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THE PRESUMPTION OF INNOCENCE OF THE STATE: DOES THE SOVEREIGN HAVE THE RIGHT TO DOUBT?

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ABSTRACT

The presumption of innocence — a foundational principle governing criminal proceedings from inception to final judgment — stands as one of the foundational guarantees of criminal justice in domestic legal orders. Its application to sovereign states in international law, however, is neither self-evident nor uniform. This article interrogates the structural analogy between individual criminal procedural rights and the position of states in international proceedings, examining three institutional arenas: the United Nations Security Council, the International Criminal Court (ICC), and the World Trade Organization (WTO). The analysis reveals a fragmented normative landscape in which the presumption of innocence applies robustly in some contexts, is systematically displaced in others, and is altogether absent in the political-enforcement mechanism of the Security Council. The article argues that this fragmentation reflects not merely institutional variation but a deeper tension in international law between the sovereign equality of states and the collective interest in maintaining international peace, security, and economic order. The question of whether a state possesses a cognizable right to the benefit of doubt ultimately exposes the unresolved relationship between international law as a legal order and international law as a political instrument.

Keywords: presumption of innocence, in dubio pro reo, sovereign equality, Security Council, ICC (International Criminal Court), WTO (World Trade Organization), aggression, burden of proof, state responsibility, international adjudication

DEVLETİN MASUMİYET KARİNESİ: EGEMENİN ŞÜPHE HAKKI VAR MIDIR?

Mustafa Çakır*

ÖZ

Masumiyet karinesi (in dubio pro reo), iç hukuk düzenlerinde ceza adaletinin temel güvencelerinden biri olarak kabul görmektedir. Ancak bu karinenin uluslararası hukukta egemen devletlere uygulanması ne kendiliğinden gerçekleşmekte ne de tekdüze bir görünüm sergilemektedir. Bu makale; bireysel cezai usul hakları ile devletlerin uluslararası yargılamalardaki konumu arasındaki yapısal analoji sorgulamakta ve üç kurumsal arenayı incelemektedir: Birleşmiş Milletler Güvenlik Konseyi, Uluslararası Ceza Mahkemesi (UCM) ve Dünya Ticaret Örgütü (DTÖ). Analiz; karinenin bazı bağlamlarda güçlü biçimde işlediği, diğerlerinde sistematik olarak devre dışı bırakıldığı ve Güvenlik Konseyi'nin siyasi icra mekanizmasında tamamen yokluğunun gözlemlendiği parçalı bir normatif manzara ortaya koymaktadır. Makale, bu parçalı yapının yalnızca kurumsal farklılıkları değil, uluslararası hukukta var olan daha derin bir gerilimi — devletlerin egemen eşitliği ile uluslararası barış, güvenlik ve ekonomik düzenin korunmasındaki kolektif çıkar arasındaki gerilimi — yansıttığını ileri sürmektedir. Bir devletin şüpheden yararlanma hakkına sahip olup olmadığı sorusu, nihayetinde uluslararası hukukun bir hukuk düzeni olarak ve siyasi bir araç olarak konumu arasındaki çözümsüz ilişkiyi gün yüzüne çıkarmaktadır.

Anahtar Kelimeler: masumiyet karinesi, *in dubio pro reo*, egemen eşitlik, Güvenlik Konseyi, UCM, DTÖ, saldırganlık, ispat yükü, devlet sorumluluğu, uluslararası yargılama

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I. Introduction: The Inversion Problem

In the domestic criminal law tradition, the presumption of innocence performs a double function. At the procedural level, it allocates the burden of proof to the prosecution: the state must establish guilt beyond reasonable doubt, and the accused need not prove innocence. At the normative level, it expresses a fundamental commitment about the relationship between individual and state power: the coercive apparatus of government may not be deployed against a person without adequate justification established through a fair process[1].

When we turn to international law, the analogy with the domestic setting is imperfect but not entirely absent. States, like individuals, are legal persons capable of incurring rights and obligations. States, like individuals, can be accused of serious wrongs — aggression, genocide, violations of peremptory norms. And states, like individuals, can suffer serious consequences if found responsible: reparation obligations, sanctions, and in extreme cases, coercive enforcement action. Yet the international legal order does not provide states with anything approaching the systematic procedural protections afforded to individual accused persons in fair trial doctrine[2].

The question this article poses is both descriptive and normative. Descriptively: across the principal international institutions where state conduct is assessed, evaluated, and potentially condemned, what evidentiary and procedural standards govern the treatment of the accused state? Does any doctrine analogous to the presumption of innocence operate, and if so, with what content? Normatively: is there a principled justification for the differential treatment of states as compared with individuals, or does the absence of robust procedural protection for states reflect a structural deficiency in the international legal order?

The domestic analogy, though imperfect, reveals a striking asymmetry. A person accused of a minor crime in most jurisdictions

1 Andrew Ashworth, Principles of Criminal Law, 7th ed. (Oxford: Oxford University Press, 2013), pp. 72–79.

2 James Crawford, Brownlie's Principles of Public International Law, 9th ed. (Oxford: Oxford University Press, 2019), pp. 537–541.

enjoys more procedural protection than a sovereign state accused of aggression before the Security Council. The individual may invoke the presumption of innocence, demand disclosure of the prosecution's evidence, cross-examine witnesses, and appeal to an independent tribunal. The accused state has none of these rights in the Council chamber. This asymmetry demands explanation — and, ultimately, normative evaluation[3].

The article proceeds through seven parts. Part I introduces the inversion problem that motivates the inquiry. Part II establishes the theoretical foundations, examining whether and on what basis a state may claim the functional equivalent of a presumption of innocence in international proceedings. Part III analyzes the Security Council, where the inversion problem is most acute and structurally embedded. Part IV examines the ICC, where individual criminal responsibility intersects with state conduct in complex and sometimes paradoxical ways. Part V addresses the WTO, where burden-of-proof rules in trade disputes create the most technically sophisticated framework for allocating the benefit of doubt among states. Part VI offers a theoretical synthesis. Part VII presents the conclusions of the study.

II. Theoretical Foundations: Can a State Claim Innocence?

2.1 The Presumption of Innocence as a General Principle of Law

Article 38(1)(c) of the International Court of Justice (ICJ) Statute recognizes "the general principles of law recognized by civilized nations" as a source of international law. The presumption of innocence satisfies the threshold conditions for recognition as such a principle: it is enshrined across common law, civil law, and mixed legal systems as a foundational rule of criminal procedure, and its expression in universal and regional human rights instruments confirms its global normative reception. Article 11(1) of the Universal Declaration of Human Rights, Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR), and Article

[3] Hersch Lauterpacht, The Development of International Law by the International Court of Justice (Cambridge: Cambridge University Press, 1958), pp. 219–221.

6(2) of the European Convention on Human Rights (ECHR) each gives it express formulation.

The doctrinal question is whether this principle, developed in the context of individual criminal procedure, can be transposed to the plane of state responsibility in international law. The transposition is not self-executing. The classic rationale for the presumption of innocence — that it protects the individual from the overwhelming coercive power of the state — does not map straightforwardly onto a system of formally equal sovereign states[4]. In domestic criminal proceedings, the asymmetry of power between the accused individual and the prosecuting state generates a structural need for protective presumptions. In international law, the formally equal position of states appears to diminish the justification for equivalent protection.

Yet this reasoning is only partially persuasive. The formal equality of states coexists with radical material inequality in international relations: small and economically weak states face a very different constellation of pressures when accused of serious violations than do great powers capable of blocking adverse determinations through political or military means. The Security Council's veto structure institutionalizes this inequality. Formal sovereign equality, in this context, may demand rather than preclude protective presumptions — precisely because smaller states lack the political resources that great powers use in lieu of legal protection.

2.2 The Law of State Responsibility and Its Structural Presumptions

The international law of state responsibility, as codified in the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) adopted by the International Law Commission in 2001, provides the primary normative framework for assessing state conduct[5]. While ARSIWA do not explicitly incorporate a presumption of

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4 Yoram Dinstein, War, Aggression and Self-Defence, 6th ed. (Cambridge: Cambridge University Press, 2017), pp. 128–132.

5 International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts, UN Doc. A/56/10 (2001), Art. 2.

innocence, several of their features reflect a structural preference for limiting the attribution of responsibility absent clear legal and factual foundation.

Article 2 ARSIWA requires both a breach of an international obligation and its attribution to the state before responsibility can be established. The "effective control" standard established by the ICJ in *Nicaragua v. United States* (1986) requires that the state must have "directed or enforced the perpetration of the acts" in question before they can be attributed to it[6]. This demanding standard protects states from responsibility for acts over which they did not exercise genuine control — a structural parallel to the presumption of innocence operating at the level of the attribution inquiry.

The overall control standard adopted by the International Criminal Tribunal for the former Yugoslavia (ICTY) in Tadić (1999) as an alternative basis for attribution illustrates the normative stakes of the attribution threshold. A lower threshold means a reduced functional presumption in favor of the state; a higher threshold means greater protection. The disagreement between the ICJ and the ICTY on this question reflects a substantive choice about how much benefit of doubt states should receive in the gravest contexts.

2.3 Sovereign Equality and the Baseline of Freedom

The classical foundation for a presumption in favor of state freedom is the principle established in the *SS Lotus* case (1927): "restrictions upon the independence of States cannot be presumed."[7] The Permanent Court held that, in the absence of a permissive rule of international law, states are free to act. This baseline of freedom means that international obligations are the exception, not the rule, and that their existence must be positively established.

Lotus has been substantially qualified in subsequent international legal development, but its foundational logic retains relevance for the

[6] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States), ICJ Reports 1986, para. 115.

[7] SS Lotus (France v. Turkey), PCIJ Reports, Series A, No. 10 (1927), p. 18.

allocation of burden of proof in international adjudication[8]. If restrictions on state freedom must be positively established, then the burden of proving a violation falls naturally on the party claiming that the restriction exists and has been breached. This is the doctrinal foundation of the claimant-bears-the-burden rule that governs international adjudicative proceedings.

III. The Security Council: Politics Against Presumption

3.1 The Architecture of Chapter VII Authority

The United Nations Security Council represents the starkest institutional context in which the inversion problem appears. Under Chapter VII of the UN Charter, the Council possesses the authority to determine "the existence of any threat to the peace, breach of the peace, or act of aggression" and to decide on coercive measures — including the authorization of military force under Article 42 — in response[9]. These are extraordinary powers with potentially existential consequences for the targeted state. A Council determination under Article 39 can authorize the use of force against a state, impose comprehensive economic sanctions, establish international criminal tribunals, or authorize territorial administration.

Yet the Security Council operates under no legal obligation to apply any standard of proof before making such determinations. The Charter contains no procedural requirements governing how the Council assesses facts, what categories of evidence it must consider, what threshold of certainty it must reach before acting, or what procedural rights the accused state possesses in the deliberative process. The accused state has no right to present its case before the Council, no right to challenge evidence presented against it, no right to an independent assessment of the factual record, and no right of judicial review of the Council's determination[10].

8 Martti Koskenniemi, From Apology to Utopia: The Structure of International Legal Argument (Cambridge: Cambridge University Press, 2005), pp. 235–241.

9 UN Charter, Arts. 39–42.

10 Derek Bowett, "The Impact of Security Council Decisions on Dispute Settlement Procedures," European Journal of International Law 5(1) (1994), pp. 89–101, at 93.

3.2 The Aggression Determination: The Inversion at Its Starkest

The determination of aggression — the most serious accusation that can be leveled against a state in international law — illustrates the inversion problem in its acutest form. General Assembly Resolution 3314 (1974) 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."[11] The definition is broad, deliberately non-exhaustive, and its application to specific situations is explicitly vested in the Security Council.

The structural pathology of this arrangement is compounded by the veto provision under Article 27(3) of the Charter. A permanent member of the Security Council accused of aggression can prevent any determination against it by exercising its veto. The result is a system in which the presumption of innocence operates, in practice, as a privilege of great power status rather than a universal procedural protection. Smaller states are exposed to aggression determinations that the great powers are structurally insulated from[12].

The Council's response to Russia's invasion of Ukraine in February 2022 provides a contemporary illustration. Russia, as a permanent member, vetoed Security Council resolutions condemning the invasion and referring the situation to the ICC. The matter was subsequently addressed through the General Assembly's "Uniting for Peace" mechanism — a political workaround that underscores the systemic nature of the veto problem rather than resolving it[13].

3.3 Targeted Sanctions and the Individual Dimension of the Inversion

The Security Council's targeted sanctions practice — particularly the listing of individuals and entities on terrorism-related sanctions lists —

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[11] UN General Assembly Resolution 3314 (XXIX), 14 December 1974, Art. 1.
[12] Dinstein, War, Aggression and Self-Defence, pp. 145–151.
[13] UN General Assembly Resolution ES-11/1, Aggression against Ukraine, 2 March 2022.

has generated the most extensive academic and judicial debate about due process in the Council's work. Sanctions adopted pursuant to Resolution 1267 (1999) and its successors created a regime in which individuals and entities were listed by a Council committee on the basis of intelligence information supplied by member states, without advance notice to the listed party, without any hearing, and initially without any independent review mechanism[14].

For states as collective entities, no comparable reform has been achieved. The *Lockerbie* cases (1992) established that the ICJ would not exercise judicial review of Security Council determinations acting under Chapter VII, effectively removing the last institutional check on the Council's power to act against a state on factual and legal foundations that would not survive scrutiny in any adjudicative proceeding[15].

3.4 The Rationale and Its Limits

The absence of procedural protections for accused states in Security Council proceedings is not entirely without justification. The collective security function of the Council requires the capacity for rapid, decisive action on inevitably imperfect information: a requirement of proof beyond reasonable doubt before authorizing enforcement action would paralyze the system precisely when it most needs to function. Moreover, the Council's determinations are not strictly analogous to criminal verdicts — they are political authorizations for collective action, not findings of legal guilt generating individual consequences[16].

These justifications are real but insufficient. The consequences of Council action can be indistinguishable, in practical terms, from the consequences of a criminal conviction: the state's territory may be occupied, its leadership prosecuted, its economy devastated. Functional consequences of this severity arguably demand procedural constraints

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14 Security Council Resolution 1267, UN Doc. S/RES/1267 (15 October 1999).

15 Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. United Kingdom), ICJ Reports 1992, paras. 39–40.

16 José Alvarez, International Organizations as Law-makers (Oxford: Oxford University Press, 2005), pp. 202–215.

that the current Charter framework does not provide. The gap between the gravity of potential consequences and the poverty of procedural protection represents a genuine structural deficit in the international legal order.

IV. The International Criminal Court: Individual Guilt and the State Shadow

4.1 The ICC's Formal Framework: Innocence for Persons, Exposure for States

The International Criminal Court presents a structurally distinct picture. The Rome Statute establishes individual criminal responsibility — not state responsibility — as the primary object of ICC adjudication[17]. Accordingly, the robust due process protections of the Statute apply to *individuals* accused before the Court. Article 66 provides unambiguously that "everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law." Article 67 enumerates a comprehensive catalogue of fair trial rights including the right to be informed of charges promptly, the right to silence without adverse inference, the right to examine prosecution witnesses, and the right to disclosure of exculpatory evidence.

The structural paradox is that the ICC fully honors the presumption of innocence for individuals while the conduct of *states* — which is inescapably implicated in the gravest ICC crimes — receives no equivalent protection. The crime of genocide requires proof of a "specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group"; crimes against humanity require proof of a "widespread or systematic attack directed against any civilian population"; and the crime of aggression requires proof of a "manifest violation" of the UN Charter by a state[18]. Each of these definitional elements embeds a reference to collective or state conduct, yet the state itself stands outside

[17] Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 90, Arts. 25, 66.

[18] Rome Statute, Arts. 6, 7(1), 8 bis(1).

the ICC's jurisdiction and outside the protection of its evidentiary standards.

4.2 The Crime of Aggression: Structural Dependency and Its Consequences

The ICC's jurisdiction over the crime of aggression, activated in 2018 following the Kampala amendments to the Rome Statute, creates the most direct and most troubling intersection between individual criminal responsibility and state conduct[19]. Article 8 bis defines the crime of aggression as the planning, preparation, initiation, or execution by a person in a leadership position of "an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations." The underlying "act of aggression" is defined by reference to state conduct.

The ICC Prosecutor, in exercising jurisdiction over the crime of aggression, must therefore make a determination — at least implicitly — that the state's conduct constitutes a manifest violation of the Charter. This determination is embedded within the prosecution of an individual, without the state as a party to the proceedings, and without any formal mechanism for the state to contest the characterization of its conduct before the ICC[20].

Under Article 15 bis, the Court may exercise jurisdiction over the crime of aggression only with respect to states parties to the relevant amendments. For non-states parties, the Security Council retains the exclusive gateway role through referral under Article 13(b). This creates a chain of determination in which the Council — acting without evidentiary standards — triggers ICC proceedings in which individuals are prosecuted for conduct that the Council has already, in effect, prejudged at the political level.

19 ICC Assembly of States Parties, Activation of the Jurisdiction over the Crime of Aggression, Resolution ICC-ASP/16/Res.5, 14 December 2017.

20 Claus Kreß and Leonie von Holtzendorff, "The Kampala Compromise on the Crime of Aggression," Journal of International Criminal Justice 8(5) (2010), pp. 1179–1217, at 1195.

4.3 Complementarity and the Presumption Against Domestic Proceedings

The ICC's complementarity principle — the rule under which the Court may only exercise jurisdiction when national courts are genuinely unable or unwilling to investigate and prosecute — introduces a different form of presumption reversal. Under Article 17 of the Rome Statute, a case is inadmissible before the ICC if it is being investigated or prosecuted by a state with jurisdiction over it, unless that state is unwilling or unable genuinely to carry out the investigation or prosecution[21].

The complementarity assessment effectively requires a state to demonstrate, to the ICC's satisfaction, that its national proceedings are genuine. In the *Libyan* admissibility proceedings (2013–2014), ICC Pre-Trial Chamber I scrutinized Libyan domestic proceedings against Saif Al-Islam Gaddafi in considerable detail, examining whether Libya possessed sufficient institutional capacity to conduct a genuine prosecution[22]. The Chamber's approach — requiring Libya to demonstrate domestic capability rather than presuming it — attracted scholarly criticism for privileging ICC jurisdiction over national sovereignty in ways that the complementarity principle's text does not require.

4.4 The ICJ Genocide Cases: Heightened Standards as Functional Presumption

The ICJ's adjudication of genocide claims under the 1948 Genocide Convention provides essential comparative context. In the *Bosnia Genocide* case (2007), the Court addressed at length the standard of proof required to establish genocide by a state. The Court held that "claims against a State involving charges of exceptional gravity must be proved

21 Rome Statute, Art. 17(1)(a).

22 The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi, Pre-Trial Chamber I, Decision on Admissibility, ICC-01/11-01/11-344-Red, 31 May 2013, paras. 200–215.

by evidence that is fully conclusive."[23] This formulation — "fully conclusive evidence" — sets a standard explicitly higher than the civil balance of probabilities standard ordinarily applicable in international adjudication, and approximates, without formally equating to, the criminal standard of proof beyond reasonable doubt.

This heightened standard represents the ICJ's most explicit operationalization of a functional presumption in favor of the accused state. The ICJ's subsequent application of the heightened standard in *Croatia v. Serbia* (2015) — where both parties' genocide claims failed in substantial part for want of fully conclusive evidence — confirms that the standard has genuine operative bite[24].

V. The WTO: Burden of Proof as Institutional Architecture

5.1 The Foundational Rule: Actori Incumbit Probatio

The World Trade Organization dispute settlement system provides the most technically elaborated framework for allocating the benefit of doubt among the three institutions examined in this article. The Appellate Body articulated the foundational principle in *United States — Shirts and Blouses from India* (1997): "it is a generally accepted canon of evidence in civil, common law and most other legal systems that the burden of proof rests upon the party, whether complaining or defending, who asserts the affirmative of a particular claim or defence."[25] This principle — *actori incumbit probatio*, or the burden lies with the claimant — means that the complaining state must first establish a *prima facie* case that the respondent's measure is inconsistent with the applicable WTO agreement before any burden shifts to the respondent.

The practical significance of this allocation is substantial. In the absence of a *prima facie* case, the respondent need do nothing: it is

23 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), ICJ Reports 2007, para. 209.

24 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), ICJ Reports 2015, paras. 177–179.

25 Appellate Body Report, United States — Measure Affecting Imports of Woven Wool Shirts and Blouses from India, WT/DS33/AB/R (25 April 1997), p. 14.

presumed to be acting in compliance with its WTO obligations. The burden of displacing this presumption rests entirely on the complaining party. The structure mirrors, at the level of adjudicative process, the *Lotus* principle of substantive law: restrictions on state freedom are the exception, and their existence must be positively established[26].

5.2 The Exception-Justification Framework: Qualified Inversion

The WTO's burden-of-proof architecture incorporates a significant qualified inversion. When a respondent seeks to justify a trade-restrictive measure under one of the general exceptions provisions — Article XX of the General Agreement on Tariffs and Trade (GATT), Article XIV GATS, or the Agreement on Sanitary and Phytosanitary Measures — the burden shifts to the respondent to demonstrate affirmatively that its measure satisfies the conditions of the applicable exception.

In the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) context, this includes demonstrating that sanitary measures are based on a risk assessment meeting the agreement's scientific standards. The Appellate Body in European Communities — Hormones (1998) held that the EU bore the burden of establishing the scientific basis for its ban on hormone-treated beef and that the precautionary principle did not relieve it of this burden. The resulting structure is a two-stage presumption framework: at the first stage the presumption of compliance operates in favor of the respondent; at the second stage — if the respondent invokes an exception — the burden reverses, and the respondent must establish justification.

5.3 National Security Exceptions: The Outer Limit of Presumption

The WTO's treatment of national security exceptions under Article XXI GATT presents the outer limit of the presumption framework. For decades, the conventional understanding was that Article XXI exceptions were entirely self-judging: a state invoking national security was the sole

26 Robert Howse, "The World Trade Organization 20 Years On: Global Governance by Judiciary," European Journal of International Law 27(1) (2016), pp. 9–77, at 45.

judge of whether the conditions were satisfied, subject to no external review[27]. If this interpretation were correct, it would represent a zone of absolute presumption in favor of the invoking state.

The Panel in *Russia — Traffic in Transit* (2019) rejected the absolute self-judgment position, holding that Panels retain jurisdiction to determine whether the objective conditions specified in Article XXI are satisfied[28]. The Panel simultaneously held that a state's characterization of a situation as constituting an emergency in international relations is entitled to substantial deference. The result is a modified presumption: the invoking state enjoys a strong but rebuttable presumption that its security assessment is legitimate.

5.4 Non-Violation Complaints and Legitimate Expectations

The WTO's non-violation nullification or impairment mechanism under Article XXIII:1(b) GATT adds a further dimension to the analysis of state presumptions. The complaining party bears a heavy burden at every stage: it must establish the existence of a legitimate expectation arising from concession negotiations, the existence of the challenged measure, the existence of a benefit nullification or impairment, and a causal connection between the measure and the nullification[29].

Panel practice under the non-violation mechanism has been consistently cautious, reflecting a structural presumption that state regulatory autonomy is legitimate absent a demonstrated case of frustrated expectations. This caution — a heightened burden on the complainant — is justified on grounds that resonate with the broader theme of this article: the non-violation mechanism creates liability without a technical violation, making it structurally analogous to a form of no-fault responsibility.

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[27] Meredith Crowley, "Paradoxes of Article XXI GATT," Journal of International Economic Law 22(2) (2019), pp. 127–141, at 131.

[28] Panel Report, Russia — Measures Concerning Traffic in Transit, WT/DS512/R (5 April 2019), paras. 7.75–7.132.

[29] Panel Report, Japan — Measures Affecting Consumer Photographic Film and Paper, WT/DS44/R (31 March 1998), para. 10.41.

VI. Synthesis: The Conditions of Presumption and Displacement

6.1 A Typology of State Procedural Protection

The analysis across three institutional arenas produces a differentiated typology of state procedural protection. The determinative variable is not the nature or gravity of the accusation — whether it involves aggression, crimes against humanity, or trade violations — but the *institutional character* of the proceeding in which the accusation is assessed. Four variables appear most significant: the adjudicative or political character of the proceeding; the presence or absence of a consenting jurisdictional relationship; the existence or absence of an independent tribunal applying objective legal standards; and the nature of the consequences that flow from an adverse determination.

Where all four variables favor adjudicative rather than political processing — as in WTO dispute settlement and ICJ contentious proceedings — the state enjoys a functional presumption of compliance, a burden-of-proof rule that places the onus on the complaining party, and a heightened evidentiary standard for the gravest accusations. Where the variables favor political over adjudicative processing — as in Security Council Chapter VII proceedings — the state enjoys no procedural protection, and the benefit of doubt is determined by political calculation rather than legal standard[30].

6.2 The Gravity-Protection Paradox

Perhaps the most striking normative finding of this analysis is what might be termed the *gravity-protection paradox*: in international law, the gravity of the accusation against a state tends to *reduce* rather than *increase* the procedural protections available to the accused state. In the WTO context, trade violations are addressed through a fully adjudicative process with sophisticated burden-of-proof rules. Violations of *jus cogens* norms — genocide, aggression, crimes against humanity — are addressed through mechanisms that afford the accused state far fewer procedural protections.

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30 Cheng, General Principles of Law, pp. 317–320.

The paradox is not accidental. It reflects the structural architecture of international law: the more politically sensitive the subject matter, the less the international legal order has been willing to commit to adjudicative resolution with its attendant procedural requirements. Trade disputes, though economically significant, do not implicate the existential interests of sovereign states; they can be safely juridified. Determinations of aggression and genocide implicate the fundamental architecture of the international order and the distribution of power among its primary actors; they have been reserved, by deliberate design, for political rather than legal determination[31].

6.3 Toward a More Coherent Framework

The normative deficit identified by this analysis resists easy remedy. Three partial reforms are worth identifying. First, the Security Council could adopt procedural guidelines requiring minimum evidentiary standards for Chapter VII determinations, distinguishing between the initial authorization of enforcement action on provisional grounds and subsequent confirmation of the factual and legal basis for continued action.

Second, the ICC's complementarity framework could be applied with a stronger structural presumption in favor of national proceedings, reversing the burden so that the party challenging complementarity bears the burden of establishing that national proceedings are not genuine, rather than requiring the state to prove that they are.

Third, the ICJ's "fully conclusive evidence" standard for genocide claims could be generalized to other accusations of *jus cogens* violations in international adjudicative proceedings, creating a coherent framework in which the evidentiary threshold scales with the gravity of the accusation. None of these reforms would constitute a full transposition of the criminal presumption of innocence to the international plane, but each would narrow the gap between the procedural protection afforded to accused individuals and that afforded to accused states.

[31] Koskenniemi, From Apology to Utopia, pp. 490–495.

VII. Conclusion

The presumption of innocence, as applied to sovereign states in international law, is neither a universal protection nor an empty formality. It exists in functional form within the adjudicative frameworks of international courts and tribunals — most elaborately in the WTO, most explicitly in the ICJ's heightened evidentiary standard for *jus cogens* accusations — and in the structural logic of the law of state responsibility, which requires positive proof of both breach and attribution before responsibility can be established. It is substantially absent in the political-enforcement mechanism of the Security Council, where determinations of the gravest significance are made on political rather than evidentiary grounds, without procedural protections for the accused state, and without possibility of independent judicial review.

The answer to the question posed in the title — does the sovereign have the right to doubt? — is that it depends entirely on who is asking the question and in what forum. Before international courts and tribunals exercising consensual jurisdiction, states possess a meaningful right to the benefit of doubt, embedded in burden-of-proof rules, evidentiary standards, and the presumption of compliance that underlies the *Lotus* principle. Before the Security Council acting under Chapter VII, states have no such right — only the political resources they can mobilize, the alliances they can call upon, and, for the fortunate few, the veto that makes them permanently immune to the mechanism's reach.

This fragmentation is not merely a technical legal problem. It reflects a deeper truth about the international legal order: that law and power coexist in it not as equals but as permanent contestants, and that the presumption of innocence — like so many other protections that legal orders extend to the accused — ultimately depends for its effectiveness on institutional configurations that the most powerful actors have strong incentives to resist. Acknowledging this tension honestly, and pursuing the incremental reforms that the politics of international law permit, is the most realistic path toward a more just international order — one in which even the sovereign, when accused, is entitled to the benefit of doubt.

Bibliography

Primary Sources

Charter of the United Nations, 26 June 1945, 1 UNTS XVI, Arts. 2(1), 27(3), 39–42.

Statute of the International Court of Justice, 26 June 1945, annexed to the UN Charter, Art. 38(1)(c).

International Law Commission, *Articles on the Responsibility of States for Internationally Wrongful Acts,* UN Doc. A/56/10 (2001).

Rome Statute of the International Criminal Court, 17 July 1998, 2187 UNTS 90.

Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 UNTS 277.

International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, Art. 14(2).

Universal Declaration of Human Rights, UN General Assembly Resolution 217A, 10 December 1948, Art. 11(1).

UN General Assembly Resolution 3314 (XXIX), *Definition of Aggression,* 14 December 1974.

UN General Assembly Resolution ES-11/1, *Aggression against Ukraine,* 2 March 2022.

Security Council Resolution 1267, UN Doc. S/RES/1267 (15 October 1999).

ICC Assembly of States Parties, Activation of the Jurisdiction over the Crime of Aggression, Resolution ICC-ASP/16/Res.5, 14 December 2017.

SS Lotus (France v. Turkey), PCIJ Reports, Series A, No. 10 (1927).

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States), ICJ Reports 1986.

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), ICJ Reports 2007.

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), ICJ Reports 2015.

Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. United Kingdom), ICJ Reports 1992.

Prosecutor v. Tadić, IT-94-1-A, ICTY Appeals Chamber, Judgment (15 July 1999).

The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi, ICC Pre-Trial Chamber I, Decision on Admissibility, ICC-01/11-01/11-344-Red, 31 May 2013.

Appellate Body Report, *United States — Measure Affecting Imports of Woven Wool Shirts and Blouses from India,* WT/DS33/AB/R (25 April 1997).

Appellate Body Report, *European Communities — Measures Concerning Meat and Meat Products (Hormones),* WT/DS26/AB/R (16 January 1998).

Appellate Body Report, *United States — Import Prohibition of Certain Shrimp and Shrimp Products,* WT/DS58/AB/R (12 October 1998).

Panel Report, *Russia — Measures Concerning Traffic in Transit,* WT/DS512/R (5 April 2019).

Panel Report, *Japan — Measures Affecting Consumer Photographic Film and Paper,* WT/DS44/R (31 March 1998).

Secondary Sources

Alvarez, José. *International Organizations as Law-makers.* Oxford: Oxford University Press, 2005.

Ashworth, Andrew. *Principles of Criminal Law,* 7th ed. Oxford: Oxford University Press, 2013.

Bowett, Derek. "The Impact of Security Council Decisions on Dispute Settlement Procedures." *European Journal of International Law* 5(1) (1994), pp. 89–101.

Cheng, Bin. *General Principles of Law as Applied by International Courts and Tribunals.* Cambridge: Cambridge University Press, 1953; repr. 2006.

Crawford, James. *Brownlie's Principles of Public International Law,* 9th ed. Oxford: Oxford University Press, 2019.

Crowley, Meredith. "Paradoxes of Article XXI GATT." *Journal of International Economic Law* 22(2) (2019), pp. 127–141.

Dinstein, Yoram. *War, Aggression and Self-Defence,* 6th ed. Cambridge: Cambridge University Press, 2017.

Howse, Robert. "The World Trade Organization 20 Years On: Global Governance by Judiciary." *European Journal of International Law* 27(1) (2016), pp. 9–77.

Koskenniemi, Martti. *From Apology to Utopia: The Structure of International Legal Argument.* Cambridge: Cambridge University Press, 2005.

Kreß, Claus / von Holtzendorff, Leonie. "The Kampala Compromise on the Crime of Aggression." *Journal of International Criminal Justice* 8(5) (2010), pp. 1179–1217.

Lauterpacht, Hersch. *The Development of International Law by the International Court of Justice.* Cambridge: Cambridge University Press, 1958.