Examining the international political and legal accountability of states for genocide, ecocide, and weapons of mass destruction: Current norms, practices, and political implications

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Abstract

The article reveals the international framework of political and legal liability of states for committing acts of genocide, ecocide, and using weapons of mass destruction. It is emphasized that these areas form a separate legal responsibility institution within international law. The author emphasizes the lack of unity between theoretical and practical aspects of legal regulation of using weapons of mass destruction, as well as the role that liability plays in the progressive development of law. The paper also highlights topical issues related to the paradigm shifts in modern international law due to the cases of genocide, ecocide, and WMD. The study aims to analyze international legal norms and practices of holding states accountable for the crimes of genocide, ecocide, and use of weapons of mass destruction. The following methods were employed in the course of this research: systemic, comparative legal, historical and legal, structural and functional, and generalization. The article emphasizes that most international crimes are committed with the support or under the control of collective entities, especially states. Nevertheless, international law has tended to impose responsibility for such crimes not only on certain people but also on states. The predominant response of the international community to international crimes was to impose responsibility on specific persons to the extent that it has been directed through international responsibility law. In this regard, it has been symbolized by prosecuting particular criminals through international criminal courts and tribunals.

Keywords: international criminal law, international criminal court, international responsibility, genocide, ecocide, weapons of mass destruction

1. Introduction

The most critical issue of states’ responsibility is the matter of the grounds for such responsibility. States’ responsibilities may be incurred for committing an international crime or for damage resulting from certain international legal activities, for example, in global space, maritime, and environmental law. The responsibility of states is mentioned in various treaties, conventions, and agreements. However, they are not directly linked by the codification of general rules on states’ responsibility.

The study aims to analyze international legal norms and practices of prosecuting states for the crimes of genocide, ecocide, and misuse of mass destruction weapons (WMD). The main goals of this research are as follows:

- to highlight the system of international criminal law;
- to study the role of liability institutions in international criminal law;
- to consider the peculiarities of legal regulation of using weapons of mass destruction;
- to establish the basis for the interpretation of genocide in international law;
- to study the reflection of the ecocide concept in international law.

Crimes against humanity have always been a poignant topic of legal research. Throughout the entire existence of mankind, there have been cases of mass extermination of people by nationality, ethnicity, race, etc. This terrible phenomenon was called “genocide”. So far, the issue of genocide has received enough attention in research sources, but its study continues...
in the future (Radomska, 2018). As V. K. Rybachek rightly notes, one of the main problems of mankind is to ensure peace, overcome hunger and solve the ecological situation that has developed in the world. Along with such crimes as genocide and the use of weapons of mass destruction, ecocide is one of the greatest crimes against human security and the environment. In general, ecocide is defined as an international environmental crime caused by destruction and damage to the environment. Investigating such a crime and establishing responsibility is the main prerogative of domestic and international law enforcement agencies (Rybachek, 2022).

In addition, crimes against humanity should include weapons of mass destruction. Throughout its existence, endless bloody wars have caused suffering to mankind, taking many human lives. The desire to capture more territory became the reason for which various types of weapons were used. Including weapons of mass destruction (Khavronyuk, 2010).

Therefore, the international political and legal status and responsibility of states for genocide, ecocide and the use of weapons of mass destruction in the modern world are the subject of thorough analysis and discussion. Norms of international law that regulate these issues reflect generally accepted principles of humanism and protection of human rights. However, the practice of their application is not uniform. In general, the violation of these norms will have serious political consequences. That is why it is important to strengthen international control over the implementation of these norms and ensure their effective application in order to ensure peace, security and protection of human rights throughout the world.

2. Methods

During the study, the author employed the following methods:

- Systemic approach (allowed to consider the rules governing international crimes as a system of international criminal law).
- Comparative legal method (was used to compare the practices of application of international rules).
- Historical and legal method (was used to analyze the formation of liability for international crimes).
- Structural and functional method (allowed to consider specific international criminal law structures and their functional responsibilities).
- Generalization method (was used to formulate scientific, theoretical, and practical recommendations).

3. Results

In modern international law, the normative basis for responsibility refers to international legal instruments that establish international obligations, the breach of which is qualified as an international legal violation.

The nature of international responsibility for a violation primarily depends on the type of breached obligation and the legal qualification of the specific violation. An international crime is a complex social, political, and legal phenomenon. The elements of transnational crime, like any other legal violation, include:

- Unlawfulness.
- The state’s wrongdoing.
- The harm caused by the unlawful act of the offending state.
- The causal link between the illegal act and the damage.

The main body responsible for maintaining world peace and security is the United Nations Security Council. Based on the provisions of the UN Charter, it is the only institution with the right to take coercive measures against states (Oguekwe, 2019; Tymoshenko et al., 2022).

The practice of holding states responsible is based on the system of international criminal law. The goals of international criminal law can be divided into two broad categories. The first category refers to the theories of deterrence, restraint, investigation and retaliation (Werle & Jessberger, 2020). Restraint involves using criminal law to prevent states from committing specific crimes. The effectiveness of this approach is a subject of debate. Some scholars believe that restraint is highly effective, especially at the international level (Werle & Jessberger, 2020).

At the same time, other scholars argue that restraint theories lack substantial empirical support at both the national and international levels (Maučec, 2021). The reason for the lack of a deterrent effect in international criminal law is the absence of an effective mechanism for bringing to an international responsibility. For example, we can talk about Omar al-Bashir (the former president of Sudan), who has not yet been convicted under international criminal law. The International Criminal Court has issued an arrest warrant for him back in 2009. The same applies to Putin, for whom the ICC issued an arrest warrant on March 17, 2023, for committing a war crime.

The theory of limited capacity (incapacitation) involves imprisoning people for their past crimes to prevent them from committing future crimes, in addition to the punishment for their past offenses. The theory of deterrence and retribution pertains to using international criminal law as a means to educate certain people and, subsequently, society in the direction of moral development (Werle & Jessberger, 2020).

The second category of goals applies only to "international criminal justice" and consists of promoting stable peace and national reconciliation (Werle & Jessberger, 2020; Bayev et al., 2022). The idea of using international criminal law to promote
peacemaking is based on the assumption that conducting judicial prosecutions is crucial for creating long-term stability. The concept of "national reconciliation" means that society, after a conflict, assimilates the results of criminal prosecution from international law to move away from the previous conflict.

The activities of international structures investigating international law violations, such as genocide, ecocide, and the use of weapons of mass destruction (WMD), are historically based on the activities of the Nuremberg and Tokyo Tribunals. The International Criminal Tribunal for the Former Yugoslavia (operated from 1993 to 2017), the Special Court for Sierra Leone (2002-2013), and the International Criminal Tribunal for Rwanda (1994-2015) were also modeled following the example of these tribunals. They created the basis for a case law in making decisions on responsibility for international crimes of genocide and using weapons of mass destruction (WMD) (Milanović, 2006; Rahman et al., 2022).

Based on the activities of these structures, the International Criminal Court (ICC) was created, as established in the Rome Statute. Article 5 of the Rome Statute defines that the jurisdiction of the ICC extends exclusively to the investigation of several categories of crimes (Rome Statute of the International Criminal Court, 1998).

The ICC can exercise its mandate to end impunity only when a state party agrees to the jurisdiction of the ICC. This is confirmed through the ratification of the Rome Statute. It grants the ICC jurisdiction over the territory of a state party to the Rome Statute where the relevant crimes have been committed. However, Article 12, paragraph 3, also specifies that the ICC can extend its jurisdiction to states that are not parties to the Rome Statute (Rome Statute, 1998).

The ICC has the authority to infringe on a state's sovereignty only in cases where the situation in question has been referred to the ICC prosecutor through the UN Security Council (Werle & Jessberger, 2020).

The Rome Statute of the ICC stipulates four basic crimes, namely war crimes, genocide, crimes against humanity, and crimes of aggression (Nowak, 2022).

1. **War Crimes.** In the Rome Statute, provisions regarding war crimes can be found in Article 8. War crimes should be understood as covering the most significant violations of international law as set forth in the Geneva Conventions (Rome Statute, 1998). They may include acts of "murder" and/or acts involving forms of torture, ill-treatment, inhuman treatment, up to and including acts of biological experimentation (Rome Statute, 1998). War crimes also include cases of violating the laws and customs of armed conflicts, such as the intentional targeting of the civilian population (Nowak, 2022).

2. **Genocide.** The provisions on genocide can be found in Article 6 of the Rome Statute, which defines genocide as deliberate acts committed with the specific purpose of exterminating a particular group based on their national, ethnic, racial, religious characteristics and identities (Rome Statute, 1998).

3. **Crimes Against Humanity.** According to the Rome Statute (Article 7(1)), this category of crime in international criminal law implies a purposeful act. In other words, a party (state, head of state, official, etc.) committing an unlawful act understands the consequences of the crime for the civilian population of their country, another state, or the entire world. The fact that the harm to the civilian population is systematic and widespread is also a specific attribute of this category of crimes (Rome Statute, 1998).

4. **Crimes of Aggression.** The addition of the crime of aggression to the Rome Statute was endorsed by the Assembly of States Parties. This addition became effective in 2010 (Nowak, 2022). According to Article 8, an aggression crime involves committing acts of aggression that violate the legal norms of the statute. In the context of studying political and legal responsibility, it is essential to note that this category of crime requires punishment for acts such as "initiating and carrying out" and "planning and organizing" them (Rome Statute, 1998). It brings the possibilities of political and legal responsibility of states (political decision-makers) in international law to a new level of understanding and implementation.

All these crimes may be related to the use of weapons of mass destruction (WMD). The danger of this weapon comes from the fact that it can cause uncontrolled deaths, destruction of the gene pool, contamination, or destruction of flora and fauna both in a particular region and all over the planet. The main international problem with weapons of mass destruction is that it is primarily indiscriminate, as their use can result in the death of an indefinite number of both militaries and civilians. According to international law norms, WMD includes nuclear (atomic), chemical, and biological (bacteriological) weapons (Gazzini, 2022).

The question of banning the use of various types of WMD became vital with the advent of nuclear weapons. Nuclear weapons are undoubtedly the most destructive WMD. In 1981, a special resolution of the United Nations General Assembly adopted the Declaration on the Prevention of Nuclear Catastrophe. It stated that governments and those in positions of political authority, who take the lead in employing nuclear weapons for military or any other objectives, will be engaging in the gravest offense against humanity (Gazzini, 2022).

Nevertheless, despite international recognition of nuclear weapons’ danger, their use is not clearly restricted by international law. Moreover, states possessing nuclear weapons contemplate the potential utilization of such weapons, including situations involving self-defense.

A pivotal moment in addressing the prohibition of chemical weapons occurred with the adoption of the Chemical Weapons Convention in 1993. Under this Convention, nations pledge to prohibit the manufacture and deployment of chemical weapons and agree to eliminate all existing stockpiles. The Organization for the Prohibition of Chemical Weapons is responsible for ensuring adherence to the Convention’s stipulations (Gazzini, 2022).
The fact that in many states (especially non-democratic ones or those experiencing civil conflicts and/or other forms of internal political instability), the control of chemical weapons trafficking is challenging.

As an example, the case of using chemical weapons during the conflict in Syria, officially recognized by international organizations, took place in 2013 in Ghouta. It resulted in the largest civilian casualties as a result of the direct shelling and the effects of sarin gas being used as a chemical weapon. The international investigation organizations (primarily the UN) confirmed the fact of the targeted use of chemical weapons. Regarding the topic of our study on the liability for using WMD, it should be noted that at that time, Syria had not officially ratified or acceded to the Chemical Weapons Convention. That is why no one was held responsible for this crime, not to mention the state's responsibility (Lytvyn et al., 2022). Only in 2014 did Syria ratify the Convention. After that, the country officially destroyed its chemical weapons stockpiles. Yet, no single party to the conflict has been held internationally responsible for the crime. Similarly, there are numerous examples of the use of white phosphorus munitions (including during the military aggression by Russia). Until now, despite their official prohibition, international criminal law cannot influence the practice of their use. This highlights the fragmentary and the inherent flaws in the global legal system (Gazzini, 2022; Hubanova et al., 2021).

Utilization of biological weapons has the most extended history of all types of WMD. The main restrictive document on the use of biological weapons is the Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons. Despite its undoubtedly great importance for international security law and the system of international responsibility, this document is still being criticized. It does not provide for a specific international political and legal mechanism of prosecution. Furthermore, this document does not form a specialized international structure that would monitor the compliance of states with their obligations on biological weapons (Gazzini, 2022).

Therefore, despite the scale and significance of the topic related to mass destruction weapons, international liability for the use of WMD today has no clear system of investigation. There are no specific, prescribed political and legal consequences for using WMD. It is explained by the fact that, first of all, the key issue with any treaties prohibiting certain types of armaments is the limited scope of participants. Accordingly, international obligations under these conventions do not apply to states that have not signed these banning conventions. It is also important that there is no single international scheme for the prosecution of not only states but also specific decision-makers (Kortukova et al., 2023).

If international political and legal regulation of WMD use still lacks a clear structure, the international legal status of genocide and state responsibility seems to be more defined. The international law on genocide is formed under the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention). This Convention primarily defines genocide as an international crime that entails individual criminal liability (Van Schaack, 2019; Tsaras et al., 2018). The fact that the Genocide Convention also imposes obligations on states that can be held liable for actions related to genocide is crucial for our research goals. The foundations of responsibility for genocide were laid down in the judgments of the International Tribunals for the Former Yugoslavia and Rwanda.

The five objective actions that constitute the actus reus of genocide must be committed with the specific purpose of a criminal impact on a particular social group (Mljanović, 2006). These actions include:
- extermination (a murder);
- causing severe physical or mental damage;
- intentional creation of conditions for life, designed for its complete or partial physical destruction;
- conducting measures aimed at preventing childbirth within a group.

The Genocide Convention forbids not only direct acts of violence but also involvement in a plot to carry out genocide, the public encouragement of others to commit genocide, attempts to commit genocide, and involvement as an accomplice in genocide (Van Schaack, 2019).

States can be prosecuted not only for committing genocide but also for violating some additional obligations under the Genocide Convention, namely:
- failure to prevent or punish genocide;
- conspiracy, incitement that is explicit and made openly to the public, or an attempt to commit genocide;
- participation in genocide (Van Den Herik, 2016).

Despite the detailed legal definition of the category of genocide in international law, attributing state actions to acts of genocide is often complicated. For example, since the beginning of the conflict between Russia and Ukraine, scholars have yet to identify it as a genocide (Quévivret, 2022).

The issue of legally establishing the fact of genocide is often associated with a specific politicization of this issue. An illustration of this can be observed in the international dispute over the recognition of the Armenian genocide, which faces significant opposition from Turkey. Some scholars also argue that the current policies of the People’s Republic of China are aimed at the genocide of Uighurs (Smith Finley, 2021).

Quite often, it is related to the fact that in the case of international recognition of the genocide, the international community’s responsibility, and, notably, the significance of the UN Security Council becomes particularly crucial. The latter must take part in the protection of the victim group (Van Den Herik, 2016). While the discretion to authorize the use of force
under Article 42 exists, it is subject to the authority's judgment. Besides, the text of the UN Charter does not require the Security Council to act. The international act of recognizing genocide is quite influential.

In the practice of establishing the facts of genocide in Rwanda and Yugoslavia, the tribunals within the scope of the tribunals considered the following indicators of criminal acts related to genocide:

1. The general scope of criminal acts that had a systematic nature and were directed against the same group, committed by the same offender or other persons;
2. The extent of spread and typical features of the committed acts;
3. Fixation of facts and evidences that victims were systematically and intentionally targeted due to their affiliation with the group, unlike non-members (Van Den Herik, 2016).

In addition to the indicators mentioned above, other indicators were also considered. They indicate a specific intent to destroy a particular group, not just a group of people. For example, when establishing the fact of genocide in Rwanda, an important indicator was the complete "randomness" of killings within a particular group. It was directed not only against males but also against pregnant females, the elderly, and children.

A separate and important issue in the modern world is ecocide. The destruction of nature recently poses a significant threat to humanity and requires immediate intervention by all states. Parfinenko, A. Sokolenko, L. Bielialov, T. Karpenko, and V. Tolubyak (2019) note that modern global development is impossible without ensuring dynamic sustainable development. In this context, international crimes against the environment acquire special significance.

As we have already mentioned, international criminal law includes four crimes as "core crimes" that are subject to the ICC's jurisdiction. These crimes are mostly categorized as those posing a serious threat to humanity. Similarly, ecocide actions also pose a severe threat to humanity, their rights, and social justice. These actions also have long-term consequences.

The term "ecocide" denotes various methods of destruction and devastation aimed at damaging and destroying the ecology in general. It occurs as a result of harmful activities that damage people, fauna and flora (Sarkar, 2021). The consequences of environmental destruction or damage can lead to catastrophic outcomes for specific regions and humanity in general.

The destruction and disruption of ecosystems are central elements of the ecocide crime. Large corporations that cause irreversible harm to the environment exacerbate the situation. Since the "environmental" component does not significantly affect a company's profitability, many corporations focus on profit maximization (Megits, Aliyev, Pustovhar, Bielialov, & Prokopenko, 2022). This issue is underexplored in ecocide research, and the primary focus of research is related to state military actions.

Historically, war has always played a significant role in environmental destruction, often with consequences not justified by military goals. For instance, in the Persian Gulf War of 1990-1991, Iraq consistently released oil into the Persian Gulf. It has led to a major ecological disaster and the extinction of many animal and plant species in the Indian Ocean.

The responsibility of states for ecocide crimes cannot be ignored because the "environment" has come to be viewed as a means of waging war (Sarkar, 2021). For example, we can see targeted destructive activities aimed at the natural environment, wildlife and protected areas during the Russian aggression in Ukraine.

Kupriianova and Kupriianova (2023) note that due to Russian aggression, Ukraine is suffering significant damage from land and atmospheric pollution. The issue lies in the inflexible legal framework, making it challenging to establish violations of international law officially. For instance, the explosion of the Kakhovka Hydroelectric Station resulted in substantial ecological consequences.

According to international law, for Ukraine to hold Russia responsible, the country must prove the following facts:
1. The criminal activity of the Russian Federation was committed consciously with an understanding that it would lead to excessive loss of human life, injuries to civilians, and damage to civilian objects.
2. These actions were intentional.
3. It resulted in death, serious bodily harm, or worsening health of civilians (Pantazopoulos, 2023).

Article 8 of the Rome Statute of the International Criminal Court provides for a single war crime related to the environment, namely, a targeted assault, characterized by an understanding of extensive harm, enduring repercussions, and significant damage to the ecological system (Rome Statute, 1998). This provision establishes criminal responsibility.

The nature of "ecocide" includes elements of a crime that can be widely disclosed and draw attention due to the shock of consciousness of the international community in general. However, the legal recognition of ecocide and its inclusion in the Rome Statute has always been a matter of debate. Many scholars argue that it should be categorized as a "core" offense according to the provisions of the Rome Statute, following which it falls under the jurisdiction of the International Criminal Court (Sarkar, 2021).

Thus, this research concludes that the scope of ecocide as a crime in international criminal law is restricted. Only some multilateral agreements and treaties impose criminal penalties for these acts on state parties.
4. Discussions

The most relevant and debatable issue today is the question of the state’s responsibility for using force. In international law, there is no unity in the classification of the responsibility institute. In my opinion, the institute of state responsibility for acts of genocide, ecocide, and the use of weapons of mass destruction can be divided into two categories:

− State responsibility for the use of force concerning other states.
− State responsibility for the use of force concerning the citizens within that state.

We can agree with Shelton D. (2021), who interprets the first category of responsibility as "state responsibility for international crimes" and the second as "responsibility for violations of human rights and freedoms." In other words, the fundamental division of responsibility is based on the territorial principle - either the crime that triggers responsibility occurs within a state or the state acts outside its territory. The most significant issues related to the question of state responsibility are the issues of state sovereignty and the use of weapons of mass destruction (especially, as noted by Considine L. (2019), nuclear weapons) in international law.

Summarizing the norms of international law, we can identify two basic forms in which state responsibility is realized, namely:

− Material (in the form of compensations, restitutions, substitutions, and reparations).
− Immaterial (also known as political and moral responsibility) in the form of retorsions, reprisals, satisfaction, rehabilitation, temporary withdrawal of membership, or removal from an international organization, along with the imposition of sanctions, represent distinct methods of military, political, and legal responses and penalties for offenses under international law. These measures primarily aim to discourage, limit, and respond to such actions (Considine, 2019).

It is also possible to agree with Paparinskis M. (2020) that the boundaries of state responsibility need to be expanded in the context of state responsibility for aiding or abetting an international crime in the sphere of the use of WMD, genocide, and ecocide. For example, using this principle, a state could be held responsible in the same way as if that state committed the crime. This principle could be helpful for the international assessment of Belarus' actions during Russia's military aggression.

5. Conclusions

The main problem of state responsibility lies in the fact that this area is hardly codified. Since the norms of agreements and conventions do not impose obligations on states that have yet to sign them, raising questions about international responsibility, in such cases, is very difficult.

Since the conventional mechanism that regulates the procedure for holding states accountable for international responsibility is currently absent, each case of a state committing a transnational crime is considered individually.

It is important to note that this issue is crucial to address because the responsibility of states for genocide, ecocide, and the use of mass destruction weapons is closely related to the concept of human rights. It is important to understand that in the current international legal and political sphere, the nature and environment are also tightly linked to the basic idea of human rights. Various forms of environmental destruction by countries in conflict conditions have become a severe problem. In the present day, it is noticeable, especially considering the military aggression carried out by the Russian Federation. The destruction of the Kakhovka Hydroelectric Power Station could indeed become the first test of the application of international criminal law in investigating war crimes as defined in the Statute of the International Criminal Court.

Therefore, in the development of modern international law, it is necessary to include ecocide in the sphere of international criminal law as the fifth category of international crimes.

Ethical considerations

Not applicable.

Conflict of Interest

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