

## GENERAL COMMENTS

The subject of responsibility for aggression is usually linked with the liability of the state, since the aggression against the state – not against an individual – was defined as first. It was the state which was treated as the primary subject of international law, it was granted the rights and obligations, and it bore responsibility. The concept of aggression was established on the basis of public international law, and the UN was responsible for the limited use of military force. Problems with the regulation of principles of state responsibility appear to involve a long process to adapt these rules to the principles of contemporary international law.

An individual is also a subject of international law, but a secondary one. It has not only the rights under international law, but also duties; the responsibility is related to, *inter alia*, international criminal law. In 2001, the General Assembly formulated the memorandum on the provisions concerning the liability of states and on separating the provisions from the regulation on the responsibility attributed to individuals acting on behalf of the state (which would relate to Art. 58 of the Draft Code of Crimes against the Peace and Security of Mankind). Similar wording was used in the draft Art. 4 of the Code of Crimes against the Peace and Security of Mankind.

Individual criminal responsibility stems from the end of World War II, as part of the transformation of international law. As a result of these processes, individuals have become subjects of international law. The result of international law evolution is providing individuals not only with rights, but also responsibilities.

The main feature that distinguishes the crimes of states from the crimes of individuals, listed in a special category of crime, and the related importance of these crimes, is the involvement of the state bureaucratic apparatus in committing these crimes<sup>1</sup>. The title issue, thus, concerns two autonomous legal regimes<sup>2</sup>.

State and individual responsibility regimes may and should be treated separately. It is demonstrated in the Convention on the Prevention and

<sup>1</sup> Cf. N.H.B. Jorgensen, *The Responsibility of States for International Crimes*, Oxford Monographs in International Law, 2005, p. 112.

<sup>2</sup> A. Bianchi, *State Responsibility and Criminal Liability of Individuals*, [in:] A. Cassese, *The Oxford Companion to International Criminal Justice*, Oxford University Press, 2009, p. 16.

Punishment of the Crime of Genocide, which separately regulates the obligation of extraditing a natural person or his judgment<sup>3</sup>, while a separate provision stipulates the interpretation and implementation of the Convention, including disputes relating to the state responsibility for genocide<sup>4</sup>.

A crime against peace is included in the international criminal law system as a crime which all others derive from<sup>5</sup>. The basis for the issue is initiating the war and adopting criminal liability for its triggering; the problem has become a subject of interest to the international community in the 20th century. It often relates to the supreme state representatives who are held responsible for the crime of aggression. An additional issue, which should therefore be brought up, is the question of exempting (or the opposite) the persons with immunities from the responsibility. As it is easily noticeable, the state's responsibility and the individual's responsibility overlap each other.

Although the International Law Commission had been looking for common elements for criminalising aggression committed by the state, and the UN General Assembly wanted to combine the idea of the state and individual criminal responsibility trying to find a use for the definition of aggression created by the Assembly in the context of individual criminal responsibility, these attempts turned out to be fruitless, whether due to imprecise definition of international law violations or international act, which provokes questions about a political nature of this act<sup>6</sup>.

<sup>3</sup> Article IV of the Convention on the Prevention and Punishment of the Crime of Genocide. Cf. N.H.B. Jorgensen, *The Responsibility of States for International Crimes*, Oxford Monographs in International Law, 2005, p. 112.

<sup>4</sup> Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide.

<sup>5</sup> Cf. T. Cyprian, J. Sawicki, *The Nuremberg law*, Warsaw-Krakow 1948, p. 234.

<sup>6</sup> P. Wilson, *Aggression, Crime and International Security; Moral, political and legal dimensions of international security*, Routledge Taylor & Francis Group London and New York, 2009, pp. 84-85.