CHAPTER – 3

INDIVIDUAL RESPONSIBILITY VIS-À-VIS INTERNATIONAL CRIMINAL LAW

“Crimes against international law are committed by men, not by abstract entities and only by punishing individuals who commit such crimes can the provisions of international law be enforced.”
- Nuremberg Judgment

3.1. Introduction

Sir Frederic Smith observed that ‘states and states alone enjoy a locus standi in the law of nations and that they are the only wearers of international personality’1. This is the old, orthodox and classic view of the positivists, who believed that only states are the subjects of international law. Individuals were not considered the subjects of international law; but they were considered as the objects of international law. States were primarily considered the subjects of international law because ordinarily, international law deals with the rights and duties of the states; it is the states that enter into treaties with each other2. Therefore only states are bound by such treaties under international law. Even the International Court of Justice empowers only states to take action in international disputes3. And individuals have no right to bring a case against any State in the International Court of Justice. While defining international law in 1905, Oppenheim considered international law as the body of customary and conventional rules, which are considered legally binding by states in their intercourse with each other. It is important to note that he only mentions states in his definition and excludes the mention of individuals as forming a part of international law.

3 Article 34 of the ICJ Statute expressly provides that only states may be parties in the cases before the Court
This view cannot be held to be correct in the present times. Because treaties do not bind only the states. There are several treaties that protect the basic rights of the individuals. These treaties deal with the rights and duties of the individuals' vis-à-vis the State and with each other. It is pertinent to mention here about various treaties and declarations that declare and recognize the rights of individuals. For instance, Universal Declaration of Human Rights 1948, International Covenant on Civil and Political Rights 1966, International Covenant on Economic, Social and Cultural Rights 1966, United Nations Convention on Rights of the Child 1989, Geneva Convention on Protection of Prisoners of War 1949, Rome Statute of the International Criminal Court 1998, so on and so forth. Not only under various treaties and conventions the individuals have found their place, but the importance of individuals has been also recognized under the customary international law. The twenty-first century marks the steady rise of the individual as a subject of international law, more particularly in the province of human rights and dilution of procedural incapacities before international tribunals. The high watermark of the present century is global commitment towards ending impunity, fixing accountability and criminal responsibility of individuals who commit serious international crimes.

Several international conventions adopted during the period 1884 to 1936, fairly established the norm of individual criminal responsibility. State practice has also recognized individual as subject of international law.

The Nuremberg and Tokyo tribunals have, after the Second World War, raised the benchmark of personal responsibility of individuals - irrespective of their position and the offices they held - for commission of ‘crimes against

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4 J.G. Starke, *Introduction to International Law*, page 70. He writes, “that under modern practice, the number of exceptional instances of individuals or non-state entities enjoying rights or becoming subject to duties directly under international law, has grown”. States are no longer exclusive subjects of international law. In the human rights regime, the individual has readily found access to international bodies.


6 *ibid*
peace', 'war crimes' and 'crimes against humanity'. The General Assembly in 1946 and the International Law Commission of the UN in 1950 formulated the Principles propounded by the Nuremberg and Tokyo tribunals, into a Draft Code of principles affirming the Tribunal's judgment. In these principles, reference is made to persons as guilty of crimes against peace and security of the mankind. The Nuremberg Principle has affirmed the individual responsibility doctrine in the following words-

"Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment."

The defendants in the Nuremberg and Tokyo trials argued in their defense that they were soldiers of sovereign countries, they followed orders of their political supremo and the offences they were charged with were not crimes at the time of commission of offence. But the tribunal held them responsible and observed that superior order is no defence. Even the military commanders and the Head of the State were not exempt from responsibility. Principle III of the G.A. Resolution 1950 provides, "the fact that a person who committed an act which constituted a crime under international law acted as a Head of State or responsible Government official does not relieve him from responsibility under international law."

One point, which has been clarified in the light of these principles, is that international law can reach over and beyond traditional technicalities, and prosecute guilty individuals sheltering behind the abstract concept of the state. The Nuremberg and Tokyo Tribunals held the individuals responsible for their acts, which were considered crimes under international law.

The concept of individual responsibility under international criminal law has also been recognized under the 1998 Rome Statute establishing International

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7 Supra note 4
8 General Assembly Resolution, 1950. Principle I
9 Supra note 5 at 653-4
10 J.G. Starke, Introduction to International Law, Butterworths Publication (Tenth Edition)
Criminal Court. To enforce *jus in bello*, the principle of individual responsibility cannot be ignored. The individual responsibility vis-à-vis the international criminal law will be better understood, firstly if the importance of individuals under international law is highlighted. Thereafter, the analysis of individual criminal responsibility under international law can be made.

3.2. Importance of Individuals as subjects of International Law

The traditional view that only states are the subjects of international law was supported by Lassa Oppenheim. He defined International Law or the Law of Nations as the name for the body of customary and conventional rules, which are considered legally binding by civilized states in their intercourse with each other. To conclude from the definition as given by Oppenheim, international law is the rules that governs the relations between states only. According to this traditional view, individuals were not considered the subject of international law. It was in the time of Westlake and Oppenheim that international law was considered to regulate the relations between states and interests of individuals were at best, marginal.

The later views expressed by jurists consider individuals as subjects of international law. Kelsen strongly supported this view. According to him, ‘the subjects of international law are - like the subjects of national law - individual human beings’. Kelsen believed in the view that individuals alone are the subjects of international law. In this respect, according to him, there is no real distinction between state law and international law. Both systems bind individuals, according to his view; though even this view of Kelsen is extreme that only individuals are the subjects of international law. Westlake supporting a similar view observed, ‘the duties and rights of states are only the duties and rights of the men who compose them.’ In fact the central figure in international law is man; and his rights and responsibilities are inalienable and...

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11 Article 25 of the Rome Statute provides for individual criminal responsibility
14 *Supra* note 10
indefeasible\(^\text{15}\). However, it cannot be said that individuals alone are the subjects of international law. We can say that individuals occupy the same position as states under international law.

The international legal personality of individuals under international law has been derived from various international conventions relating to rights and duties of individuals. The Human Rights conventions that solely deal with the protection of basic rights of the individuals are discussed as follows-

(i) **Universal Declaration of Human Rights, 1948** - The most important declaration that has recognized the worth and rights of the human beings is the Universal Declaration of Human Rights (UDHR)\(^\text{16}\) adopted by General Assembly Resolution on December 10, 1948. The Declaration states all kinds of basic human rights from right to life, liberty and security of person to economic, social and cultural rights. The Declaration sets a new international standard\(^\text{17}\). The rights in UDHR have been set forth in following two covenants-

- International Covenant on Civil and Political Rights (ICCPR), 1966
- International Covenant on Economic Social and Cultural Rights (ICESCR), 1966

The two covenants ensure equal rights of men and women for the enjoyment of all civil and political rights and also economic, social and cultural rights as well.

**ICCPR, 1966** - protects the right to life (Article 6), prohibits torture or cruel, inhuman and degrading treatment or punishment (Article 7), prohibits slavery, slave trade, protects right to freedom of opinion and expression, provides for equality before courts and guarantees in civil and criminal procedures and the like. However,


\(^{16}\) G.A. Res. 217 A, UN GAOR, 3d Sess., Res. 71, UN Doc. A/ 810 (1948)

\(^{17}\) *Supra* note 15
along with enumeration of rights, limitations has also been specified to protect national security, public order, public health and morals and the rights and freedoms of others.

**ICESCR, 1966** - Under this covenant, state parties recognize the right to work freely, right to the enjoyment of just and favorable conditions of work (Article 7), right to form and join trade unions, right to social security, right of free consent to marriage and the like. Article 14 of the covenant provides for making available compulsory primary education free of charge.

(ii) **Genocide Convention, 1948** - The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the U.N. General Assembly on December 9, 1948 attaches direct responsibility towards individuals by making provision for punishing persons committing genocide, whether they are constitutionally responsible rulers, public officials or private individuals (Article IV).

(iii) **Atlantic Charter, 1941** - It gave expression to four basic principles of human freedom- freedom from fear, freedom from want, freedom of speech and freedom of worship.

After this charter, it became internationally established that ‘the state is an instrument to serve the people and not an end for man to serve.’

(iv) **Charter of the United Nations, 1945** – The UN Charter has laid emphasis on the respect and protection of human rights and fundamental freedoms for all under Article 56 and its Preamble. The UN, the International Bank for Reconstruction and Development (IBRD), the International Monetary Fund (IMF), the UN International Children’s Emergency Fund (UNICEF), etc are all designed to secure economic, social and cultural advancement of mankind.

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18 Supra note 15
(v) **International Convention on the Elimination of All forms of Racial Discrimination, 1965** - Under the convention\(^\text{19}\), States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the civil rights, political rights and economic, social and cultural rights.

(vi) **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984** - The Convention was adopted by General Assembly on December 10, 1984. It declares that any kind of torture or cruel, inhuman or degrading treatment or punishment is an offence to human dignity and violates human rights.

(vii) **Convention on Political Rights of Women, 1952** - It was adopted by General Assembly in 1952. The Convention recognizes the political rights of women and provides that there shall be no discrimination in regard to right to vote and eligibility for holding public office.

(viii) **Convention on Elimination of All Forms of Discrimination against Women, 1979** - The General Assembly adopted this convention in 1979. The purpose of the convention is to end the discrimination that denies or limits women’s equality in political, social, cultural and civil fields.

(ix) **The Slavery Convention, 1926** - The convention came into force in 1927 and was amended by the Protocol of 1953. The state parties to the convention have undertaken to abolish slavery in their territory.

\(^{19}\) Adopted by General Assembly Resolution 2106 (XX) of 21 December 1965
Convention on Suppression and Punishment of Apartheid, 1973 - The convention was adopted by General Assembly in 1973. It outlaws apartheid and considers it a crime against humanity. Apartheid has been recognized as a crime against humanity in other international instruments also. For example, even the Rome Statute mentions apartheid as crimes against humanity.

All these conventions deal with the rights and duties of the individuals, which have been recognized under international law. There are other regional conventions that deal with rights and duties of individuals. These are discussed as follows -

European Convention for Protection of Human Rights, 1950 - This was a step in the direction of realization of the ideas enshrined in UDHR on regional basis. Other endeavors by the European Union in this direction are setting up of European Commission of Human Rights and European Court of Human Rights.


Banjul (African) Charter on Human and People's Rights, 1981 - The Charter was adopted by the member states of the Organization of African Unity (OAU) and recognizes the basic rights, duties and freedoms of the human persons for right to equality, education, to property, respect for life and integrity of a person.

Apart from the recognition of rights of the individuals under the various conventions as discussed above, the importance of individuals is also reflected with the recognition of rights of aliens' under the concept of extradition and asylum. Needless to mention here, are the Pirates that are covered under international law. Further, the stateless persons are subjects of
no particular state but they are the subjects of international law. It is important also to mention here the rights of refugees as recognized under the International Convention on Refugees, 1961.

The rights and duties of individuals under international law are not only recognized under various conventions but customary international law also recognizes the importance of individuals. In the famous Danzig Railway Officials case, PCIJ observed, “It cannot be disputed that the very object of an international agreement, according to the intention of the contracting parties may be the adoption by the parties of some definite rules creating individual rights and obligations and enforceable by the national courts”. Though generally treaties don’t create rights and obligations for private individuals but if the states intend to do so, that intention can be given effect to by a treaty or an agreement. In the said case, in accordance with the agreement between Danzig and Poland which regulated conditions of employment of officials taken by Polish railway service, the Danzig railway officials had a right of action to be brought against Polish railway administration for recovery of claims under the said agreement. Therefore, even the private individuals were given importance under a treaty, which was given effect to by the PCIJ in 1928.

The importance of individuals can also be traced back to the end of 2nd World War, when Nuremberg and Tokyo Tribunals were established i.e. in 1946. Certain defendants were prosecuted and held guilty for having committed crimes against humanity and war crimes. The said judgments affirmed the principle of individual responsibility under international criminal law. The establishment of the two military tribunals is of historic significance. The principles of international law recognized in the agreement for setting up of tribunals of 1945, were subsequently formulated by ILC of the UN as a Draft Code of Principles recognized in the tribunal’s judgment. In these principles

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as formulated by the ILC, the reference is made to persons as guilty of crimes against peace and security of mankind\textsuperscript{21}.

According to the Nuremberg Tribunal\textsuperscript{22}, “Crimes against international law are committed by men, not by abstract entities and only by punishing individuals who commit such crimes can the provisions of international law be enforced”.

It cannot be ignored that in the ICJ, it is only the states that can bring an action and that too only against another state. But the fact that individuals have such procedural incapacities before the international court of justice is not inconsistent with their status as subjects of international law. Though it has become necessary that access by individuals and international corporations should be allowed to the international court of justice, and in this direction suggestions have also been proposed. In certain cases, the access by individuals or corporations to the international tribunals is necessary and should be allowed, and it may be expected that in the future, changes in this direction will come about\textsuperscript{23}.

\textbf{INTERNATIONAL CRIMINAL COURT (ICC)-}

The Rome Statute establishing the international criminal court, in its \textit{Article 25} provides for individual criminal responsibility. The provision reads, ‘the court shall have jurisdiction over natural persons’\textsuperscript{24}. The individuals have been made criminally responsible for committing the crimes specified under the statute. These crimes are international in character for which an international court has been given jurisdiction to prosecute such persons. The Article further provides that a person who commits a crime within the jurisdiction of

\textsuperscript{21} J.G. Starke, \textit{Introduction to International Law}, Butterworths Publications (Tenth Edition)

\textsuperscript{22} See Official record, Vol. I, Official Documents at p 223. The tribunals also pointed out that it has long been recognized that ‘international law imposes duties and liabilities upon individuals as well as upon states’, in J.G. Starke, \textit{Introduction to International Law}, Butterworths Publications (Tenth Edition)

\textsuperscript{23} Globalized Economy has brought about interaction between states and transnational corporations. Governments of developing states are increasingly relying on MNCs/ TNCs for executing infrastructure projects. Thus, any dispute between the two entities might be better resolved under the aegis of ICJ, rather than municipal courts.

\textsuperscript{24} Rome Statute, Article 25 (1)
the court shall be individually responsible and liable for the punishment in accordance with the statute. The official capacity of a person who commits such crimes as specified under the statute is also irrelevant. His official capacity even if he is a Head of State or Govt. shall not exempt him from criminal liability. Article 28 further provides for command responsibility, i.e. a military commander shall be criminally responsible for crimes within the jurisdiction of the court, committed by forces under his/her effective command and control provided the commander knew that the crime is being committed and he failed to take all necessary and reasonable measures to prevent or repress the commission of such crime. Similar responsibility is also of the superior who shall be made responsible under the provisions of the statute, for the crimes committed by his subordinates. The statute of the ICC extends individual responsibility to commanders and superiors for the acts of their subordinates. Thus, the importance of individuals under international criminal law has been further enhanced with the coming into force of the ICC.

3.3 Principle Of Individual Responsibility in the International Criminal Law

The principle of individual criminal responsibility is based on the notion that individuals behaving contrary to the most fundamental legal standards may be held criminally responsible regardless of whether they have acted in an official capacity, that is, both when they were state organs and when they acted as private individuals. Prosecution and punishment are conducted in the interest of the world community. The primary goal of this class of responsibility is to punish the culprit.

The principle of individual criminal responsibility is a general principle of law, whether it is applied in national criminal law or in international criminal law. As has been discussed in earlier paragraphs, there has been a shift under international law from holding states responsible for international crimes to individual criminal responsibility. The coming into force of the Rome Statute of

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25 See Rome Statute, Article 28
27 ibid
International Criminal Court (ICC) is itself an achievement in development of the principle of individual responsibility in international criminal law. The principle of individual responsibility under international criminal law was established by the Nuremberg Tribunal, which observed that crimes against international law are committed by men and not by abstract entities. The Nuremberg and Tokyo Tribunals made individuals criminally liable for having committed such heinous crimes as genocide, crimes against humanity, war crimes and crimes against peace. The principle was later adopted by International Criminal Tribunal for Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) that prosecuted individuals for committing crimes against humanity and war crimes.

The case of *Prosecutor v. Stanislar Galic*, was decided by the trial chamber-1 of the ICTY which gave its judgment on 5 Dec 2003. The case involves discussion of two war crime charges - i.e. attack on civilians and terror against civilians - and of the individual criminal responsibility of the defendant. Galic was charged with both direct and command responsibility under Article 7(1) & Article 7(3) of the ICTY Statute. The chamber found Galic guilty on 5 counts of terror, murder and inhuman acts; he was punished with 20 years imprisonment. The case highlights the principle of individual criminal responsibility that was recognized by the ICTY.

The principle of individual responsibility under international criminal law was further developed when it was reiterated in the Rome Statute of the ICC, in which specific provision regarding individual criminal responsibility has been made.

Although all criminal justice systems in the world recognize the concept of individual criminal responsibility for the violation of the norm which entails

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28 Article 6 of Nuremberg Charter establishing principles of individual criminal responsibility
29 Rome Statute, Article 25
penal consequences. Within the national framework of the particular system it is understood as a principle of national criminal law. But enforcing this principle under international criminal law has only recently been recognized by the international community.

Another issue regarding the establishment of the principle of individual criminal responsibility under international criminal law was whether international criminal law can inflict direct criminal responsibility upon individuals without going through the mediation of the states since states also proscribe for the same responsibility under its national criminal legislation. To explain this further, the point to consider is whether the international criminal law through its sources, i.e. conventions, customs, *jus cogens* or general principles, provides for imposing direct criminal responsibility on individuals. And if we do peruse the conventional rules, we may conclude that the Rome Statute does provide for such criminal responsibility. For that matter even the customary international law and also the general principles recognized by the states provide that individual criminal responsibility can be enforced as it were by the Nuremberg Tribunal and Tokyo Tribunal.

The principle of individual criminal responsibility not only makes an individual responsible for acts that are prohibited by the Rome Statute or customary international law, but the principle also covers the individual who orders, solicits or induces the crime and also the person who aids, abets or otherwise assists. Though the Rome Statute does not indicate whether there is some quantitative degree of aiding and abetting required to constitute material acts involved in complicity.

In the case of *Prosecutor v. Ferdinand Nahimana et al*, the trial chamber of ICTR sought to define the offence of direct and public incitement to commit

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genocide. The defendant was held responsible for the charge of public incitement to commit genocide. The case was also called the Media Trial.

The developing system of international criminal law in the light of establishment of various international criminal tribunals has proven the acceptance of the principle of individual criminal responsibility under international criminal law. The system of international criminal law imposes certain duties on individuals, which can be examined from various international conventions. The provisions of international criminal conventions govern various categories of international crimes which can be or are violated by the acts of individuals. Not only the duties have been imposed by the various international conventions; these conventions also protect the rights of the individuals. If we examine the Rome Statute, there are provisions that protect the rights of persons during an investigation (Article 55), rights of the accused (Article 67), protection of the victims’ and witnesses (Article 68), reparations to victims (Article 75), and etcetera. These provisions under the conventions protect the rights of the individuals. The individual is considered to be the sole subject of international human rights law and constituting an integral part of international criminal law. In fact, most punishments under international criminal law are solely applicable to physical and not legal persons. The increasing development of regional and international conventions relating to extradition, jurisdiction, prosecution and punishment of perpetrators of international crimes implies the concept of international criminal responsibility of individuals32.

3.4. Issues regarding individual criminal responsibility under the international criminal law
From the above discussion it is clear that the principle of individual criminal responsibility embodies responsibility of individuals for the most serious crimes committed under international law. Such individuals can be prosecuted in the international criminal court if they commit acts that are prohibited under

32 Supra note 30
the Rome Statute or are crimes under the customary international law. These prohibited acts are covered under the category of so-called international crimes, for which there is also universal jurisdiction, i.e. crimes against humanity, war crimes, genocide and act of aggression. Although under the Rome Statute, the act of aggression has not been defined as such. General Assembly, in its Resolution in 1974 has tried to define aggression. According to Article 1 of the Resolution on the Definition of Aggression 1974, Aggression is the use of armed force by a state against the sovereignty, territorial integrity, or political independence of another state or in any other manner inconsistent with the charter of the United Nations, as set out in this definition. Article 3 specifies the acts of aggression. Further Article 4 provides that the acts are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the charter.

According to the above definition of aggression and act of aggression, it can be implied that aggression or the act of aggression can only be committed by the states. Analyzing the provisions of Article 4, the Security Council has been given wide powers to determine whether a particular act can constitute aggression. But it cant be ignored that the power to determine the act of

34 Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with provisions of Article 2, qualify as an act of aggression:
   (a) The invasion or attack by the armed force of a state of the territory of another state, any military occupation, however temporary, resulting from such invasion or attack, or an annexation by the use of force of the territory of another state or part thereof;
   (b) Bombardment by the armed force of a state against the territory of another state or the use of any weapons by a state against the territory of another state
   (c) The blockade of the ports or coasts of a state by the armed force of another state;...
   (e) The use of armed force of one state which are within the territory of another state with the agreement of the receiving state, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement
   (f) The action of a state in allowing its territory, which it has placed at the disposal of another state, to be used by that other state for perpetrating an act of aggression against a 3rd state.
   (g) The sending by or on behalf of a state of armed bands, groups, irregulars or mercenaries which carry out acts of armed forces against another state of such gravity as to amount to the acts listed above, or its substantial involvement therein.
35 See Article 1, G.A. Resoln on the Definition of Aggression 1974
36 See G.A. Resolution on the Definition of Aggression 1974, Article 3
aggression can only be used in the light of above provisions, i.e. act of aggression that is committed by the states. Therefore according to the 1974 G.A. resolution on definition of Aggression, we may say that only states can commit aggression. Article 5(2) of the resolution provides that a war of aggression is a crime against international peace. Aggression gives rise to international responsibility. But the nature of international responsibility that arises in this case, has not been defined. Although with due regard to the needs of time and enlarging scope of the term, international responsibility may apply to different subjects of international criminal law, which would mean that apart from making states liable, individual responsibility may also arise. The ambiguity of the provision still remains and the same needs to be removed.

The other side of the argument is regarding the legal validity of the G.A. resolution. The resolution was adopted by consensus and was not made the subject of an international convention. The international community thereafter could not draft a convention on the definition of aggression. Even at the time of drafting of Rome Statute when aggression was made punishable in the ICC, there was no consensus on defining aggression. It still has not been defined in the statute. However, there are ongoing efforts by the international community to define the term.

The International Law Commission (ILC) worked from 1991 to 1996 to adopt a definition of aggression. In 1991, the ILC provisionally adopted a complete set of articles on crimes against peace and security of mankind. Aggression was provided in Article 15(1) of the 1991 ILC Report on the Draft Code of Crimes Against Peace and Security of Mankind. It provides that “an individual who as a leader or organizer plans, commits or orders the commission of an act of aggression shall, on conviction thereof, be sentenced [to …]”. Article 15(2) refers to aggression as committed by a state. The ILC Report has tried to


38 It defines Aggression as the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the charter of the United Nations.
define Aggression in terms of individual as well as state. The definition of aggression has not been adopted by the state parties to the Rome Statute. There is a requirement for a consensus on the definition of aggression being adopted by the ILC Report with respect to the state parties.

If the states adopt the definition of aggression as put forth by the G.A. Resolution of 1974, the definition restricts itself only to the aggression or acts of aggression committed by the states. But if the international community adopts the definition as given in the ILC Report of 1991, then the term aggression would not only embody the state responsibility but it would also include the responsibility of an individual committing aggression.

It is important to note that in the present era the individuals have been given equal importance as states under international law and the principle of individual criminal responsibility under international criminal law has been fully developed and recognized. Thus it cannot be ignored today that an individual can also be a major participant in commission of an act of aggression. The best example is provided by the attack on Twin Towers (World Trade Center in the US) on 9/11 in 2001. This attack was allegedly committed by Osama Bin Laden, who could be made criminally liable for his acts, since it was a serious violation of the territorial integrity of a state. It can be categorized as an act of aggression. He, as a leader, allegedly organized, planned and ordered the commission of an act of aggression. Under international law, such act imposes individual criminal responsibility.

The second issue is regarding the enforcement of the principle of individual responsibility under international law. Once a state imposes responsibility on an individual liable for having committed international crimes, i.e. the crimes within the jurisdiction of the court, it becomes difficult to actually enforce this principle specially when the other states are not cooperating to hand over the fugitive, for example by not extraditing such an individual. Further, in case there is no extradition treaty between the states, the extradition of such criminals becomes very difficult. So the question remains as to how do the
states or the ICC should actually enforce the principle of individual criminal responsibility? In the present context, the major problem that arises is how to get extradition of such individuals from a state which is giving them shelter. Therefore, the need is to have a regional extradition convention with respect to the crimes mentioned under the Rome Statute, if not a universal convention. The need to have a universal extradition convention cannot be ignored because that would only make it work against the non-member states. It is important to note that under Article 1(3) of the UN charter, one of the purposes of the United Nations is to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. One of the important principles of the United Nations, is that the organization shall ensure that states which are not members of the United Nations, act in accordance with these principles so far as may be necessary for the maintenance of international peace and security.

Therefore, there is an obligation on the UN to maintain international peace and security, and in furtherance of that, to take all necessary measures including ensuring assistance from members as well as non-member states of the UN. This would automatically apply to cases of extradition/ surrender of the person where there is a prima facie case against a person who has committed crimes against international peace and security or any act, which can be categorized under the crimes that are within the jurisdiction of the Court.

The third issue is pertaining to the grant of amnesty by states that are exercising jurisdiction over individuals who commit most serious crimes under international law. Here, the situation being highlighted is when a state exercising jurisdiction under the principle of complementarity over the crimes within the jurisdiction of the ICC, grants amnesty after prosecuting the individuals for having committed those crimes. In such a situation, can we

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39 See the Preamble Rome Statute, Article 1 & Article 17(1)(a)
conclude that the principle of individual criminal responsibility was legally applied? And since the states have universal jurisdiction over such crimes, the alleged criminal may not even be the national of the state holding the trial. Though the appeal is for international cooperation but it is the sole discretion of the state, which is also a sovereign act of the state wherein it grants amnesty to a criminal. In fact the non-state parties are under no obligation to cooperate with the ICC. But, in that case, the Security Council has been empowered to take action under chapter VII by asking states to cooperate, if non-cooperation amounts to threat to international peace and security. The Security Council may ask the non-state parties, by adopting resolution under chapter VII, to surrender the persons to the Court so that individual responsibility may be enforced effectively.