Part I
General Approaches to the Relationship Between State and Individual Responsibility for International Crimes
Chapter 1

The General Framework of the Relationship Between State and Individual Responsibility for International Crimes

1. Clarifying Some Basic Concepts

The present work has the limited purpose of examining the relationship between aggravated state responsibility and individual criminal liability for international crimes. The use of the expression ‘international crimes’, referring to both state and individual responsibility, may need some preliminary clarification.

First, international crimes is a very short and clear expression that will be employed here – for the sake of simplicity – to refer to those very serious breaches of customary international law rules entailing both state responsibility and individual criminal liability. In no way is this intended to suggest that, when referring to breaches entailing state responsibility, international law provides for a criminal regime of state responsibility.¹

Second, only international crimes prohibited under customary international law will be taken into account. Focusing on the so-called ‘core crimes’ has the advantage of limiting the analysis to a relatively small number of well-established

¹ The ILC has used this expression for years in connection with state responsibility, and in particular in the attempt to codify special consequences to attach to very serious breaches of international obligations. From the very beginning, the ILC has made it plain that referring to international crimes did not imply the establishment of a criminal regime of state responsibility under international law (see the ILC commentary on Article 19, ILC, ‘Report of the ILC on the Work of its 28th Session’, YILC (1976), vol. II(2), pp. 104, and 119). Nonetheless, the use of this expression raised some concern, because it could suggest the development of such a regime (see the general commentary on Articles 40 and 41, ILC, ‘Report of the ILC on the Work of its 53rd Session’, YILC (2001), vol. II(2), p. 111, paras. 5–6). Thus, the ILC decided to abandon this terminology in favour of a more neutral one (see J. Crawford, ‘First Report on State Responsibility’, UN Doc. A/CN.4/490/Add.1, para. 60, and UN Doc. A/CN.4/490/Add.2, paras. 68–71; J. Crawford, ‘Third Report on State Responsibility’, UN Doc. A/CN.4/507, para. 9, and A/CN.4/507/Add.4, para. 407; J. Crawford, ‘Fourth Report on State Responsibility’, UN Doc. A/CN.4/517, paras. 48–9). This aspect is examined in detail infra in Chapter 8.