

International Individual Criminal Responsibility: Between Proponents and Opponents

المسؤولية الجنائية الفردية الدولية - بين مؤيد ومعارض -

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Abstract:

The present study seeks to demonstrate that, notwithstanding the convergence of legal systems on the necessity of attributing responsibility to the individual for harmful conduct attributable to him or her, a doctrinal and jurisprudential controversy persists within Public International Law concerning the extent to which international criminal responsibility arises for international crimes committed by individuals.

Indeed, contemporary international legal scholarship reveals a clear division between proponents and opponents of the recognition of such responsibility, a division equally reflected within international and domestic criminal judicial systems. Furthermore, jurists of international law have advanced a number of grounds capable of excluding or negating international criminal responsibility, including mental incapacity, intoxication, duress, and self-defence.

The study ultimately concludes that individual international criminal responsibility has become firmly established as an autonomous principle within contemporary international law, and is now consistently recognised across diverse international criminal justice systems.

Keywords: Responsibility, criminal, international, individual, crimes.

الملخص:

هدف هذه الدراسة إلى تبيان بأنه وعلى رغم اتفاق الأنظمة القانونية على وجوب ترتيب مسؤولية الفرد على فعل ضار تقام به، إلا أنه في القانون الدولي ثار خلاف بين فقهاء القانون الدولي والأنظمة القضائية المختلفة

حول مدى قيام المسؤولية الجنائية عن الجرائم الدولية التي يرتكبها، فقد دار خلاف بين الفقهاء في القانون الدولي المعاصر حول مؤيد ومعارض لها وكذلك هو الحال بالنسبة للأنظمة القضائية الجنائية، كما ذهب فقهاء القانون الدولي إلى القول بأسباب تدفع بالمسؤولية الجنائية الدولية عن الفرد كالعاهة العقلية، السكر، الإكراه والدفاع الشرعي وقد خلصت في الأخير إلى أن المسؤولية الفردية الجنائية أصبحت مؤكدة وقائمة بذاتها في القانون الدولي المعاصر وفي مختلف الأنظمة القضائية الجنائية.

الكلمات المفتاحية: المسؤولية، الجنائية، الدولية، الفرد، الجرائم.

Introduction:

International criminal liability presupposes that an individual shall bear the legal consequences of his or her wrongful conduct, by being subjected to a penal sanction proportionate to the nature and gravity of the offence committed pursuant to the applicable rules of public international law. Nevertheless, a longstanding doctrinal controversy has arisen among scholars of Public International Law concerning the proper identification of the subject of law (legal subject) capable of incurring responsibility under international law.

Prior to the consolidation of individual criminal responsibility within the framework of contemporary international law, divergent doctrinal currents emerged, oscillating between acceptance and rejection of such responsibility. Notwithstanding the near-consensus among jurists that the individual constitutes a subject of particular concern within the normative ambit of International Law, a marked division of opinion persists. One doctrinal tendency advocates for the direct attribution of international criminal liability to the individual, whereas an opposing school denies such attribution, grounding its position in classical state-centric conceptions of international legal personality. Each position is supported by distinct juridical arguments and evidentiary rationales. Furthermore, a third, intermediate doctrinal approach has developed, seeking to reconcile these positions by advancing the notion of dual responsibility, whereby the individual and the State may concurrently bear responsibility for internationally wrongful acts.

In parallel with these doctrinal developments, judicial approaches have also evolved, as reflected in the jurisprudence and positions adopted by both ad hoc and permanent international criminal tribunals, most notably the International Criminal Court. Such judicial practice has likewise fluctuated between affirmation and denial of the principle of individual international criminal responsibility.

International Individual Criminal Responsibility: Between Proponents and Opponents

Moreover, international criminal law has recognized a set of exculpatory grounds which, when established, negate or exclude the criminal responsibility of the individual notwithstanding the material establishment of the offence. These are commonly designated as grounds for exclusion of criminal responsibility within the corpus of International Criminal Law.

Accordingly, the present research paper seeks to examine the extent to which the individual may be held internationally criminally responsible. It endeavors to address the following central research question: Can the individual be deemed criminally liable for the commission of international crimes, or does he or she fall outside the normative scope of international criminal law? Furthermore, where such responsibility is established, is it absolute in nature, or may it be mitigated or excluded by legally recognized defences?

This study adopts an analytical methodology grounded in the critical examination of the various doctrinal and legal positions relating to the recognition—or denial—of individual criminal responsibility. The analysis is structured in accordance with the following scheme:

Section I: Doctrinal and Judicial Trends in Establishing Individual Responsibility

- Subsection I: Doctrinal Approaches
- Subsection II: Approaches of International Criminal Jurisprudence

Section II: Grounds for Exclusion of Individual Criminal Responsibility

- Subsection I: Mental Incapacity and Intoxication
- Subsection II: Duress and Legitimate Self-Defence

I. Doctrinal Trends in the Attribution of Individual Responsibility

In empirical and legal reality, when an individual perpetrates an act of an international character, such conduct is seldom undertaken in pursuit of purely personal interests; rather, it is typically executed in the name of, and for the benefit of, the State. On this basis, a segment of legal scholarship has historically advocated for the imposition of criminal sanctions upon the State itself, rather than upon natural persons.

However, such a theoretical position could not be sustained in light of the progressive evolution of the international legal order, particularly with the growing recognition of the individual as a subject of legal concern and the

concomitant emergence of the doctrine of individual international criminal responsibility within the normative framework of International Law.¹

Subsection I: Doctrinal Approaches

The status of the individual within international law—especially in relation to international legal personality and direct subjection to its norms—has long constituted a matter of doctrinal contention. This controversy has significantly contributed to the fragmentation of International Criminal Law scholarship into three principal schools of thought, particularly in light of the structural transformations experienced by the international legal system.²

These doctrinal schools may be summarized as follows:

- (i)** a first school advocating the exclusive attribution of criminal responsibility to the State;
- (ii)** a second, intermediary school endorsing the notion of dual responsibility, whereby both the State and the individual may be held accountable; and
- (iii)** a third, modern school affirming the primacy of individual criminal responsibility under international law.

Each of these doctrinal positions is underpinned by distinct legal arguments and justificatory frameworks, yet each has also been subjected to sustained critical scrutiny, ultimately paving the way for the evolution of more refined theoretical constructs.

A: The Doctrine of State Criminal Responsibility

Proponents of this doctrine maintain that the State alone bears international criminal responsibility for crimes of an international nature, while simultaneously denying the possibility of attributing such responsibility to individuals.

Among the principal exponents of this view are Franz von Liszt and Max Weber, both of whom argue that the State constitutes the sole entity capable of committing an international crime. According to this perspective, the normative addressees of international law are exclusively States; consequently, only those entities bound by its rules may incur responsibility.

¹ Chenbi, Fouad, *Criminal Justice and Human Rights in International Judicial Protection Procedures*, PhD Thesis, Faculty of Law, University of Oran, 2010–2011, p. 65.

² Al-Obaidi, Bushra Salman Hussein, *International Criminal Violations of Children's Rights*, 1st edn., Al-Halabi Legal Publications, Lebanon, 2010, p. 179.

International Individual Criminal Responsibility: Between Proponents and Opponents

Individuals, not being recognized as subjects of international law within the classical paradigm, fall outside its direct normative scope.¹

From this standpoint, subjects of international law are confined to States alone, as they are the sole bearers of international obligations. Accordingly, where such obligations are violated in a manner giving rise to an international crime—including, for instance, the crime of child recruitment in internal armed conflicts—the attribution of responsibility must necessarily be directed toward the State.

Conversely, the individual is not regarded as a direct addressee of international legal norms and does not possess independent international legal personality. It follows, therefore, that no international criminal responsibility may be imputed to the individual for acts committed, even where such acts constitute violations of international law. Rather, responsibility is mediated through the State, operating via both its domestic and international legal systems. In this regard, it is argued that logic dictates that the individual should be held accountable solely under domestic criminal law.²

A prominent defender of this position, Max Weber, rejected the subjection of individuals to international criminal responsibility on the grounds that it would entail the untenable situation of a natural person being simultaneously governed by two distinct legal systems—namely, domestic and international law—in the absence of a supranational sovereign authority or “world State.”

The adherents of this doctrinal orientation³ further ground their arguments in the theory of legal dualism, as advanced by Heinrich Triepel and Dionisio Anzilotti. This theory posits the structural independence and separation of the international and domestic legal orders in terms of their sources, subjects, and normative operation. As a consequence of this separation, international law imposes obligations exclusively upon States, thereby precluding the attribution of international criminal responsibility to individuals.⁴

¹ Bouhia, Wassila, *International Criminal Responsibility for Crimes against Humanity*, MA Dissertation, Faculty of Law, Saad Dahlab University of Blida, 2005, p. 28.

² Nasser, Mariam, *Effectiveness of Punishment for Serious Violations of International Humanitarian Law*, MA Dissertation, Faculty of Law, University of El Hadj Lakhder Batna, 2008–2009, p. 85.

³ Rawan, Mohamed Al-Saleh, *International Crime in International Criminal Law*, PhD Thesis, Faculty of Law, Mentouri University of Constantine, Algeria, 2008, p. 252.

⁴ Moussa, Ahmed Beshara, *International Criminal Responsibility of the Individual*, Dar Houma for Printing, Publishing and Distribution, Algeria, 2009, p. 31.

Similarly, the Spanish jurist Luis Jiménez de Asúa (referred to in the text as “Saldana”) affirmed this position in a lecture delivered at the Hague Academy of International Law on the subject of “International Criminal Justice,” wherein he asserted that the State possesses a will which may itself be criminal in nature. On this basis, he advocated for the extension of the jurisdiction of the Permanent Court of International Justice to encompass criminal matters, including all crimes committed against international law.

In the same vein, Lassa Oppenheim argued that the State bears criminal responsibility for violations of rules of public international law that fall within the ambit of criminal conduct as defined in the penal laws of “civilized nations.” He cited, *inter alia*, acts such as the waging of aggressive war and the perpetration of massacres against foreign nationals within a State’s territory. Likewise, García Mora emphasized that certain situations—such as genocide and grave violations of human rights—render the notion of State criminal responsibility particularly evident, insofar as such acts transcend mere illegality and engage criminal liability at the international level.

Furthermore, during the Nuremberg Trials, significant questions were raised regarding the appropriate locus of responsibility for crimes committed by Nazi actors—whether such responsibility should attach to the German State itself or to the individuals responsible for its governance. The indictment notably encompassed senior officials of the German State, while simultaneously emphasizing their official capacities. The British Chief Prosecutor, Hartley Shawcross, supported the proposition that charges could be directed against the German State.¹

Notwithstanding its grounding in classical doctrinal theories, this approach has been widely criticized for its failure to account for the dynamic transformations of the international legal order, particularly the progressive recognition of the individual as a bearer of international rights and obligations. Consequently, it no longer reflects a tenable or persuasive position within contemporary international legal scholarship.²

In response to these deficiencies, an alternative doctrinal approach emerged, advocating for the concurrent attribution of criminal responsibility to both the State and the individual—commonly referred to as the doctrine of dual responsibility.

¹ Rawan, Mohamed Al-Saleh, *International Crime in International Criminal Law*, PhD Thesis, Faculty of Law, Mentouri University of Constantine, Algeria, 2008, pp. 252–253.

² Al-Obaidi, Bushra Salman Hussein, *International Criminal Violations of Children’s Rights*, 1st edn., Al-Halabi Legal Publications, Lebanon, 2010, p. 180.

International Individual Criminal Responsibility: Between Proponents and Opponents

B: The Doctrine of Dual (Concurrent) Criminal Responsibility

This doctrinal approach advances the proposition of concurrent attribution of international criminal responsibility to both the State and the individual. Among its principal proponents is Vespasian Pella, who posits that the State, as a social reality endowed with a distinct and autonomous will separate from that of its constituent members, is capable of bearing criminal responsibility. In his view, the recognition of the State's international legal personality necessarily entails the acknowledgment of its capacity to incur criminal liability and, correlatively, its aptitude to perpetrate international crimes.

Vespasian Pella further contends that it is untenable to disregard the criminal responsibility incumbent upon natural persons for acts committed in the name of the State. Accordingly, international crimes give rise to a dual structure of responsibility: a collective responsibility borne by the State, and an individual responsibility borne by the natural person responsible for the material execution of the crime.¹

The Romanian jurist elaborates that objections raised against the notion of State criminal responsibility—particularly those premised on the argument that the State lacks an autonomous will and exists merely as a juridical abstraction operating through its agents—fail to account for the fundamental function of International Law in safeguarding States against external violations. It would thus be logically inconsistent to deny the imposition of criminal sanctions upon States in circumstances where they are culpable of international crimes. Indeed, the recognition of international legal personality inherently implies the capacity to bear the legal consequences of wrongful conduct, including criminal responsibility.²

Moreover, Vespasian Pella developed a draft penal code—commonly associated with his name—in which he articulated a system of sanctions applicable to States. These included a range of coercive measures that could be imposed upon a State found to have violated the rules of international law and committed an international crime, such as the recruitment of child soldiers into armed forces. By contrast, with respect to natural persons, the

¹ Bouhia, Wassila, *International Criminal Responsibility for Crimes against Humanity*, MA Dissertation, Faculty of Law, Saad Dahlab University of Blida, 2005, p. 30.

² Rawan, Mohamed Al-Saleh, *International Crime in International Criminal Law*, PhD Thesis, Faculty of Law, Mentouri University of Constantine, Algeria, 2008, pp. 254–255.

applicable sanctions do not fundamentally differ from those prescribed under domestic criminal law systems.¹

Similarly, Hans Kelsen argues that governmental authorities merely constitute organs of the State, thereby substantiating the existence of dual responsibility: that of the State on the one hand, and that of its officials on the other.

In the same vein, Jean Graven aligns with this perspective, advocating for the dual responsibility of both State and individual. However, he does not ground State responsibility in traditional moral or ethical theories of attribution; rather, he constructs it upon objective criteria consistent with the nature of the State as a juridical person. Consequently, sanctions imposed upon the State must take forms compatible with its legal nature, reflecting a progressive and pacific orientation of International Criminal Law, which remains an evolving legal discipline.

- **Critical Appraisal of the Doctrine**

Notwithstanding the relative coherence and normative appeal of this doctrine, it has been subjected to substantial criticism by scholars of international law. The principal objections may be summarized as follows:

- 1. Incompatibility with General Principles of Law:**

The attribution of international criminal responsibility to both the State and the individual for the same act is argued to contravene general principles of criminal law, particularly in the absence of a legally recognized nexus of joint criminal participation between the two entities.

- 2. Primacy of the Natural Person:**

The State, as a juridical (moral) person, is ultimately a legal construct, whereas the natural person constitutes the main actor. Accordingly, it is the individual—being the true source of criminal conduct—who ought to bear international criminal responsibility, especially given that the main threat emanates from those exercising State authority.

- 3. Dependence of State Will on Individual Agency:**

The formation of a criminal intent attributable to the State is inconceivable without the will of its members (organs or agents). Even if one were to accept the notion of collective will, it would remain more coherent, from a procedural and evidentiary standpoint, to prosecute the

¹ Chenbi, Fouad, Criminal Justice and Human Rights in International Judicial Protection Procedures, PhD Thesis, Faculty of Law, University of Oran, 2010–2011, p. 67.

International Individual Criminal Responsibility: Between Proponents and Opponents

specific representative who acted in the name of the State, as the principal planner and executor of the criminal act.¹

• Doctrinal Outcome

In light of these critiques, and through a systematic examination of the corpus of International Criminal Law, International Humanitarian Law, and the statutory frameworks of international criminal tribunals, it becomes evident that contemporary legal developments have decisively favored the attribution of international criminal responsibility to individuals alone.

This evolution ultimately paved the way for the emergence and consolidation of the third doctrinal school, which affirms the principle of exclusive individual criminal responsibility under international law.

II: Judicial Approaches of International Criminal Jurisprudence

The prevailing view within the doctrine of Public International Law affirms that the individual has, within defined limits and under specific conditions, acquired a form of international legal personality. This development enables the individual to derive certain rights directly from the corpus of international law, while simultaneously possessing the legal capacity to bear international criminal responsibility.²

This principle was first articulated in a precise and explicit manner in the Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, dated 8 August 1945, and was subsequently codified in the statutes of the international military tribunals at Nuremberg Trials and Tokyo Trials³. It was later reaffirmed in the constitutive instruments of the ad hoc tribunals for the former Yugoslavia and Rwanda, and ultimately consolidated within the framework of the International Criminal Court as a permanent judicial institution.

A: Individual Criminal Responsibility before the Ad Hoc Tribunals for the Former Yugoslavia and Rwanda

The Statute of the International Criminal Tribunal for the former Yugoslavia enshrines, in Article 7, the principle of individual criminal responsibility, extending even to Heads of State in relation to specified violations committed within the Tribunal's temporal jurisdiction.

¹ Nasser, Mariam, Effectiveness of Punishment for Serious Violations of International Humanitarian Law, MA Dissertation, Faculty of Law, University of El Hadj Lakhdar Batna, 2008–2009, p. 88.

² Saïd, Mahmoud Saïd Mahmoud, *International Protection of Children during Armed Conflicts*, Dar Al-Nahda Al-Arabiya, Egypt, 2007, pp. 305–306.

³ Ibrahim, Najat Ahmed, International Responsibility for Violations of International Humanitarian Law, Mansha'at Al-Ma'arif, Egypt, 2009, p. 324.

Nehari Nacera

Article 7 provides that any person who plans, instigates, orders, commits, or otherwise aids and abets in the planning or execution of crimes referred to in Articles 2 to 5 of the Statute shall incur individual criminal responsibility. It is evident from the wording of this provision that the Statute unequivocally affirms the criminal liability of natural persons for the commission of international crimes as defined therein.¹

Accordingly, the jurisdiction of the ICTY is expressly limited to natural persons, thereby excluding legal persons such as States or corporations. This confirms that international criminal responsibility, within this judicial framework, attaches solely to individuals²

Furthermore, paragraph (3) of Article 7 establishes the doctrine of superior (or command) responsibility, whereby a superior may be held criminally liable for acts committed by subordinates if he knew, or had reason to know, that such acts were being or were about to be committed, and failed to take necessary and reasonable measures to prevent them or to punish the perpetrators.

In addition, the Statute explicitly rejects the defence of superior orders as a ground for exoneration from criminal responsibility. While obedience to orders of a government or superior does not absolve the accused, it may, at the discretion of the Tribunal, be considered as a mitigating factor in sentencing where the interests of justice so require³.

In parallel, the Statute of the International Criminal Tribunal for Rwanda affirms, in Article 6(1), the principle of individual criminal responsibility. It provides that any person who plans, instigates, orders, commits, or otherwise aids and abets in the commission of crimes falling within its jurisdiction—namely those enumerated in Articles 2 to 4—shall be held criminally liable.

Article 6(2) further abolishes immunities traditionally accorded to State officials, including Heads of State, thereby reinforcing the primacy of accountability under International Criminal Law. Moreover, Article 6(3) reiterates the doctrine of superior responsibility, holding superiors liable where they knew or had reason to know of the criminal acts and failed to prevent or repress them.

¹ Saïd, Mahmoud Saïd Mahmoud, *International Protection of Children during Armed Conflicts*, Dar Al-Nahda Al-Arabiya, Egypt, 2007, pp. 341–342.

² Moussa, Ahmed Beshara, *International Criminal Responsibility of the Individual*, Dar Houma for Printing, Publishing and Distribution, Algeria, 2009, p. 277.

³ Saïd, Mahmoud Saïd Mahmoud, *International Protection of Children during Armed Conflicts*, Dar Al-Nahda Al-Arabiya, Egypt, 2007, p. 342.

International Individual Criminal Responsibility: Between Proponents and Opponents

The jurisdiction of the ICTR extends to the prosecution of individuals responsible for genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions, as well as of the Additional Protocol II relating to the protection of victims of non-international armed conflicts.¹

Finally, it is noteworthy that the legal characterization of crimes under the respective statutes of the ICTY and ICTR reflects differing normative foundations. The crimes under the ICTR are primarily grounded in Common Article 3 of the Geneva Conventions and the provisions of Additional Protocol II, thereby pertaining predominantly to non-international armed conflicts.

By contrast, the crimes under the ICTY are governed by the grave breaches regime of the Geneva Conventions and the provisions of Additional Protocol I, as well as customary laws of war, situating them within the context of international armed conflicts, or at minimum conflicts that have undergone processes of internationalization².

B: Individual Criminal Responsibility before the Permanent International Criminal Court

The establishment of the International Criminal Court represents the culmination of a long-standing aspiration within the international community, motivated by the grave atrocities and mass crimes that claimed the lives of millions of innocent victims. By the end of the twentieth century, this aspiration materialized with the creation of a permanent international criminal jurisdiction, designed—according to its constitutive Statute—to reflect the will of peoples and the collective conscience of humanity.³

Since the precedents established by the Nuremberg Trials and Tokyo Trials, the urgency of instituting a permanent international criminal mechanism became increasingly evident. In this regard, the International Law Commission, operating under the auspices of the United Nations General

¹ Saïd, Mahmoud Saïd Mahmoud, *International Protection of Children during Armed Conflicts*, Dar Al-Nahda Al-Arabiya, Egypt, 2007, pp. 252–253.

² Moussa, Ahmed Beshara, *International Criminal Responsibility of the Individual*, Dar Houma for Printing, Publishing and Distribution, Algeria, 2009, pp. 298–299.

³ Marouk, Nasr Eddine, 'Definition of Crimes within the Jurisdiction of the International Criminal Court', in *Algerian Contributions to International Humanitarian Law*, 1st edn., Algeria, 2008, p. 241.

Assembly, undertook sustained efforts to conceptualize and operationalize such a judicial institution ¹.

Undoubtedly, the adoption of the Rome Statute of the International Criminal Court constitutes not merely a normative development, but a watershed moment in the evolution of the contemporary international legal order. It signifies a decisive step toward preventing impunity for perpetrators of the most serious crimes against humanity. For the first time in legal history, a permanent international tribunal was established with jurisdiction to investigate, prosecute, and punish those responsible for the gravest international crimes, typically perpetrated in a widespread or systematic manner ².

With regard to the principle of individual criminal responsibility, the Rome Statute comprehensively regulates this doctrine across several provisions, notably Articles 25, 26, 27, and 28. Article 25, explicitly entitled “Individual Criminal Responsibility,” constitutes the cornerstone of this framework.

Pursuant to the Statute, the Court’s jurisdiction is expressly limited to natural persons, thereby excluding legal entities. Furthermore, official capacity—whether as a Head of State or government official—does not exempt a person from criminal responsibility, nor does it constitute a bar to the exercise of the Court’s jurisdiction ³. This reflects a clear departure from traditional doctrines of immunity, affirming the primacy of accountability under International Criminal Law.

Moreover, the Statute adopts a complementary and selective jurisdictional approach, whereby the Court does not exercise competence over all war crimes indiscriminately, but rather limits its jurisdiction to those crimes that attain a threshold of particular gravity. Less serious offences remain within the purview of national criminal jurisdictions, in accordance with the principle of complementarity ⁴.

Section II: Grounds for Exclusion of Individual Criminal Responsibility

An act committed by an accused may, in principle, constitute an international crime—such as a war crime—thereby engaging responsibility

¹ Hamouda, Montasser Saïd, *The International Criminal Court: General Theory of International Crime and Rules of International Criminal Law*, New University Publishing House, Egypt, 2006, p. 217.

² Al-Shehata, Abdelkader Al-Arabi, ‘The Principle of Complementarity between the International Criminal Court and National Criminal Jurisdiction’, *Annals of the Faculty of Law, University of Oran*, No. 3, 2011, p. 45.

³ Al-Makhzoumi, Omar Mahmoud, *International Humanitarian Law in Light of the International Criminal Court*, 1st edn., Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2008, p. 260.

⁴ Hamouda, Montasser Saïd, *The International Criminal Court: General Theory of International Crime and Rules of International Criminal Law*, New University Publishing House, Egypt, 2006, p. 107.

International Individual Criminal Responsibility: Between Proponents and Opponents

under the rules of International Law. However, such responsibility may be excluded where the act is accompanied by circumstances or conditions that justify or excuse the conduct under international law. In such cases, the accused may invoke legally recognized defences negating criminal responsibility¹.

These grounds for exclusion largely correspond to those recognized in domestic criminal law systems. However, their codification at the international level was впервые systematically articulated in Article 31 of the Rome Statute of the International Criminal Court, which established, as a matter of binding international legal principle, the principal grounds excluding individual criminal responsibility.

Among the most significant of these grounds are: mental incapacity, intoxication, duress, and legitimate self-defence².

Subsection I: Mental Incapacity and Intoxication

In certain circumstances, an international crime may be committed by a person suffering from a severe mental disorder, commonly referred to as mental incapacity, which substantially impairs the individual's ability to appreciate the unlawfulness or nature of their conduct, or to control their actions. Such a condition may lead the perpetrator to engage in conduct that would otherwise be deemed unlawful.

In contrast, the cause of impaired cognition may be temporary rather than permanent, as in the case of intoxication, typically resulting from the voluntary or involuntary consumption of alcohol or other substances. This condition involves a temporary suspension or diminution of reason (cognitive capacity), potentially affecting the individual's capacity for discernment (capacity for judgment) at the time of the commission of the crime.

Both cases—mental incapacity and intoxication—are thus recognized within the framework of International Criminal Law as potential grounds for excluding or mitigating individual criminal responsibility, subject to the conditions and limitations prescribed under Article 31 of the Rome Statute.

¹ Rawan, Mohamed Al-Saleh, *International Crime in International Criminal Law*, PhD Thesis, Faculty of Law, Mentouri University of Constantine, Algeria, 2008, p. 167.

² Al-Obaidi, Bushra Salman Hussein, *International Criminal Violations of Children's Rights*, 1st edn., Al-Halabi Legal Publications, Lebanon, 2010, p. 186.

A: Mental Incapacity

The notion of insanity or mental incapacity encompasses all pathological conditions affecting the cognitive faculties of the individual in such a manner as to result in the loss of discernment or free will. These cognitive faculties include both simple and complex mental processes, such as perception, attention, memory, imagination, and evaluative judgment, as well as other cognitive functions inherent to human reasoning ¹.

Within the framework of the International Criminal Court, mental disease or defect is understood as any condition that substantially impairs the mental faculties of the individual, thereby negating the capacity for cognition or autonomous choice ².

This ground for exclusion of responsibility is expressly codified under Article 31(1)(a) of the Rome Statute of the International Criminal Court, which provides that:

A person shall not be criminally responsible if, at the time of that person's conduct, he or she suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of the conduct, or to control that conduct in accordance with the requirements of law.

It is evident from this provision that the legal standard does not hinge upon the classification or nature of the mental disorder per se, but rather upon the functional impact of such disorder on the individual's cognitive and volitional capacities. Accordingly, mental incapacity constitutes a valid ground for excluding criminal responsibility only where it results in the deprivation of either awareness (realization) or freedom of choice ³.

The applicability of this defence is contingent upon the existence of one of the following three conditions:

1. The mental disease or defect negates the individual's capacity to appreciate the unlawfulness of the act;
2. It impairs the individual's understanding of the nature of the conduct;
3. It deprives the individual of the ability to control his or her behaviour in accordance with legal norms.

¹ Al-Buqayrat, Abdelkader, *International Criminal Justice: Punishment of Perpetrators of Crimes against Humanity*, 2nd edn., Office of University Publications, Algeria, 2007, p. 92.

² Moussa, Ahmed Beshara, *International Criminal Responsibility of the Individual*, Dar Houma for Printing, Publishing and Distribution, Algeria, 2009, p. 288.

³ Bouharawa, Rafik, *Jurisdiction of the Permanent International Criminal Court*, MA Dissertation, Faculty of Law and Political Science, Mentouri University of Constantine, 2009–2010, p. 96.

International Individual Criminal Responsibility: Between Proponents and Opponents

Where any of these conditions is satisfied, the accused is exempted from criminal responsibility. However, such exemption does not render the act lawful; rather, the act retains its criminal character, while the perpetrator is relieved of liability.

Importantly, the recognition of this ground does not preclude the jurisdiction of the Court. The International Criminal Court remains competent to adjudicate the case, establish the commission of the crime, and attribute it to the accused, before subsequently declaring the exclusion of responsibility on the basis of mental incapacity. Once such a determination is made, the principle of non bis in idem precludes any other tribunal from re-adjudicating the same matter ¹.

B: Intoxication

Intoxication is defined as a condition in which an individual is rendered incapable of performing ordinary activities in a normal manner due to the consumption of alcoholic beverages or narcotic substances. As the degree of intoxication intensifies, the divergence between the individual's sober and intoxicated states becomes more pronounced. The individual's self-awareness diminishes, and behaviour becomes increasingly governed by instinctual drives and primitive impulses under the effect of alcohol or drugs, accompanied by a weakening of self-control. In its most severe form, intoxication may approximate a case analogous to insanity.

Article 31(1)(b) of the Rome Statute of the International Criminal Court recognizes intoxication as a ground for excluding criminal responsibility, providing that:

A person shall not be criminally responsible if, at the time of the conduct, the person is in a state of intoxication that destroys his or her capacity to appreciate the unlawfulness or nature of the conduct, or to control that conduct in accordance with the law, unless the person has become voluntarily intoxicated under circumstances in which he or she knew, or disregarded the risk, that such intoxication might lead to conduct constituting a crime within the jurisdiction of the Court.

This provision was the subject of extensive deliberation during the Rome Conference. A number of States advocated a strict distinction between voluntary and involuntary intoxication, arguing that only the latter should

¹ Al-Fatlawi, Suhail Hussein, *Encyclopaedia of International Criminal Law*, Vol. 2, Dar Al-Thaqafa for Publishing and Distribution, 2011, p. 211.

constitute a ground for exclusion of responsibility, in conformity with their domestic criminal laws.

Conversely, another direction—comprising largely Western States—opposed an overly broad acceptance of intoxication as a defence, particularly in relation to grave international crimes such as genocide. They contended that it would be normatively unacceptable to permit perpetrators to evade responsibility for atrocities on the basis of self-induced intoxication.

As a compromise, the final text introduced a qualified rule: voluntary intoxication does not exclude criminal responsibility where the individual was aware, or consciously disregarded, the likelihood that such intoxication could result in conduct amounting to a crime within the jurisdiction of the Court ¹.

In parallel, domestic criminal law systems generally recognize conditions such as insanity, loss of consciousness, or involuntary intoxication—particularly where induced without the individual's knowledge or under coercion—as grounds for excluding responsibility. However, where intoxication is self-induced, it is typically regarded not as a complete defence, but rather as a mitigating circumstance affecting the degree of culpability ².

Subsection II: Duress and Legitimate Self-Defence

The will of the perpetrator may be vitiated by certain defects, the most prominent and perilous of which is duress, insofar as it negates the autonomy of will and deprives the individual of any meaningful choice regarding the commission of the crime. Conversely, an individual may engage in conduct that constitutes a crime under ordinary circumstances in order to protect his or her person, property, or honour, within the legal framework of legitimate self-defence.

A: Duress

Duress, in its general juridical conception, refers to the exertion of pressure upon the will of the individual such that it undermines its autonomy and compels action under the influence of a force that cannot reasonably be resisted. This coercive force may intervene at the level of the *actus reus* (material element), in which case it is characterized as physical

¹ Bouharawa, Rafik, Jurisdiction of the Permanent International Criminal Court, MA Dissertation, Faculty of Law and Political Science, Mentouri University of Constantine, 2009–2010, pp. 96–97.

² Al-Fatlawi, Suhail Hussein, Encyclopaedia of International Criminal Law, Vol. 2, Dar Al-Thaqafa for Publishing and Distribution, 2011, p. 212.

International Individual Criminal Responsibility: Between Proponents and Opponents

duress, or at the level of the mens rea (mental element), in which case it is designated as moral or psychological duress.

Comparative analysis demonstrates that the majority of domestic criminal law systems recognize duress as a ground for excluding criminal responsibility.

At the international level, this defence is codified in Article 31(1)(d) of the Rome Statute of the International Criminal Court, which provides that:

A person shall not be criminally responsible if the conduct alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such threat may be either:

(i) made by other persons; or

(ii) constituted by other circumstances beyond that person's control.

It is apparent from this provision that the Statute addresses duress as it affects individuals, rather than forms of coercion or necessity invoked by States. This reflects the foundational orientation of the International Criminal Court toward individual criminal responsibility, to the exclusion of State criminal liability ¹.

For duress to operate as a ground for exclusion of criminal responsibility under the Statute, several cumulative conditions must be satisfied:

1. The coercion must involve a threat of imminent death or serious and continuing bodily harm;
2. The threat may be directed either against the accused or against a third person (for example, a close relative);
3. The accused must have acted in a necessary and reasonable manner, without exceeding what is required to avert the threatened harm;
4. The determination of the applicability of duress falls exclusively within the competence of the International Criminal Court, which retains jurisdiction over the case and renders a finding of exclusion of responsibility, rather than a declaration of lack of jurisdiction or acquittal.

¹ Bouharawa, Rafik, Jurisdiction of the Permanent International Criminal Court, MA Dissertation, Faculty of Law and Political Science, Mentouri University of Constantine, 2009–2010, p. 98.

This doctrinal approach reflects a clear transplantation of principles derived from domestic criminal law systems into the corpus of International Criminal Law ¹.

B: Legitimate Self-Defence

The right of legitimate self-defence constitutes a fundamental legal principle, deeply rooted in domestic legal systems and subsequently incorporated into the framework of international criminal law. It affirms the entitlement of an individual to employ necessary means to repel an imminent and unlawful threat directed against his or her person, property, or honour.

In essence, self-defence authorizes the commission of acts that would otherwise be deemed unlawful—such as the use of force against another individual—provided that such acts are undertaken within the bounds of necessity and proportionality for the purpose of averting a threat. Thus, conduct which is *prima facie* criminal may be rendered lawful where it is justified by the imperative of self-protection.

Accordingly, the individual is entitled to resist an unlawful act directed against him or her by engaging in conduct that, under ordinary circumstances, would be prohibited, but which acquires legality by virtue of its defensive character ².

A significant strand of legal scholarship maintains that the nature of legitimate self-defence in International Law is fundamentally analogous to its conception within domestic criminal law. It is regarded as an inalienable and sacred right, incapable of waiver, whether by individuals, groups, or even States.

From this doctrinal perspective, the use of lethal force may be deemed lawful where it arises from a state of actual necessity inherent in self-defence. Aggression, being antithetical to law, is countered by self-defence, which itself represents the negation of that negation—namely, the affirmation and application of law. Accordingly, defensive acts are rendered lawful because they lack the element of aggression; conversely, the conduct of the aggressor retains its unlawful character, and the latter remains criminally responsible notwithstanding any harm inflicted by the defender.

¹ Al-Fatlawi, Suhail Hussein, *Encyclopaedia of International Criminal Law*, Vol. 2, Dar Al-Thaqafa for Publishing and Distribution, 2011, p. 213.

² Al-Fatlawi, Suhail Hussein, *Encyclopaedia of International Criminal Law*, Vol. 2, Dar Al-Thaqafa for Publishing and Distribution, 2011, p. 206.

International Individual Criminal Responsibility: Between Proponents and Opponents

A further doctrinal position—one which is here endorsed—holds that self-defence constitutes a right conferred not only by positive law but also by the general principles of law. This position aligns with the foundational tenet of criminal legality (*nullum crimen, nulla poena sine lege*), whereby the standard in human conduct is permissibility, and criminalization arises only by virtue of explicit legal prohibition.

The legal order, in its teleological function, seeks to promote the public interest by balancing competing interests. Where legal norms prove insufficient to ensure the protection of such interests, and recourse to public authority is impracticable, individuals must be empowered to act autonomously in defence of their rights.

Within the framework of International Criminal Law, the doctrine of self-defence rests upon the same normative foundation as in domestic systems—namely, the prioritization of the victim's interest over that of the aggressor. Consequently, both individuals and States are entitled to repel unlawful attacks, a principle further reflected in the recognition of the right of collective and individual self-defence in international law ¹.

The Rome Statute of the International Criminal Court codifies this principle in Article 31(1)(c), which provides that:

A person shall not be criminally responsible if, at the time of the conduct, the person acts reasonably to defend himself or herself or another person, or, in the case of war crimes, property essential for survival or for the accomplishment of a military mission, against an imminent and unlawful use of force, in a manner proportionate to the degree of danger.

However, the provision further clarifies that mere participation in a defensive military operation does not, in itself, constitute a ground for exclusion of criminal responsibility ².

Conditions Governing the Exercise of Self-Defence

The Statute establishes several conditions governing the lawful invocation of self-defence:

1. Reasonableness of Conduct:

The defensive act must be objectively reasonable, implying that it is strictly limited to repelling the imminent threat without exceeding what is

¹ Moussa, Ahmed Beshara, *International Criminal Responsibility of the Individual*, Dar Houma for Printing, Publishing and Distribution, Algeria, 2009, pp. 238–239.

² Bouharawa, Rafik, *Jurisdiction of the Permanent International Criminal Court*, MA Dissertation, Faculty of Law and Political Science, Mentouri University of Constantine, 2009–2010, p. 97.

strictly necessary. Once the threat has ceased, the right to self-defence is extinguished, and any subsequent conduct constitutes retaliation rather than lawful defence.

2. Protected Interests:

Self-defence may be exercised in protection of oneself, another person, or—within the context of war crimes—property indispensable to survival or to the execution of a military mission, against an imminent and unlawful use of force.

3. Proportionality:

The defensive response must be proportionate to the degree of danger faced, reflecting a balance between the harm inflicted and the harm avoided.

Notwithstanding these provisions, certain commentators have criticized the Rome Statute for its relative lack of detail in regulating self-defence, particularly when compared to the more elaborate frameworks found in domestic criminal legislation ¹.

Concluding Observation on Grounds for Exclusion

The grounds for exclusion of individual criminal responsibility, while essential to ensuring fairness and justice, must be applied with considerable restraint. Their overly broad application may undermine the protective objectives of International Criminal Law and risk facilitating impunity.

Accordingly, it is argued that such defences should be narrowly construed—and, in certain instances, altogether excluded—particularly in relation to grave international crimes such as genocide, crimes against humanity, and war crimes, especially where such violations affect vulnerable populations, including children. The protection of humanity and the preservation of international peace and security remain the paramount objectives of the international legal order ².

Conclusion:

In conclusion, the present research establishes that individual criminal responsibility has become firmly entrenched as an autonomous and operative principle within the framework of international criminal adjudication. Its normative regime has attained a significant degree of effectiveness and uniformity, particularly in its application **erga omnes**

¹ Al-Fatlawi, Suhail Hussein, *Encyclopaedia of International Criminal Law*, Vol. 2, Dar Al-Thaqafa for Publishing and Distribution, 2011, p. 207.

² Al-Obaidi, Bushra Salman Hussein, *International Criminal Violations of Children's Rights*, 1st edn., Al-Halabi Legal Publications, Lebanon, 2010, pp. 199–200.

International Individual Criminal Responsibility: Between Proponents and Opponents

without discrimination based on the official status or position of individuals within the State. This is most notably reflected in the progressive erosion of the doctrine of criminal immunity, whereby Heads of State and senior officials are no longer shielded from accountability, but rather placed on an equal juridical footing with ordinary individuals before international criminal justice.

The principal findings of this study may be summarized as follows:

- The importance of individual criminal responsibility is manifested in the fact that the individual has become directly accountable before international tribunals, and is subject to the rules of International Law in terms of procedure, substance, adjudication, and punishment. This represents the most coherent expression of the increasing attention of international law in the individual, whether in a positive capacity (as claimant) or a negative one (as accused).
- The principle of individual criminal responsibility has been unequivocally affirmed in both ad hoc international criminal tribunals, such as the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia, as well as within the permanent judicial framework of the International Criminal Court.
- The regulation of legitimate self-defence under the Rome Statute of the International Criminal Court remains comparatively underdeveloped, lacking the degree of doctrinal precision and detailed articulation typically found in domestic criminal law systems.
- The exclusion of criminal responsibility does not negate the jurisdiction of the international criminal court. Rather, the Court retains competence to adjudicate the case, establish the occurrence of the crime, and subsequently determine the absence of criminal responsibility of the accused. Furthermore, once such a determination has been rendered, the principle of non bis in idem precludes any subsequent adjudication of the same case by another tribunal.

Recommendations

In light of the foregoing, it is recommended that greater emphasis be placed on enhancing the legal status and functional role of the individual within Public International Law, particularly within the domain of International Criminal Law. This is necessitated by the profound impact—both positive and negative—that individual conduct exerts upon the dynamics of international relations.

To this end, it is further recommended that the Rome Statute of the International Criminal Court be subject to continued development through the incorporation of additional legal provisions and detailed regulatory frameworks. Such reforms should address, inter alia, the precise classification of international crimes, the determination of appropriate sanctions, and the refinement of grounds for exclusion or mitigation of criminal responsibility, thereby contributing to the consolidation of a coherent and comprehensive system of international criminal justice.

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