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Establishing state responsibility in the absence of effective government

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Propositions relating to the dissertation

ESTABLISHING STATE RESPONSIBILITY
IN THE ABSENCE OF EFFECTIVE GOVERNMENT

by Andrea Varga

1. If a state loses control over part of its territory, it is still under an obligation to use all reasonably available means to comply with its duties to protect, among others, individuals within that territory.
2. Even if attribution based on the exercise of governmental functions can capture the conduct of local *de facto* governments established by rebel groups, the rule's inherent limitation means that it cannot extend to acts carried out for the group's own benefit.
3. Both the European and the Inter-American Court of Human Rights apply attribution tests that are based on state support for, rather than control of, private actors. These diverge from the tests set by the International Court of Justice.
4. Attributing conduct based on factual links necessarily involves some trade-off between ensuring that states are only held responsible for conduct carried out on their behalf and preventing that they easily evade responsibility. This, as well as differing notions of what 'acting on the state's behalf' means, is what explains the divergence between courts.
5. Conceptual confusion over the basis for state responsibility can lead to considerable uncertainty over the scope of conduct for which the state is held responsible.
6. Specialized courts need to demonstrate a thorough understanding of the rules of general international law, such as state responsibility, before they can persuasively depart from such rules.
7. The real difficulty with having multiple tests of attribution based on factual links lies not in the specter of fragmentation, but in the potential clash between judicial lawmaking and state consent.
8. The existing categories of state responsibility cannot adequately capture state complicity in the conduct of non-state actors. This can lead to a *responsibility gap*. Accordingly, a general rule prohibiting state complicity in the wrongful conduct of private actors should be developed in international law.

9. Much of the law on state responsibility in connection with the conduct of private actors has been and continues to be formed outside the work of the International Law Commission of the United Nations.
10. However much private conduct they are able to capture in some way, the rules of state responsibility cannot compensate for the lack of (enforcement mechanisms for) private actors' direct responsibility under international law.
11. No matter how optimistic the candidate may be regarding the projected timeline, accepting a full-time job before having completed the manuscript *will* increase exponentially the time required to finish the PhD.