

INTERNATIONAL LAW

The ICC's Doctrine of Superior Responsibility: A Threat to Sovereignty of States

by Wendy Enerlan

INTRODUCTION

The International Criminal Court (ICC) is a permanent international court established with the intention of bringing justice for the most heinous crimes against humanity, including genocide, war crimes, and crimes against humanity (McTaggart et al., 2022). The ICC is making an effort to establish a justice system capable of holding individuals accountable for the commission of these heinous crimes (Prakash, 2002), one of which is the doctrine of superior responsibility. This doctrine holds those in positions of authority responsible for crimes done by subordinates under their effective control, even if they did not personally conduct the crimes themselves. It is founded on the idea that those in positions of authority have a responsibility to prevent or punish crimes committed by those under their supervision. While the doctrine was created to deter future humanitarian violations, some states argued that the application of the ICC's doctrine poses a challenge or danger to the sovereignty of states (Bantekas, 2000).

COUNTERCLAIMS

According to Kelsen (1998) the states' sovereignty becomes problematic when international law is brought into the picture as a legal system imposing obligations. Some critics state that the ICC's action under the doctrine of superior responsibility may weaken the authority of national legal systems. States often have their own procedures for investigating and punishing crimes committed within their boundaries. However, the ICC's participation can undermine state sovereignty by bypassing national justice system and asserting jurisdiction over individuals charged with international crimes.

Another contention is that with the application of the doctrine, it interferes with sovereign states' internal affairs. The ICC violates the state's sovereignty and autonomy in addressing with internal issues by holding individuals accountable

for crimes committed inside a state's jurisdiction. State sovereignty requires that states have ultimate and independent authority to govern themselves and those within their territory (Hathaway, 2008).

Also, some states have stated that the doctrine may be subject to political abuse, that it is possible that head of State or high ranking officials may potentially be prosecuted for the actions of their subordinates with whom they have no interaction with (Bantekas, 2000).

ARGUMENTS

With respect to the claim that the ICC's doctrine circumvent the national justice system of the state, it must be taken into consideration that the International Criminal Court operates based on the principle of complementarity (McTaggart et al., 2022). The ICC respects the primary jurisdiction of the state's national legal system. According to our class discussion in Public International Law and under the Article 17 of the Rome statue, the ICC only intervenes when the State is "unwilling or unable genuinely to carry out investigation or prosecution". It does not pursue cases which are subjects of credible investigation or prosecution by the state through its legal system. With this, the ICC respects the State's sovereignty states by acknowledging the State's authority to address crimes committed within their territories. Also, the ICC is a court of last resort, it only ensures that justice is served when the national or state mechanism fails in holding high ranking officials accountable to crimes committed.

Another concern pertains to the criticism suggesting that the ICC's doctrine encroaches upon the internal affairs of sovereign states. It should be acknowledged that the ICC operates on the basis of state cooperation. As per the ICC's stance, becoming a party to the Rome Statute is a voluntary act, constituting a sovereign decision for each state to undertake. Moreover, state parties bear a fundamental obligation to provide complete cooperation to the Court regarding its inquiries and legal proceedings. Therefore, a state that willingly joined to the ICC cannot legitimately argue that the Court's actions amount to interference in its domestic affairs, as such cooperation is inherent in the decision to join.

Lastly, I agree that while it may have a possibility for certain superiors to be held responsible for the actions of subordinates with whom they have no direct interaction, but this doctrine could establish a culture of command diligence across all levels. It would emphasize the significance of diligence and proactive measures among individuals in positions of authority to prevent and address crimes committed by those under their command. By enforcing this doctrine and holding

leaders accountable for the actions of their subordinates, it both advances and strengthens the principles of the rule of law and state sovereignty.

CONCLUSION

In conclusion, the International Criminal Court's doctrine of superior responsibility do not pose a threat to the sovereignty of a State but rather it promotes cooperation between the State and International Court, accountability, command diligence or responsibility, and upholding the rule of law.

REFERENCES

- BANTEKAS, I. (2000) The Interest of States versus the Doctrine Of Superior Responsibility. *International Review of Red Cross*, Vol. 82, 391– 402
- INTERNATIONAL CRIMINAL COURT (n.d.). Joining the International Court. [https://www.icc.cpi.int/sites/default/files/Publications/Joining-Rome-Statute Matters.pdf](https://www.icc.cpi.int/sites/default/files/Publications/Joining-Rome-Statute%20Matters.pdf)
- INTERNATIONAL CRIMINAL COURT (n.d.). Understanding the International Criminal Court. [https://www.icc.cpi.int/sites/default/files/Publications/understanding-the icc.pdf](https://www.icc.cpi.int/sites/default/files/Publications/understanding-the%20icc.pdf)
- KELSEN, H. (1998). *Normativity and Norms: Critical Perspectives on Kelsenian Themes*. Clarendon Press, Oxford, 525–536
- HATHAWAY, O. A. (2008). International Delegation and State Sovereignty. *Law and Contemporary Problems*, 71(1), 115–149. <http://www.jstor.org/stable/27592224>
- MCTAGGART, S., BARNETT, L., & DOLIN, B. (2022). *The International Criminal Court: History and Role*. Library of Parliament. Publication No. 2002-11-E
- PRAKASH, K. P. (2002). International Criminal Court: A Review. *Economic and Political Weekly*, 37(40), 4113–4115. <http://www.jstor.org/stable/4412690>