1. INTRODUCTION

As it is well known, the International Law Commission (ILC) finally adopted the Draft Articles on Responsibility of States for Internationally Wrongful Acts in 2001, at the conclusion of one of the most important, and certainly the most difficult, works of codification and progressive development of international law ever attempted by the Commission. I do not intend now to propose general comments on these Draft Articles, although they are certainly praiseworthy in many respects. I only wish to make some critical observations on a specific point: the role granted to the individual in the Draft Articles. In my opinion, the issue of the international responsibility of the State toward the individual should have been given greater attention in the Draft, because it constitutes an important element of contemporary international law on State responsibility.

In fact, the ILC Draft Articles expressly deal only with the international responsibility of the State toward other States and thereby remain almost completely organized around traditional international law, with its focus on "interstate" relations. The Articles only contain some very shy and rather insufficient openings on the role of the individual. From this point of view then, the Draft Articles were already born old and have unfortunately remained so, despite appreciable efforts by some members of the ILC to take into greater account some important developments in contemporary international law relating to the individual, especially in the field of human rights.

As a matter of fact, one may maintain that there are two general and fundamental phenomena of development and gradual change in contemporary international law which the Draft Articles could and should have taken into account: a) the ever-growing importance of collective, solidarity - and community - based interests; and therefore the progressive overcoming of the bilateral, individualistic and privatistic character of traditional international law; b) the increasingly significant
role of the individual (natural or legal person) and of other non-State entities; and therefore the progressive overcoming of the \textit{strictly interstate} character of traditional international law and of the \textit{statist} approach to that law. It should be noted that international literature, which easily recognizes the former phenomenon, is on the contrary rather divided about the latter.\textsuperscript{5} This cautious doctrinal approach has had an influence on the ILC Draft Articles also, as we shall see. 

2. \textbf{THE ROLE OF THE COLLECTIVE AND COMMUNITY INTERESTS}

It is not necessary to expand upon the phenomenon of the growing importance of the interests of the international community as a whole in contemporary international law, since it is largely dealt with in recent literature. The progressive development and consolidation of the concepts of \textit{jus cogens}, of obligations \textit{erga omnes} and of international crimes of States\textsuperscript{6} is well known. I wish only to underline that one can also strengthen the protection of the interests of the individual through these concepts (which all tend to develop, in a "publicistic" way, the overall system of international law). The protection of fundamental human rights, for instance, can be better ensured at the international level if one recognizes that such rights are established by norms of \textit{jus cogens}, which create obligations \textit{erga omnes}, and that their serious violation by a State constitutes an international crime of that State.

However (and this is the fundamental point), the concepts listed above still live and work \textit{only within the "interstate" world} and are capable only of creating an \textit{indirect and mediate} protection for individuals; that is, a protection only through those "third" States that may, and wish to, take action in response to the violations of human rights committed by a State. If the "third" States do not wish to act, the individual has no protection. Therefore, the trend in international law in favour of community interests may sometimes benefit the individual; but it is, by itself, insufficient to adequately perform the task of real protection of the individual.\textsuperscript{7}

In any case, one should recognize that the ILC Draft Articles on State Responsibility have been greatly concerned, from the time of Special Rapporteur Ago, with the phenomenon of the progressive development of community interests

\footnotesize{\textsuperscript{5} See PISILLO MAZZESCHI, \textit{cit. supra} note 3, pp. 18-36.}

\footnotesize{\textsuperscript{6} As it is well known, the international crimes of States are now described by the Draft Articles as "serious breaches of obligations under peremptory norms of general international law" (see Chapter III of the Draft).}

\footnotesize{\textsuperscript{7} On the contrary, some writers maintain that the ILC Draft Articles on State Responsibility constitute a development in favour of human rights and of the individual insofar as they deal with the protection of community interests. See SIMMA, "Staatenverantwortlichkeit und Menschenrechte im ILC-Entwurf 2001", in FROWEIN ET AL. (Hrsg.), \textit{Verhandeln für den Frieden/Negotiating for Peace: Liber amicorum Tono Eitel}, Berlin, 2003, p. 423 ff., passim.}