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# Complicity and the Law of State Responsibility

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Helmut Philipp Aust



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## **Complicity and the Law of State Responsibility**

This systematic analysis of State complicity in international law focuses on the rules of State responsibility. Combining a theoretical perspective on complicity based on the concept of the international rule of law with a thorough analysis of international practice, Helmut Philipp Aust establishes what forms of support for wrongful conduct entail responsibility of complicit States and sheds light on the consequences of complicity in terms of reparation and implementation. Furthermore, he highlights how international law provides for varying degrees of responsibility in cases of complicity, depending on whether peremptory norms have been violated or special subject areas such as the law of collective security are involved. The book shows that the concept of State complicity is firmly grounded in international law, and that the international rule of law may serve as a conceptual paradigm for today's international legal order.

DR HELMUT PHILIPP AUST is a Senior Research Fellow at the Humboldt-University, Berlin. His key research interests lie in the fields of international responsibility, UN law, human rights law and the interaction between international and domestic law.

Established in 1946, this series produces high quality scholarship in the fields of public and private international law and comparative law. Although these are distinct legal sub-disciplines, developments since 1946 confirm their interrelation.

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## Foreword

Until rather recently, 'complicity' was a marginal concept and a neglected issue in international law. The long gestation of Article 16 of the International Law Commission's Articles on State Responsibility of 2001 did not attract much attention. According to this provision, 'A State which aids or assists another State in the commission of an internationally wrongful act by the latter, is internationally responsible.' However, after the terrorist attacks on 11 September 2001 and in connection with the invasion of Iraq in 2003, certain cooperative behaviour by States raised the general awareness of the possible responsibility of States for providing 'aid and assistance'. This awareness, in turn, shed more light on other areas in which States cooperated in a way which raised questions about their implication in the internationally wrongful acts of other States. Today, barely ten years later, the possible responsibility for complicity is one of the most important and difficult issues which arise in the daily work of government legal departments.

This state of affairs alone would justify the timely publication of a monograph which carefully researches and analyses the relevant issues and practice. But the present book is much more than a solid synthesis of practice and the interpretation of an increasingly relevant rule of international law. Helmut Aust also situates this rule within the larger context of international law. He shows that the general prohibition of aid and assistance, as it is laid down in Article 16, is merely one element within a web of more specific primary rules. He also argues persuasively that this prohibition is an expression of a more general legal principle which would guide the interpretation of Article 16. Finally, he demonstrates that the position which international law adopts with respect to 'aid and assistance' is a highly significant symptom of

its own state of development, perhaps as important as the concept of peremptory norms.

Helmut Aust's perceptiveness for relevant practice, his mature sense of place and direction, and his talented erudition have contributed to making this book a felicitous example for the mutual enrichment of practice and theory. This is true both for what the book describes – the development of a norm from certain instances of practice which were successfully postulated by academic lawyers to be of more general significance – as well as for what the author does – developing prudent suggestions of how to interpret and conceive a rule within its wider political, historical and systematic context. The book shows that careful empirical analysis and historically informed systematic thinking with respect to a crucial rule of international law, if well done, are not only compatible with each other but ultimately interdependent. Their combination is necessary for the proper identification and development of international law. This book is a most valuable contribution to this end.

Georg Nolte  
Humboldt University Berlin  
15 November 2010

## Preface

This book is a revised and updated version of the doctoral dissertation which I defended at the Faculty of Law of the Humboldt University Berlin in December 2009. As this is a book about complicity, it is only fair to gratefully acknowledge the ‘aid and assistance’ that I received from a number of people. It should very well be understood that this ‘complicity’ does not entail any responsibility for errors and misconceptions which can only be attributed to the author.

First of all, I would like to thank my academic teacher, Professor Georg Nolte. He supervised my work as a doctoral candidate. My way of thinking about international law has been deeply influenced by him. I am especially grateful for the academic guidance with which he has accompanied my work so far, as well as for his personal cordiality and warmth. He also initially directed my attention to the topic of this book.

I would also like to thank Professor Christian Tomuschat for being the second examiner of my thesis. I am very grateful to Professor James Crawford for his hospitality at the Lauterpacht Centre for International Law in Cambridge, for an important conversation about complicity in the work of the ILC as well as for the inclusion of this book in the Cambridge Studies in International and Comparative Law series.

Alejandro Rodiles was often the first person with whom I discussed ideas for this book. Our conversations about international law and other issues had a profound influence on this book. Dr Thomas Kleinlein and Dr Mindia Vashakmadze read the entire draft manuscript which benefited greatly from their constructive comments and criticism.

I received valuable feedback on and suggestions for my work from a great number of people, including Gebhard Bücheler, Dr Thomas Burri, Professor Michael Byers, Dr Alejandro Carballo, Christian Djeflal,

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This book was written at three splendid institutions. Most parts originated at the Institute for International Law, University of Munich. I would like to thank all members and staff of the Institute for being such a warm and generous community, in particular Christine Schuhbeck-Schmidt. I would also like to express my gratitude to the librarians at the Peace Palace Library in The Hague where I had the privilege to work for two periods of three weeks each. The Lauterpacht Centre for International Law at the University of Cambridge proved to be every bit the inspiring place for an intense period of research and writing I expected it to be. My stays in Cambridge and The Hague were supported by scholarships from the German Academic Exchange Service (DAAD). The doctoral dissertation underlying this book received the Thesis Prize of the *Absolventen und Freunde der Juristischen Fakultät der Humboldt-Universität zu Berlin – Bibliotheksgesellschaft e.V.*

Finally, I would like to thank my family: my parents supported me generously throughout my studies for which I cannot thank them enough. My brother Martin has been an important influence for me as well as a good friend in all times. My wife Johanna is a constant source of love and inspiration. Without her, I would not know what would become of me.

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