

The Legal Nature of International Responsibility for the Crime of Aggression

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Abstract

This article examines the evolving legal nature of international responsibility for the crime of aggression. Traditionally, the state was regarded as the sole subject of international law and thus solely responsible for acts of aggression. However, since the post-World War II tribunals in Nuremberg and Tokyo, individuals—particularly political and military leaders—have increasingly been held accountable for planning and executing acts of aggression. This shift has led to the emergence of a dual responsibility framework: one that holds both the state and the individual accountable under international law. The article explores the divergent legal opinions regarding the attribution of responsibility and ultimately supports the recognition of both state and individual liability for the crime of aggression.

Keywords: international responsibility, crime of aggression, state liability, individual criminal responsibility

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Introduction

The concept of international responsibility has undergone significant transformations throughout the evolution of international law. In its classical form, international responsibility was exclusively attributed to states, which were considered the only subjects of international law. This state-centric approach meant that only states could be held accountable for violations of international obligations, including acts of aggression. Under this traditional framework, the notion of individual responsibility was largely absent from legal discourse and enforcement mechanisms.

However, the aftermath of World War II marked a turning point in the development of international criminal law. The establishment of the Nuremberg and Tokyo tribunals introduced the groundbreaking principle that individuals—particularly those in leadership positions—can be held criminally responsible under international law for committing crimes such as war crimes, crimes against humanity, and crimes of aggression. These judicial precedents laid the foundation for the recognition of the individual as a subject of international law, capable of bearing personal criminal responsibility for actions undertaken in the name of the state.

This evolution sparked a critical shift in the legal understanding of the crime of aggression. While the state continues to bear responsibility for violating international obligations and may be subjected to various sanctions, the role of individuals in planning, preparing, initiating, or executing acts of aggression has gained growing attention. Legal scholars and international legal instruments have increasingly recognized that a state cannot commit aggression in isolation; it requires human agency. Political and military leaders, therefore, are essential actors in the commission of such crimes and must be held accountable accordingly.

Given this duality, a debate has emerged in international legal doctrine regarding the allocation of responsibility for acts of aggression. Some scholars maintain that the state alone bears responsibility, while others argue that individual perpetrators must be held accountable. A more balanced view has emerged, supporting a dual-responsibility approach that acknowledges both the state and individuals as responsible entities under international law. This article explores these different perspectives, aiming to clarify the legal foundations of dual international responsibility in the context of the crime of aggression.

Research Problem

The crime of aggression represents one of the most serious breaches of international peace and security. However, despite its significance, the legal determination of who bears responsibility—whether the state, the individual, or both—remains a contentious issue in international legal scholarship. While the classical framework of international law emphasized state responsibility, modern developments in international criminal law have introduced the concept of individual criminal accountability, particularly for state leaders and military officials. This evolution has created a legal gap in clearly defining the nature and scope of responsibility for aggression.

Furthermore, the Rome Statute of the International Criminal Court (ICC) includes the crime of aggression under its jurisdiction, but it also raises legal and practical challenges regarding enforcement and attribution of responsibility. The lack of consensus on whether aggression should invoke state responsibility, individual criminal liability, or both continues to create ambiguities in legal procedures and accountability mechanisms. This research aims to investigate and clarify the legal nature of international responsibility for aggression in light of evolving legal norms and judicial precedents.

Research Objectives

The primary objective of this research is to explore the legal foundation and implications of attributing international responsibility for the crime of aggression to both states and individuals. By analyzing legal texts, judicial decisions, and scholarly debates, the study aims to uncover the theoretical and practical justifications for this dual approach to responsibility. The research also seeks to examine how international law has evolved from a state-centric model to one that recognizes individual criminal responsibility, especially in the context of aggression.

Another key objective is to assess how the dual responsibility model can enhance international accountability, deter future crimes of aggression, and promote justice for affected populations. The study will explore the impact of this model on the credibility and functionality of international institutions like the ICC and the UN Security Council. Additionally, it will offer recommendations to improve the legal mechanisms for prosecuting both states and individuals involved in aggressive acts.

Research Question

The central research question that this paper seeks to answer is: *What is the legal nature of international responsibility for the crime of aggression, and to what extent can both the state and individuals be held accountable under international law?* This question stems from the complex relationship between state sovereignty and individual liability, especially in the context of crimes committed in the name of state policy or national security.

Subsidiary questions include: How has international legal doctrine evolved to include individuals as subjects of international law in cases of aggression? What legal and institutional frameworks currently exist for addressing dual responsibility? And what are the theoretical and practical implications of recognizing a shared responsibility between states and individuals for crimes of aggression?

Rationale for the Research

This research is significant because it addresses a fundamental gap in the legal understanding of accountability for one of the gravest crimes in international law. As the international community continues to face armed conflicts and acts of aggression by state and non-state actors, a clear and enforceable legal framework is essential. By analyzing the evolving legal principles surrounding aggression, this research contributes to the broader effort of strengthening international peace, justice, and the rule of law.

Moreover, the study responds to a pressing need for clarity in international criminal law, especially with regard to the enforcement of the crime of aggression under the Rome Statute. With the ICC now having jurisdiction over aggression, but with practical and jurisdictional limitations, the research will shed light on the effectiveness and legitimacy of holding both states and individuals accountable. Ultimately, this study seeks to bridge the gap between legal theory and enforcement in the pursuit of global justice.

Chapter 1: Legal Framework of International Responsibility for the Crime of Aggression

Section 1: The Evolution of International Responsibility for Aggression

The concept of international responsibility has significantly evolved over the past century. Initially, in the traditional framework of international law, the state was considered the sole subject of international law, and thus the only entity capable of bearing responsibility for international crimes. Aggression, as a form of illegal use of force by states, was primarily addressed under the

premise that the state was responsible for any violations of international peace and security. However, the post-World War II era witnessed a dramatic shift in how the international community viewed individual responsibility for aggression. This shift was especially evident with the Nuremberg and Tokyo Trials, where individual leaders were held criminally responsible for their role in the planning and execution of aggressive acts.

The legal foundation for this change was laid by the Charter of the United Nations, which established the prohibition of the use of force under Article 2(4). Despite this clear prohibition, the implementation of accountability mechanisms for states and individuals committing acts of aggression was somewhat vague. It wasn't until the creation of the International Criminal Court (ICC) that the criminal responsibility of individuals for the crime of aggression was formally recognized. The Rome Statute, adopted in 1998, laid out the legal framework for prosecuting individuals who directly commit, order, or aid and abet the crime of aggression. This marked a significant leap in the enforcement of international law, highlighting a dual responsibility of both states and individuals.

Historically, the responsibility of individuals in cases of aggression was only addressed in extreme circumstances. During the Cold War era, the global political climate made it difficult to hold either state actors or leaders accountable for aggressive military actions, given the geopolitical tensions. It was the post-Cold War era that allowed the international community to reassess the principle of accountability for international crimes, including aggression. The creation of the ICC in 2002 and the amendment of its Statute to include aggression as a prosecutable crime in 2010 were milestones in the international legal framework, ensuring that not only the states but also their leaders could be held accountable for such crimes.

Section 2: State Responsibility for Aggression

State responsibility for aggression remains a foundational element of international law. The state, as the principal actor in international relations, can be held accountable for breaching the prohibition against aggression by its actions or policies. According to Article 2(4) of the United Nations Charter, all member states are prohibited from using force against the territorial integrity or political independence of any state. Aggression, defined under the United Nations General Assembly Resolution 3314 (1974), refers to the use of force by a state against another state without just cause or legal justification, particularly when it involves an invasion, occupation, or attack on a state's sovereignty.

The principle of state responsibility is based on the premise that states are legal entities capable of violating international law through their conduct. The state's responsibility is usually invoked when an act of aggression occurs, as seen in historical instances like the invasion of Kuwait by Iraq in 1990. The United Nations Security Council, under Chapter VII of the UN Charter, is authorized to determine the occurrence of an act of aggression and decide on appropriate measures, including sanctions or military intervention. This form of responsibility is often public and can lead to international condemnation, economic sanctions, or, in extreme cases, military action authorized by the UN Security Council.

While state responsibility is clearly established, the enforcement of this responsibility has proven to be a complex issue. The political dynamics within the Security Council often limit the effectiveness of measures against aggressive states, particularly when a permanent member with veto power is involved. Despite this, the International Court of Justice (ICJ) has also played a pivotal role in adjudicating disputes related to acts of aggression, as seen in the case of *Nicaragua v. United States* (1986), where the ICJ ruled against the U.S. for its role in funding rebels against Nicaragua, which was considered a violation of the prohibition on aggression.

A critical point regarding state responsibility for aggression is the concept of *jus ad bellum*, the body of international law governing the justification for war. States can argue self-defense, humanitarian intervention, or other exceptions recognized under international law to justify their use of force. However, the burden of proof lies heavily on the aggressor state to demonstrate that their actions fall within the permissible exceptions of international law. Therefore, the application of international law in matters of aggression often involves intricate legal arguments and significant geopolitical considerations.

Section 3: Individual Criminal Responsibility for Aggression

The shift toward holding individuals criminally responsible for the crime of aggression is a significant development in international law. This principle was first articulated during the Nuremberg Trials, where prominent Nazi leaders were held accountable for initiating aggressive wars in Europe. The establishment of individual criminal responsibility marked a departure from the traditional view that only states could be held accountable for such crimes. Following the Nuremberg precedent, the idea that individuals could be personally liable for crimes of aggression gained increasing support within the international legal community.

The International Criminal Court (ICC) was established in 2002 to prosecute individuals for crimes including genocide, war crimes, crimes against humanity, and the crime of aggression. The Rome Statute, which forms the foundation of the ICC, outlines the legal framework for holding individuals accountable for their role in aggression. The statute specifically criminalizes the act of planning, preparing, initiating, or executing an act of aggression against another state. As such, individual leaders—whether heads of state, military commanders, or other political figures—can be held criminally responsible for aggression.

A crucial aspect of individual criminal responsibility for aggression is the legal interpretation of "leadership" and "command responsibility." According to international law, individuals who plan, organize, or command acts of aggression are equally responsible for the consequences of those actions as the individuals who carry them out directly. This concept was first established in the Nuremberg Trials, and has been further reinforced by the ICC's rulings. It emphasizes that those who hold power over military or political decisions are accountable for the broader implications of their actions, including initiating acts of aggression that lead to widespread conflict and suffering.

The case law of the ICC has also developed a more nuanced understanding of the circumstances under which an individual can be convicted for the crime of aggression. In 2010, a historical amendment to the Rome Statute officially recognized the crime of aggression as a prosecutable offense, and in 2018, the ICC established guidelines for how to proceed with cases involving aggression. The Court has thus paved the way for broader accountability for leaders who plan and execute aggressive acts, and this framework ensures that such individuals are not able to escape liability by hiding behind the state's sovereignty.

Section 4: Challenges in Prosecuting Aggression

Despite the legal frameworks in place, the prosecution of aggression faces numerous challenges. One of the primary obstacles is the requirement of proving the crime beyond reasonable doubt, particularly when it comes to determining the intent and scope of aggression. Prosecutors must demonstrate that the accused individual or state deliberately engaged in the planning and execution of acts of aggression, and that these actions violated international law in a manner that led to substantial harm. This process is particularly complex in cases involving high-ranking state leaders or military commanders, where actions are often carried out under the guise of national security or defense.

Another challenge in prosecuting aggression is the political dimension of international justice. The International Criminal Court, for example, relies on the cooperation of states to execute arrest warrants and enforce judgments. However, certain powerful states, such as the United States and China, are not parties to the Rome Statute and have refused to cooperate with the ICC. This lack of cooperation undermines the effectiveness of the Court, particularly when pursuing cases involving high-profile leaders accused of aggression. The issue of selective justice—where only certain states or individuals are prosecuted for aggression—also complicates the legitimacy of international justice.

Furthermore, the lack of a consistent and universally accepted definition of aggression has contributed to the difficulty in prosecuting such crimes. While the United Nations General Assembly Resolution 3314 provides a basic framework, the interpretation of what constitutes aggression often varies based on political and legal perspectives. This lack of consensus complicates efforts to ensure that acts of aggression are prosecuted uniformly across different jurisdictions, leading to potential inconsistencies in enforcement.

Finally, the challenge of balancing sovereignty and accountability is a key issue in the prosecution of aggression. States are often reluctant to surrender their leaders to international courts or acknowledge that they have engaged in aggressive behavior. The political ramifications of holding state leaders accountable for aggression can have far-reaching consequences, affecting international relations and stability. As such, while the legal framework for prosecuting aggression exists, it is often overshadowed by the political complexities that arise in each individual case.

Chapter 2: Dual Responsibility for the Crime of Aggression: The State and the Individual

Section 1: The Debate over Who Should Be Held Responsible

The debate surrounding the question of who should be held responsible for the crime of aggression—states or individuals—has been ongoing for decades. Proponents of state responsibility argue that the state, as the primary legal subject in international law, should bear the responsibility for initiating aggressive wars. They emphasize the importance of state sovereignty and the need for states to be accountable for breaches of international peace. However, others argue that individuals—specifically political and military leaders—should also bear responsibility for their role in perpetrating acts of aggression, as they often play a direct role in the planning and execution of such actions.

The legal perspective on this issue has evolved considerably. Initially, international law focused solely on state responsibility for aggression. However, the post-World War II trials of Nazi

and Japanese leaders established a precedent for individual accountability for crimes related to aggression. This led to the eventual creation of the International Criminal Court (ICC) and the incorporation of the crime of aggression into its mandate. The dual responsibility approach suggests that both the state and the individual can be held accountable for the crime of aggression, but determining the extent of each party's responsibility remains a contentious issue.

Supporters of the dual responsibility theory argue that this approach reflects the reality of modern international conflicts, where state actors often work in tandem with individuals to carry out acts of aggression. They believe that holding both the state and its leaders accountable is necessary to deter future violations of international law and to ensure justice for the victims of aggression. Critics, however, argue that prosecuting individuals for aggression is problematic because it may shift the focus away from addressing the systemic issues that enable aggressive actions to take place at the state level.

Ultimately, the ongoing debate highlights the tension between the traditional principles of state sovereignty and the modern push for individual criminal accountability in international law. Both sides of the argument recognize that accountability for aggression is essential, but they differ on the mechanisms for enforcing this accountability. As international law continues to evolve, finding a balanced approach to holding both states and individuals responsible will be key to ensuring justice for all parties involved in acts of aggression.

Section 2: Legal Framework for State Responsibility in Aggression

State responsibility for the crime of aggression is deeply rooted in international law and is governed by several key legal instruments. One of the most pivotal documents in this regard is the United Nations Charter, particularly Article 2(4), which prohibits the use of force by states in their international relations. Aggression, as defined by the United Nations General Assembly in Resolution 3314 (1974), includes acts like invasion, occupation, and bombardment that breach the sovereignty of another state. This resolution provides the basis for legal actions taken against a state that commits an act of aggression.

International law emphasizes that states bear responsibility for their actions and can be held accountable for violations of international peace and security. For example, the International Court of Justice (ICJ) has played a significant role in adjudicating disputes related to acts of aggression. In the 1986 case of *Nicaragua v. United States*, the ICJ ruled that the United States had committed unlawful acts of aggression against Nicaragua by supporting rebel forces and engaging in military actions, thus violating Nicaragua's sovereignty. This decision reinforced the idea that states are legally accountable for their aggressive behavior under international law.

However, while state responsibility for aggression is clear in principle, the practical enforcement of this responsibility remains complicated. The United Nations Security Council (UNSC) is the primary body responsible for determining whether an act of aggression has occurred and imposing sanctions or other measures in response. Yet, the veto power held by permanent members of the UNSC often hinders the Council's ability to take effective action. This creates a situation where the political dynamics of global power struggle with the need for legal accountability, potentially undermining the principle of equal state responsibility under international law.

Additionally, the mechanisms for holding states accountable for aggression are often influenced by geopolitical factors. In some cases, powerful states may escape consequences for acts of aggression due to their political and military influence, as seen in the cases involving the United States and its military interventions in countries like Iraq and Afghanistan. These challenges underscore the limitations of the current international legal framework in addressing state responsibility for aggression in a fair and consistent manner.

Section 3: Legal Framework for Individual Responsibility in Aggression

In addition to state responsibility, the legal framework for holding individuals criminally responsible for the crime of aggression has undergone significant development over the past century. The principle of individual responsibility for crimes of aggression became central after the Nuremberg Trials, where Nazi leaders were held accountable for the aggressive war they waged during World War II. These trials set a precedent for holding individuals, rather than just states, accountable for their actions, particularly in relation to war crimes, crimes against humanity, and the crime of aggression.

The creation of the International Criminal Court (ICC) in 2002 marked a turning point in international law by establishing a permanent judicial institution with the authority to prosecute individuals for crimes of aggression. The Rome Statute, which serves as the foundation of the ICC, specifically criminalizes the act of aggression, encompassing the planning, preparation, initiation, or execution of such acts. This statute extends the concept of individual criminal responsibility to those who directly or indirectly contribute to the commission of aggression.

One of the key issues surrounding individual responsibility for aggression is the principle of command responsibility. This principle holds that military and political leaders who issue orders to carry out acts of aggression are criminally liable for their actions, even if they did not directly participate in the physical execution of the crime. This concept has been crucial in ensuring that those at the top of the chain of command, who often direct and orchestrate acts of aggression, are held accountable. For example, during the Yugoslav Wars, leaders such as Slobodan Milošević were

tried for their involvement in aggressive acts, marking a significant step in international criminal justice.

Despite the advancements made through the ICC, the prosecution of aggression has faced significant challenges. One of the most contentious issues is the lack of clear and universally accepted definitions of aggression, which can make it difficult to prosecute individuals for this crime. Furthermore, political resistance from states that may be accused of aggression often undermines efforts to hold leaders accountable. This was evident during the initial years of the ICC, when powerful states such as the United States and China refused to become parties to the Rome Statute, preventing the Court from exercising jurisdiction over cases involving these countries.

Section 4: The Challenges and Politics of Dual Responsibility

The concept of dual responsibility—holding both the state and individuals accountable for the crime of aggression—introduces significant legal and political challenges. One of the main hurdles is the tension between the state's sovereignty and individual accountability. While the international community has made significant strides in recognizing the criminal liability of individuals, many states remain reluctant to allow foreign legal institutions to interfere in their internal affairs. This reluctance is particularly evident in cases involving high-ranking political or military leaders, who may argue that their actions were in the service of national interest or defense, despite being deemed acts of aggression under international law.

The dual responsibility model also raises concerns about the potential for political bias and selective justice. Critics argue that the prosecution of aggression may be used as a tool for political maneuvering, with certain countries or individuals being targeted while others escape scrutiny. The case of NATO's bombing of Yugoslavia in 1999 is often cited as an example of this double standard. While NATO's actions were widely condemned as an act of aggression by some, the international community did not hold the alliance accountable in the same way it has pursued individual leaders of other states. This inconsistency in prosecution undermines the legitimacy of the international legal framework and raises questions about the true impartiality of international law.

Additionally, the international legal system faces challenges in ensuring that both states and individuals are held accountable in a timely and effective manner. The process of prosecuting acts of aggression, whether committed by states or individuals, is complex and requires a high level of legal and political coordination. The involvement of multiple actors—including the United Nations Security Council, the International Court of Justice, and the International Criminal Court—often results in a fragmented and inconsistent response to aggression. Moreover, the political dynamics within these institutions, especially the veto power of certain UN Security Council members, can significantly influence the outcome of cases involving state responsibility for aggression.

Finally, the question of deterrence arises in the context of dual responsibility for aggression. Critics argue that the current international legal system does not provide sufficient deterrence for states or individuals contemplating aggressive acts. The lengthy and politically charged nature of legal proceedings, coupled with the limited scope of enforcement mechanisms, makes it unlikely that those who commit acts of aggression will face swift and certain justice. For dual responsibility to be effective, there must be a more coherent and enforceable system of international accountability that ensures both states and individuals face meaningful consequences for their actions. Only then can the international community hope to deter future acts of aggression and uphold the principles of peace and security.

General Conclusion

The study of international responsibility for the crime of aggression reveals a complex and evolving framework where both states and individuals bear significant legal accountability. Historically, the traditional model of international responsibility centered primarily around state accountability, with the emergence of international criminal law in the aftermath of World War II, particularly through the Nuremberg and Tokyo Trials. These trials marked the beginning of a paradigm shift where individuals, particularly political and military leaders, could be held criminally responsible for crimes of aggression. The creation of the International Criminal Court (ICC) further solidified this shift by making individual accountability a permanent fixture of international criminal law.

The dual responsibility model—where both the state and individuals can be held responsible for committing acts of aggression—has presented challenges in practice. State responsibility remains enshrined in key legal frameworks such as the United Nations Charter, which prohibits the use of force in international relations. Yet, enforcement of this responsibility is often hampered by political dynamics within the United Nations Security Council, where the veto power of permanent members may block necessary actions. Meanwhile, individual responsibility, as reinforced through the ICC, faces hurdles related to the clear definition of aggression and the political resistance of states reluctant to subject their leaders to international jurisdiction.

Despite these challenges, the dual responsibility model has contributed significantly to the development of international law. It ensures that accountability for aggression is not limited to states alone but also extends to those who make the decisions and execute these actions. While the practical application of this model is fraught with difficulties, the theoretical and legal

advancements made in this area reflect the growing recognition that both state actors and individuals must be held to account for violations of international peace and security.

For the future, it is essential that the international community continues to refine the legal frameworks governing the crime of aggression. Enhancing the efficiency and impartiality of enforcement mechanisms, improving the clarity of legal definitions, and addressing the political obstacles that often undermine justice are crucial steps toward ensuring that the responsibility for aggression is consistently and fairly upheld. Only through a balanced and comprehensive approach to accountability can the international legal system effectively deter acts of aggression and promote lasting peace.

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