

Table of Contents

<i>Foreword by His Excellency Judge Bruno Simma</i>	vii
<i>Acknowledgements</i>	ix
<i>Table of Cases</i>	xv
<i>Table of Legislation</i>	xxiii
<i>Table of Conventions, Treaties etc</i>	xxv
<i>Disclaimer</i>	xxxix
Introduction	1
I. Introductory Remarks	1
II. Overview of Research	7
Part I – The International Response to 9/11 and Its Impact on the Law of State Responsibility	9
Chapter 1: State Responsibility, Terrorism and International Law	11
I. General Remarks: State Responsibility as a Complementary Solution	11
II. Emergence of the Obligation of Prevention	18
III. Counterterrorism Obligations after 9/11 and the Primary/Secondary Divide	30
IV. The Shortcomings of State Responsibility Vis-à-vis Terrorism	33
A) <i>A Gradation of State Involvement</i>	34
B) <i>Scenario 1: Iran-Hezbollah</i>	37
C) <i>Scenario 2: Iran-Hezbollah</i>	41
D) <i>Scenario 3: Lebanon-Hezbollah (in the Shadows of Iran and Syria's Involvement)</i>	44
E) <i>Scenario 4: Afghanistan-Al Qaeda</i>	48
V. Adapting the Law of State Responsibility to Counterterrorism	50
VI. Policy Relevance	50
Chapter 2: The Impact of 9/11 on International Law and Beyond	54
I. General Remarks	54
II. Direct Versus Indirect Responsibility	57
III. The Concept of Attribution	62
IV. A Paradigm Shift: Towards a Law of Indirect Responsibility	76
A) <i>Evolution of Indirect Responsibility in International Law</i>	76
B) <i>Impact on Primary Norms: The Emergence of the Harboring and Supporting Rule</i>	84

C) <i>Specific Incidents Involving the Harbours and Supporting Rule Before 9/11</i>	95
i) The 1982 Israel-Lebanon Conflict	95
ii) The Beirut Raid	101
V. The Security Council's Posture Before and After 9/11	103
 <i>CONCLUSION TO PART I</i>	 111
 Part II – Rethinking State Responsibility After 9/11: Defining the Scope of States' Counterterrorism Obligations and Implementing a Model to Ensure Compliance with Those Obligations	 113
 Introduction	 115
 Chapter 3: Unity Through Vagueness: The Challenges of Devising General Rules of Responsibility	 119
I. Introduction	119
II. Alternative Response: Causation	120
III. Developing Guidelines and General Principles for Fact-Intensive, Fact-Specific Phenomena	130
A) <i>Partial Solutions: State Centricism and Other Limits of State Responsibility</i>	130
B) <i>Generalising Terrorism and State Responsibility</i>	142
IV. Doing Away with Attribution: Towards a Model of Strict Liability?	147
A) <i>Limited Scholarly Advances in Devising Potential Deterrence Models</i>	149
B) <i>Rethinking Trans-substantive Rules</i>	149
i) Shortcomings on Domestic Legal Analogies and the Notion of 'Control'	150
ii) Shortcomings on Defining the Content of Primary and Secondary Obligations	155
C) <i>Need for the Development of General Rules or Guidelines</i>	158
D) <i>Complicating the Equation under the ILC Articles: The Primary/Secondary Dichotomy</i>	159
V. Conclusion	163
 Chapter 4: Rethinking the Rationale Underlying State Responsibility for Terrorism: Trans-substantive Rules, Domestic Analogies and the Rationalist Agenda	 164
I. Introduction	164
II. Revisiting Trans-substantive Rules	165

A) <i>The Notion of ‘Control’ Under the ILC Articles</i>	165
B) <i>Defining Primary Counterterrorism Obligations</i>	174
C) <i>The 9/11 Precedent: The Consecration of the ‘Harbouring and Supporting’ Rule</i>	178
III. The Temporal Element of the Breach of an International Obligation	182
A) <i>Article 14(3): The Distinction between Instantaneous and Continuing Breaches</i>	183
B) <i>A Rationale of Strict Liability</i>	188
IV. Drawing on Legal Traditions and Domestic Law Analogies to Inform the Law of State Responsibility	190
A) <i>The Impenetrability of International Law</i>	190
B) <i>Domestic Law Analogies: Moving Towards Strict Liability</i>	198
V. Mitigating Tensions: Implementing a Model Inspired by Strict Liability	204
A) <i>Security Council Resolution 1373</i>	206
B) <i>The Efficient Breach Doctrine and Other Rationalist Considerations</i>	211
C) <i>Confronting Abstraction: The Lack of Specificity in the Articles</i>	217
D) <i>Overcoming Evidentiary Hurdles</i>	220
VI. Conclusion: Consolidating Rationalist Theories and State Responsibility	226
Chapter 5: Implementing a Two-tiered Strict Liability-infused Model	229
I. Introduction	229
II. A Two-tiered Strict Liability Mechanism	229
A) <i>Striking a Balance: Limiting Governmental Interference in the Private Sphere While Upholding the Sovereign Equality of States</i>	236
B) <i>The Conundrum of Ineffective or ‘Failed’ States</i>	242
C) <i>Transferring the Onus onto the Host-State</i>	248
III. Other Advantages of a Strict Liability Model	251
A) <i>Impact on International Relations and Reciprocity</i>	251
B) <i>Social Stigma Argument</i>	263
IV. Content of the Obligation of Prevention	268
A) <i>Obligation of Conduct versus Result Dichotomy</i>	269
B) <i>The Obligation of Prevention on a Variable Scale</i>	282
C) <i>Legal Consequences of an Internationally Wrongful Act</i>	297
V. Conclusion: A Partial Politico-Legal Solution Lying at the Heart of International Law	302

<i>CONCLUSION TO PART II</i>	308
Concluding Observations	315
Appendix I	323
Appendix II	324
Appendix III	325
Appendix IV	326
Appendix V	327
<i>Index</i>	329

<http://www.pbookshop.com>