. Research objectives

The United Nations General Assembly had requested the International Law Commission to codify the subject of international responsibility of States in 1949. After a long preparatory work period the Commission had appointed the first Special Rapporteur of the matter in 1955. Formulating the articles had taken almost fifty years, after which the ILC had agreed upon at first reading in 1996, and finally, at second reading in 2001. In the very same year the General Assembly finalised the articles as part of a GA resolution. Thus the Articles on State Responsibility may be developed into a convention at a diplomatic conference of States, as it had happened so in other instances, such as the law of treaties, or the rules of diplomatic privileges and immunities.

Part Two of the Articles regulates the legal consequences of responsibility, including primarily reparation and its means: restitution, compensation and satisfaction. My research was targeted at the comparison of the ILC made Articles and the hundred-years-old development of international custom, meanwhile estimating the effect on international judicial and arbitral practice achieved so far. During the preparation of the thesis a declared objective was to reveal the relations between certain legal notions, the logic of the various remedies as well as the political aim that may justify the review and even the modification of some articles. I also examined if it was possible to apply unified forms of reparations for all types of wrongful acts, from the destruction of bordermarks, through the illegal detention of diplomats - to armed conflicts.

Forms of reparations under international law are in strict correlation with their civil law counterparts; thus my research had to involve certain aspects of comparative law as well as legal history. In the analysis high attention had been paid for current international legal doctrine and sources of historical importance. The thesis also includes the set of relations between the different forms of reparations and cessation of the wrongful act, as well as the relation between reparation and the countermeasures.

2. Methodology

Researches on the development of civil law forms of reparations preceded the analysis of the relevant international legal issues. These researches included the *Leges Duodecim Tabularum*, the *Digesta*, the Holy Bible, the original versions of the *Code Civile* and the *BGB*, along with the relevant works of international legal history. The preparation of the thesis was also aided by a comparative legal research on contemporary French, German, English, and North-American civil law institutions, in order to reveal the distinct approaches of the common law and continental legal families. The examination also included those ancient principles of law that are possible to be accepted as generally recognised principles of international law. The thesis also tries to highlight the relevant domestic law basis of the legal principles cited in arbitral awards.

A method of research was the detailed analysis of the reports of the ILC Special Rapporteaurs, comparing them to other legal scholars' positions. Based upon judicial and arbitral practice, as well as the doctrine the author tried to outline the main tendencies of international legal development, as well as the measurable effect of the codification work so far.

The forms of reparation developed among the supranational circumstances of the European Law might also be connected with public international law. Thus a brief section is included on this issue, in order to highlight the international legal problems of reparation from yet another point of view.

3. Results and applicability of research

3.1 The need for the codification of the rules of international responsibility of states was raised already in the League of Nations. The committee for codification designated by the Council of the League proposed for the organisation to include this topic in the program for codification, but the conference called upon for the codification in 1930 was unsuccessful. The General Assembly of the UN, on its 468. plenary session on 7 December 1953 mandated the International Law Commission with the codification of rules governing state responsibility. The International Law Commission appointed its first Special Rapporteur in the field, Garcia Amador in 1955. However his reports were never discussed. The real work on the codification begun in 1963 under the effective leadership of the new Special Rapporteur, Roberto Ago. The position of Special Rapporteur was taken over by Willem Riphagen from 1979 who was followed by Arangio Ruiz in 1987 and James Crawford in 1997. The Articles on State Responsibility were adopted on first reading by the International Law Commission in 1996, and on second reading in 2001. The General Assembly took note of the Articles in a resolution adopted in 2001. Presently it is doubtful whether or not the Articles on State Responsibility can be transformed into a convention at a later stage.

If no further agreement could be reached on any modification of the text of the Articles on State Responsibility, or if no Convention could ever be concluded on the basis of these Articles, it would still play a fundamental role in the development of international law in the field of State responsibility. These Articles form a sufficient basis for later decisions to be born in the ground of an integral legal concept thereby contributing to the further harmonisation of international law in the field of State responsibility, further strengthening the customary role of the adopted articles, as well as making the structure of the laid down rules more and more accepted.

Part Two of the Article on State Responsibility is dedicated to the legal consequences of international responsibility. According to the international law theory legal consequences of responsibility *lato sensu* entail reparation and countermeasures. In addition to these, cessation was inserted into the Articles, which is an obligation to stop the wrongful act, which obligation originates in a theoretical sense from the primary obligation. Cessation is not part of the structure of reparation but is in strong correlation to that. Reparation in a strict sense includes *restitutio in integrum*, compensation and satisfaction.

3.2 *Cessation and reparation.* The responsible state is obliged to provide cessation and restitution; if its act or omission has a continuing character, and the violation is in progress when the injured state claims any sort of remedy. In accordance with the analysis provided for in the thesis, if obligation to provide cessation and restitution prevails in one case at the same time than both obligations will lead separately to the same conduct, notably the belated performance of the original obligation by the responsible state. Restitution however has to be provided upon the claim of the injured state, while the obligation to provide cessation is an objective one and has an obligatory force on the responsible state when the injured state does not require - *horribile dictu* would not like to have restitution. The Articles seem to disregard of the fact, that there might be loss in the interest for the continued performance of the violated norm on the part of the injured state, moreover it is possible that it would like to take advantage of the relevant provisions of the Vienna Convention on the Law of Treaties related to termination of treaties in case of serious violations. of essential provisions. Another difference is that the responsible state is waived from the performance of its restitution obligation if it is materially impossible or it would cause a disproportionate burden to it in comparison to the advantage that the injured state would gain when receiving reparation in the form of restitution instead of compensation. On the contrary, cessation, at least in theory, is not limited at all, and has to be performed unconditionally.

Because of the fact that cessation was laid down as an objective obligation in the Articles on State Responsibility, which is therefore independent from the will of the injured state, this latter is deprived from its freedom to choose between restitution or compensation. This obliges the responsible state to fully discharge its original obligation, that is - as proven in the dissertation - equivalent to the *restitutio in integrum*. It would be necessary therefore to phrase both cessation and restitution as entitlement for the injured state.

The present concept of the International Law Commission is unjustifiably departed from the interstate practice and decisions of courts and arbitral tribunals. According to the rules laid down in the Articles on State Responsibility cessation can only be claimed in case of wrongful acts, while this obligation seems to prevail in relation to acts or omissions whose legality is justified by the provisions of the Articles on State Responsibility in relation to circumstances precluding wrongfulness.

The responsible state may be ready to stop the breach, but may be reluctant at the same time to acknowledge the unlawfulness of its conduct, and entail all the consequences deriving from that. In many case putting an end to the ongoing violation of the primary obligation, and achieving thereby belated performance of that norm may be more important than enforcing a full reparation of all of the consequences of that act. Nevertheless, the responsible state may be interested to fulfil its cessation obligation, in the hope that it can avoid to perform cessation, should it be able to agree on these terms with the injured state, just as it can avoid having countermeasures applied against it by undertaking reparation. Cessation, in appropriate case can be applied in a way that it will result in the termination of the wrongful conduct, without the need to bring into question the issue of wrongfulness with all of its consequences in terms of reparation.

The dissertation refers to the fact that the definition of cessation redundantly incorporates the notion of unlawfulness, it would be enough to phrase cessation as an independent right of the injured state to claim full performance of the original obligation, the discharge of which was interrupted or did not commence. It is worth safeguarding cessation in the Articles on State Responsibility as a legal instrument that is suitable to put an end to continuing active violations that encompass the danger of aggravation and irreversibility. In case of sufficient impact from the part of the states, the present Articles on State Responsibility can be transformed into a convention and the problems arising from the matching legal role of cessation and restitution can be resolved. In course of this, cessation should be rephrased not to include an investigation whether the act in question was unlawful or not. Since cessation is not part of the structure of reparation, there is not only no need, but at the same time there is any sense to investigate this question. Cessation should only be dependent whether the discharge of the original obligation was interrupted and the termination of that conduct was demanded by the injured state. The availability of cessation has to be made dependent on the claim of the injured state, and thereby the right of the injured state to decide between cessation and restitution can be secured.

Taking this approach Draft Articles should be rephrased in a way that the relevant provision would mean an entitlement of the injured state to claim full performance of the obligation, the discharge of which was interrupted. Bringing the notion of wrongfulness into question would not only take away the practical utility of this legal institution, but could cause a potential risk of confusing cessation with restitution.

3.3. *Unifying provisions related to reparation.* When drafting rules of reparation, the members of the International Law Commission had to face with the problem of delineating unified rules for wrongful acts of all sorts, including terrorist acts, aggression, establishment of an international organisation, unlawful expropriation, tearing of the flag of a foreign state. These rules had to be at the same time suitable to serve as legal basis of judicial decisions, as well as guidelines for direct settlement between the involved states.

The present provisions in the Articles on State Responsibility, at least in principle, form appropriate basis for the resolution of any wrongful act, regardless of its weight and kind. However, there are certain sort of wrongful acts that cannot be inserted into the bed of Procustes created by the present structure of reparation. At some wrongful acts, the application of even the least burdensome form of reparation is redundant, while in case of violations of great magnitude, the legal consequences provided for in the Articles on State Responsibility seem to be to light.

In the course of determining legal consequences of wrongful acts, it is impossible not to consider the fact that states can undertake obligations with entirely different weight. Obviously, the weight of a political declaration on co-operation - even if it is taking a legally binding form - may be entirely different than for example an agreement on the trade of weapons or disarmament, and again different an agreement that places the responsibility of controlling the implementation on the very state - such as a convention on the rights of women. It is very well possible that treaties in the legal rubric of *traité-contrat* should entail in different legal consequences than those in the rubric of *traité-loi*, or violation of customary international law.

In certain cases of wrongful conduct, application of the rules of reparation is either not necessary or not possible. General agreements on co-operation are in this category, which can be regarded as *de facto* political declarations. If ties are worthening between two formerly co-operative states, an enforced implementation of general agreements on co-operation is neither really possible nor necessary. A further category is created by agreements in which states undertaking obligations towards their own citizens. In the revised Commentary to be attached to the Articles on State Responsibility, at least a reference should be made to those exceptions.

Originally the Articles on State Responsibility divided the wrongful conduct

into the subcategories of international delicts and international crimes. It seemed however impossible to elaborate two distinct set of rules, that at the one hand would have made the differentiation between the two subcategories sensible, that is to say to form significantly different legal consequences; on the other hand would have been realistic in its applicability, that is two say that both the international crimes and the international delict would have been necessary to be phrased in a way so that either international courts and arbitral tribunals or involved states in case of direct settlement of the dispute could have taken advantage of the prescribed rules. The subcategory of international crimes was deleted from the Articles on State Responsibility, and instead the subcategory of serious breaches of obligations under peremptory norms of general international law was inserted into the text.

The concept of international crimes seemed to the author to be ill founded, because the name itself of this legal institution would have made it impossible to refer to it in direct settlement cases. It would have been necessary to differentiate among the different sort of wrongful acts in accordance to their gravity. A provision indicating that in case of wrongful acts of significant gravity, the reparation has to be proportionate not only with the damage suffered, but also with the injury that took place, would have adequately served this differentiation, and at the same time would have been perfectly in line with the present practice of international law.

3.4 *The primacy of restitutio in integrum.* This doctrine was developed in international law in order to secure that the responsible state would at least belatedly perform its original obligation. The later developed concept of cessation has became widely accepted by now and secures the discharge of the original obligation, therefore any reference to the primacy of *restitutio in integrum* can be deleted from the Articles on State Responsibility. One cannot forget that the legal instrument for the termination of the ongoing violation of the primary obligation is cessation, while the goal of reparation is to wipe out all of the consequences of the wrongful conduct - first and foremost any sort of damage suffered. In our present Word, the most significant damages are arising from wars and from environmental catastrophes caused by will or negligence. In these cases it is not even considered to have the restitution physically undertaken by the responsible state. It seems that the doctrine of the primacy of restitution is not in harmony with the current practice. In the international case law one cannot find enough evidence to prove the doctrine of primacy of restitution over compensation. International practice indicates more that the change of

circumstances - especially a change in the political environment, the significant time that may pass from the occurrence of the injury until the remedy is actually rendered- often *de facto* excludes the restitution. Nearly each unlawfully exercised expropriation (such as for example those implemented in a discriminatory way) can underline this statement.

3.5 *Exceptions from restitutio in integrum.* According to the present rules, a state the wrongful state is liberated from its obligation to make reparation in the form of restitution, if it is materially impossible or it would involve a burden for the responsible state out of all proportion to the benefit of the injured state deriving from obtaining restitution instead of compensation According to the author, it is not really possible to express with the legal logic applied in the Articles on State Responsibility the advantage of the injured state if it receives restitution instead of compensation. The author does not intend to say that it may not be more adventurous in a political sense for the injured to achieve restitution. However there are no means to express this value on the basis of the present Articles on State Responsibility. One can find it a particularly unpractical solution to measure the advantage of one state with the disadvantage of the other, without creating clear and objective legal guidelines for the determination of this (if at all possible). It is especially difficult in direct settlement cases if the responsible state and the injured state directly attempting to weight one's advantage with the other's disadvantage without the help of a neutral third party. The author believes that in certain cases restitution may be excessively onerous for the wrongful state and it had to be taken into account when the respective rules were laid down. However it would have been more realistic to have the burden of the restitution measured with the gravity of the injury.

Does the injured state have the right to reject *restitutio in integrum*, if it is properly offered by the responsible state, if the earlier state did not specify beforehand the exact form of remedy it is seeking? The Commentary underlined that both the articles on restitution and compensation were phrased in a way to open up the possibility for the injured state to choose between them. Henry, Léon and Jean Mazeud as well as Francois Chabas in their Word famous book on French civil law entitled *Obligations théorie générale* underlined about restitution that "*C'est le mode de réparation le plus parfait*", that is to say restitution is most perfect form of reparation. The authors also express very clearly their view that the victim cannot refuse this sort of remedy. It seems that this doctrine can be found in several continental legal systems. It is also worth mentioning that most continental legal systems regard restitution as the main form of reparation. On the contrary, in the states following common law system,

compensation is the main form of reparation, while restitution, the so called "specific performance" is merely exceptional. With respect to the right of the injured party to refuse restitution: there is no much general guidance we could receive from the domestic law, at same time the Articles on State Responsibility are also lacking that guidance, so at a later stage further clarification would be necessary.

The Articles on State Responsibility *expressis verbis* provided for the right of the injured state to choose between compensation and restitution. In the author's view there was no clarification provided in the Articles on State Responsibility for situations in which there are more than one injured state, and some of them are claiming remedy in the form of compensation while others seeking it in the form of restitution.

3.6 *The extent and limits of compensation.* One of the most important achievements of the codification of reparation articles can be that all States will be aware "at what price" they can commit internationally wrongful acts. Codification of the rules of reparation in international law should result in a situation in which no one could question the right of the injured State to obtain loss of profit or interest in appropriate cases. In order to achieve this, it would be necessary to adopt more rules than those in the Articles on State Responsibility in a prospective Convention on State Responsibility to be adopted in the course of a diplomatic conference hopefully called upon in the future.

There would be a preventive function of sufficiently detailed provisions on the method of reparation. Detailed provisions in this field would also facilitate direct settlements between the injured and wrongdoing States. Since an injury in the international field nearly always has emotional-political consequences on the part of the injured State, this may result in unjustifiable claims. The above concrete and detailed provisions would help in determining fair reparation.

The dissertation describes the main principles that were developed by international courts and arbitral tribunals in relation to compensation. Most of these principles find their origin in the private law and were adopted in international law as a general principle recognised by civilised nations. In the interstate practice we can experience a more and more general recognition of these principles. According to the author there would have been possibility to determine the exact nature and conditions for applicability of these principles in the Articles on State Responsibility.

Principle of full reparation. The best known definition of this principle can be found in the verdict of the Chorzow Factory case: "reparation must, as far as possible, wipe out all the consequences of the illegal act." This principle was laid down in the English law in *Livingstone* v. *Raywards Coal Co., Ltd (1880)* and *Victoria Laundry (Windsor), Ltd* v. *Newman Industries, Ltd.* The § 249 of the German BGB also contains it, and French *Cour de Cassation* took a stand for this principle, as well. The Articles on State Responsibility also contains *expressis verbis* this principle.

Loss of profits. The arbitral tribunal in the *Capehorn Pigeon* case awarding loss of profits defined its notion as "a profit, which would have been possible in the ordinary course of events." There has been a long-standing development in international case law in the matter of awarding compensation for losses suffered subsequent to a wrongful act but beyond the direct losses occurring, but cases such as *William Lee, Yuille, Thomas E Bayard, Norwegian Shipowners* and *The Kate* make it reasonable to believe that international practice generally permits the availability of loss of profits. Private law of most legal systems secures the injured person's right to claim loss of profits such as in Art 1149 of French Civil Code, or §252 of the German BGB. According to the Articles on State Responsibility loss of profits can be awarded, however, a clear provision would be essential in order to determine the criteria for the availability of loss of profits.

Interest. According to Lauterpacht 'general rule of private law, that in the case of default on the part of the debtor to fulfil a pecuniary obligation the creditor is entitled to moratory interest'. Interestingly, this rule is far from being generally accepted in every domestic legal system. However, the decision in the Russian indemnity case is based on this concept, which was referred to as a general principle of law. This decision had a significant impact in international law, and international practice seems to be united -regardless of some minor exceptions like the *Lighthouses* case- in the matter of the availability of interest.

On the proposal of *Special Rapporteur* James Crawford, the International Law Commission included a separate article on interest into the Articles on State Responsibility. According to this article, interest 'runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled'. There is no provision however defying the applicable rate of the interest, nor about the availability of compound interest. These are important questions that should have been clarified in the Articles on State Responsibility.

Compensation and exclusion of punitive damages The arbitral tribunal

emphasised in the Carthage case that "the imposition of ... pecuniary penalty ... goes beyond the purposes of international jurisdiction" and the verdict in the Lusitania case contains similar provision, as well. Scholars such as Aréchaga and Arangio-Ruiz also condemned the few cases in which reparation was imposed as a punishment. Riphagen drew the attention to the danger of the "lack of clarity to what exactly constitutes a 'reparation' and to what exactly constitutes a 'penalty' "

The general consensus between practitioners and theorists that punishment must not be a factor when reparation is awarded (not even in wrongful conduct involving the breach of *jus cogens*) it would have been fortunate to provide for the *expressis verbis* incorporation of this principle into the Articles on State Responsibility.

A stricter requirement would be to demand that "damages should not lead to over-compensation" of the injured State. Gray regards it as a "basic principle" and according to her it may be seen at work in the *Chorzow Factory* case. The ILC also expressed that "essential aim is to avoid 'double recovery' in all forms of reparation." It would have been beneficial to lay down in the Articles on State Responsibility that reparation shall not lead to the unjust enrichment of the injured State.

Indirect damage, foreseeability, remoteness and proximate cause. International courts and arbitral tribunals turn down the injured States's claims for compensation if the relationship between the injury and the damage seemed to be too remote. Examples of this are the *Sardinero, Alabama, Dix* cases and the Administrative Decision No. II (1923). Reference was often made by these courts either to the French doctrine of indirect damage or the English private law doctrine known as foreseeability or proximate cause. These principles should have been considered to form part of the Articles in State Responsibility, with the aim to detail the limits of compensation.

Mitigation of damage. The principle, which can be found in the private laws of most legal systems, was also incorporated into the Articles on State Responsibility. The *Iranian Hostages* and *Germany's Responsibility to Portugal* case, in which the Court paid attention to the injured State's contribution to the damage, prove that there was sufficient support in State practice for the provision to be codified by the ILC. The Judgement of the International Court of Justice emphasised further this principle and this contributed to the inclusion of it into the Articles on State Responsibility.

In summary: several principles were incorporated into the Articles on State Responsibility. However there are still unsolved problems in relation to interest, even more so with respect to loss of profits. There were no regulations phrased with the aim to exclude reparation of punitive nature. The principle of proximate cause or foreseeability is missing, despite of the fact that these are well know notions, already well rooted in international law.

3.7. *Rules of satisfaction: towards hollowness.* Satisfaction is the appropriate form of reparation if the wrongful act resulted in the violation of the prestige or dignity of the injured state, without causing material damage. Long ago moral damage was the technical term used in relation to satisfaction, the Articles on State Responsibly in its form adopted on first reading contained the expression immaterial damage, while the Articles as adopted on second reading did not specify at all what sort of wrongful acts can be wiped up with this sort of remedy. It would have been necessary to lay down the legal role of satisfaction in a more precise way, even if international jurisprudence and legal theory designates the place of this important remedy within the various forms of reparation.

Unfortunately, the punishment of the responsible individuals as a distinct category of satisfaction was cancelled from the finalised form of the Articles on State Responsibility. Some international lawyers raised the problem that deriving from the principle of the division of the constitutional powers, a state cannot guarantee the punishment of the responsible individuals, at maximum it can promise to investigate the responsibility of the person and prosecute him or her but can by no means guarantee the outcome of the judicial procedure. This was the reason for leaving out this category of satisfaction from the Articles on State Responsibility. It is highly regrettable even if it was said that the list of forms of satisfaction in the Articles does not have an exhaustive character. The punishment of guilty individuals is a well-known form of satisfaction in international law. The judicial proceeding is by far not the only means in providing this sort of remedy, but the responsible officers can be dismissed and also different sort of administrative sanctions - including financial ones- can be applied against them. One cannot say therefore that the governments are entirely incapable in respect to the punishment of their agents and they are also in the position to promise that they will launch a criminal procedure against guilty citizens with the aim to have their responsibility established by court.

It is regrettable that the judicial declaration of wrongfulness was not included in the final version of the Articles on State Responsibility, since this category of satisfaction is an important legal institution of modern international law.

In the view of the author, the fact that the final version of the Articles on State Responsibility the listed categories of satisfaction were supplemented by two new week ones, cannot be regarded as a favourable alteration. These two forms are the acknowledgement of the breach, and an expression of regret. It is hard to differentiate between the categories of apology and the expression of regret. The list of the different categories of satisfaction tacitly indicates a sort of ranking as regards their gravity. A state that is ready to acknowledge the breach, but unwilling to express regret seem to deny even the elemental stage of solidarity of the wrongful state towards the injured one, which is a precondition in each case when a remedy is offered for the wrong.

The cases of *I'm Alone* and *Rainbow Warrior* indicated, that there may be cases in which state basically only suffered immaterial damage, however a simple apology would be to light consequence of the breach. International law in some cases had the tendency to order satisfaction in pecuniary form, in cases of direct injuries of immaterial nature, especially gross violations of state sovereignty. Unfortunately, these tendencies will be less likely to continue in the future, because this form of satisfaction was deleted from the Articles on State Responsibility in the course of the revision of the entire text of the document before its adoption on second reading.

According to the Articles on State Responsibility, satisfaction is the appropriate form of reparation insofar as the internationally wrongful act cannot be made good by restitution or compensation. This formula suggest that the consideration of restitution and compensation has to came first in all cases, and only subsequent to that can satisfaction be considered - if the first two remedies were not sufficient enough to provide full remedy for the wrong. The practice seems to be just the opposite in many cases: the responsible state would most probably consider acknowledgement of the breech, expression of regret and apologies at the first instance, because these remedies require relatively little sacrifice and can just as well serve the purpose of restituting the good relations between the injured and the responsible state.

The Articles on State Responsibility indicates a structure in which the injured state is entitled to choose from the various forms of remedies, however should it be reluctant to select a specific form of reparation, than according to the logic of the Articles the responsible state has to first attempt to provide restitution, and than, insofar as such damage is not made good by restitution, it has to provide compensation, and only finally it has to consider satisfaction if necessary to provide full reparation. When the International Law Commission discussed the

legal institution of satisfaction, the members of the Commission seemed to be in agreement that satisfaction can have an auxiliary, as well as an independent role and in itself can provide full remedy for the wrong in appropriate cases. This latter role is not clearly indicated in the Articles on State Responsibility.

In the opinion of the author, satisfaction is an important form of reparation, which is considered at the first place as a potential remedy in most of the cases by the responsible state. This significant role should have been expressed in the Articles on State Responsibility, giving a proper weight to satisfaction within the structure of reparation consonant to its role instead of its backseat one indicated presently.

3.8 *Proposals for further perfection.* In summary, the present provisions on reparation in the Articles on State Responsibility form a sufficient basis for the determination of the content, form and degrees of international responsibility. However - in case of sufficient need for that from the part of the states - the Articles on State Responsibility can be transformed into a Convention, providing the possibility to further improve the existing provisions on reparation. In the course of this process, it would be favourable to include provisions that:

- would define cessation in a way that would be a claim of the injured state and not an unconditional obligation deferring thereby the obstacle that actually prevents the injured state to choose between restitution and compensation;

- would rephrase cessation so it would not involve an immediate investigation weather the act or omission in question was wrongful but simply a claim for the continuation or commencement of a prevailing obligation if the discharge was interrupted or not even commenced;

- would declare that in the course of the determination of the obligation of reparation, the role and the weight of the norm breached in international law and the gravity of the injury should be taken into account;

- would determine stricter forms of reparation in case the wrongful act was committed in breach of a *jus cogens* norm;

- would terminate the primacy of *restitutio in integrum*;

- would further detail the legal conditions for the availability of interest and loss of profits;

- would prescribe that the goal of compensation is to provide full remedy for the damage suffered, but unjust enrichment of the injured state is unlawful;

- would in detail prescribe conditions for the applicability of doctrines of indirect damage, forseeability, remoteness or contemplation test providing for more detailed guidelines as to the extent and limits of compensation;

- would restore the stricter forms of satisfaction, with special regard to the obligation of states to punish the responsible individual, as well as the possibility to claim satifaction in pecuniary form at least in case of injuries of significant gravity.

These modifications could make the rules of reparation in the structure of state responsibility even more complete and satisfactory.

3.9 *Applicability of the research*

Although the General Assembly took note of the Articles on State Responsibility with a resolution adopted in 2001, it is at the present time uncertain whether or not there is going to be a diplomatic conference called upon with the aim to transform, dependent the aim of the states, the present Articles into a Convention on State Responsibility. If that is not going to happen, one can still expect that the provisions that have a customary origin in the Articles on State Responsibility will be often referred to in the international judicial practice. The author hopes that the majority of the states will wish to transform the Articles on State Responsibility into a Convention and in that case the results of this research can be used one way or the other by the Hungarian delegation in the course of the diplomatic conference.

The negotiations on the implementation of the Judgement of the International Court of Justice of 25. September 1997. are still not finished. An important aspect of that negotiations is the mutual obligation of Slovakia and Hungary to undertake the necessary reparation obligations. The finding of the dissertations could be used to strengthen the Hungarian party's position.

4. List of publication and studies elaborated in relation to the topic of responsibility

1. Reparation in international law (University of Cambridge, 1997, supervisor: James Crawford.

2. A *cessatio* mint jogintézmény alkalmazhatósága Szlovákiával szemben a hágai Nemzetközi Bíróság 1997 szeptember 25-i Ítéletét követően. (official study prepared for the Prime Minister's Office, 1998)

3. A hágai Nemzetközi Bíróság előtt a felek által előterjesztett és a Bíróság által elrendelt jóvátétel összevetése a Bős-Nagymarosi Terv ügyében (official study prepared for the Prime Minister's Office, 1998)

4. The legal position of Hungary and Slovakia after the Judgement of the ICJ in the Gabcikovo-Nagymaros case In: Kovács Péter (ed.): International Law at the turn of the millennium - the Hungarian approach, Pázmány Péter Katolikus Egyetem, 2000. Budapest.

5. Forms of Reparation in International Case Law In: Emlékkönyv Flachbart Ernő tiszteletére, Budapest 2002.

6. Cessation in International Law In: Emlékkönyv Flachbart Ernő tiszteletére, Budapest 2002.

7. Critical remarks on the reparation aspects of the Draft Articles on State Responsibility In: Horváth Pál-Zlinszky János: Doktori Iskola - Prelegálások Pázmány Péter Katolikus Egyetem, 2003.