



THE CRITICAL ANALYSIS OF COMMAND RESPONSIBILITY AND THE RWANDA GENOCIDE

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ABSTRACT

International Criminal Law is that branch of law that consolidates a coherent set of law regulatory norms that deal to govern with International crimes such as war crimes, crimes against humanity, genocide, and crimes of aggression, and preferably is an established set of conduct that regulates mass destruction, criminal prosecutions and atrocious crimes which are heinous and involves criminal accountability to commit grave offenses and necessitate the serious violations of the principles of International Law and substantive provisions of Customary International Law and contravene the statutes of International Criminal Court and Geneva Convention. These International criminal practices are highly brutally unlawful and precarious and categorically inflict grievous injury and destructively cause harm to the members and citizens of the International Community subsequently, in these criminal intricacies the war-crime perpetrator, and criminal prosecutors are liable for crimes committed by their subordinate members or commanding army officers, and the International conflicts is termed to be as "Command Responsibility". The international legal doctrine is codified under the applicable code of International Criminal Law which provides the regulatory process of approving permission of military commanders of serious atrocities committed during war-crime and perpetrated by their subordinates. This doctrine is known as the 'Doctrine of Command or Superior Responsibility' that vitally interprets that civilian and military commanders shall be held accountable for the criminal deeds and atrocious course of actions to which their subordinate member gravely commits or necessarily practices. In a broader context, criminal atrocities or genocide crime is an international form of crime, perpetrator to the general killing of humans and stimulating grave consequences of causing serious bodily injury and illicitly discriminates people on the grounds of nationality, religion,

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ethnicity, or caste systems and violates the genesis of humanity and universal peace. Substantiating these genocide crimes, the controversial case is of Rwanda where the Genocide occurred in 1994 the case of Rwandan Genocide involved mass destruction, killing, and murder of more than 800,000 Rwandans who were gravely injured and slaughtered by army soldiers or war-crime perpetrators in a state-sponsored genocide with a special target of ethnic groups of Tutsi. Instead of the genocide and criminal atrocities, the proposed article will widely emphasize the comprehension of the Genocide in Rwanda and will stimulate the doctrinal aspects of Command Responsibility. Therefore, this Article is a critical assessment of Command Responsibility and the Rwanda Genocide, and that will critically examine the nuances of the doctrine and comprehension of the Rwandan Case with a comparative analysis of Genocide Crime.

Keywords: Criminal Liability, Deliberate killing, Subordinates, Superior Responsibility.

INTRODUCTION

In the global realm under the ambit of International Criminal Law, the fundamental core crimes that were internationally committed are war crimes, genocide, crimes against humanity, and crimes of aggression. These crimes are commonly referred to as serious violations of the treaties of law of war that led to criminal responsibility for the cause of armed conflict. In contradiction to this international criminal practice, the principle of command responsibility is an international legal doctrine that provides that commanders have absolute freedom for the criminal liability committed by their subordinates and are accountable for the war crimes committed by their subordinates. The principle was primarily codified in the Hague Conventions of 1899 and 1907.

On subsequent connotations, genocide refers to the sole destruction of a group of people on grounds of nationality, ethnicity, religion, and caste system and the prominent form of genocide is in Rwanda. The Rwanda Genocide of 1994 is also called as Genocide against Tutsis in Rwanda and the members of the Hutu ethnic majority. It refers to the mass slaughter of the ethnic Tutsi and politically moderate Hutu people and the international mass killing occurred in the initial month of the year 1994 and existed its continuance for about 100 days. This international genocide is predominantly was heinous and major grave atrocities were carried out by Hutu militia group, along with the state government of Rwanda and its army, and conceived by Rwanda's majority Hutu population who had a deliberate plan to kill minority the

majority population the Tutsis group of people. It is the worst form of genocide in the world which involves the deliberate killing of around 800,000 Tutsi ethnic Rwandas by the Hutu extremist groups the Rwanda Patriotic Fund is a politically originated party followed by the Rwandas that launched the major civil war in 1990 and ended the Rwanda genocide of 1994. Well, to critically summarize the international genocide crime, the paper will manifest on the command responsibility and the historical background of the case of the Rwanda Genocide.

COMMAND RESPONSIBILITY

In the subset of transnational felonious law, the doctrine of command responsibility provides that a service or a superior leader is primarily held liable for felonious responsibility when his inferiors commit transnational crimes or undergo transnational war crimes. The doctrine is also known as superior responsibility and is part of customary transnational law and has been incorporated into the bills of the transnational felonious bars and the Rome Statute of the International Criminal Court.¹The superior incurs felonious responsibility for failing to have averted felonious acts committed by his inferior members and is a crime of elision. As the superior may be solely held criminally responsible, the doctrine provides the introductory principles of felonious law, in particular the principle of individual guilt. Felonious law rests on the idea of free mortal agency, inferring that the indicted can act in conformity with the fairly and innocently desirable norm and he knows about the futuristic converse of consequences. The doctrine of command responsibility comprises colorful constituent rudiments including power and agency, and the elision that triggers felonious responsibility. They relate to the connection of command responsibility to mercenary elders and in non-international fortified conflicts, bandy its relationship with other generalities of felonious liability, and bear on the doctrine's event and interpretation by the ICC and internal or domestic authorities.

LEGAL INSTRUMENT

Illustrating the transnational legal frame of the doctrine of command responsibility, it has been correctly codified under Composition 28 of the Rome Statue- Responsibility of Commanders and Other Elders. Under this provision, military commanders are held criminally responsible for crimes committed by fortified forces under their effective command and control, similar to

¹ ECCHR, 'European Centre for Constitutional and Human Rights < <https://www.ecchr.eu/en/glossary/command-responsibility/> > accessed on 18 November 2023

rape and any sexual violence used in war. This applies to cases where the superior knew or should have known about similar crimes, or failed to take all necessary and reasonable measures to help their commission. The crimes committed by the fortified forces must have been a result of the failure of the commander to duly exercise control over them. In addition, there must be substantiation beyond any reasonable mistrustfulness that the commander is responsible and the crimes were sufficiently wide so that it's apparent that they passed during the ordinary perpetration of the military action for which the commander is responsible.

THE RWANDA CASE

In the intercourse of transnational war crime, the genocide committed in Rwanda is the most incorrect crime, largely atrocious, and the worst form of transnational genocide largely committed in the transnational community, targeting ethnical groups and innocent civilians. The genocide is largely married to destroy and butcher innocent populations and disrupt transnational security and peacekeeping operations. The genocide condemns that the major ethnical groups in Rwanda are the Hutu and the Tutsi, independently graphing the rate for further than four-fifths and about one-seventh of the total population of Rwanda.² Social differences between the Hutu and the Tutsi traditionally were profound, with a strong pastoralist tradition, gaining social, profitable, and political ascendance over the Hutu, who were primarily cultivators. During the social period, Germany and latterly Belgium assumed that race could be easily distinguished by physical characteristics and also used the ethnical differences set up in their own countries as models to produce a system whereby the orders of Hutu and Tutsi were no longer fluid. The German social government, begun in 1898 and continuing until 1916, pursued a policy of circular rule that strengthened the ascendance of the Tutsi ruling class and the dictatorship of its monarchy.³

HISTORICAL BACKGROUNDS

Instead of the literal frame of the transnational genocide of Rwanda, it contains three major ethnical groups videlicet- the Tutsi, the Hutu, and the Twa. The Hutu are the largest ethnical group forming 85 of the population also, the next largest ethnical group is the Tutsi, who comprise about 14 of the population in the moment's transnational scripts and the Twa people are a small nonage

² Britannica, ' Rwanda Genocide of 1994' < <https://www.britannica.com/event/Rwanda-genocide-of-1994> > accessed on 18 November 2023

³ BBC News, ' Rwanda Genocide: 100 days of Slaughter' < <https://www.bbc.com/news/world-africa-26875506> > accessed on 18 November 2023

but they're an indigenous lineage who substantially live a traditional life as nimrods and gatherers. In the late 1800s, Germany settled in Rwanda. During the phase of World War I, Rwanda was taken by the Entente powers and transferred to Belgium, remaining a Belgian colony for several decades. The European social governments enforced an age-old system to cement their hold on Rwanda and enforced the policy of peak and conquer which created an atmosphere of resentment among the maturity of the Tutsi nonage population units.⁴ During the phase of 1950s, Belgium's hold an fresh power in Rwanda began the direction to slip, and due to this grave violence broke out in 1959 when the Tutsi king was overthrown in the battleground and numerous Tutsi people fled Rwanda, driven out by the trouble of violence or act of committing violent crimes. In 1973, General Juvenal Habyarimana seized the critical power and meanwhile, expatriated Tutsi people in Uganda began to organize a new political movement aimed at overthrowing Habyarimana. In 1990, the RPF raided Rwanda, sparking the Rwandan Civil War and as part of the government's war trouble, it organized Hutu regulars and inculcated a strong sense of review and abomination among them directed against the Tutsi population. Fighting continued until it broke in 1993 because of a fragile peace accord. In 1994, the Hutu government controlled the utmost of the country, though the RPF had some control. Government propaganda, still, denigrated Tutsi people as cockroaches, over radio broadcasts. To the south directions, an analogous transformation played out in Burundi, which had an analogous ethnical composition to Rwanda.⁵ In 1993, the first Hutu chairman of Burundi and the Hutu maturity launched butcheries against the Tutsi nonage, killing about 100,000. Hereafter, the situation was precarious and led to several other transnational war crimes and genocides.

BEGINNING OF GENOCIDE

On the arbitrary evening of April 6, 1994, an airplane carrying the Rwanda premier and Burundian was shot down over the field of Kigali, thereby destroying everyone on board. Although the identity of the person or group who fired upon the airplane has noway been conclusively determined the Hutu crazies were firstly allowed to be criminally responsible for the genocide crime of Rwanda and on the ultimate passage of time, there were allegations that RPF leaders were criminally responsible and were behind the atrocious attack. The organized payoff of Tutsi and moderate Hutu began that night, led by Hutu crazies. Also, a moderate

⁴ Britannica, ' Rwanda Genocide of 1994' < <https://www.britannica.com/event/Rwanda-genocide-of-1994> > accessed on 18 November 2023

⁵ History, ' Rwanda Genocide ' < <https://www.history.com/topics/africa/rwandan-genocide> > accessed on 18 November 2023

Hutu, was assassinated the coming day and the murder was part of a crusade to exclude moderate Hutu or Tutsi politicians, with the thing of creating a political vacuum and therefore allowing for the conformation of an interim government of Hutu crazies who latterly would be linked as having played a significant part in organizing the genocide.⁶

On the posterior passage, the coming many months saw a dynamic surge of lawlessness and mass killings, in which the army and Hutu host groups known as the Interahamwe and Impuzamugambi laboriously contributed to the genocide and played a central critical part in the due course of atrocity. Radio broadcasts further fueled the genocide by encouraging Hutu civilians to kill their Tutsi neighbor groups, who were appertained to as " cockroaches " who demanded to be canceled. Mathematically, it's estimated that some 200,000 Hutu shared in the genocide, although some were unintentional and accordingly were forced to do so by the army and Hutu host groups. The styles of killing were generally brutal and involved extreme atrocity. Still, by the end of April 1994, the Tutsis force regrouped and drove out the Hutu Militia and the Rwanda army into the neighboring Zaire.

The transnational legal body, known as the United Nations had formerly the functional mechanisms of peacekeeping operations in the country for a monitoring peace charge rather known as the United Nations Assistance Mission for Rwanda or UNAMIR. On April 21, as the extremity strengthened, the UN suggested reducing UNAMIR's presence in the country from 2,500 colors to 270. That putatively incomprehensible troop reduction at a time when the backing was plaintively demanded was embedded in similar factors as the charge's accreditation, which needed an effective check-fire to be in place, and the incapability of the UN to find further colors to bolster the charge, which it felt had formerly been stretched too thin to have a significant impact on the situation. The RPF had rejected the legality of the Hutu revolutionist interim government inaugurated in April and proceeded to fight also, by April 12, RPF colors had raided the outskirts of Kigali. The RPF was successful in securing the utmost of the country by early July, taking Kigali on July 4. Extremist Hutu leaders, including those of the interim government, fled the country. A transitional government of public concinnity was established on July 19, with Pasteur Bizimungu, a Hutu, as chairman and RPF leader Paul Kagame, a Tutsi, as vice chairman. And hereafter, the genocide crime had come to an end.⁷

⁶ World Without Genocide, ' Rwanda Genocide ' < <https://worldwithoutgenocide.org/genocides-and-conflicts/rwandan-genocide> > accessed on 19 November 2023

⁷ USC Shoah Foundation, ' Genocide Against Tutsi in Rwanda ' < <https://sfi.usc.edu/collections/rwandan> > accessed on 19 November 2023

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR)

In accord with the transnational legal instrument, the ICTR shortened as the International Criminal Tribunal for Rwanda was transnational in composition and was located in Arusha, Tanz. The bench wasn't empowered to put capital discipline and it could put only terms of imprisonment.

The governing enactment of the ICTR defined war crimes astronomically as murder, torture, expatriation, and servility and that were subject to execution, but the ICTR also stated that genocide included “ subjugating a group of people to a subsistence diet, methodical expatriation from homes and the reduction of essential medical services below minimal demand, minimizing fiscal or capital earnings, rape of women and girl child and brutal abuse and sexual importunity among the women populations. ” The bench therefore was among the first transnational legal bodies to formally fete sexual violence as a war crime.

The enactment of the ICTR limited the governance of the bench to Rwandan leaders and recusant groups, while lower-position defendants were to be tried in domestic courts. The ICTR enactment didn't primarily consider the sanctioned status of an individual, including his powers, functions, and position as head of state, to be a sufficient cause for avoiding or escaping felonious guilt. Military and mercenary leaders who enthralled central positions have known that their inferiors were committing war crimes that were subordinated to execution under the doctrine of command or superior responsibility. Also, individuals who had committed war crimes under government or military orders weren't thereby relieved of felonious liability, though the actuality of the orders could be used as a mitigating factor.⁸ After expansive executive and logistic detainments or specialized dislocations, the ICTR completed its first transnational felonious cases in 1998. In May, former Rwandan high minister Jean Kambanda contended shamefaced to six charges of genocide and was doomed to life imprisonment eventually in October 2000 Kambanda tried to drop his shamefaced plea, but his star was rejected by the ICTR.

AFTERMATH OF THE CASE

In the fate of the International genocide, Rwanda posed with serious mass atrocity and multitudinous circumstances and worldwide challenges. Utmost survivors of the war crime were in

⁸ International Justice Resource Centre, ‘ ICTR ‘ < [https://ijrcenter.org/international-criminal-law/ictr/](https://ijrcenter.org/international-criminal-law/ict/) > accessed on 21 November 2023

critical need of essential medical care installations and were either homeless or stressed about returning home and living next to the people who canceled their lives and boggled their families. The genocide left thousands of orphans, numerous of them with no surviving family members. Because of wide genocidal rape, thousands of women were HIV positive, with no access to proper drug services. The political system was poorly destroyed, there were extreme fiscal dilemmas and also the judicial system didn't lead its actuality. The recusant army that ended the genocide – the RPF – assembled a government and has been the ruling party since 1994.⁹

Also, hundreds of thousands of people shared in the payoff – but no coffers were to document the crimes, try the indicted in court or maintain sufficient captivity space to accommodate all perpetrators. In response to these challenges, the United Nations established the International Criminal Tribunal for Rwanda (ICTR), which doomed 62 of the biggest perpetrators between 1994 and 2012. Rwanda also established public courts to try the engineers of genocide and original courts called gacaca to discipline lower-position perpetrators and original merchandisers. Rwanda has addressed these requirements in colorful ways, but reconstruction is ongoing. Thus, in trouble to forge a new, inclusive, public identity, race was removed from identity cards and the use of ethical terms in political converse is now illegal and was encyclopedically honored.¹⁰

CASE STUDY

The Prosecutor V Jean Kambanda

In this illustrative legal case reference, Jean Kambanda was the accused of the present case and the former Prime Minister of Rwanda. In 1998, Jean pleaded guilty to committing the act of genocide and crimes against humanity, and Trial Chamber I of the ICTR promptly sentenced him to life imprisonment, he raised an appeal against that sentence but in a later passage, he requested that his guilty plea be necessarily quashed and hence he stand trial. Then, Kambanda argued before the Appeal Chamber that he had not been extended proper legal mechanisms and the lawyer of his competent necessity and that even when he finally did receive legal representation the assignment of the lawyer was influenced by the Prosecution and pointed out that, for a while, Kambanda had crucially refused any legal representation even in

⁹ Britannica, ' Rwanda Genocide of 1994' < <https://www.britannica.com/event/Rwanda-genocide-of-1994> > accessed on 22 November 2023

¹⁰ BBC News, ' Rwanda Genocide: 100 days of Slaughter' < <https://www.bbc.com/news/world-africa-26875506>> accessed on 22 November 2023

circumstances where he was individually stated that the due interest in justice had to be represented by the counsel.¹¹

The Appeals Chamber dismissed all the basic grounds that were advanced by the Accused and upheld his sentence. In 1998, Kambanda pleaded guilty to several crimes namely, genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, complicity in genocide, and crimes against humanity. Subsequently, the accused pleaded state immunity, which was struck by ICTR, and as a result, the Appeals Chamber also dismissed the grounds challenging the sentence imposed on the accused, and henceforth the Chamber upheld the sentence of life imprisonment.¹²

LEGAL RECOMMENDATIONS

Under the regulatory code of International Criminal Law, the legal intricacies of international war crime coherently determine that the principles of subordinate relationships are a hierarchical establishment of international war crimes wherein the military officer and a civil officer are criminally accountable for the atrocity committed by his fellow subordinate members. The international legal doctrine necessarily imposes a definite set of procedures and strict liability that there is a superior-subordinate relationship and that a superior has sufficient grounds to know that the subordinate was about to commit crimes or practice atrocious means and in a circumstance where the superior failed to implement the reasonable measures to refrain such heinous acts or to severely punish the criminal offender. During the phase of late 19th century, the legal principle is largely based on the Lieber Code, and during the 20th century, the widespread legal development of the doctrine is presented in the Nuremberg Trial.

Further, the intricate dynamics of international crimes also exemplify that the genocide of Rwanda has globally proved to be the worst form of genocide crime, in which mass killing was a common criminal proceeding between the groups and created destruction, systematic killing, and brutal forces in Rwanda. In consonance with the Rwanda genocide, Tutu's groups occupied a higher social position and the Hutu group had a lower status, however during the late 1950s, the former colonial power, Germany lost possession of Rwanda during the First World War and the 1950s great wave of decolonization, tensions increased in Rwanda. The Hutu group of

¹¹ International Crimes Database, ' Jean Kambanda V The Prosecutor ' < <https://internationalcrimesdatabase.org/Case/147/Kambanda/> > accessed on 22 November 2023

¹² Oxford Public International Law, ' Prosecutor V Kambanda ' < <https://opil.ouplaw.com/display/10.1093/law-icl/833ictr98.case.1/law-icl-833ictr98> > accessed on 22 November 2023

movement, which stood to gain from majority rule, was acquiring a significant position while the domain of the Tutsi establishment resisted democratization and the loss of their acquired privileges. Henceforth, it has been legally recommended that from April through June 1994, more than 800,000 Rwandas were brutally slaughtered by fellow citizens in a state-led genocide targeting the Tutsi ethnic group therefore Rwanda Genocide is the world's most heinous crime, and posed several adverse challenges for the Rwanda Populations and International Community as a whole, to severely determine the war crime, genocide and crime against aggression.

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