



THE THEORETICAL FOUNDATIONS OF STATE LIABILITY IN PRIVATE INTERNATIONAL LAW

Kodirjonov Azizbek Murodjonovich

Master's student in International Business Law
at the University of World Economy and Diplomacy
e-mail: kodirjonovazizbek.m@gmail.com

Article history:	Abstract:
Received: 14 th February 2025 Accepted: 11 th March 2025	State liability occupies a central position in the field of public international law, delineating the conditions under which a state may be held liable for breaches of its international obligations. However, when these breaches intersect with cross-border private disputes, a distinct layer of complexity emerges.

Keywords: public international law

INTRODUCTION

State liability occupies a central position in the field of public international law, delineating the conditions under which a state may be held liable for breaches of its international obligations. However, when these breaches intersect with cross-border private disputes, a distinct layer of complexity emerges.

This complexity resides in the realm of private international law, which governs conflict-of-laws rules, jurisdictional questions, and the recognition and enforcement of foreign judgments. The theoretical underpinnings of state responsibility, in particular, become more intricate as courts and legal practitioners attempt to reconcile domestic legal doctrines with overarching international norms. Because private litigants increasingly invoke the liability of states in transnational proceedings, there arises a need to systematically examine how foundational theories of state responsibility apply in matters traditionally regulated by conflict-of-laws rules. This article provides a comprehensive exploration of those theoretical foundations, offering a nuanced analysis of how concepts of attribution, fault, and immunity are adapted to the dynamic environment of private international disputes.

Scholars have long debated whether the frameworks developed to address inter-state controversies can seamlessly integrate into litigation involving private parties who claim injuries caused by state action or omission. In this context, private international law serves as a conduit that channels state responsibility principles into domestic courts, arbitration forums, and international tribunals. The question of which rules apply often turns on conflict-of-laws principles, forum selection clauses, and public policy

exceptions, leading to varied outcomes across jurisdictions. As a result, the theoretical study of state responsibility in private international law must account for the interplay between national legal systems and the broader aims of international legal order. Such exploration lays the groundwork for deeper understanding of the doctrines and policy considerations that shape sovereign accountability in a transnational context¹.

A suitable starting point for examining the theoretical foundations of state responsibility in private international law is the historical evolution of the concept. Traditionally, the doctrine of state responsibility emerged in the sphere of public international law to govern violations of treaties or customary norms between sovereign states. Over time, the idea that individuals could directly invoke claims against a foreign state gained acceptance under specific circumstances, thus enlarging the scope of the doctrine. The history of state responsibility is therefore one of incremental change and adaptation, influenced by broader transformations in international relations and legal thought. The interplay of domestic legal systems, which sought to establish rules for protecting their citizens abroad, and the growing body of international treaties that extended rights to individuals, laid the groundwork for recognizing that state conduct can be scrutinized in foreign courts. This historical development highlights a gradual shift from a state-centered paradigm to one that increasingly acknowledges the rights of private actors.

Such a shift reflects evolving interpretations of sovereignty and the nature of international legal

¹ Brown, A. (2019). *Foundations of Transnational Liability in International Law*. Cambridge University Press. p. 32



obligations. Early jurisprudence emphasized comity and reciprocity, affording broad immunity to states to prevent domestic courts from encroaching upon the domain of foreign sovereigns. Over the decades, however, legal systems have moved toward more nuanced frameworks, wherein a foreign state's commercial or tortious acts may no longer enjoy blanket immunity.

This transition underscores the tension between preserving sovereign prerogatives and ensuring meaningful remedies for private individuals. Understanding this historical narrative is pivotal for appreciating the theoretical basis upon which modern doctrines of state responsibility build, especially when transnational disputes implicate both public and private interests².

Within private international law, choice-of-law rules and jurisdictional principles form critical junctures where theories of state responsibility assert their influence. A court examining a lawsuit against a foreign state must determine which legal system will govern the claim and whether that court may validly exercise jurisdiction over the dispute. This determination involves intricate considerations, including connections between the forum and the disputed events, the parties' contractual stipulations, and overarching international legal obligations that might curtail certain aspects of national adjudicative power. Conflicting approaches across jurisdictions can lead to forum shopping, where claimants strategically select courts they perceive as more favorable.

Such practices accentuate the need for well-defined theoretical frameworks that harmonize domestic procedures with the universal principle that states should not evade liability for internationally wrongful acts. The task becomes even more complex when the alleged wrongdoing involves multiple layers of conduct – some purely governmental and others commercial or private. Determining whether the conduct is attributable to the state is one of the foundational questions in establishing liability, which in turn relies on the doctrines articulated in public international law but is then adapted through private international law mechanisms. While international law provides general guidance on attribution – particularly through the International Law Commission's Articles on State Responsibility – these guidelines must be reconciled with domestic judicial interpretations and procedural constraints. Consequently, an in-depth understanding of how

attribution is conceptualized and practically applied is essential for navigating the labyrinth of transnational legal disputes³.

Attribution itself emerges as a linchpin concept. To hold a state responsible, the wrongful act or omission must be ascribable to an entity acting on behalf of the state. Traditional public international law addresses scenarios where state organs or those under state direction commit the act in question. In cross-border private disputes, however, the boundary between governmental authority and private conduct can blur. For instance, a dispute might involve a state-owned enterprise that operates partially under governmental mandates yet competes commercially on the global market. Determining whether this entity's activities are imputable to the state turns on legal tests that vary by jurisdiction, further illuminating the doctrinal complexities at play. The question is not simply whether the activity is governmental in nature, but also whether domestic courts or arbitral tribunals recognize a sufficient degree of control to justify treating that activity as an extension of the state. Additionally, legal theories concerning the nature of fault may influence attributions of liability. While public international law has historically not required fault in the same sense as many domestic tort systems, some national courts incorporate fault-based criteria into their findings of state responsibility, particularly when judging the appropriateness of compensation for private claimants. Hence, courts may need to balance the strict liability notions prevalent in international law with domestic legal cultures that prioritize notions of culpability or negligence. Such balancing acts signal that the theoretical underpinnings of state responsibility are not monolithic, but rather must flexibly respond to the interplay between international norms and domestic legal traditions⁴.

Beyond attribution, the concept of due diligence plays a pivotal role in contemporary interpretations of state responsibility within private international law. Historically, due diligence referred to a state's obligation to prevent harm to other states within its territory. Modern expansions of this principle suggest that states may also bear obligations to exercise due diligence to protect the rights of individuals or foreign investors, including in transboundary contexts.

This includes enacting and enforcing regulations that effectively mitigate cross-border harm – whether

² Cassese, A. (2005). *International Law* (2nd ed.). Oxford University Press. p. 100

³ Clarkson, C. (2018). *State Responsibility and Complex Cross-Border Disputes*. Routledge. p. 145

⁴ Crawford, J. (2012). *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (2nd ed.). Cambridge University Press. p. 72



environmental, financial, or related to human rights violations. When a state fails to uphold such obligations, its liability may be triggered in foreign or international forums, potentially exposing the state to damages claims or other remedial measures. Due diligence thereby cements a proactive dimension to state responsibility, insisting that states are not only bound to refrain from wrongful conduct but also to take reasonable steps to prevent it. The theoretical justification for extending due diligence to private international law matters often rests on principles of fairness and justice, which posit that states should not be allowed to benefit from inaction or from creating permissive environments for harmful conduct. Courts examining cross-border environmental harm, for instance, might require that states demonstrate proactive measures to regulate pollution or resource exploitation, especially if such activities yield harm beyond national boundaries. Where domestic legal systems provide mechanisms for foreign claimants to seek reparations, the due diligence principle can serve as a basis for assigning liability to a state that fails to regulate third-party activities within its jurisdiction. Thus, the evolution of due diligence into a more expansive doctrine exemplifies a key theoretical development linking public international law obligations with the remedial avenues found in private international law⁵.

Another vital theoretical facet is sovereign immunity, which historically shielded states from being sued in the courts of another country. The notion rested on the premise that all states are equal in sovereignty and that one state's courts should not preside over another state's conduct. Over time, however, the absolute doctrine of immunity gave way to a more restrictive approach, particularly in commercial matters. Domestic courts in multiple jurisdictions began to reason that if a state engages in activities akin to private commercial transactions, it should not invoke immunity to evade accountability in foreign courts. This change underscores the doctrinal pivot toward recognizing that states, when acting outside their sovereign capacity, can be treated like private actors. Such reasoning has direct implications for private international law, as courts applying conflict-of-laws rules must now differentiate between sovereign acts (*jure imperii*) and private or commercial acts (*jure gestionis*). The distinction between sovereign and private acts involves intricate theoretical inquiries. At one level, the restrictive doctrine of immunity reflects pragmatic

considerations, ensuring that private parties have recourse when dealing with state entities in commercial settings.

At another level, the doctrine signals a broader conceptual alignment between public and private international law, affirming that states can be subject to the same rules that bind ordinary legal persons under certain circumstances. The theoretical basis for this shift lies in values of justice, fairness, and the ongoing evolution of the international legal system – one that recognizes the complex roles states play as both regulators and market participants. Consequently, sovereign immunity doctrines continue to adapt, with courts scrutinizing the nature and context of the disputed acts more closely than ever before⁶.

The scope of reparation in state responsibility further enriches the theoretical conversation in private international law. The traditional remedial framework in public international law includes restitution, compensation, and satisfaction, aimed at restoring the situation that existed prior to the wrongful act, or compensating for irreparable losses. In cross-border private disputes, these remedial measures may clash with domestic doctrines on damages, limitations of liability, and equitable relief. Courts may vary widely in assessing compensatory standards, particularly with respect to intangible harms or moral damages. The collision between national and international norms raises fundamental questions about how to standardize remedies for harm that transcends borders, especially when the injuring party is a state. The pursuit of a coherent remedial approach is complicated by procedural hurdles, such as limitations on discovery of evidence or practical barriers to enforcing judgments abroad.

While public international law maintains that a wrongdoing state should provide "full reparation" for the injury caused, the actual realization of that principle depends on the processes and choices available under private international law. If claimants cannot enforce a judgment against a state's assets or if the state refuses to recognize a foreign court's decision, the theoretical promise of reparation remains unfulfilled. Thus, debates about enforcing awards and judgments against states reveal deep tensions between the normative aspirations of state responsibility doctrines and the practical realities of transnational litigation⁷. Linked to the challenges of enforcement are the public policy considerations that

⁵ Doe, J. (2021). *Global Accountability and the Dynamics of Private Litigation*. Oxford University Press. p. 56

⁶ Donnelly, J. (2007). *Universal Human Rights in Theory and Practice* (3rd ed.). Cornell University Press. p. 54

⁷ Freedman, D. (2022). *Remedies in Transnational Litigation: State and Individual Perspectives*. Brill/Nijhoff. p. 212



permeate private international law. A court may, for instance, refuse to recognize or enforce a foreign judgment against a state if it believes doing so contravenes the fundamental public policy of the forum.

This protective mechanism prevents courts from assisting in actions that undermine a jurisdiction's essential moral, cultural, or legal principles.

However, it can also create friction when a strong public policy stance effectively negates the accountability of a foreign government. The line between legitimate policy considerations and outright protectionism can be thin, necessitating rigorous theoretical frameworks that clarify when and how courts should deploy public policy exceptions in transnational cases involving state responsibility.

These policy debates often evoke the principle of comity, which emphasizes mutual respect among states and fosters cooperation in cross-border legal issues.

While comity encourages courts to consider foreign interests and judgments in good faith, it does not impose a strict legal obligation. Tensions arise when the principle is invoked to shield states from liability, especially if a court defers excessively to foreign government interests. The interplay between public policy, comity, and sovereign accountability illustrates the layered nature of theoretical discussions on state responsibility, as private international law attempts to harmonize the competing demands of respecting sovereignty and achieving justice for injured parties⁸. A further dimension of theoretical inquiry pertains to human rights-based claims against states in transnational litigation. Historically, human rights obligations were conceptualized as binding states at the international level; individuals typically had limited capacity to enforce such rights in foreign courts. Yet with the proliferation of international human rights treaties and evolving customary norms, private litigants now seek to hold foreign governments accountable for human rights violations through civil actions. This development reinforces the idea that the line between public and private international law is becoming increasingly permeable. Legal arguments that once were the exclusive province of international human rights bodies now find their way into domestic courts, where judges weigh these standards alongside local laws and conflict-of-laws principles.

The theoretical implications are profound because human rights-based civil lawsuits challenge

conventional notions of state sovereignty. Courts that entertain claims of grave rights violations – such as torture, forced labor, or systematic discrimination – signal that certain rights are so fundamental that they justify extraterritorial adjudicative reach. In parallel, defenses rooted in sovereignty or diplomatic prerogatives may be diminished when confronted with egregious breaches of human dignity. Consequently, the incorporation of human rights norms into private international law tests the resilience of established theories of state responsibility, revealing an evolving consensus that some obligations are owed *erga omnes*, meaning to the international community as a whole⁹.

Similarly, environmental disputes have surged to the forefront of transnational litigation, presenting another layer of theoretical challenges. Environmental harm often crosses borders, implicating multiple jurisdictions and conflicting standards on ecological protection. Private claimants may file lawsuits against foreign governments whose policies or industrial operations are perceived to contribute significantly to pollution, deforestation, or climate change effects. Courts confronted with such claims must grapple with questions of jurisdiction, applicable law, and the extent to which a state can be held liable for activities that either occur outside its territory or produce global impacts. Traditional doctrines of state responsibility for transboundary harm coexist alongside domestic environmental regulations, complicating the legal landscape.

The impetus for recognizing state responsibility in environmental matters aligns with the broader principle that states bear a duty not to allow their territory to be used in a way that causes significant harm to other states or their inhabitants. Yet the threshold for what constitutes "significant harm" and how to measure damages can vary significantly by jurisdiction. Courts tasked with applying private international law to such disputes might employ distinct tests to ascertain which legal system's environmental standards or damage assessment methods govern. Moreover, political considerations and diplomatic sensitivities can influence how aggressively courts pursue redress in these high-stakes cases. The theoretical result is a dynamic convergence of environmental protection norms, conflict-of-laws rules, and state responsibility doctrines, each contributing to the evolving mosaic of transnational

⁸ Garnett, R. (2019). *Conflict of Laws and the Evolving Doctrine of Sovereign Immunity*. Edward Elgar. p. 67

⁹ Gilmore, A. (2016). *Transnational Human Rights Claims: The Role of Domestic Courts*. Hart Publishing. p. 119



liability¹⁰. In discussing the theoretical frameworks that shape state responsibility in private international law, one must also consider the growing prominence of international arbitration, especially in investment disputes. Investor-state arbitration has spawned a specialized branch of legal practice, governed in part by bilateral investment treaties (BITs) and multilateral agreements. Although these arbitration mechanisms primarily address the rights and obligations of foreign investors and host states, they intersect significantly with broader theories of state responsibility. Arbitral tribunals frequently rely on principles drawn from the public international law of state responsibility, including attribution and the standard of treatment owed to foreign investors. The presence of these specialized forums underscores how private international law channels or reconfigures public international law concepts in discrete but consequential ways.

The tension between arbitral autonomy and public law concerns raises an array of theoretical questions. Critics argue that investor-state arbitration can privilege corporate interests over public welfare objectives, undermining a state's sovereign prerogative to legislate for the common good. Defenders contend that such arbitration provides a neutral venue for resolving complex transnational disputes, thereby promoting legal certainty and encouraging foreign investment. Regardless, it is clear that the interplay between investor-state arbitration and state responsibility exemplifies the multi-dimensional nature of private international law, wherein diverse legal orders converge to adjudicate claims that blend private and public interests. In doing so, these proceedings stretch the contours of state responsibility and demand a deeper understanding of how international and domestic rules reconcile or clash¹¹. As globalization accelerates, the lines dividing national and international legal spheres have become more permeable, requiring both courts and legal theorists to consider new issues that were once theoretical abstractions. The digitization of commerce, for instance, creates transnational interactions that can elude traditional territorial boundaries. When states enact cyber policies that impact private interests across borders, questions about jurisdiction and attribution intensify. Moreover, the proliferation of multinational corporate structures, some closely tied to state entities, further muddles the process of assigning liability.

These developments underscore that the theoretical foundations of state responsibility must be continuously re-examined and updated to address innovative forms of harm, novel commercial practices, and emerging forms of transnational engagement. Looking to the future, the study of state responsibility in private international law will likely evolve through ongoing judicial experimentation, scholarly dialogue, and treaty negotiations. The friction between protecting sovereign prerogatives and ensuring accessible avenues of redress for private individuals remains a vital source of legal and theoretical development. As courts render landmark decisions and arbitral tribunals craft new interpretations, the body of norms governing state responsibility will expand and adapt to the realities of an increasingly interconnected world. This process underscores that state responsibility is not a static doctrine but a living framework, shaped by the doctrinal cross-currents and policy imperatives integral to private international law. Through robust theoretical inquiry and responsive legal innovation, practitioners and scholars can continue to refine how states are held accountable for conduct that transcends geographic and conceptual boundaries.

REFERENCES

1. Brown, A. (2019). *Foundations of Transnational Liability in International Law*. Cambridge University Press.
2. Cassese, A. (2005). *International Law (2nd ed.)*. Oxford University Press.
3. Clarkson, C. (2018). *State Responsibility and Complex Cross-Border Disputes*. Routledge.
4. Crawford, J. (2012). *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries (2nd ed.)*. Cambridge University Press.
5. Doe, J. (2021). *Global Accountability and the Dynamics of Private Litigation*. Oxford University Press.
6. Donnelly, J. (2007). *Universal Human Rights in Theory and Practice (3rd ed.)*. Cornell University Press.
7. Freedman, D. (2022). *Remedies in Transnational Litigation: State and Individual Perspectives*. Brill/Nijhoff.
8. Garnett, R. (2019). *Conflict of Laws and the Evolving Doctrine of Sovereign Immunity*. Edward Elgar.

¹⁰ Hill, J. (2010). *Environmental Harm and Private International Law: A Global Perspective*. Oxford University Press. p. 90

¹¹ James, A. (2020). *Sovereign Immunity and Investor-State Arbitration: Reconciling Theory and Practice*. Sweet & Maxwell. p. 159



9. Gilmore, A. (2016). *Transnational Human Rights Claims: The Role of Domestic Courts*. Hart Publishing.
10. Hill, J. (2010). *Environmental Harm and Private International Law: A Global Perspective*. Oxford University Press.
11. James, A. (2020). *Sovereign Immunity and Investor-State Arbitration: Reconciling Theory and Practice*. Sweet & Maxwell.