUSION**

The responsibility of the state can be accepted as a general principle of international law, with positive rules and the assumption that an act is considered unlawful by reference to the rules that create rights and obligations. In this respect, the law of liability is related to the realization of an act contrary to the law and the consequences of the act, especially the recovery of the loss suffered. In international law, the emergence of the state responsibility is conditional on international tort and attribution of this tort to the state. Violation of any norms of international law has been recognized as an international tort. There was no difference in quality between the violated norm being from international treaty, international custom or other sources of international law. When an international commitment has been breached, it is a principle of international law to adequately remedy it; therefore, reparation is a mandatory and complementary condition in the execution of a contract, not necessarily written in this contract.

In this context, it is clearly seen that the Chinese administration has some international tort (these may be deliberate or unintentional) during the emergence and spread of the COVID-19 pandemic. In this context, the most important development that can be considered as an international tort is to hide people who show signs of a new type of corona virus from both the country and the international community, and try to silence doctors who want to reveal this and try to put pressure on them. More importantly than this, and the development that constitutes the legal basis for China's committing international torts crime, comes out within the scope of the International Health Regulations, 2005. According to Article 6 because the Chinese administration did not report any suspicious situation threatening public health by violating the rule of an international treaty, which it had previously signed and was binding for it, to WHO within 24 hours. In addition, since he did not take the necessary measures to prevent the spread of the virus (not taking contamination measures), therefore Chinese state officials became responsible for the spread of the virus all over the world. Of course, we do not claim here that China



deliberately took this action. However, it is clearly that the Wuhan-based virus spreading to all countries of the world has been neglected by the authorities of China's health institutions and the people who govern the country politically. Moreover, if the Chinese administration had quarantined the region and closed the entrances and exits to the region instead of silencing the doctors who made rumors about the virus when the virus had not fully spread, perhaps the new type of corona virus would not turn into a global pandemic. By this way, China seems responsible for COVID-19 – and if legal claims were brought against Beijing they could amount to trillions of dollars.

According to Article 12, when there is an inconsistency between the behavior required by a State under an international obligation and what it actually does, a breach of an international obligation has been created by that State if the conduct of the State is incomplete with respect to the behavior that it should have taken under the obligation. In question article states that the origin or nature of the obligation breached does not matter. The international responsibility of the State may also arise from a breach of bilateral obligations or from a breach of an obligation to more than one State. In fact, responsibility may have arisen from the breach of an obligation to the general of the international community. As in the example of the spread of the Corona virus all over the world, breach of an international obligation can affect the entire international community. A State may exhibit relatively mild torts, as well as much more severe torts than these. Severe violations of the obligations to the general of the international community will constitute such grave tort.

In addition, it is an undeniable fact that there is a connection between the actual situation, namely the damage (material and moral damages caused by the corona virus) and the cause. While the breach of an international obligation is necessary for an act contrary to international law, it is not sufficient. An additional condition is necessary to create an automatic link between the state to which the act is attached and the claiming state in terms of responsibility; this is the existence of a damage suffered by the claiming state. Here, the neces-

sity of harm is not part of the primary rules, but is related to secondary rules, as the existence of harm will come to the fore at the diplomatic or judicial level. Therefore, a state will only have liability if another is harmed due to an illegal act. The necessity of the damage derives from the fundamental legal postulate that “no person can bring a case without a legal interest”. In this respect, states do not have floating rights to seek redress for any violation or contravention of any other state.<sup>67</sup>

In this respect, it is obvious that in the corona virus pandemic that affects the whole international community, the Chinese administration is responsible for the damages it has inflicted on other states and its citizens due to the violation of its international obligations, and that this responsibility is obliged to compensate. For example, in the USA, “Missouri’s attorney general filed a lawsuit against the Chinese government over its handling of the outbreak, saying China’s response led to devastating economic losses for the state. Missouri’s lawsuit was filed in a federal court last April by state Attorney General Eric Schmitt, alleging negligence on China’s part. The complaint said Missouri and its residents have lost possibly tens of billions of dollars, and it seeks cash compensation. The Chinese government lied to the world about the danger and contagious nature of COVID-19, silenced whistleblowers, and did little to stop the spread of the disease,”<sup>68</sup> However, “China is bound by international law to report crucial public health information in a timely, accurate and detailed manner. However, it ‘failed in its obligations to do this’ through December and January in the early stages of the outbreak,”<sup>69</sup>

It is seen in the official statements that China will not accept responsibility for these claims and that the virus has emerged naturally and has spread to the world outside of its control, and will claim that

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<sup>67</sup> Bal, 2006, p. 152

<sup>68</sup> Tan, Huileng China ‘owes us’: Growing Outrage Over Beijing’s Handling of the Coronavirus Pandemic, 24 April 2020, <https://www.cnn.com/2020/04/24/lawsuits-outrage-over-chinas-handling-of-the-coronavirus-pandemic.html> (18.06.2021)

<sup>69</sup> Henderson, 2020, p.16

other states have not taken the necessary precautions even though they warn the world and will defend itself in this way. In this case, it is possible to say that China rejects those claims and will try to ignore the compensation claims and resist the judiciary as much as possible. For instance an official transcript of a regular press briefing of Chinese foreign ministry spokesman Geng Shuang: The lawsuit from Missouri 'has no factual or legal basis' and "it only invites ridicule," The Chinese Government did nothing but warn the World Health Organization and the USA and other relevant countries about the pandemic in an open and transparent manner. "Such a lawsuit is nothing short of frivolous litigation which defies the basic theory of the law," "Based on the principle of sovereign equality prescribed by international law, US courts have no jurisdiction over the sovereign actions taken by Chinese governments of all levels in response to the pandemic."<sup>70</sup> In other words, states have sovereignty free of judgment, so if China does not want to, trial is not possible. Since China will not be a party to this case, even if compensation is awarded, China will not pay it.

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<sup>70</sup> Tan, 2020.

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