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Establishing state responsibility in the absence of effective government

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Appendix: Articles 4-5, 7-11 and 16 ARSIWA

Article 4

Conduct of organs of a State

1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.
2. An organ includes any person or entity which has that status in accordance with the internal law of the State.

Article 5

Conduct of persons or entities exercising elements of governmental authority

The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.

Article 7

Excess of authority or contravention of instructions

The conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.

Article 8

Conduct directed or controlled by a State

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

*Article 9**Conduct carried out in the absence or default of the official authorities*

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority.

*Article 10**Conduct of an insurrectional or other movement*

1. The conduct of an insurrectional movement which becomes the new Government of a State shall be considered an act of that State under international law.
2. The conduct of a movement, insurrectional or other, which succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered an act of the new State under international law.
3. This article is without prejudice to the attribution to a State of any conduct, however related to that of the movement concerned, which is to be considered an act of that State by virtue of articles 4 to 9.

*Article 11**Conduct acknowledged and adopted by a State as its own*

Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own.

*Article 16**Aid or assistance in the commission of an internationally wrongful act*

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that State.

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- Agreement concerning the Headquarters of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, New York, 29 July 1994, in force provisionally 29 July 1994, definitively 17 November 1994, 1792 UNTS 351
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- Al Nashiri v. Romania*, Application No. 33234/12, First Section, Judgment of 31 May 2018
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Curriculum Vitae

Andrea Varga was born in 1985 in Székesfehérvár, Hungary. She first studied international relations at the Corvinus University of Budapest, receiving an MA in 2009. She then went on to study public international law at Leiden University, graduating *cum laude* from the LLM (reg.) programme in 2010 and completing the Law Faculty's Talent Programme at the same time. She started her doctorate at Leiden in 2011 as a Meijers PhD Fellow. During her PhD, she was a Visiting Scholar for a semester at Columbia University in New York in 2014. Between 2015 and 2018, she worked at the Lauterpacht Centre for International Law in Cambridge as a Research Associate on the *Legal Tools for Peace-Making* project, led by Prof. Marc Weller. As part of the project, she oversaw the development of the award-winning *Language of Peace* database, created together with the UN Mediation Support Unit and PASTPRESENTFUTURE.

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