State responsibility is a fundamental principle of international law.\textsuperscript{588} In the context of failed states, attention focuses on transgressions committed by the state and its agents, and any breaches of international law that have been committed. The International Law Commission (ILC) drafted articles in the \textit{Responsibility of States for Internationally Wrongful Acts}, which was submitted to the General Assembly in 2001, noting that under Article I of the International Law Commission draft “[e]very internationally wrongful act of a State entails the international responsibility of that State.”\textsuperscript{589}

\begin{footnotesize}
\textsuperscript{588} The state responsibility as defined in international law: “either by an act or omission, has breached an international obligation in force and incurs, in the absence of circumstances precluding wrongfulness of its conduct, certain legal consequences for the internationally wrongful act of attributable to it, including the obligation to cease the wrongful conduct and make such full reparation of any material and moral damage to the injured state or states as is reasonably adequate depending on the merits of the case in question,” Boleslaw A. Boczek, \textit{International Law A Dictionary}, Lanham: The Scarecrow Press (2005) at 121.

\textsuperscript{589} \textit{Responsibility of States for Internationally Wrongful Acts} 2001, International Law Commission. Text adopted by the Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session. Under attribution of the conduct of a State, in Article 4(1) and 4(2), any state organ: “shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.” An organ includes any person or entity, which has that status in accordance with the internal law of the State. States are liable for violations of international law and are responsible for restitution, as outlined in International Law Commission Draft Article 35. A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation, which existed before the wrongful act was committed, provided and to the extent that restitution: “(a) is not materially impossible; (b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.” Article 2 defines an internationally wrongful act by a state as existing when conduct consisting of an action or omission: “(a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.”
\end{footnotesize}
The international community thus recognizes that states have an obligation to safeguard fundamental, peremptory human rights and humanitarian norms, as each violation of these norms entails state responsibility.

Individuals who commit crimes of genocide, crimes against humanity, war crimes, grave breaches of the Geneva Convention and crimes of aggression are liable under universal jurisdiction for breaches of international law. In the case of state failure, several criteria and precedents have been established by the war crimes tribunals at Nuremberg and strengthened through the establishment of ad hoc tribunals, such as the Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the International Criminal Court. For failed states, one of the most significant aspects of international criminal law is the deterrent effect on imposing criminality.590

Individual criminal responsibility must be distinguished from state responsibility. Individuals who commit gross and systematic human rights violations, whether acting on behalf of the state or as a private individual, must be prosecuted and punished by a domestic or international criminal tribunal functioning in the interest of the international community.591 There are a number of treaties and conventions that explicitly prohibit offences such as aggression, genocide and serious breaches of international humanitarian law, which constitute the rules of jus cogens.592


591 Boleslaw A. Boczek, International Law A Dictionary, Lanham: The Scarecrow Press (2005) at 122. As well, the expression ‘aut dedere aut judicare’ (extradite or prosecute) is used to designate the obligation of states to prosecute those guilty of violations set out in a number of treaties aimed at international co-operation in the suppression of certain kinds of criminal behaviour. The term is the modern adaptation of the phrase, coined by Grotius, ‘aut dedere aut penire’ (either extradite or punish). See M. Cherif Bassiouni and Edward M. Wise, Aut Dedere Aut Judicare: The Duty to Extradite or Prosecute in International Law, Leiden: Martinus Nijhoff Publication (1995) at 3–4.

592 Bassiouni at 52. Some legal scholars have asserted that the principle of aut dedere aut judicare also represents a jus cogens norm. This principle has been defined in the 1996 Draft Code of Crimes against Peace and Security of Mankind as: “The obligation to prosecute or extradite is imposed on the custodial State in whose territory an alleged offender is present. The custodial State has an obligation to take action to ensure that such an individual is prosecuted wither by the national authorities of that State or by another State, which indicates that it is willing to prosecute the case by requesting extradition...” See Official Records of the General Assembly, Fifty-first Session, Supplement No. 10 (A/51/10), chap. II, 1996 Draft Code of Crimes, commentary on Article 9, para. 3. Under International Law Commission Draft Article 8, an act carried out by an individual or group whose conduct is directed or controlled by a state shall: “be considered an act of a State under international...