CHAPTER -7: CONCLUSION

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7.1 Concluding Remarks

I have taken great care and caution meticulously to draw the conclusion based on the research conducted in this area. However, the research is aware that it would be wrong, if not possible to draw absolute conclusions in theoretical discourses of this type. Hence it is respectfully submitted that all conclusions drawn are based on facts available at the time of completion of this thesis. It is further submitted that conclusions are drawn carefully on the basis of the discussion conducted in each chapter.

The First Chapter of current research work explained a broad introduction to the topic of International State Responsibility for injurious consequences arising out of acts not prohibited by international law put forward certain basic propositions. The decision taken by Mr. Robert Ago, as special rapporteur on the topic of international responsibility that the topic of responsibility was concerned with the consequences of failure to fulfill obligations established by international law and therefore comprised of secondary rules of obligations was, in a way, a turning point that led the ILC to regard the harmful consequences arising out of acts not prohibited by international law, concerning only the primary rules of obligation, as a separate and distinct body of rules quite apart from the rules of international responsibility. Though this juridical distinction on the lines that it is made out by the ILC has been subjected to certain criticisms, the subsequent work of the Commission’s has demonstrated that the doctrinal distinction between responsibility and liability are quite in consequence with the general system of rules of international law. Therefore it has to be regarded as a rational step taken by the special supporter. It may therefore be further said that both from the jurisprudential and sociological context the principle of responsibility as it is sought to be developed is founded on stronger and sound basis.

On the other hand argument of “noting of sovereignty” as an objection to an international regime of responsibility on the reasons that apart from the domain of ‘responsibility’, which is a product of general international law it is conceivable to effectuate a system of ‘responsibility’ even regarding activities not prohibited by international law without any support of general international law, is superfluous. It is more logical to conclude that the very notions of sovereignty would have to be regarded as supporting the process of crystallization of the concept of responsibility for the reason that so long as “responsibility” does not exact compliance for breach of
rules of international law but would only impose “soft obligations” of co-operation and reparation, states are free to feel away from the stigma of responsibility. To the extent “responsibility” would have not allowed multiplication of prohibitions and therefore to that extent the “notion of sovereignty” is left unassailed.

All Sovereign States are equal in rights as well as in corresponding duties to respect the rights of other states. When a state violates the rights of another state and causes injury to the latter as a result it is responsible for said injury and has to compensate fully for all damages. As the PCIJ has appropriately found, “it is a principle of international law and even a greater conception of law, that any breach of an engagement involves an obligation to make reparation”.\(^1\) In simple words, the state is responsible for the breaches of its international obligations and becomes subject to whatever remedial action is legally permissible in the circumstances.

Professor James Crawford has suggested that the circumstances under which the state would be found liable under this head are rare. They include the situations during a revolution armed conflict or foreign occupation where regular authorities have been dissolved or are incapable of carrying out their normal duties.\(^2\)

In terms of the Draft Articles, state responsibility is incurred when two elements are proved. The first is that there must be conduct consisting of an act or omission, which attributable to the state under international law. The second is that conduct must constitute a breach of an international obligation of the state. It is clear, therefore, the state responsibility is dependent on the link between the state and the wrongful act of conduct of a private actor must qualify as an act of a state.\(^3\)

The apparent differentiation in practice in assigning responsibility for various acts has led to a distinction on the part of many writers between direct and indirect responsibility.\(^4\) This distinction is between acts of the state itself, through its authoritative organs, and acts of individuals. For its own acts, the state is regarded as directly responsible, but its responsibility for the acts of individuals is indirect and conditioned upon fault. This position is stated by Hershey as follows:

“A state is directly responsible for its own actions or for acts of its officials and agents performed at its command or acting under its authority. State acts which

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\(^1\) *Chorzow Factory [Germany.V.Poland]*, PCIJ, Series A, No.17[1928] 4, p.29
\(^2\) James Crawford, *The International Law Commissions Articles on state Responsibility; Introduction, Text and commentary*, [200], p.100
\(^3\) C. Eagleton, *The Responsibility of States in International Law*, (19280, p.207
\(^4\) Oppenheim, *International Law*, I, pp.149.50, see Fiore, *International Law Codified*, p.594
violate international law, or inflict injuries upon other nations constitute serious international delinquencies if committed willfully or as a consequence of culpable negligence. In ordinary times a state is also indirectly responsible for the ordinary and law abiding conduct of all those residing or domiciled within its jurisdiction and subject to its laws”.  

Recent writers have tended to attack this clarification, basing their arguments upon the conviction that the individual is unable to violate international law. Since they say, state can deal only with state and international law cannot impose duties upon individuals, liability must always be direct. The act of the individual, they argue, can only occasional responsibility, and the responsibility there by engendered is not for his act; but for the failure of the state to prevent or punish it. This failure on the part of the state is an international delinquency of the state itself, for which it is directly responsible. Thus, responsibility for acts of individuals is entirely eliminated and international law has no longer to concern itself with such acts, except in so far as they reveal the state itself in a delinquency.

Some confusion of thought arises from such a distinction. If the distinction between direct and indirect responsibility has reference to substantive responsibility, one may agree with Anzilotti and his followers that the state is responsible only for its own acts and that therefore responsibility is direct. If, however, those who distinguish between direct and indirect responsibility have in mind the method by which responsibility may be claimed or discharged, it may be accepted. International law sets certain obligations, if these are not met, responsibility exists whether such responsibility is discharged by reparation made directly to the other state, or is discharged by the ordinary action of municipal justice, the injured state never perhaps being cognizant of the existence of the injury.

From the study of the first chapter what becomes clear that “state responsibility” sought to be portrayed is an unorthodox concept. Unorthodox because the liability that is formulated has not those fines attributes of traditional systems. In a way it may be criticized as an obscure and enigmatic conception. At the same time it may be concluded that the criticism is neither sound nor justifiable. The components

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5 Hershey, Essentials, pp.161-162
6 Supra Note 3, p.215
7 Since the State can act only through its agents, it would probably be more correct to say that responsibility is always indirect.
of notification, prevention, consultation and reparation compositely in a state of continuum creating the concept of responsibility, is not altogether an oddity. On the other hand, contemporary international contemplates a duty to co-operate with all these attributes. Thus “state responsibility” as it is conceived here is quite in consonance with the contemporary development of international law.

Added to this the matters highlighted in the first Chapter that in the event of injury ensured, in spite of the prior safeguards by way of duty to notify, prevent and consult, the assessment of state responsibility is not exclusively determined by any single doctrinal considerations. Several interests, some favorable to the victim state and some favorable even to the state of origin, are required to be balanced in the process of its determination. It may therefore be said that while injury ensued might primafacie require the state of origin to bear the responsibility it is neither conclusive nor decisive in as much as the operation of balancing interests would certainly place the things in the proper perspective so as to make better and a more scientific determination of responsibility. On the whole the first chapter of Introduction has advanced the argument infamous of founding the concept of state responsibility and the logical determination favours that argument.

The Second Chapter in the current research has explained the historical overview of state responsibility. In International relations as in other social relations, the invasion of the legal interest of one subject of the law by another legal person creates responsibility in various forms. These forms determined by the given legal system and the customary forms of redress and self help will vary from one historical period to another. The essential idea of responsibility is simple and has its basis both in religious thought and in the secular morality of which law is the outwork.

Morality and law are concerned with damage not as such, but only when inflicted without justification *damnum injuria datum* was the condition for the action on the *Lex Aquilia to lie.*8 The fundamental conception would remain the same whether the action or form of responsibility was ‘Penal’ in nature, or was based upon fault, or involved ‘Strict liability’ in which case the defendant would have the burden of exculpation. Similarly, in the development of the common law the legal terminology was that of contemporary morality, the terms used were transgressio, trespass, and mis-demeanour.

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In the case of state responsibility the task is complicated by two peculiarities of the genre. The first lies in the fact that the concept of responsibility is both very simple and yet sophisticated. It is both a fundamental moral idea common to laymen and lawyers, and a concept which in legal experience calls for considerable study and refinement, involving problems of measure of damages, liability for moral damage and so forth. Secondly, in the earlier doctrine of the law of nations and even to some extent in the more recent past, the concept of state responsibility has been accorded a more or less latent role and the existence of the concept has been matter of assumption.

However, Hall’s discussion is far from negligible and he bears witness to the state of the doctrine thus, ‘the subject of the responsibility of the state is not usually discussed adequately in works upon international law.’9 There are more modern examples, the successful short treatment of Brierly,10 The Law of Nations, contains no discussion of state responsibility as a category although there is some consideration of the duties owed in respect of aliens received on state territory.

The law of international responsibility as such was developed by reference to states which until some decades ago, were considered the only subject of international law. Although state responsibility still remains at the fore front, the emergence of international organizations as new legal persons increasingly calls for a tailored responsibility regime. As noted by an author, “The steadily growing participation of international organizations in international relations calls for a closer scrutiny of the question of legality of the acts of international organizations, understood as the proper fulfillment of their statutory functions with due respect to the rights of other subjects of international intercourse. The fundamental role of international responsibility ensuring the proper functioning of the international legal order can be played effectively only when the rules governing responsibility in that order apply to all subjects.”11

The writings of the twentieth century protagonists of the law of state responsibility, Anzilotti and Ago, represent two conceptually opposed theories. Both authors have had their predecessors since Grotius and their approaches are likely to

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9 Ibid p. 2
remain influential in the future. Taking into account the political and legal context in which Anzilotti and Ago developed their theories; both Anzilotti’s bilateral conception of state responsibility and Ago’s recognition that the violation of certain fundamental norms creates a legal injury to all states should be perceived as legitimate. The persistent influence of their theories even beyond the context in which they were developed appears due to the reasons which led international lawyers to lean more towards a positivistic or to a natural law/policy-oriented jurisprudence. In this respect the work of Hersch Lauterpacht marks an important turning point.

The invocation of state responsibility, analyzes them in historical context, and notes where they represent progressive development of international law. It then surveys a wide range of contemporary situations where individuals, other non-state entities, and international organizations invoke state responsibility by initiating judicial or other formal complaint proceedings. In light of this contemporary practice, it usefully advances the codification and development of international law but do not deal sufficiently with the right of individuals and non-state entities to invoke the responsibility of states.

Increased complexity arises in cases involving the violation of an international obligation that affects the interests of the international community as a whole. In cases that compromise collective interests, a state will be particularly injured and entitled to invoke the international responsibility of another state if it is specifically affected by the breach or if the violation “is of such a character as radically to change the position of all the other states to which the obligation is owed with respect to the further performance of the obligation.” This high threshold may constitute a definitive bar in cases involving collective interests, as not all the other states may see their positions as radically changed. Still, states other than an injured state may also invoke international responsibility with respect to inter alia, obligations erga omnes. In such cases, however, states may only claim cessation of wrongful acts, assurances of non-repetition, and reparation “in the interest of the beneficiaries of the obligation breached”. These distinctions and limitations show the difficulties involved in the utilization of international law on state responsibility to assure the diffuse interests of the international community.

The law of state responsibility is still in evolution, and may possibly advance to the stage where states are fixed also with responsibility for breaches of
international law which are international crimes,\textsuperscript{12} as distinct from normal responsibility for breaches giving rise ordinarily to an obligation only to make reparation or pay compensation.

Another important matter which will have incidences on the developing law of state responsibility is the extent to which states are or may become involved in the control of ultra-hazardous activities, e.g. nuclear experiments, the development of nuclear energy, space exploration, and the “sonic boom” or “sonic bang” of new types of aircraft. This is not a domain in which traditional diplomatic procedures of protest, demands for satisfaction, and claims can be a avail. Dangers must be anticipated, and if possible completely excluded, e.g., if there be such a risk as an alteration of the environment of the earth. It may be necessary to impose strict duties of consultation, notification, registration and providing information, while even a process of injunction, mandatory or restraining, may need to be developed. There may be room for other international safeguards.

The Third Chapter has exploded on State Responsibility and its foundations. This chapter takes within its purview the study of the concept of responsibility in international law. Responsibility as a concept renders its analysis complex and intricate. The considerations of the doctrine of responsibility in international law is sought to be studied along with the parallel developments in the municipal sphere.

The modern development in the doctrine of responsibility in the domestic sphere has been far reaching. The traditional view of considering the aspect of responsibility jurisprudentially on the basis of what is called “fault responsibility” has proved itself to be too inadequate to be acceptable under all circumstances. The traditional casual link established by the conception of fault has found its application too conservative and narrow to answer several problems raised in technologically advanced modern society. In fact juridical there is nothing objectionable to found the responsibility on the basis other than the principle of fault. The traditional justifications of fault responsibility in ascribing blame worthiness is not a satisfactory explanation and the contemporary concern of reallocation of losses and the issue of risk management operates as enough justification for resorting to a process of

\textsuperscript{12} See now the Report of the International Law Commission on the work of its 27\textsuperscript{th} Session, 1975, paragraph 49, p.10, and also the detailed consideration of this matter of “International Crimes”, in the light of the recent literature, by professor R. Ago. in this fifth report, op.cit., on State Responsibility (1976), paragraphs 69-75, pp.71-81
ascribing responsibility upon the basis of effective distribution of losses. Thus development of concept of responsibility in the domestic law suggests its openness to receive modern basis for its application.

The Fourth Chapter has explained on the contemporary issues under international law. In the present context how far state is responsible for Internally Displaced Persons, Terrorism, Aliens, Human Rights violations, Refugees problems, and Environmental problems, War Crimes, Indigenous Peoples and the Hijacking is meticulously and keenly analyzed.

The above chapter has pointed out the contemporary issues facing by the international community as a whole and there is a need for international law to be enforced through legal mechanisms to tackle the problems or the issues facing various individuals also.

The global crisis of IDPs presents a challenge that, because of the magnitude and complexity of the problem, can seem overwhelming to address. Yet, the starting point is clear protecting and assisting IDPS is a responsibility that rests first and foremost with their governments. Individually, each of these measures stands to enhance national efforts and benefit the internally displaced. Collectively, they comprise the core components of a comprehensive response to the problem of internal displacement and more specifically, to the plight of the millions of internally displaced around the world who rely on their governments for protection and assistance for them.

Under international law “our war on terror begins with Al-Qaida, but it does not end there”. It will not end until every terrorist group of global reach has been found, stopped and defeated. States should use the international legal system to hold states accountable in damages for state sponsorship and support of terrorist activities committed by private persons. The bringing of claims through diplomatic channels and before judicial tribunals educated in international law will not only increase state accountability for international terrorism, but will also create a much needed opportunity to change and clarify international norms relating to terrorism and state responsibility. As the threat of international terrorism increases, states may wish to impose criminal sanctions on states for the use of terrorism, create enhanced duties of due diligence for the prevention and punishment of terrorism and relax evidentiary standards for attributing terrorist acts to the state. There is certainly an urgent need in
the international community to hold states responsible for the violation of
international law and accountable for their participation in terrorist activities.

The law of state responsibility for injury to aliens has been a much debated
and written about issue ever since the law of state responsibility was envisaged. In
fact, the state responsibility for aliens has been in practice even before the state
responsibility between states came up. Several attempts of codification of this law
have been made, but none of them have seen the lights of the day as a real substantive
law inform of treaty of convention in the international sphere. The law of
international responsibility of states for injury to aliens has developed tremendously
over time. It kept changing with the changing times and as the world expanded into
larger and larger smaller territories, this law became more and more conspicuous in
the practice of states in their interactions with other states and national of other states
i.e. aliens. The law of state responsibility vis-à-vis Aliens have many lacunae which
are hard to fill and there is a lack of consistent practice among nations which cannot
render it the tag of customary international law. Given that certain aspects of this state
responsibility had achieved the status of a customary practice, their manifestations are
the ones predominantly used by several states. This makes it difficult for anyone who
wants to take up the job of codification of this law because there are several common
principles which are ambiguous due to many points of view of standards. This
dichotomy can be attributed to the variety of history that these states have gone
through.

The international legal system faces a formidable challenge in reconciling
traditional international law with the recognition of international human rights. The
recognition of international human rights poses a substantial challenge to the
traditional view. Human rights create obligations that are owed to individuals, rather
than to states, making individuals subjects under international law. Individuals, in
some instances, now may complain directly to international institutions about human
rights violations rather than waiting for states to assert a claim on their behalf.

The refugee problem is a worldwide phenomenon which demands the cooperation and participation of all states. Despite the many moral consideration according to which the arbitrary divisions of responsibility seems problematic the current international framework of refugee law sets no guidelines, at least not explicitly and not in the form of “hard international law norms”. Consequently, responsibility is allocated between states quite arbitrarily, by an amorphous principle some call “accidents of geography”. While international is certainly no stronger to the general idea that protection should take some form of sharing between states, this principle is framed in a loose highly generalized, and non-binding manner. It will also point out the need for the state to cooperate with UNHCR in order to meet international standards.

Every state has an obligation to co-operate in preventing measures for the avoidance of known and foreseeable hazards from ultra-hazardous activities in accordance with appropriate international conventions and regulations. A state once if it is aware that an activity within its jurisdiction is abnormally dangerous and threatens to cause damage to persons and property of another state, must at the minimum take measures to reduce the risk of harm beyond its jurisdiction. Further, a state must assess the possible detrimental impact on the world community of activities, primarily industrial and technological, which it permits within its jurisdiction.

International law is often criticized on the ground that it lacks sanctions. It is true that as compared to state law, there are very few sanctions behind the international law. It would, however, be wrong to contend that there are no sanctions at all behind international law. It is true that the laws of war are frequently violated but would be wrong to say that international law does not possess any means to enforce these laws upon the states. Each state has enacted different laws regarding universal jurisdiction.

The application of the international law of human rights has begun to provide indigenous peoples a mechanism for protecting themselves and their culture from the exploitation which threatens their very existence. This progress is, nevertheless tentative and weak, and much remains to be done before it is really “a good day to be indigenous”. An abundance of activity around indigenous people’s rights has
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unfolded at the UN and elsewhere during the last 25 years, culminating in the creation of a permanent forum.

Despite the steps that have been taken so far to suppress the crime of hijacking, there has been no reduction in the number of incidents of hijacking. Rather the incidents of hijacking have increased recently. The process is continuing but still the fact comes out clear, nation states are not prepared to fetter their sovereignty, therefore, the aircraft users seem to be condemned to rely on co-operation between states which seems to be more an outcome of convenience and more diplomacy than the result of any sense of obligation.\(^\text{15}\) There is need to tackle the problem of suppressing the crime of hijacking afresh. With this in view, a special session of the U.N. General Assembly should be convened and united effort should be made to plug the loopholes in the existing law. In the meantime preventive measures such as search of all passengers and their luggages, etc before they board aircrafts should be tightened. Since many states do not still seem to be prepared to take stringent measures against hijacking and in view of the present state of international relations and affairs, preventive measures comprising of thorough searches of all passengers, and their luggage constitute the best means to prevent or at least minimize the incidents of hijacking.

In the Fifth Chapter, which is an analysis of the state responsibility before international judicial institutions like ICJ, International Criminal Tribunal for Rwanda and Former Yugoslavia, ICC and Human Rights Courts? International courts and tribunals have increasingly played an important role in clarifying and developing a number of areas of international law, including the law of state responsibility. The authority of the court is based on its mission to declare and apply the law. To achieve this mission and to establish its authority it is essential that the court should have the maximum opportunity to apply and interpret the international law. The nature of jurisdiction of the court is the major barrier to make its best use. It is therefore, necessary to replace the consensual basis of jurisdiction of the court by the compulsory jurisdiction. Accordingly, certain provision of the statute of the Court and Charter of the United Nations need amendment. Amendments to Article 33 of the Charter and Article 36 of the statute will add to the compulsory nature of jurisdiction of the Court and will help in bringing the larger number of cases before it for judicial

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The acceptance of unconditional compulsory jurisdiction of the Court should be made an imperative condition of membership of the United Nations for the new comer states.

The acceptance of jurisdiction of the court with reservation is illusory and defeats its purpose. It is therefore, submitted that right to make reservations with the optional clause should be abolished. Unconditional acceptance of jurisdiction will bring more and more number of cases and thus the court will have greater chances to contribute towards the development of international law. The non-binding effect of decisions of the court in the subsequent cases is another disturbing fact restricting the development of the jurisprudence of the judicial decisions. It is the need of the day that the individuals should also have the access to the court. It can be achieved through the establishment of international court at the national level where the court can concentrate on this neglected field of international justice.

International judicial law making can usefully respond to a central challenge for all international institutions, modulating the contradictory demands of rule stability and flexibility in the face of changing conditions. The statute has set up a complex judicial body with detailed regulations governing all the stages in the criminal adjudication. The prerequisites to the exercise of jurisdiction, however, depend greatly on the willingness of all states parties concerned in the prosecution to co-operate with the court. Neither the legal mandate of the ICC nor the resources available to it are sufficient to allow the court to fulfill the world’s high expectations. The effectiveness fairness and independence of international criminal justice are at stake. One consequence of generating both positive and negative incentives is that the court must essentially perform a balancing act in its relations with national governments. These hopes may have been understandable and perhaps even necessary to the courts creation; however, they are difficult, if not impossible to satisfy.

International criminal sanctions against private actors who resort to violence as a means of obtaining fundamental human rights, or preventing human rights deprivations, merely maintain a status quo of repression, injustice, and inequality. International law should require actors who resort to violence to provide clear and convincing evidence that the violence is rationally related to the prevention of fundamental human rights violations. The international criminal court’s core mission is to end impurity for the most serious international crimes only if states meet their
international legal obligations to prosecute international crimes can widespread accountability become possible. The ICC is a new and modern reality for the international system. It is a new fit for the dated, state-centered approach to the UN system, but once that reflects the reality of international law as it stands now and in the future.

Finally two general observations are called for. In the first place, the law of state responsibility grows on the basis of its application in concrete situations. In this respect the court’s jurisprudence has been of primary importance. Secondly, there is a nice question, which will no doubt remain unresolved, concerning the balance between the role of the court, in the context of dispute settlement, as the author of declarations of rights, and the court’s role in the context of the implementation of judgments and crisis management. This difficult question of balance arises especially in the sphere of remedies.

In the present system of international law, national forums are more effective from the point of view of enforceability. This is not to decry international forums. But the circumstances for an effective operation of enforceability through international tribunals are still wanting. It is therefore in the present situation national legislations are more suited. Further, the availability of diplomatic channel would sufficiently safeguard, to the extent the present international law permits; the remedies unsatisfied through national legislation.

In the Sixth Chapter, which is an analysis of the study of Draft Articles made by the ILC, several aspects concerned with the concept of state responsibility have been discussed. At the outset itself the scope of topic, as discussed in this Chapter, requires certain clarification. The scope of the state responsibility regime has to give regard to the very purpose for which the regime is created. It could be said that the entire idea here is to avert the consequences of the activities, beyond a threshold, causing transboundary harm. At the same time the freedom of state should not unduly interfere within the process of preventing such consequences. This would require a soft approach without imposing any prohibition. Secondly, the scope of the topic should not unduly work harsh by imposing any heavy disadvantages either upon the state of origin or the affected state. Thirdly, the nature of the activities that are to be covered by the topic of state responsibility would be of great relevance because it becomes important to consider whether they should be restricted to physical activities
only or should they be extended to other type of activities also. Fourthly, the criterion of the location of the activities should have to be taken into consideration because there is bound to be an effective relation between the activities and the state upon which the responsibility is sought to be imposed. Finally, the scope of the topic is also determined by the nature of the risk causing injury. The last mentioned aspect, especially, requires greater and more careful examination. The final consideration on all these aspects are made but in different order.

It is also important to note that there is another controversy with regard to ‘activity’. This was with regard to the desirability of providing in the draft articles for a list of activities that would come within the purviews of the topic. The first problem was whether at all a list was required. The second was if a list of activities is furnished should it be exhaustive, or illustrate. The controversy arose because many members of the ILC demanded that a list be included which would decisively say about the position of a state of origin and therefore would bring an element of certainty in it. On the other hand the Special Rapporteur’s contention was that in a global convention was that in a global convention providing for a list was inappropriate.

Further it is submitted that the work of the ILC and the reformulated draft articles on the duty to co-operate, to prevent, and make reparation have not given rise to much controversy and to that extent appears to be satisfactory. It is also the submission, here, that the controversy regarding ‘global commons’ is no doubt a real problem, which requires the immediate attention of the members of the international community. Yet however the regime of state responsibility that is visualized here need not be mixed with issues connected with the global commons because any such decisions would bring about many more new perspectives in to the regime along with attendant controversies. It is submitted that the area of “activities” along with its enumerated dangerous substances as formulated by ILC needs further scrutiny.

The ILC Articles do not deal with these aspects in an exhaustive manner. The finalization of the Articles developed over a period of several decades. In a different context, Shabtai Rosenne said that the 1996 version of the draft Articles of the ILC on state responsibility are inadequate, if not substantially flawed and do not take sufficient account of the consequences of the breakdown of the traditional state system of the nineteenth century, nor of its replacement by a new system which is
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slowly taking place before our very eyes’. In large part this remains true of the 2001 articles. The ILC did envisage development of the law, but confined that to the consequences of aggravated responsibility. It needs further through us to whether that will be sufficient or whether matters of attribution and defenses may also need development.

The ILC articles do not preclude interactions between the law of individual responsibility and the law of state responsibility (to which it should be added that many of the practical manifestations of the interactions concern matters of evidence and presumptions in interstate proceedings issues not covered at all by the Articles). However, they also do not provide them with much guidance. Now that the ICC is starting its work, developing the law on aggravated forms of responsibility which inevitably will touch on the problems of concurrent forms of state responsibility, should be a key area for the development of international law. The respectful submission is that there is a greater need to review and finally to arrive at a conclusion.

It is therefore respectfully suggested that there is a greater need to carry out more research work on that aspect along with its relations to the topic of “state responsibility”.

7.2 Findings of the Research

After analyzing the state responsibility in the present context, it is found that:

1. States are not given more importance to the concept of state responsibility due to the evolution of individual and collective state responsibility. In fact, enforcement of responsibility at both levels (State and Individual) remains episodic and unsystematic.

2. ILC, Articles on state responsibility can’t be viewed by courts as changing the precedents and expanding on the concept of state responsibility for the actions of individuals.

3. The final outcome of the codification of the law of state responsibility by the ILC remains unknown yet. The second reading process issues mentioned under ILC Draft Articles are yet unresolved, so it is the need to adhere rather closely to the distinction between primary and secondary rules.

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4. There are certain reasons for the ineffectiveness and minimum use of the services of the court regarding jurisdiction, executing power, and the absence of execution machinery.

5. The most important and worst affected subject of international law regarding the jurisdiction of ICJ is concerned, individuals have excluded from availing the services of the Court. There is no strict statute under international law to avail service as compulsory jurisdiction to resolve international problems and also lack of binding authority of the court’s decision.

6. There is an unproblematic move from domestic to international criminal law because international criminal law will not prevent future atrocities because of lack of ability, expertise and execution of decisions by international courts. The two adhoc international criminal tribunals (ICTY and ICTR) have no proper or strict rules and procedure for deciding the cases of individual criminal responsibility.

7. According to ICC, states must enact and enforce national legislation which provides that the crimes under international law are also crimes under national legislation but most of the states will not accept under their legislation or constitution.

8. Under the ILC draft articles the responsibility of states to individuals, international organizations and other non-state actors are not directly addressed. The ILC articles do not preclude interactions between the law of individual responsibility and the law of state responsibility. However, they also do not provide them with much guidance.

9. Certain provisions of the Statute of the ICJ and Charter of the United Nation’s have got inherent weaknesses.

10. There is no uniform substantive law under international law to protect the aliens, IDPs, and indigenous people in every state.

11. There is no stringent rule or statute under international law to hold states responsible for the violation of international law and accountable for their participation in terrorist activities.

12. There is no uniform statute, rules, or preventing measures to avoid the known and foreseeable hazards from ultra-hazardous activities in the form of environmental pollution all over the world.
13. International law does not possess uniform laws to enforce the laws of war crime upon the states.

14. Under international law or municipal law states do not still seem to be prepared to take stringent measures to suppress the crime of hijacking.

### 7.3 Suggestions

It has been made it clear that to build on the above overview of the research work the following suggestions should be taken seriously into consideration to solve the contemporary issues.

1. State responsibility is a fundamental principle, whose roots ramify deeply beneath the entire field of international law and as new rules are laid down to meet the exigencies due to the increasingly complex relationships between individuals and states, the range of operation of the principle of responsibility automatically widens.

2. In international law itself the UNO or its members states should frame regular international procedures by unquestionable sources that is by way of treaty of enforcement or implementation of concept of state responsibility.

3. As far as enforcement of decisions of ICC is concerned every state has to accept and enact national legislation which provide that the crimes under international law are also crimes under national legislation then only the decisions made by the ICC is effectively enforced and it restricts the crimes in international level.

4. There is a need for establishing appropriate institutional building and mechanism of coordinated response. Building upon mechanism already in place, appropriate institutional structures for addressing displacement issues should be established with the government at all levels, (central regional and local) including the appointment of focal points to facilitate coordination with the government and with United Nations agencies and other partners in the international community on issues of aliens, IDPs and indigenous people. So it is the responsibility of every state to protect these persons within their territory. The ultimate objective should be to create a national framework which accommodates all groups in the country and ensures the dignity of all peoples irrespective of race, ethnicity or religion.

5. Under international law there is no proper definition for terrorism. So for any state to be protected from non-state actor, the international community must
come up with appropriate definition of terrorism. So that each state can tackle the problem of terrorism within their territory. All states must enact stringent mechanisms to fight terrorism.

6. International community has their responsibility to protect the influx of the refugees to any state and there should be no forceful refoulment of refugees to their own country without their consent. So the UNO, UNHCR and the states have to frame uniform hard laws to protect refugees.

7. The current Draft Articles take a firm view on the primacy of restitution, this inevitably entails the need for limits and exceptions to the award of restitution. The ILC has run into difficulties in trying to provide for these while maintaining its distinction between primary and secondary rules. Moreover, if the exceptions are too wide they will offer loopholes to the wrongdoing states and undermine the primacy the ILC wants to assert; if the limits are too narrow they will be unrealistic. The reaction of states to the Draft Articles shows the need for the ILC to be flexible in its approach.

8. The state should have responsibility to protect its environment through sustainable development from the perspective of national and international laws for future generation.

9. For any state to overcome its problem of war crimes the state has the responsibility to promote democracy and it must flourish from top of the gross route. At the same time the state must have strong human right mechanism in place also the state must promote human rights awareness. States have responsibility to compensate the victims of war crime by establishing an effective appropriate mechanism.

10. Both the international law and domestic law must have stringent law and proper laws to curb the problems of hijacking and the state must provide suitable security to avoid the problems of hijacking.

11. As far as the jurisdiction of international court is concerned, all states parties concerned give their willingness to co-operate with the courts decision for effective enforcement.

12. If the states are unwilling or negating their liability, some of the seu moto powers should be given to international courts to curb the contemporary issues.
13. The system for international justice is at present still weak and lacks the support of major global players. It is a political reality that is unlikely to change soon, and the community of states will have to work with what is available.