



НАУЧНЫЙ СЕМИНАР

MISTAKE OF FACT IN INTERNATIONAL LAW – UNEXPLORED TERRAIN

Научно-учебная группа «Международное право в киберэпоху»

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Онлайн-семинар в ZOOM

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HOW TO ADDRESS THE CASES WITH THE MISTAKE OF FACT?

- by individual criminal responsibility, which is laid down in international criminal law (ICL) and in international humanitarian law (IHL)
- by state responsibility

Neither is able to respond adequately to situations generated by the aforementioned ‘mistakes’.

I. INDIVIDUAL RESPONSIBILITY

- **Article 32 ICC Rome Statute, Mistake of fact or mistake of law**

1. A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.

- **Article 30 ICC Rome Statute, Mental element**

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.

2. For the purposes of this article, a person has intent where:

- (a) In relation to conduct, that person means to engage in the conduct;

- (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

3. For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly

I. INDIVIDUAL RESPONSIBILITY

■ Honest or Reasonable mistake?

In cases where the threshold of *mens rea* applicable to the crime charged is at least recklessness, there is not the necessity for the mistake of fact to be objectively reasonable. It could be only an honest mistake, which means the defendant's guilt, or innocence is strictly subjective and determined by what he actually thought or perceived



I. INDIVIDUAL RESPONSIBILITY

- International Committee of the Red Cross, *'Views of the ICRC on autonomous weapon systems'*, Convention on Certain Conventional Weapons Meeting of Experts on Lethal Autonomous Weapons Systems (LAWS), (Geneva, 11-15 April 2016)
- *Draft Report of the 2019 session of the Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons Systems* (Geneva, 25-29 March 2019 and 20-21 August)

II. STATE RESPONSIBILITY

- **Article 1 International Law Commission the Responsibility of States for Internationally Wrongful Acts Articles**

Every internationally wrongful act of a State entails the international responsibility of that State.

- **Article 2 International Law Commission the Responsibility of States for Internationally Wrongful Acts Articles**

There is an internationally wrongful act of a State when conduct consisting of an action or omission:

- (a) is attributable to the State under international law; and
- (b) constitutes a breach of an international obligation of the State.

II. STATE RESPONSIBILITY

- **Tallinn Manual on the International Law Applicable to Cyber Warfare (2017)**

Rule 30, Definition of Cyber Attack

17. If an attack is conducted against civilians or civilian objects in the mistaken but reasonable belief that they constitute lawful targets, an attack has nonetheless occurred. However, if the attacker has fully complied with the requirement to verify the target, the attack will be lawful.