

THE BASIS OF STATE RESPONSIBILITY

(a) The issue of State responsibility is, indeed, the current leading problem of International Law. It may be stated that it involves practically the entire scope of international conduct, since it originates from a definite principle of law and comprises diverse features, such as the definition of the State as an international character, its rights, its obligations, and its powers. In other words, responsibility covers the solution of matters which deal with the activities of the State and the securities which it affords. This unique problem is now assuming the importance which it commands, having been brought to light out of its former exclusive status in political and lay circles. Until just recently, responsibility was confined to special claim proceedings instituted through diplomatic channels, arising out of a one-sided conception of the alleged injury, and their decision was dependent in most cases upon coercion on the part of the States with preponderant power, or, at the most, upon direct settlement or arbitration proceedings that were not in themselves strictly based upon juridical principles. Even to this day there are many who confuse the problem of substantive law involving responsibility with the claim proceedings instituted through diplomatic channels, whereas they are not altogether two inseparable subjects. There are certain cases in which a person may institute an international action; and the present tendency is to establish a court with international jurisdiction, to which individuals may have recourse whenever the State raises questions of public policy in order to become immune from its municipal jurisdiction; or whenever there is a manifest denial of justice. In any event, the possibility of private citizens resorting to such international jurisdiction evidently shows that no relation necessarily exists between the principle of responsibility and diplomatic claim proceedings.

(b) Responsibility on the part of the State may, or may not, exist; and its definition and scope may vary, depending upon whatever conception of the law is entertained as regards the State itself. If such right should be derived from the will of the State, and if such will purports to comprise peremptory sovereignty of the State in its ancient form, then there is no

NOTE.—The author's original manuscript in Spanish has been translated into English for this publication by G. Marquez, LL.B.