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Individual International Criminal Responsibility Provisions

أحكام المسؤولية الجنائية الدولية للفرد

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Abstract:

Since its inception, public international law did not recognize any form of individual accountability, whether civil or felony. Public international law addresses only its "persons," which are traditionally states. Individuals were never subject to its provisions. Instead, any act by an individual that violated this law was attributed to their state for failing to supervise them.

As global criminal law evolved, particularly following the trials of World War II, a new rule emerged in international law that was not previously recognized: the principle of individual international criminal accountability. This means that individuals can be held criminally liable for their international crimes because they are an attack on humanity and humanitarian values. It is no longer acceptable for the international community to remain silent about these crimes.

Keywords: individual – accountability– global – felony.

الملخص:

القانون الدولي لم يعرف أي مسؤولية تقوم على الفرد مدنية كانت أم جنائية ، فالقانون الدولي العام لا يخاطب إلا أشخاصه، وأشخاصه التقليديون هم الدول، أما الأفراد فلم يكونوا مخاطبين أبدا بأحكامه، بل كان كل ما يرتكبه الفرد من أفعال مخالفة لهذا القانون يُنسب إلى دولته لإخلاقها بواجب الرقابة عليه وفشلها في منعه من ارتكاب جريمته أو فعله الضار.

ومع تطور القانون الدولي الجنائي وخاصة مع محاكمات الحرب العالمية الثانية، ظهرت قاعدة جديدة لم يكن معترف بها من قبل، وهي قاعدة المسؤولية الجنائية الدولية الفردية، أي أن يكون الفرد مسؤولا جنائيا عن جرائمه الدولية لكونها اعتداء على القيم الانسانية و البشرية.

الكلمات المفتاحية: الأفراد- مسؤولية- الدول- الجنائية

Introduction



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One of the most significant subjects in international criminal law is individual international criminal liability. By extending the notion of international accountability, this legislation seeks to create a global community's common interests, which were restricted to its civil aspect and whose purpose is to make up for the harm inflicted in the case of a violation The global system of criminal justice international obligations. It has been expanded to include the criminal aspect, which is essentially concerned with holding individuals accountable for the consequences of their internationally criminal acts and punishing them for their violations.

The responsibility we are dealing with here is individual international criminal responsibility. It has its own special provisions, as its subject is the individual. In this sense, we ask: does international law address individuals so that they can have international criminal accountability for their deeds? Which party bears more responsibility—the people or the states that carried out the crimes?

In order to comprehend the liability clauses in this context, we will first address its nature by studying its concept and provisions in international jurisprudence in the first section, and then we will clarify its elements and conditions of presence in the part that follows.

Chapter 1: The Fundamentals of International Criminal Personal Liability

Anybody who conducts a criminal act in violation of criminal law internationally act bears the consequences of their actions and is subject to the punishment prescribed by law and imposed by the community through a judicial verdict, in this sense, our study in this chapter will focus on providing definitions for the terms "individual" and " global criminal accountability " in the context of international law in particular.

Section one: Individual International Criminal Responsibility: A Concept

The concept of individual international criminal responsibility's background and wide meaning will be covered in this part.

Subsection 1: The Evolution of the Concept of International Personal Criminal Liability

Since its inception, public international law has not recognized any individual responsibility, whether criminal or civil. Public international law addresses only its own subjects, which are traditionally states. There was no connection between individuals and the rules of international law (HAIKAL, 2009, p. 180). Any acts



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committed by individuals in violation of international law were attributed to their state. In other words, the state was accountable for its actions because it neglected to oversee its citizens.

With the advancement of criminal law internationally and human rights, particularly influenced A new, previously unrecognized rule—the rule of individual international criminal responsibility—emerged from the trials that followed the Second World War, particularly after this conflict. This rule states that an individual is criminally accountable not only under the criminal law subject to it in the territory over which he commits his crime, but also that he is criminally responsible anywhere around the world under international law itself and its provisions that criminalize certain acts or crimes because they violate humanity and human values.

In reality, this international criminal responsibility of the individual originated more in practice than in theory. That is, it was not based on a general theory and then developed towards application. Rather, it was a result of the atrocities of international crimes that were committed, war crimes, or what is known as violations of international humanitarian law.

Subsection 2: Defining Personal Accountability in Global Criminal Justice

According to international law, a person's criminal responsibility is not all that dissimilar from the concept and basis of responsibility in national criminal law. This liability applies to any person who commits a serious international crime, whether they are a senior state official, as the nation's leader and main military leader, the head of state, the chief of staff, or a low-ranking soldier in the aggressor state's army (ATTIA, 2006, p. 23). Anyone who is established to have committed one of the offenses specified in international criminal tribunals' legislation, either as a primary actor or as a contributor in the preparation, incitement, participation, or assistance, is accountable and susceptible to trial before national or international criminal tribunals.

In international law, individual criminal responsibility creates a close relationship between the accused individual and the criminally wrongful act, encompassing all its elements. It is not an integral part of the international crime itself but rather the legal consequence or outcome associated with it. This principle holds that those who seriously violate international law criminal law must bear the repercussions of their criminal acts and be subject to the legal penalty.



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Considering the aforementioned, an individual's international criminal responsibility is described as " the ability of an individual to face criminal penalties for the offenses they commit. Any action carried out by a person who is qualified as A significant legal infraction gives rise to the concept of criminal liability and the application of criminal sanctions on him" (Musa, 2009, pp. 22-24).

Section two: International Criminal Responsibility in International Jurisprudence

The vast scale of human rights abuses witnessed around the world, particularly during armed conflicts, has necessitated the identification and accountability of individuals who bear personal responsibility for the orders they have issued or the crimes they have committed. In this context, international law has grappled with the question of attributing individual criminal responsibility, with varying perspectives on who should bear this responsibility.

Subsection 1: international criminal responsibility is determined solely by the state

This theory finds its basis in the fact that international responsibility pertains to topics covered by conventional international law. Consequently, the state was accountable for the wrongful acts it committed, or for its failure to fulfill an obligation

required by international law.

The idea of state accountability for committing foreign offenses peaked during the two world wars, largely because a significant portion of international jurisprudence supported the notion that the state itself carries criminal culpability on a global scale, but personal criminal responsibility for the commission of crimes according to national laws. (Fattache, p. 176)

Jurisprudent "pella" attached a draft of an international penal code that was prepared before the outbreak of World War II and submitted to the International Association of Criminal Law. He mentioned in it many transnational crimes by the state, such as: war crimes, the production and distribution of illegal weapons of mass destruction, the eradication, slavery, or persecution of particular racial or ethnic groups in war and peace for racial, political or religious reasons, the state's refusal to take measures to prevent other international crimes, and he said that the criminal penalties that can be imposed on the state that commits international



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crimes consist of diplomatic penalties (such as warnings, severing diplomatic relations, etc.), legal penalties (such as placing the state's national property under guard, etc.), economic penalties (such as economic boycott.) and other penalties (such as fines, a ban on representation in international organizations for a certain period).

This means that according to this aspect of jurisprudence, the individual does not bear international criminal responsibility and cannot be held accountable except before national courts in accordance with domestic laws. The state alone bears international criminal responsibility, However, given the shortcomings of this approach and the increase in severe human rights violations, it was necessary for another approach that is more in line with reality to emerge.

Subsection 2: dual International Criminal Liability (State and Individual)

This legal perspective considers international criminal obligation that the state and the person must share. The absence of any reference to the State's criminal accountability of Germany as a legal entity is because of the dissolution of its legal system, even though the concept of individual criminal responsibility—as clearly illustrated in the Nuremberg Trials—does not fundamentally negate the state's accountability. sovereignty following the surrender treaty signed on June 5th, 1945 (BOUBOUCH, 2009, p. 236).

According to the principle of dual global offender liability between the state and individuals, war criminals—who are natural people working on behalf of the state—are held criminally accountable for their actions when they commit international crimes. It also supports the idea that this international criminal liability is shared by the state and the person.

First: An international crime perpetrated by a person acting on behalf of the government

Proponents of this theory assert that the state has a shared criminal character with the individuals who run it (El-Far, 1995, p. 268). Additionally, they have demanded that the Permanent International Court of Justice's jurisdiction be extended include criminal cases involving the state or private parties committing international crimes inside the state. Since criminal responsibility is collective for the state that has waged a war of aggression or that encourages bloody attacks in



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occupied territories and lands, as well as for the occupier who imposes harsh and unusual punishments on the territories it occupied momentarily.

Second: Assigning individual and state criminal culpability internationally

Given that the state participates in the crimes that people commit, it shares responsibility with those individuals, as stipulated in accordance with contemporary international criminal law. After the tribulations of World War II, the idea of global responsibility for its agents and individuals residing within its territory emerged (Kamal, 1997, pp. 152-153). Criminal punishment must be imposed on the individual, and the government has to be forced to make the damaged state whole again. In line with this idea, the government's foreign criminal responsibility arises for each violation that results when carrying out a transnational offense. This The Nuremberg International Military Tribunal's decisions, which recognized the international criminal responsibility of people connected to the German state and various German organizations accused of crimes against humanity, crimes against peace, and crimes during conflict, validated this viewpoint.

The state is also accountable for foreign criminal activity in addition to ordinary individuals because this state has condoned or participated in making its political system criminal.

However, this theory has been subjected to several criticisms, the most significant being that the state's fine for violating international obligations by compensation does not carry the meaning of punishment. Also, saying that there is dual responsibility for one crime refers us to an important criminal principle, which is criminal accountability. This is difficult to imagine and apply by combining the responsibility of a natural legal person with another legal person. Therefore, it was necessary to look for another alternative to this theory.

Subsection 3: international criminal responsibility is determined solely by the individual

This doctrine represents the prevailing trend in jurisprudence, as it maintains that for two reasons—first, the person has come to be recognized as a subject of criminal law internationally; and second, the person is the direct perpetrator of the international crime—the person is the principal offender of the international crime and, as such, the exclusive bearer of criminal responsibility.

First: The person engages in international criminal law



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Modern jurisprudence contends that the holder of rights and responsibilities is an individual or natural person. that fall upon them, because the states that international law addresses are fictitious entities (GLASER, 1957, pp. 61-62).

The perpetrator of an international crime can only be an individual, that is, a natural person who commits that crime on their own account or acting on behalf of the state. Advocates of this theory dismiss the criminal responsibility of legal entities because they are, in reality, only artificial legal entities invented by jurisprudence and justified by the necessities of social, economic, and political life. It follows that they do not, in reality, enjoy an autonomous or unique psychological existence, thus the requirements for accountability and the prerequisites for the ethical element are not met for them (ALLAM, 2001, p. 92).

In the same context, advocates of this approach emphasize that natural beings are the objects of criminal law internationally and are accountable for their own crimes abroad. This occurred on the occasion of presenting a paper to the 1919 Preliminary Peace Conference condemning the former German Emperor "Wilhelm II" for personal and individual responsibility for war crimes and crimes against humanity committed during World War I (as defined in the following parts of the Treaty of Versailles and in Article 227 thereof).

Leading those subjects to international criminal law and holding international criminal responsibility are the leaders and commanders who have the criminal intent to commit international crimes. This is because these persons possess the moral element, will, and criminal intent, which leads to the establishment of international criminal responsibility, which requires awareness, discrimination, and choice, which are matters that cannot be available to states with a hypothetical nature and legal personality.

Solely holding states accountable under traditional international law was a direct cause of the perpetration of many transnational crimes. States' criminal liability frequently hindered the creation of individual responsibility or allowed those individuals, who simultaneously benefited from diplomatic immunity, to evade punishment.

Second: The natural person is the sole perpetrator of an international crime.

International jurisprudence strongly advocates the idea that the individual is the only one who has international criminal responsibility, highlighting the natural



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person or individual is the one who commits international crimes. The appearance of a person as a defendant before the Nuremberg Tribunal for the first time in the history of international law is seen as a confirmation of the person's liability for crimes abroad and a reinforcement of the idea that the person has direct obligations imposed upon him, which was confirmed by Articles 7 and 8 of the Court's Charter, which stated that the Charter stipulates that people are bound by international obligations that surpass national obligations imposed by state laws, and that violators of the laws of war cannot claim immunity influenced by the fact that they carried out their work in accordance with state orders.

Chapter Two: Elements and Requirements for Establishing Individual International Criminal Responsibility

The idea of individual criminal responsibility in international law is similar to that of national criminal law. In general, responsibility is based on three elements, just like the elements on which domestic the material, legal, and moral elements serve as the foundation for accountability. Furthermore, there are several conditions that must be met for it to be established, which we will mention below.

Section One: The Elements of Personal International Criminal Liability

Three components comprise the elements of international criminal responsibility: Lawful, Material, and Moral, which we will try to address in the following subsections.

Subsection 1: The international criminal responsibility's legal component

When it comes to the range of transnational crimes that fall within the purview of criminal law internationally, the legality principle serves as a pillar that requires considered a crime and the mechanisms of international prosecution and punishment cannot be activated against it unless it is proven to be subject to an international criminal and punitive legal rule (HEGAZI, 2005, p. 29).

The legal basis for international criminal law cannot be established in the absence of a well-defined international criminal framework. responsibility in general draws its details from three sources: International customary law, international treaties and international tribunals. (El-Rafa, 2005, pp. 52-53)

Therefore, international jurisprudence believes that the rule of "no crime and no punishment without a text" should be reformulated in the content of criminal law internationally to become "no crime and no punishment except on the basis of



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any legal rule, even if it is customary", because the absence of legislation should not make us deny this principle, but it is an obstacle that can be overcome by making this principle subject to a special flexibility that is required by this customary law's character. The idea is governed by a unique flexibility required by the nature of this customary law, and this flexibility consists in reformulating it on broader grounds than those currently adopted by the principle, where it is formulated that there is no crime and no punishment except by law without specifying its nature, whether written or customary, which allows us to embrace the idea in its whole rather than just in writing.

Subsection 2: The Material Component of Each Person's International Criminal Liability

Under international criminal law, the offense, sometimes referred to as the material element of criminal liability, is defined as a prohibited act that causes harm or poses a risk to international interests (HAMMOUM, 2005, p. 24).

The material element, as is well known, is divided into positive criminal behavior, which is determined by the commission of an act prohibited by international law, or negative criminal behavior based on a person's deliberate failure to implement legal obligations (YATOUJI, 2014, p. 36), and the most important forms of harmful criminal activity in international law include the crimes of failing to uphold the rule of law and denying justice to prevent armed gangs from using their territory as a base for military operations on the area occupied by one state or more.

The essential component of global criminal liability is also established with respect to all those who aid in the commission of an international crime, whether the criminal involvement is primary or secondary, as well as in relation to criminal inchoate acts, whether at the stage of preparation or planning, as stipulated in numerous global legal documents and the international criminal tribunals' legislation.

Subsection 3: Individual International Criminal Responsibility's Ethical Aspect

The commission of an international crime that results in international criminal liability, as per international criminal law, necessitates a material act demonstrating intentional unlawful activity that is defined and outlawed under international humanitarian law or international criminal law. Moreover, it has a specific mental



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component that connects the physical elements of the crime to the offender, thereby proving guilt. intent. (HEGAZI, 2005, p. 305)

What the law considers with respect to the perpetrator's conduct is his or her possession of awareness, discernment, and freedom of choice.

While the mental element of a crime, which serves as the basis for establishing individual criminal responsibility, is relatively easy to apply in national criminal law, it is more challenging to define and identify within the context of criminal law internationally. This is because the psychological motive behind the commission of an international crime is often ordered or commissioned by others, and the perpetrator does not commit the crime to achieve a personal interest or goal.

In all cases, the mental element of international criminal responsibility is established by the existence of criminal intent, which consists of two essential elements: knowledge and will.

Section two: Conditions for Determining a Person's International Criminal Liability

As individuals have become active participants in the international community, their breach of international obligations, particularly criminal ones, leads to their international legal accountability. Therefore, for this international criminal responsibility to arise, several conditions must be met, which can be identified as follows:

- The doing of an act that is prohibited internationally (infringement of an international obligation)
- The Unlawful Act's Assignability to the Individual
- Injury

Subsection 1: Putting into Practice a Foreign Illegal Act (Breaking an International Peace Obligation)

Scholars of law have differed in their definitions of unlawful acts. Professor Glaser, for instance, defines them as "any act that constitutes a violation of the interests protected by international law and prescribes a penalty for those who commit them" (GLASER, 1957, p. 11).

In this context, we emphasize that an unlawful act here is an act that is criminally unlawful. Therefore, it falls outside the scope of the concept of an



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unlawful act in civil law, which arises when an international obligation or a provision of international law is violated that does not constitute an international crime.

The severity of this unlawful act varies in terms of gravity. Individuals may violate obligations established by international law during times of peace, such as: Drug trafficking, Human trafficking, Piracy, Money laundering (AL-SAAD, 2002, p. 113). However, the consequences of these violations are somewhat limited, as these acts constitute national crimes that may be qualified as transnational organized crimes. On the other hand, an individual's breach of obligations during conflicts, i.e., their commission of international crimes in wars and armed conflicts, is what triggers the imposition of their criminal liability on a global scale. As an illustration, the perpetration of:

- Crimes of using internationally prohibited weapons or materials, such as explosive, incendiary, and toxic weapons.

Subsection 2: Attribution of unlawful acts to individual

The individual has been the primary focus of criminal law internationally 's regulations on international criminal liability as they address their behavior on the one hand and are also rules that have been established to protect him on the other hand. This is because the individual has now become an important member of the international community, and as a result, the unlawful act is criminally attributed to him alone, and he bears its consequences and the provisions of criminal law internationally are applied directly to him.

However, the question that the question that comes to me is: Can the state be held accountable for an illegal conduct that a private individual commits? To answer this question, we must distinguish between an ordinary individual and an individual who works for the state, such as a soldier or a civil servant. Consequently, accountability of the state for the actions of its employees emerges. in two cases:

- The person carried out their acts with the state's approval or direction, or under its supervision, or in its name.

- The state's failure to exercise due diligence to prevent such acts that cause harm to others. (Ghazlan, 2014, p. 190)

This was affirmed by the International Law Commission, which said that an individual's or group of people' activities are considered acts of the state in



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accordance with international law in Draft Article 8 on State Liability for Internationally Toxic activities:

If it is determined that the person or group of persons was actually working on behalf of their state.

Or if, in the lack of formal authority, the person has really used certain governmental authority powers. But what if the person went beyond the bounds of the power bestowed upon them by their state and engaged in an act of international wrongful conduct?

Under modern international law, the idea that a state's actions are criminally liable has grown law, an absolute principle that encompasses all individuals who hold official positions in the state's hierarchy, whenever they have committed or contributed to the conduct of crimes against international law. As a result, the state is accountable in this case for the acts of its officials even if they have violated them.

Regarding regular people, the general norm is that the state is not responsible for the actions of regular people who do not represent the state. Regarding this, the International Law Commission said in Article 1 of its Draft Articles on State Responsibility for Internationally Wrongful Acts that a person's or a group of people's activities that do not represent the state are not regarded as state acts under international law. Thus, the ordinary individual is personally punished for his acts that violate international law.

Subsection 3: Damage

Damage is considered a condition for determining international criminal responsibility. The harm in this context refers to the violation of a right or a legitimate interest of a person under international law. In domestic criminal law, damage is considered any change that occurs in the external world as a result of the commission of a criminal act (Obeid, 1994, p. 104).

Damage is a crucial element in establishing international criminal responsibility: thus, it is essential to prove it.

Damage, as a condition for international criminal responsibility, can be categorized into types:

- It can be either material or moral, and each of these two types has different forms. Material harm may impact the cohesion of the state, or it may manifest as killing, destruction, and aggression. It may also be moral, such as any transgressions



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and insults aimed against the government and its members, including burning its flag.. etc.

The damage that entails international criminal responsibility must meet several conditions:

- To be certain and present: This condition is agreed upon in many international cases, as potential damage is not taken into account.
- The injury must result from unlawful behavior.
- Evidence that the unlawful activity and the harm it produced were causally related.
- The damage must not have been previously adjudicated: Such that the damage cannot be a subject of responsibility if it has already been adjudicated in an international or national court.

Conclusion

Studying this topic enables us to deal with One of the main points of contention in international criminal law is the individual's criminal responsibility., given that its status in international law has long been a subject Any discussion over the potential for having international legal personality or the degree of his direct subjection to its rules and, consequently, his accountability in the event of violating them, especially if it pertains to the perpetration of offenses classified as transnational crimes. Consequently, outlining the clauses of this responsibility by determining its conditions, pillars, elements, and provisions is likely to establish this principle in contemporary international justice, whether special, temporary, or permanent, by including it in the statute of these courts.

International practice has acknowledged and upheld the principle of individual international criminal liability for transnational crimes—whether internal or transnational—committed during armed wars. International agreements that are Pertinent authorities have been keen to affirm this principle, and this principle has also found practical application in international trials held for many individuals accused at the international level.

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16-This is stipulated in Article 227 and subsequent articles of the Treaty of Versailles. (n.d.).

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