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On the International Criminal Responsibility of States

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Abstract: At present, the concept of international criminal responsibility lacks explicit provisions in international conventions, and scholars have developed diverse interpretations based on domestic legal frameworks. Traditional international law denies the existence of criminal responsibility for states and holds that only individuals may bear such liability; however, modern international law has incorporated this concept into the broader regime of state responsibility, thereby extending the traditional scope. Owing to political and economic disparities among states, this issue remains contentious. This paper supports the position that states can be subjects of international criminal responsibility. Through comparative analysis, it argues for both the necessity and feasibility of attributing international criminal responsibility to states, emphasizing its vital role in upholding the rule of law at the international level. The paper contends that this represents a significant legal development in the international community's response to systemic crimes.

Keywords: State, International Responsibility, International Criminal Responsibility

1. Introduction

Traditional international law limited state responsibility to legal liability, whereas modern international law has incorporated international criminal responsibility into the broader framework of state responsibility. This shift signifies a transformation from absolute immunity to a diversification of accountability. Although this expansion remains controversial due to political and economic disparities among states, and despite the lack of a clear definition in international criminal law conventions, the academic community generally agrees that criminal acts serve as the basis for attributing responsibility. Scholars also draw on concepts from domestic criminal law to offer diverse interpretations. While current theory and practice have yet to establish a unified standard, they have already transcended the traditional framework, providing new legal pathways for addressing systemic international crimes. This reflects the evolving trend toward the development of the rule of law in international relations.

2. The concept of international criminal responsibility

The concept of international criminal responsibility refers to the compulsory legal consequences—specifically punitive sanctions—that an actor must bear for engaging in conduct prohibited by norms and customary rules of international criminal law, or for committing acts that seriously endanger the shared interests of the international community. This notion excludes general wrongful acts by states

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and applies solely to international crimes such as war crimes, genocide, and similar offenses. [1] According to modern international law, a state must bear responsibility when it engages in internationally wrongful acts. If such acts constitute international crimes, however, the scope of responsibility extends beyond the political and economic spheres and encompasses international criminal responsibility. This form of responsibility arises from the actual commission of international crimes and serves as a form of negative sanction imposed by the international community on criminal conduct. It emphasizes that the nature and gravity of the harm determine the type of responsibility and reflects a commitment to stricter accountability for serious violations. In other words, if a state's wrongful act violates an international obligation deemed essential for safeguarding the fundamental interests of the international community—such that its breach is universally recognized as a crime—then the act constitutes an international crime. The international criminal responsibility of the state refers to the liability it assumes under international criminal law for such crimes. [2]

There is significant theoretical support within the field of international law for recognizing states as subjects of international criminal responsibility. Lauterpacht was the first to systematically propose the theory of state criminal responsibility in his revision of Oppenheim's International Law. Bassiouni contributed to refining the legal framework for state criminal acts through the Draft Code of Crimes Against the Peace and Security of Mankind. Jennings and Watts further advanced this theory. Chinese scholars such as Liu Yaping and Jia Yu have also argued for its legitimacy from the perspective of legal theory. This paper supports this position, holding that when a state acts as the perpetrator of systemic international crimes, the establishment of its criminal responsibility not only aligns with the rule-of-law principle that "no crime shall go unpunished," but also reflects the international community's collective condemnation of serious violations. This theoretical development transcends the traditional boundaries of state responsibility and signifies a major shift in international law from absolute immunity to diversified accountability. It holds profound implications for improving the international rule-of-law system.

3. Perspectives and analysis on whether states bear criminal responsibility

3.1. The denial theory

The denial theory asserts that states should not bear criminal responsibility for their internationally wrongful acts. Based on differing rationales, this theory can be further divided into two distinct viewpoints.

The first viewpoint holds that states do not qualify as subjects of criminal responsibility. Proponents of this view argue that there is a fundamental distinction between internationally wrongful acts and criminal offenses, and that a state, as a sovereign entity, cannot be directly subjected to punishment. International law is considered a normative system governing relations between states, rather than a supranational legal order; thus, state actions cannot be classified as crimes nor sanctioned with criminal penalties. Moreover, it is argued that because the state is an abstract entity lacking consciousness, it cannot meet the essential elements required to constitute an international crime. [3] Criminal penalties such as imprisonment or capital punishment cannot be practically enforced against a state, and therefore, a state should not be regarded as a subject of criminal responsibility.

The second viewpoint argues that the essence of state responsibility lies within the realm of civil liability and compensation. According to this perspective, the state is regarded in international law as a "collective" entity, and its forms of liability—such as reparations—can be regulated through

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civil legal mechanisms without the need to elevate them to the level of criminal responsibility. Imposing criminal responsibility on states may result in punitive measures (such as economic sanctions) that affect innocent citizens, causing them to suffer adverse consequences for which they bear no personal responsibility. This contradicts the criminal law principle of nulla poena sine culpa (no punishment without fault) and infringes upon the legitimate rights of individuals. Therefore, criminal liability should be attributed to specific perpetrators, not to the state as a whole.

However, the view that states should not bear criminal responsibility is ultimately untenable.

State sovereignty does not exempt a state from international criminal responsibility, particularly in cases of systemic crimes such as war crimes that are orchestrated and carried out under the authority of the state. As such acts reflect the will of the state, it must bear corresponding responsibility. Modern legal practice has already moved beyond traditional notions and recognizes the feasibility of holding states accountable as subjects of responsibility. Moreover, the corporate criminal liability system in domestic law offers a jurisprudential reference for state criminal responsibility. The international community has also developed non-penal mechanisms of accountability—such as limitations on sovereignty and economic sanctions—which help to compensate for the limitations of traditional punitive measures. Compared with civil liability, criminal responsibility carries a stronger deterrent and condemnatory effect, more effectively expressing the international community's collective rejection of grave crimes. Therefore, affirming that states should bear criminal responsibility for committing international crimes is both accurate and grounded in legal reasoning. [4]In democratic states, governmental actions represent the will of the people; thus, holding the state accountable not only aligns with the rule-of-law principle that "power entails responsibility," but also helps to strengthen the international order. Accordingly, the establishment of state criminal responsibility is not only an inevitable development in legal theory, but also an essential institutional safeguard for curbing international crimes and upholding global justice. Its realization requires the creation of fair standards for determination and the implementation of diversified mechanisms of responsibility.

3.2. The affirmative theory

The affirmative theory holds that states should bear criminal responsibility for their international criminal acts. Based on differing approaches within this school of thought, the theory can be further divided into three distinct viewpoints.

The first is the theory of individual responsibility. This perspective advocates for the imposition of state criminal responsibility through the punishment of individuals within state institutions, thereby avoiding the generalization of responsibility to the entire citizenry. Its progressive nature lies in its effort to limit the scope of punishment; however, it also has notable limitations. In cases of grave state-led crimes such as war crimes, punishing only individuals may be insufficient to achieve effective deterrence and prevention. Furthermore, individuals may exploit the shield of state-sponsored criminal acts to evade personal accountability, resulting in the inappropriate transfer of liability to the state and, paradoxically, the weakening of individual responsibility.

The second is the theory of sole state responsibility. This view holds that the state alone should bear criminal responsibility without pursuing individual liability. In practice, this responsibility is often enforced through international sanctions, such as fines. However, since state actions are closely linked to specific individuals, focusing solely on state responsibility may obscure personal culpability and fail to fully reflect the proper allocation of responsibility.

The third is the dual liability theory, which advocates that both the state and individuals should bear criminal responsibility jointly. International legal scholar Oppenheim emphasized that

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individual responsibility arises from violations of international law committed by persons, while state responsibility is an additional layer based on this foundation; the two should not substitute for one another. The dual liability system accounts for both state and individual accountability, better aligning with principles of legal fairness and authority, and is particularly applicable to serious international crimes.

In summary, the dual liability system is considered the most reasonable approach to allocating responsibility, as it enables the punishment of state criminal acts while ensuring that the directly responsible individuals are held accountable.

4. The necessity and feasibility of confirming state criminal responsibility

4.1. Necessity

Establishing the status of the state as a subject of international criminal responsibility is indispensable.

First, holding the state accountable serves a preventive function against international crimes. By attributing international criminal responsibility to the state, its citizens can directly perceive the punitive consequences of criminal conduct, thereby encouraging the state's decision-makers to adopt a more cautious approach in the future and to strictly comply with norms of international criminal law. At the same time, this accountability mechanism has a deterrent effect on other states, helping to prevent the occurrence of similar international crimes and thereby promoting the construction of a more just and peaceful international order.

Second, holding states criminally responsible promotes state reform and enhances international security. If only individuals are held accountable while state responsibility is overlooked, the offending state and its citizens may fail to fully comprehend the severity of their crimes, making profound reflection and systemic reform difficult to achieve. Such a one-sided approach to accountability not only fails to prevent the recurrence of crimes but may also jeopardize the overall security and stability of the international community. Implementing state criminal responsibility can compel offending states to undertake comprehensive reforms, thereby reducing the risk of international crimes at their root.

Finally, holding states criminally responsible safeguards the rule of international law, fairness, and social stability. As subjects of international law, states must bear corresponding obligations alongside their rights; this is a fundamental requirement for upholding fairness and justice within the international community. Many major international crimes, such as war crimes and crimes of aggression, are typically orchestrated and executed under state authority. Punishing individuals alone fails to fully realize the deterrent and punitive functions of international criminal law. Only by incorporating states into the responsibility framework can the authority of international law be effectively maintained, ensuring the long-term stability and development of the international community.

4.2. Exploration of feasibility

The academic community generally supports both the necessity and feasibility of recognizing states as subjects of international criminal responsibility. In 1984 and 1985, during discussions at the United Nations International Law Commission, a consensus was reached. Although the Draft Code of Crimes Against the Peace and Security of Mankind centered on individual responsibility, it still left room for the future development of state criminal responsibility, thereby indirectly

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acknowledging its jurisprudential foundation and practical possibility. This consensus indicates that, despite the need for further theoretical refinement, the fundamental concept of state accountability for international crimes has gained preliminary acceptance within the international community. Its feasibility can be further substantiated through legal reasoning and international practice, providing important guidance for the future development of international law.

4.2.1. States as subjects of internationally wrongful acts

Currently, there is broad consensus in academic circles that states can be regarded as subjects of internationally wrongful acts. However, the difference between internationally wrongful acts and international crimes lies primarily in the degree of harm inflicted upon the international community, with international crimes causing far greater harm than wrongful acts. Therefore, if a state should be punished for committing an internationally wrongful act, it would be inconsistent to exempt it from punishment for committing an international crime on the basis that states are not subjects of international crimes. Such an exemption would violate fundamental principles of criminal law and run counter to the principle of proportionality between guilt and punishment. Furthermore, it would undermine the prosperity and stability of the international community.

4.2.2. States' capacity to bear criminal responsibility

Although opponents argue that states cannot be subjected to personal criminal penalties such as capital punishment or imprisonment, this does not negate the possibility of states as subjects of international criminal responsibility. State criminal responsibility, in fact, encompasses a dual dimension: on one hand, individuals directly responsible can be held criminally liable under domestic criminal law; on the other hand, the state entity itself can be punished through pecuniary sanctions (such as economic reparations) and qualification restrictions (such as the reduction of sovereignty or downgrade of international status). For example, United Nations Security Council Resolution 681 (1991) imposed sanctions on Iraq for its invasion of Kuwait. The international community implemented comprehensive measures including economic sanctions and military embargoes. This not only reflects the attribution of responsibility to the state as a subject but also involved punitive measures against relevant individuals through asset freezes and travel bans. This tiered accountability mechanism demonstrates that differences in forms of punishment do not constitute a substantive barrier to states bearing criminal responsibility. The international community can innovate in modes of accountability to establish a dual-track punitive system that accommodates both state and individual responsibility.

4.2.3. States' capacity to express intent and execute through relevant organs

From the perspective of the subjective elements required for international crimes, states fully qualify as criminal subjects. Although a state cannot think as a natural person does, each state possesses decision-making bodies whose decisions reflect and embody the will of the state, directing and controlling its activities. [5] States make decisions and carry out actions through their legislative, executive, and judicial organs. These actions, like those of individuals, can be lawful or unlawful, carried out in good faith or with malicious intent. For example, the systematic and large-scale atrocities committed in the 1937 "Nanjing Massacre" by Japan were organized and executed by the state, reflecting the will of the state rather than individual behavior. This fact demonstrates that the state possesses a fictive personality and an independent will, capable of expressing and

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implementing criminal intent through its organs. Holding only the direct perpetrators accountable not only violates the criminal law principle of personal responsibility but also obscures the decisive role the state plays in planning, organizing, and executing crimes. Recognizing the state as a subject of international crime aligns with its status as a subject of international law and ensures comprehensive accountability for systemic international crimes, making it an indispensable requirement for upholding justice in international criminal jurisprudence.

4.2.4. The close connection between state actions and the actions of individuals representing the state

The state, as a political entity composed of numerous individuals, forms and expresses its will through specialized organs. This will essentially reflects the interests of the ruling class (and sometimes also includes the demands of the governed). Although state decisions are often made by a small group, their formation follows legal procedures and possesses normative authority. When personnel within state institutions commit international crimes, their actions are not based on their individual identities but are carried out in the exercise of state authority. Therefore, such conduct should be recognized as the collective action of the state rather than merely individual behavior. This legal characterization necessitates that the state be held responsible for its systemic criminal acts. This approach aligns with the modern criminal law principle of "no crime without punishment" and is an inevitable requirement for maintaining the order of international law. Denying state criminal responsibility and holding only individuals accountable not only confuses the boundary between official and personal acts but also enables systemic crimes at the state level to go unchecked, thereby undermining international justice.

5. Elements for states to bear criminal responsibility

The elements for a state to bear international criminal responsibility can be summarized into the following three points:

Based on the principle of attributability of conduct, the prerequisite for a state to bear criminal responsibility is that it has indeed committed an international crime. According to Bassiouni's Draft Code of Crimes Against the Peace and Security of Mankind, three criteria must be met for a state to bear criminal responsibility: First, the state must be held criminally responsible for crimes committed by persons acting on its behalf or in its name; Second, crimes committed by individuals or groups while performing official duties should also be attributed to the state; Third, if the state fails to fulfill obligations prescribed by international criminal law, it must bear international legal responsibility for omission.

Based on the dual nature of responsibility, the subjects of international crimes include both the state and individuals. When state decision-making bodies make criminal decisions and direct the conduct, such acts become state actions. The individuals who directly carry out the crimes must also bear criminal responsibility, thereby establishing a dual accountability mechanism involving both the state and individuals.

Based on legal normativity, the pursuit of state criminal responsibility must strictly adhere to international criminal law. International criminal law is formulated through the negotiation of states, reflecting their collective will and aiming to punish crimes and maintain international order. Pursuing accountability according to law ensures fairness and enhances recognition by the international community. As criminal responsibility constitutes a severe sanction, it must follow due legal procedures to guarantee rationality and legitimacy.

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6. Exploration of the implementation pathways for state criminal responsibility

In international law, as subjects of international criminal responsibility, states bear criminal responsibility through mechanisms that differ significantly from those applicable to individuals in terms of standards for attributing responsibility and procedures for accountability. Specifically, states' assumption of international criminal responsibility is primarily realized through the following pathways:

6.1. Restitution

Restitution refers to the restoration of the status quo ante by eliminating the harmful consequences caused by wrongful acts, thereby returning the situation to what it was before the infringement. As a form of assuming responsibility, restitution has its origins in civil law but can also be applied as a supplementary form of liability in specific contexts. For example, historical artifacts and rare artworks looted during the invasion of China by the Eight-Nation Alliance could potentially be recovered through restitution measures, ensuring that these precious cultural heritages are returned to their original locations and their rightful historical and cultural value restored.

6.2. Moral condemnation

Moral condemnation, as a relatively mild form of sanction, possesses unique value and functions. Through non-coercive means—such as notifications by intergovernmental organizations, resolutions of international conferences, media scrutiny, and official government statements—it communicates an objective and fair stance to the international community. This approach not only provides the responsible state with space for reflection and correction but also minimizes harm to innocent civilians. By fostering a strong international public opinion environment, moral condemnation exerts political and moral pressure on the responsible state, encouraging it to proactively rectify wrongful conduct and facilitating positive adjustment of international relations. The value of moral condemnation lies in its dual character of punishment and constructive engagement: it signals the position of the international community while preserving flexibility for problem resolution, making it an indispensable governance tool within the international rule-of-law system.

6.3. Economic sanctions

In the context of globalization, economic sanctions have become one of the most effective punitive measures in the international community due to their relatively direct impact on a state's comprehensive national power. As a form of non-military coercion, economic sanctions operate through multiple dimensions, including asset freezes, financial controls, and trade embargoes, with their effectiveness significantly enhanced by the increasing number of participating states. Multilateral sanctions led by the United Nations are particularly effective. For instance, the comprehensive economic blockade against Iraq in 1990 not only successfully curtailed its aggression but also demonstrated the deterrent power of the international collective security mechanism. Such sanctions can precisely target the economic lifelines of the sanctioned state while reducing the risk of retaliation through international cooperation, making them a crucial tool for upholding the international rule of law. The core rationale behind economic sanctions is to weaken the target state's economic development capacity to compel compliance with international norms, reflecting the punitive logic of "economic leverage over political behavior" in modern international governance.

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6.4. Sovereignty restrictions

Sovereignty restriction measures implemented by the International Criminal Court constitute important punitive tools against states committing serious international crimes such as war crimes and crimes of aggression. These measures temporarily limit or revoke certain sovereign rights—such as participation in international organizations and diplomatic privileges—thereby weakening the state's capacity to reoffend while maintaining the stability of the international order. As the most severe form of sanction within the international responsibility framework, sovereignty restrictions possess both political and criminal responsibility attributes. They embody the international community's collective condemnation of core crimes and establish effective deterrence through substantive limitations on rights. These measures legally affirm the implementation pathway for state criminal responsibility, highlighting the international rule of law's zero-tolerance stance toward acts that fundamentally threaten human peace.

6.5. Dual liability as primary, sole liability as secondary

The accountability for international wrongful acts should adhere to the principles of nullum crimen sine poena (no crime without punishment) and timeliness. As a subject of responsibility, the state can refer to the model of corporate criminal liability, applying the "dual liability principle" as primary and the "sole liability principle" as supplementary in the pursuit of accountability. Here, the concept of "punishment" should be understood broadly and is not limited to traditional forms of criminal penalties. Specifically, for international crimes, states must be held criminally responsible through measures such as sovereignty restrictions and economic sanctions, while simultaneously punishing the directly responsible individuals. This establishes a dual accountability mechanism involving both the state and individuals, which fully reflects the law's comprehensive evaluation of organized crimes and ensures the substantive effectiveness of criminal sanctions. Such an approach comprehensively safeguards the fairness and deterrent power of the international rule of law.

7. Conclusion

This paper systematically demonstrated the necessity and feasibility of states bearing international criminal responsibility, endorsing the affirmative position. It analyzed the elements required for states to assume criminal responsibility and explored the pathways through which such responsibility can be realized, emphasizing that a dual liability system enables comprehensive accountability for systemic international crimes. Although international conventions have yet to establish unified standards, practical measures such as economic sanctions and sovereignty restrictions have already provided viable avenues for enforcing responsibility. This legal development is both an inherent requirement of the international rule of law and a reflection of the progress of human civilization. Of course, future efforts must focus on refining standards for determining responsibility and improving enforcement mechanisms to effectively punish international crimes, uphold justice, and ultimately promote lasting peace and stable development within the international community.

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