



NATIONAL RESEARCH  
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Research and Study Group  
Public International Law in the Age of Cyber

**THE RELATIONSHIP BETWEEN STATE AND  
INDIVIDUAL RESPONSIBILITY FOR  
INTERNATIONAL CRIMES:  
*REVISITING THE CLASSIC PROBLEM OF INTERNATIONAL LAW***

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# CONTENTS:

- Approaches to the Relationship between State and Individual Responsibility
- ‘Dual’ or ‘Complementary’ Regime of International Responsibility
- Issues:
  - Immunity
  - Genocide
  - Aggression



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## **Articles on Responsibility of States for internationally wrongful acts**

### Article 58

*These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State.*

## **Rome Statute of the International Criminal Court**

### Article 25 (4)

*No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.*

### ***International Court of Justice (Genocide case, 2007):***

*'The Court observes that that duality of responsibility continues to be a constant feature of international law'.*



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# MONIST APPROACH

- Individual Responsibility as exceptional 'extension' State responsibility is the only proper 'international responsibility
- of State responsibility
- 'International Crime' of State (Art. 19 of DARS)



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# DUALISTIC APPROACH: SEPARATION OF TWO LEGAL REGIMES

- Emergence of International (Individual) Criminal Responsibility
- Principle of Individual criminal responsibility in ICL and the nature of International crimes
- International Crime -- 'Aggravated State Responsibility'



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# COMPLEMENARITY: 'DUAL' REGIME OF RESPOSIBILITY

- The unity of primary rules
- Attribution of state officials' acts to State
- Development of positive / negative obligations
- Scope and the legal nature of dual regime



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# IMMUNITY OF STATE OFFICIALS

- (Functional) Immunity covers 'official acts'
- ICJ Arrest Warrant Case: International Crimes as 'private acts'
- Private acts cannot be attributed to a State



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# GENOCIDE

- ‘Dual’ Regime of responsibility, established by the ICJ (Bosnia Genocide Judgment, 2007)
- Genocidal Intent and Complicity
- The Gambia v. Myanmar (2019): *erga omnes partes* responsibility





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## ‘CYBER-AGGRESSION’:

- ‘Cyber-aggression’ may be regarded to act of aggression under the UN Charter
- However, it likely fails the threshold of the individual criminal responsibility for the crime of aggression
- criminal responsibility only arises with regard to ‘*a person in a position effectively to exercise control over or to direct the political or military action of a State*’
- ‘cyber warriors’, would not be criminally responsible under Article 8bis



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