

Comments [by Panama] on United Nations General Assembly resolution 56/183 of 2001 from the viewpoint of international law

The international responsibility of States for alleged wrongful acts is a matter of debate and interest for States, international organizations and international courts competent in the field of international law.

Taking into account chapter IV of the report of the United Nations International Law Commission on the work of its fifty-third session, which contains the draft articles on responsibility of States for internationally wrongful acts, we would like to contribute some observations to this topic in particular.

Breaches by States of their international responsibilities, by act or omission, may fall into various areas where States may be accused of committing unlawful acts, for instance the granting or denial of asylum, deportation or an unlawful act committed by a vessel flying a State's flag, to give a few examples, with the result that the State is accused of the unlawful act or held civilly liable for reparations for damages and harm.

As for the examples given, certain elements would have to be analysed in relation to the compliance or non-compliance with an internal legal norm in effect, as mentioned in draft article 3, or compliance with a peremptory norm regarding an obligation acquired through the ratification of an international agreement or convention, as stipulated in article 40, paragraph 1, of that set of articles.

On the other hand, as in any legal process, among elements essential to prove that the alleged unlawful act has been committed is the examination of the evidence used to denounce it. Here, article 12 could be worth considering, since in other words the responsibility of the State or States for the alleged acts, whether civil or criminal, must be proven through irrefutable evidence.

Furthermore, the interpretation of current international law, which according to peremptory norms should be strictly applied, must be taken into account. There could therefore be a presumed conflict in the interpretation of international laws requiring an

examination of all the evidence brought before the court to decide whether or not international responsibility exists.

Another essential aspect that must be assessed from the perspective and in the light of international law, are the exogenous factors that influence a State to be drawn into committing an involuntary wrongful act, from the perspective of the given circumstances, namely: necessity, fortuitous event and force majeure, self-defence and consent, that when properly assessed by the provisions of the international legal framework, exonerate from punishment and responsibility the State or States that through those circumstances was held accountable for the internationally wrongful act. Article 14, paragraph 3, and Chapter V referring to the circumstances precluding wrongfulness deal with this interpretation.

Lastly, in our view the draft should be seen as a norm erga omnes for all States and the articles we have referred to (3, 12, 14 and 40), once the necessary corrections have been made, constitute an achievement of the United Nations International Law Commission. Proposing these draft articles clearly strengthens existing norms in the field of international law and reform through the implementation of new norms that oblige States to comply with international obligations acquired through the ratification of international treaties.