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Research Article

The Role Of International Criminal Court In Command Responsibility Towards Benjamin Netanyahu At Israeli-Palestine Conflict

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Legal Protection For Consumers In Unilateral Concert Cancellations (Case Study Of The Ndx Band Concert In Palangkaraya: Bajenta Fest 2024 Event)

Abstract. The Israel-Palestine conflict remains one of the most protracted and contentious issues in international relations, particularly regarding violations of human rights and international humanitarian law. In this context, the role of the International Criminal Court (ICC) is crucial in upholding the principle of accountability for serious crimes, including those committed by high-ranking state officials. This article aims to analyze the extent to which the ICC can hold Benjamin Netanyahu, the Prime Minister of Israel, criminally responsible under the doctrine of command responsibility for alleged war crimes committed during the Israel-Palestine conflict, especially in the Gaza region. This study adopts a normative-juridical approach by examining the Rome Statute, official ICC documents, and international investigative reports related to the conflict. The findings indicate that the ICC has jurisdiction to investigate alleged war crimes and crimes against humanity in the Palestinian territories following Palestine's accession to the Rome Statute in 2015. However, political

challenges and the lack of cooperation from non-member states such as Israel remain significant obstacles to legal proceedings. Nonetheless, recent developments suggest growing ICC attention to individual accountability, including for senior government officials who may bear command responsibility for military operations resulting in civilian casualties. In conclusion, while the ICC holds potential as a vital instrument for enforcing international justice, its effectiveness is largely dependent on global political support and the consistent, independent cooperation of member states.

Keywords: International Criminal Court, Command Responsibility, Israel-Palestine Conflict

INTRODUCTION

The conflict between Israel and Palestine is one of the longest-running territorial conflicts in world history. More than 100 years ago, precisely on November 2, 1917, the Balfour Declaration formed by the British required the “right” to own Palestinian land as a home for the Jews. “The establishment in Palestine of a national home for the Jewish People and to facilitate the achievement of this object” was a statement initiated by Britain through the Balfour Declaration, leading to the explosion of the number of Jews migrating to Palestine, which at that time more than 90% of Palestine was inhabited by Arabs who were Muslims. This migration continued until 1947, the United States also approved a separation plan between Arab land and Jewish land, where Arabs living in Palestine at that time were very opposed to this idea. Through its Prime Minister at the time, David Ben-Gurion, Israel declared their independence, which invited five Arab countries; Egypt, Jordan, Iraq, Syria, and Lebanon to rebel and declare the Arab-Israeli war. Since then, starting in 1948, there have been wars, riots, and chaos in the land of Palestine, between Arabs and Jews fighting over the land of Palestine, and the war continues to have ups and downs, and is still ongoing to this day (Human Rights Watch, 2021).

Israel has clearly committed a series of violations of International Law, starting from attacks and massacres against the Palestinian population and invading innocent civilians, women, and children. However, until now, the international world still seems silent and turn a blind eye to the actions committed by Israel. Although Israel's case has been repeatedly included in the discussion and forum of international meetings, until it is prosecuted to the International Court of Justice (ICJ), but until now, the cessation of action is only done temporarily through a ceasefire, the rest of Israel is still violating the provisions of International Humanitarian Law as stipulated in The Geneva Convention and The Hague Convention which are the main international war provisions (Michael Lynk, 2021).

In November 2024, the International Criminal Court (ICC) arrested Benjamin Netanyahu, Prime Minister of Israel on charges of War Crimes and Crimes Against Humanity committed on the Gaza border from October 2023 to May 2024. The ICC's decision follows a six-month delay since Prosecutor Karim Khan initially requested the warrant in May. The warrant is part of an investigation into alleged war crimes committed by Israeli and Palestinian officials in the occupied Palestinian territory since 2014, which was launched in 2021. Although this arrest warrant is focused on the issue of war and humanitarian crimes committed within the Gaza Border, the ICC

Prosecutor has hinted that additional warrants may be issued in relation to crimes committed in the West Bank and East Jerusalem. Separately, the ICC issued an arrest warrant against Hamas commander Mohammad Deif for war and humanitarian crimes, specifically relating to attacks on Israeli civilians since October 7, 2023. Israel claims to have killed Deif, but there has been no confirmation from Hamas or the court. The public prosecutor has also requested warrants against two other Hamas leaders, Yahya Sinwar and Ismail Haniyeh, but both were also confirmed to have been killed by Israel (Yvonne McDermott, 2020).

The ICC found compelling reasons to impose criminal responsibility on Benjamin Netanyahu as a perpetrator because they were the brains behind a series of methods, plans, and strategies of warfare, crimes, riots that resulted in killings, massacres, and persecutions, as well as other inhumane acts. The court also found that these crimes were part of a widespread and systematic attack on the civilian population of Gaza. For example, the court found that it was sufficient to conclude that Netanyahu intentionally and knowingly deprived the civilian population in Gaza of indispensable items, including food, water and other basic necessities, medical supplies, and electrical fuel. The criminal conditions created by Netanyahu constitute a form of slow torture of Gazan civilians, followed by subsequent acts of murder and massacre of innocent civilians (Hala, 2019).

If the question is whether the ICC has jurisdiction to hear this case, the answer is yes. Although Israel is not a state party to the Rome Statute, the crimes in question were committed in the Gaza Strip. Palestine signed the Rome Statute and this means the ICC also has the right and jurisdiction formally to ensure Palestinian rights are fulfilled in a neutral and objective manner. In this regard, Article 27 of the Rome Statute applies to Netanyahu, which reads, "Shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government [...] shall in no case exempt a person from criminal responsibility under this statute." This principle was affirmed by the ICC due to Mongolia's refusal to comply with the arrest warrant for Russian President Vladimir Putin. Mongolia argued that Russia was not a state party to the Rome Statute, and therefore Putin had immunity as a Head of State. The ICC concluded that the obligation to arrest suspects is irrespective of their official capacity and nationality, and that interstate immunity treaties do not protect individuals, including Heads of State, from prosecution by international criminal courts. The ICC ruled that Mongolia had failed to fulfill its international obligations under the Statute by not implementing the Court's request for arrest.

Digging deeper into the legal perspective in the case of Benjamin Netanyahu's arrest, and based on the urgency of the study of command responsibility and the judicial mechanism at the ICC, the author is interested in raising the title of the study, "The Role of the International Criminal Court Against Benjamin Netanyahu's Command Responsibility in the Israeli-Palestinian Conflict." As for several problem formulations that will be dissected in this paper, namely regarding the extent of the contribution and role of the ICC in handling the responsibility of convicted persons in command and how the settlement and handling carried out by the ICC against the prosecution case of Benjamin Netanyahu in the Israeli-Palestinian Conflict. This

paper and study is raised solely as a form of real contribution from the author to provide understanding and insight to readers regarding the role of the ICC in handling the responsibility of convicted persons in command and investigating the settlement accommodated by the ICC in the case of Benjamin Netanyahu who was directly involved in role and humanitarian crimes in Gaza. Hopefully, this study and writing can be a reference for other similar writings in the future, and add insight to all readers to get to know the ICC better.

RESEARCH METHODS

The research method used in this paper is normative juridical, with qualitative analysis and data collection methods with literature studies. The approach used is a statutory and case approach, where this paper will examine the legal perspective in responding to the role of the ICC for command responsibility, and focus on using the Benjamin Netanyahu case as the main object analysis in this study later.

Based on the previous research about the similar topic, this paper will be discussing even more in the ICC's perspective about the commands liability of Benjamin Netanyahu. In Reyna Lew's study in one of her research titled, "The International Criminal Court and Israel/Palestine: An Exploration of the Court's Jurisdiction Over the Region" address the legal aspects of the ICC and its jurisdiction over Palestine-Israel, but less empirically examine how the doctrine of command responsibility and ICC role dualism are applied in the context of Netanyahu. In another study held by *Opinio Juris*, also minimally addressed the role of modern technology, particularly artificial intelligence (AI), in proving cases of command responsibility in the realm of international criminal law. In fact, technologies such as satellite image analysis and big data can help reveal patterns of attacks, command structures, and the systematic involvement of individuals.

The novelty of this research lies in its integrative approach in analyzing the role of the International Criminal Court (ICC) towards Benjamin Netanyahu's command responsibility in the Israeli-Palestinian conflict. Unlike previous studies that generally only focus on normative aspects of jurisdiction or political dynamics in isolation, this study combines legal, political, and modern digital evidence dimensions to prove command involvement in international crimes. In addition, it highlights the specific role of Palestine as a state party in providing the juridical basis for the ICC, as well as extending the analysis to the challenges of executing arrest warrants against active heads of state from non-party states. This approach contributes to the literature by showing that international justice requires not only a legal framework, but also political support and technological sophistication in proving serious crimes.

RESULTS AND DISCUSSION

A. The Roles of ICC in Managing the Commands Liability

Command responsibility is a principle in international criminal law that states that a military commander or civilian superior can be held criminally responsible for crimes committed by his subordinates if he knew or should have known about the crimes and failed to prevent or punish the perpetrators. Article 28 of the Rome Statute mandates, "*Superior shall be criminally responsible for crimes committed by*

subordinates if the superior either knew or, owing to the circumstances, should have known that the subordinates were committing or about to commit such crimes and failed to take all necessary and reasonable measures to prevent or repress them or to submit the matter for investigation and prosecution” (Antonio Cassese, 2008).

The ICC has a role to follow up on alleged crimes committed on a command basis, starting from the investigation stage until the verdict. The ICC can conduct a series of investigative actions by receiving reports from states parties, the UN Security Council, and the prosecutor's own initiative (*proprio motu*). However, the onerous task for the ICC is the need for strong evidence of a failure to control subordinates and an examination of whether or not necessary and reasonable steps have been taken, including administrative action, discipline, or reporting to the competent authority. Then, the ICC has the right to declare the prosecuted commander guilty if he has been proven to have committed a crime, but is criminally responsible for the crime.

In addition to Rome Statute Article 28, the provisions of command responsibility under the authority of the ICC are also regulated in the Geneva Conventions and Additional Protocols I and II as instruments of International Humanitarian Law, where states and commanders must prevent violations of international humanitarian law by their troops and take action if violations occur (Robert, 2019). One of the most important examples of the application of the principle of command responsibility at the ICC is the case of Jean-Pierre Bemba, former Vice President of the Democratic Republic of Congo. He was charged because troops of his militia group, the Mouvement de Libération du Congo (MLC), committed murder, rape and looting in the Central African Republic (2002-2003). Bemba was convicted by the ICC Trial Chamber in 2016 for failing to take measures to prevent or punish his subordinates for the crimes committed. However, in 2018, the ICC's Appeals Chamber overturned the conviction, stating that the trial court did not properly evaluate the preventive measures Bemba had taken. This case demonstrates the complexity and rigor of the standard of proof under command responsibility at the ICC, including the burden of proving that the military leader had effective control and was aware of the crimes (William, 2019).

The ICC's application of this principle is crucial as it strengthens vertical accountability within military and civilian structures, prevents the practice of impunity, and confirms that no command position is immune to international law. In the context of armed conflict, this principle plays a key role in ensuring that the perpetrators of crimes are not only the individual field operatives, but also the structural actors who have control over the situation. Furthermore, it is also a strong message that power must be balanced with responsibility, particularly for the lives and human rights violated during conflict. However, there are challenges in the ICC's application of this principle (Kai Ambos, 2013).

One of the main challenges is proving the relationship between superiors and subordinates, including whether the commander had effective control and knowledge of the crimes committed. In addition, the ICC's jurisdiction is limited to states that have ratified the Rome Statute or cases referred by the UN Security Council, so many perpetrators escape the court's reach. Other factors such as political

obstacles, lack of cooperation from states parties, and an imbalance between the interests of international law and diplomacy also often hamper the ICC's effectiveness in enforcing command responsibility (Valentina Azarova, 2019).

Nonetheless, the principle of command responsibility remains an important foundation in the global effort to end impunity for international crimes. The ICC, through its authority, continues to develop the doctrine through legal interpretations and precedents that provide direction for national legal systems and other international tribunals. By placing responsibility not only on direct perpetrators, but also on leaders who allow crimes to occur, this principle puts moral and legal pressure on power structures in the midst of conflict. As such, the ICC's role in upholding command responsibility is a key element in maintaining the integrity of international humanitarian law and promoting justice for victims of the most serious crimes against humanity.

B. The Roles of ICC in Managing the Commands Liability

The International Criminal Court (ICC) has been in the global spotlight since it declared its intention to investigate alleged war crimes and crimes against humanity in the protracted conflict between Israel and Palestine. One important focus of the investigation is the alleged involvement of Israeli Prime Minister Benjamin Netanyahu in international crimes committed during military operations in the occupied Palestinian territory, particularly in the Gaza Strip. In 2021, the ICC Prosecutor's Office, then led by Fatou Bensouda, announced the opening of a formal investigation into crimes committed since 2014, including during the Gaza-Israel conflict, the construction of illegal settlements in the West Bank, and attacks on Palestinian civilians (Soni, 2024).

This investigation was continued by Bensouda's successor, Karim A. A. Khan, who in May 2024 surprisingly applied for arrest warrants against several high-ranking officials, including Benjamin Netanyahu and Israeli Defense Minister Yoav Gallant, on charges of war crimes and crimes against humanity. The ICC's handling of the case relies on jurisdiction based on Palestine's membership as a State Party to the Rome Statute since 2015. Although Israel is not a member of the Rome Statute and has officially rejected the ICC's jurisdiction, Palestine has provided a legal mandate for the ICC to investigate crimes that occurred on its territory. In this process, the ICC is gathering evidence that includes patterns of attacks on civilian infrastructure, killings of civilians, blockades that cause systemic suffering, and practices of collective punishment. In the request for an arrest warrant, the ICC Prosecutor stated that there are sufficient grounds to believe that Netanyahu is responsible individually and as part of a command structure for acts that can be classified as crimes against humanity, including murder, forced displacement, torture, and the use of starvation as a method of war. While this warrant represents a significant step forward in international accountability, its completion still faces serious challenges.

Israel and some of its key allies, such as the United States, have publicly rejected the legitimacy of the ICC in this case and accused the court of political bias. The refusal of cooperation from the states concerned makes the implementation of arrests and trials technically difficult, as the ICC does not have the executive power to detain

suspects without the support of the state party. On the other hand, many states and international organizations welcomed the ICC's move as a boost to international justice and the protection of human rights in the midst of a long-standing asymmetrical conflict. These responses reflect the global polarization in response to the ICC's efforts to enforce international humanitarian law in a highly geopolitically sensitive region (Karim Khan, 2024).

The handling of the Netanyahu case by the ICC is also an important milestone in the development of contemporary international law, because it targets state leaders who are still actively serving from powerful countries that are not members of the ICC. This sets a precedent that demonstrates that the principle of non-impunity is irrespective of position, and reinforces the international norm that perpetrators of serious crimes can and should be held accountable, including at the highest levels of government (Jaibal dan Dharmil, 2024). While far from a final resolution, the ICC's actions in this case reflect institutional courage in expanding the scope of international justice, and give hope to victims that their crimes will not be ignored by the global legal system (Rayna Lew, 2021).

The prosecution of Benjamin Netanyahu by the ICC has enormous legal implications for the development of international criminal law, especially in terms of upholding the principle of non-impunity for high-ranking state officials. First, the ICC's move to expand the scope of its jurisdiction to reach active state leaders from non-member states of the Rome Statute shows that official immunity is no longer a shield against criminal responsibility for international crimes. This reaffirms the principle of individual criminal responsibility in international law, which states that individuals can be held directly accountable for acts that violate international humanitarian law, regardless of their political status or structural position (Richard Falk, 2017).

Secondly, the case raises sharp debates about the limits of the ICC's territorial jurisdiction and the validity of the authority granted by entities such as Palestine that have been accepted as "State Parties" by the ICC, while challenging the applicability of the complementarity principle where Israel's national judicial system is deemed insufficiently qualified to independently and effectively investigate the alleged war crimes. Furthermore, the case is an important sign that the ICC is now entering a highly complex geopolitical territory, raising questions about the legitimacy, independence and reach of the court amid global diplomatic and political pressures (John Dugard, 2013). On the one hand, this bold step could set a strong precedent that the ICC is not only effective against actors from weak states or internal conflicts, but also against states with great military power and global influence. On the other hand, failure to follow through on these prosecutions, such as non-execution of arrest warrants or lack of international support, risks undermining the credibility of the ICC institution itself. There is therefore an urgent need to strengthen the ICC's enforcement mechanisms, expand diplomatic support from the international community, and enhance cooperation between states parties in international law enforcement.

The ICC should continue to position itself as a fair, independent and non-selective global judicial institution. The ICC needs to strengthen its investigative and

procedural capabilities to be more responsive to serious violations around the world regardless of political affiliation or strong state pressure. In addition, there needs to be an effort to strengthen the state cooperation framework so that states parties are not only symbolically committed, but also actively support the execution of ICC decisions. The Netanyahu case also opens up opportunities to revise the approach to international legal diplomacy in supporting the legitimacy of the ICC, including expanding ratification of the Rome Statute by major countries and the establishment of multilateral forums to ensure that international crimes do not lead to impunity. Normatively, this case shows that justice should not be subject to political power, and the ICC should be a beacon for universal justice not only on paper, but also in real implementation that impacts victims of war crimes around the world (Katherine, 2015).

CONCLUSION

Based on the study in this article, it can be concluded that the International Criminal Court (ICC) has a very significant role in upholding justice for international crimes, especially through the principle of command responsibility stipulated in Article 28 of the Rome Statute. The ICC has jurisdiction to investigate and prosecute individuals allegedly involved in war crimes and crimes against humanity, including high-ranking state officials such as Benjamin Netanyahu. Although Israel is not a state party to the Rome Statute, actions occurring in the Palestinian territories that have ratified the Statute provide a legitimate legal basis for the ICC to act. This shows that political power or office cannot be a shield to avoid criminal responsibility under international law.

The Netanyahu case marks an important moment in strengthening the legitimacy of the ICC as an impartial international legal instrument committed to the principle of universal justice. The investigation and issuance of an arrest warrant against Netanyahu reflect the courage and institutional integrity of the ICC in confronting global geopolitical dynamics. Nevertheless, the effectiveness of law enforcement by the ICC still depends on the cooperation of State Parties and the international community's willingness to consistently uphold the principle of non-impunity. This case sets a strong precedent that power must not override the principle of accountability, especially in the context of armed conflict and serious human rights violations.

As an international judicial institution, the ICC must continue to strengthen its position and capacity in addressing international crimes, without being influenced by political pressure from powerful states. One strategic step it can take is to expand international support for its jurisdiction, including through legal diplomacy to encourage more countries to ratify the Rome Statute. In addition, the ICC must also improve its enforcement system by establishing more concrete cooperation mechanisms with international organizations, State Parties, and independent monitoring bodies to ensure the effective implementation of justice on the ground. To prevent the recurrence of similar crimes in the future, broader education on international humanitarian law is needed among military personnel, civilians, and political leaders. ICC member states must also enhance their commitment to cross-

border cooperation in the arrest and prosecution of international criminals. In particular, the international community must support the ICC's actions in the Netanyahu case as proof that no power is above the law. Only through decisive and collaborative measures can international justice be truly and comprehensively realized.

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