

Perpetrators' Ignorance, Public Ignorance, and Victims' Rights in Resolving a Global Conflict

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Abstract: *Background of the study:* Ignorance of international law will be severe because the perpetrator does not realize that the act is an international crime. It impacts victims' rights due to the local community's unawareness. *The aims and objectives:* To increase awareness of the importance of understanding international law and its consequences at all levels of the general public. *Methods:* Research design through a literature study and case study approach to finding patterns of challenges used to determine effective strategies for overcoming ignorance of international law. *Results:* The difference between national and international laws is a factor in the ignorance of criminals, characterized by a knowledge gap in society regarding international issues. Holding open forums by international institutions is one means of improving communication between countries and understanding international law. *Conclusion:* Ignorance of international law results in injustice in victims' rights.

Keywords: Ignorance of International Law; International Crime; International Legal Communication; International law enforcement

1. Introduction

In 1998, the UN opened the Rome Statute agreement, which was adopted by 120 countries and became the foundation for the establishment of the International Criminal Court (ICC), which came into effect on July 1, 2002, in The Hague, Netherlands, to try suspects who committed war crimes, genocide and crimes against humanity. It occurs in a country party to the Rome Statute or the perpetrator's country of origin, a member of the Rome Statute.[1] Based on the Rome Statute, acts that constitute war crimes are torture, hostage-taking, corporal punishment, mutilation, rape, execution without trial, and terrorism. In contrast to crimes against humanity, acts that fall into this category are aggressive and systematic attacks on civilians, such as deportation, murder, and rape. Actions that constitute the category of genocide are destroying certain groups, such as national, religious, or ethnic groups.[2]

ICC member countries should draft domestic laws based on the foundations of international law designed in the Rome Statute, thereby allowing ICC member countries to apply domestic jurisdiction to prosecute international crimes, which can strengthen the country's criminal justice system. Thus, the ICC is not a substitute for domestic courts but an independent institution used as a last resort in adjudicating international crimes if domestic courts cannot handle them using the complementary principle.[3] It can be said that communication between the International Criminal Court (ICC) and domestic courts is essential in strengthening international and national law in the mission to create global peace.

This study aims to increase awareness at all levels of the general public about the importance of understanding international law and its consequences. It seeks to take concrete steps in fighting for knowledge of international law to prevent international crimes. This study also highlights the challenges in disseminating international legal expertise and the efforts of international organizations to overcome them.

2. Literature Survey

Thomas Lubanga Dyilo was a war crimes perpetrator who was first tried by the International Criminal Court (ICC) for recruiting and requiring military service for minors aged 15 years to participate in hostilities in the Ituri region, Democratic Republic of the Congo. Thomas Lubanga was sentenced to 14 years on July 10, 2012.[4] This action reportedly reached 427 victims with reparation costs of US\$3.4 million. However, after the judge calculated the proportion of losses caused by this action, the judge decided that Thomas Lubanga had to pay an additional US\$6.6 million. Hence, Thomas Lubanga had to pay US\$10 million.[5] International Criminal Court (ICC) judges allowed victims to participate directly in the trial process for as many as 129 victims.[6]

This action is a crime which is stated in the Rome Statute Article 8(2)(e)(vii) which reads "Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;" [7] This case became controversial because there was a view from the defense in Lubanga that conscription was a process of integrating a person as a soldier in the context of an armed conflict to participate in hostilities on behalf of the group involved actively. Thus, the recruitment of children for military service is in the process of integration into the army structure, which is a way for individuals to participate in the conflict on behalf of the group involved and not depend on any status later in life. It means that children are not recruited to be included directly in combat.[8]

During the trial, the defense attorney in the Lubanga case stated that the suspect was not aware of the prohibition on registration and conscription for children under the age of 15 because, according to him, the implementation of the Rome Statute into domestic law was not communicated to the general public at large, which resulted in Lubanga not being aware of his actions. However, the Pre-Trial Judge rejected this argument because the violation had been agreed to as the foundation of international law before Lubanga's actions

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occurred.[9] This rejection is based on international law adhering to the *ignorantia juris non excusat* principle. This principle means that someone must be made aware that their actions violate the law or can be said to be ignorant of it. Ignorance of the law will still be held accountable in court because this principle assumes that every person knows the applicable law, and it is an individual's responsibility. Ignorance of the law is always related to *mens rea*, namely purpose, recklessness, negligence, and knowledge.[10]

3. Problem Definition

This research presents the impact of international legal ignorance in resolving a particular international conflict and the relationship between the ignorance of perpetrators and victims' rights due to the lack of widespread dissemination of international legal knowledge to the general public. This study also presents the inhibiting factors in disseminating international legal expertise to the broader community and efforts to address them. This study is hoped to inspire the entire international community to contribute to increasing awareness of international law and to take concrete actions to address ignorance to create justice and uphold international law. The following are the problem formulations of this research:

- 1) What is the impact of a lack of knowledge about the provisions of international law in resolving a global conflict?
- 2) What is the relationship between perpetrators' ignorance of the provisions of international law and victims' rights?
- 3) What are the challenges in disseminating knowledge about international law among the general public?
- 4) What efforts can international organizations make to increase knowledge and practical communication about the provisions of international law to their member countries?

4. Methodology / Approach

This research design uses a literature study and case study approach related to international crime cases where the perpetrator is unaware or does not know that his actions constitute an international crime violation, the challenges in disseminating knowledge of international law, and how to overcome them. Researchers also conducted a comparative analysis by comparing the challenges of various countries in disseminating international legal expertise to their communities and understanding the pattern of challenges these countries face. This pattern of challenges can be used to determine effective strategies designed by a country to overcome ignorance of international law.

5. Results & Discussion

5.1 The impact of a lack of knowledge about international law in resolving an international conflict

International law is decentralized based on agreements or negotiations between countries that act rationally to maximize the interests of their respective countries so that they must be complementary and mutually beneficial. Thus, international law is often ambiguous because a country's interests depend on the preferences of its leaders.[11] Diverse interpretations

make it challenging to reach mutually beneficial and complementary agreements and understand international legal rights and obligations.

Conflict countries often suffer from the influence of cruel elites, rulers, officials, and leaders to gain their benefits. Thus, a weak court system or lack of knowledge regarding international law will fail to deal with such acts, so people do not realize that their rights are being "deprived" because they are used to weak or dysfunctional institutions. A justice system that can be said to be weak has the characteristics of an outdated legal framework, essential management and administration that needs to function better, inadequate material resources, and a lack of trained personnel.[12] Creating justice that is as fair as possible requires substantial skills, values, knowledge, and strength to reform the system and make it fairer.[13]

For example, in the case of Omar al-Bashir, the South African national judiciary did not arrest the President of Sudan, Omar al-Bashir, in 2015, and the national judge did not report it to the United Nations Security Council, which then had the ICC investigate the case. Thus, the judges denied justice for the victims of Darfur. The judges said they did not want to cooperate with the ICC because they argued it grants immunity to heads of state. This opinion is contrary to the obligations of the Rome Statute to arrest perpetrators of international crimes, which apply to anyone. The ICC told South African judges that international legal immunity had been replaced by UNSC Resolution 1593, under which heads of state could be held accountable for crimes they committed.[14]

5.2 The relationship between the perpetrator's ignorance of the provisions of international law and the rights of the victim

Ignorance of the law causes people to be unaware that criminal acts are occurring in their environment.[15] Thus, these acts tend not to be reported, or efforts are not made to seek help to stop them because society does not pay attention to the suffering experienced by the victims. Unawareness of victims' rights also affects support for international law enforcement efforts and humanitarian assistance to victims.

For example, in Rwanda, many people are unaware that criminal acts are developing in their environment, creating a sense of security for perpetrators to carry out these acts. Violations such as human trafficking require active participation from victims, with victims from marginalized levels not knowing they have the right to resist such exploitation and obtain legal protection. Perpetrators can also carry out terrorism by recruiting victims who are poor and unemployed so that these victims do not know that they have committed a crime.[16]

Unawareness of victims' rights is also a severe problem in cases of international crimes such as acts of genocide. In 1994, in Rwanda, there was a genocide that carried out mass actions in Kigali within three months, the perpetrators killed around 800,000 people, most of whom were Tutsi, and it was reported that 250-500 thousand Tutsi women were raped during the genocide. Officials provided perpetrators with

money, drugs, drink, and food and removed opponents of the act. This caused more than 2 million Hutu people to leave Rwanda and take refuge in Congo.[17] The perpetrators of the genocide did not realize that their actions violated international law because, at that time, Rwandan law did not yet recognize genocide as a crime.[18] Based on articles 5 and 6 of the Rome Statute, genocide is an international crime whose perpetrators must be tried in court.[19] The lack of Rwandan law at that time regarding the denial of acts of genocide resulted in many victims not receiving justice, compensation, and reparation for the suffering they experienced.

5.3 Challenges in disseminating knowledge about international law to the general public

Countries' views on international organizations such as the International Criminal Court (ICC) can be challenging in disseminating knowledge of international law to the broader community. Several countries see the ICC as a threat to state sovereignty because the government cannot determine its fate, or it is considered that the ICC is interfering in domestic affairs, which is not to the principle of state sovereignty.[20] Doubts and concerns from countries regarding the legitimacy of international organizations such as the ICC have the potential to provide no support for disseminating knowledge about international law to their communities. This doubt can also affect the quality of communication between international law and domestic law, resulting in the potential for ignorance of international law among the public, such as the case of the Rwandan genocide.

Disseminating knowledge about international law requires cooperation with various countries to ensure that information can be conveyed well to the general public. However, some countries lack the financial means to provide adequate training to domestic law enforcement agencies to investigate international criminal acts further. This has resulted in many countries with law enforcement agencies needing more training and experience to investigate complex international crimes. Apart from that, the low prosecution and punishment of perpetrators in a country also influence the knowledge and expertise of law enforcement in that country.[21] Meanwhile, disseminating information about international law to the public widely and effectively requires institutions with a lot of training and experience in international law.

Surveys conducted by the Council on Foreign Relations (CFR) and the National Geographic Society (NGS) indicate a need for more knowledge about world affairs among American adults.[22] This means more public awareness and attention to international issues. Lack of attention from the public will be a challenge in disseminating international legal knowledge because, without an adequate understanding of international law, the public will experience difficulty identifying complex international crime issues.

5.4 Efforts that international organizations can make to increase knowledge and effective communication regarding international legal provisions to their member countries

Member States party to the Rome Statute will hold a meeting agenda at least once a year to determine the policy and general administration of the Court of Justice, review activities in specific periods established by previous Member States, discuss issues relevant to the role of the International Criminal Court (ICC) to increase collective understanding of the obstacles and potential in international law enforcement, and discuss current projects and design the annual budget for global law enforcement.[23] This is done by international institutions such as the ICC to increase knowledge and communicate effectively with its member countries.

International law is created based on cooperation between various countries, which collect legal cases and practices from each country with the principle of mutual benefit. This means that international law is interconnected and not bound by centralized agreements but rather strengthens reciprocal practices. However, the principle of mutual benefit is an essential foundation in forming international law. This can create legal uncertainty due to the need for more transparency. International institutions have a role in reducing this uncertainty because they can develop mutually beneficial cooperation between countries through negotiations to achieve transparency and make it easier for global institutions to monitor the government against its commitments.[24]

This negotiation process not only creates transparency and government compliance with its commitments but also increases understanding of the principles of international law among countries by holding open dialogue forums between member countries that facilitate discussion, exchange of information, and monitoring of commitments made by the countries concerned. This open dialogue forum can also help with international legal training and education for government officials, which can be implemented in their domestic judiciary so that global and domestic law will become more assertive in enforcing international crimes.

6. Conclusion

Ignorance of international law creates people's unawareness about crimes occurring in their environment, which results in injustice for victims because the community does not recognize their rights, so law enforcement is hampered. Countries' views of the ICC and gaps in public knowledge of information make disseminating knowledge of international law difficult. Open forum meetings with member countries held by the ICC are an effort to increase awareness and understanding of international crimes. There are several suggestions from the author that need to be taken to overcome ignorance of international law, including:

- 1) Governments should update their national laws in line with international legal standards to minimize criminal acts of ignorance.
- 2) The government provides education about international law at school and college levels to increase public awareness about international crimes.
- 3) The government conducts training programs using languages understood by local communities, especially in places without internet access, to increase awareness and understanding of international law.
- 4) International institutions must ensure that knowledge of international law can be properly channeled to the

general public through their member countries and carry out evaluations when the meeting agenda is presented.

7. Future Scope

This research focuses on the impact of ignorance on the part of criminals, which influences injustice for victims and hinders international law enforcement. In the future, the scope of this research can be expanded by analyzing the effectiveness in minimizing the ignorance of perpetrators with a country's initiative to update the country's national laws by international legal standards to ensure justice for victims of violations of international law.

References

- [1] ICC. 'Joining the International Criminal Court,' p.3. 2018. [Data File]. Available: <https://www.icc-cpi.int/sites/default/files/Joining-Rome-Statute-Matters.pdf>. [Accessed April 29, 2024].
- [2] Government of the Netherlands 'The International Criminal Court (ICC).' [Online]. Available: <https://www.government.nl/topics/international-peace-and-security/international-legal-order/the-international-criminal-court-icc>. [Accessed April 29, 2024].
- [3] ICC. 'Joining the International Criminal Court,' p.11. 2018. [Data File]. Available: <https://www.icc-cpi.int/sites/default/files/Joining-Rome-Statute-Matters.pdf>. [Accessed April 29, 2024].
- [4] ICC. "Lubanga Case". 2006. [Online]. <https://www.icc-cpi.int/drc/lubanga>. [Accessed April 29, 2024].
- [5] Redress "ICC Appeals Chamber confirms Lubanga's liability for US\$ 10 million in reparations to war victims". 2019. [Online]. Available: <https://redress.org/news/icc-appeals-chamber-confirms-lubangas-liability-for-us-10-million-in-reparations-to-war-victims/>. [Accessed April 29, 2024].
- [6] Cole, Alison, and Kelly Dawn Askin. "Thomas Lubanga: War Crimes Conviction in the First Case at the International Criminal Court." *American Society of International Law*, p.2, 2012.
- [7] International Criminal Court. "Rome Statute of the International Criminal Court." 1998. Article 8(2)(e)(vii).
- [8] Graf, Roman. "The International Criminal Court and Child Soldiers: An appraisal of the Lubanga judgment." *Journal of International Criminal Justice* 10(4), p.968, 2012.
- [9] Marchuk, Iryna. "The Fundamental Concepts of Crime in International Criminal Law: A Comparative Law Analysis." Springer Heidelberg New York Dordrecht London, pp. 273–274, 2014.
- [10] Asa, Simplexius. "Examining the Principle of Ignorantia Facti Excusata, Ignorantia Iuris Non Excusata In the Corruption Case Nizzadro Fabio." *Indonesia Law Review* 13(1), p.77, 2023.
- [11] Goldsmith, Jack, and Eric A. Posner. "The Limits of International Law Fifteen Years Later." *Chi. J. Int'l L.* 22, pp.114–115, 2021.
- [12] Lyday, Corbin, and Jan Stromsem. "Rebuilding the Rule of Law in Post-Conflict Environments." *United States Agency International Development*, pp.5–6, 2005.
- [13] Varghese, Femina P., Tania Israel, Guy Seymour, Rachel Becker Herbst, Lauren G. Suarez, and Candice Hargons. "Injustice in the justice system: Reforming inequities for true "justice for all."" *The Counseling Psychologist* 47(5), p. 682, 2019.
- [14] ISS Africa. "The real problem behind South Africa's refusal to arrest al-Bashir". 2017. [Online]. Available: <https://issafrica.org/iss-today/the-real-problem-behind-south-africas-refusal-to-arrest-al-bashir>. [Accessed Apr. 29, 2024].
- [15] Roks, Robert A., Edwin W. Kruisbergen, and Edward R. Kleemans. "Walls of silence and organized crime: a theoretical and empirical exploration into the shielding of criminal activities from authorities." *Trends in Organized Crime*, p.9, 2022.
- [16] The National Public Prosecution Authority (NPPA). "ANALYSIS OF CAUSES OF CRIMES, CHALLENGES, AND PREVENTION STRATEGIES IN RWANDA." *Rwanda National Police*, p.117, 2016.
- [17] History. "Rwandan Genocide". 2013. [Online]. Available: <https://www.history.com/topics/africa/rwandan-genocide>. [Accessed May. 05, 2024].
- [18] Jansen, Yakaré-Oulé. "Denying genocide or denying free speech? A case study of the application of Rwanda's genocide denial laws." *Nw. UJ Int'l Hum. Rts.* 12, p.205, 2014.
- [19] International Criminal Court. "Rome Statute of the International Criminal Court." 1998. Articles 5 and 6.
- [20] Cryer, Robert 'International criminal law vs state sovereignty: another round?' *European Journal of International Law* 16(5), p.986, 2005.
- [21] UNODC. "Challenges to an Effective Criminal Justice Response". 2019. [Online]. Available: <https://www.unodc.org/e4j/en/tip-and-som/module-9/key-issues/challenges-to-an-effective-criminal-justice-response.html>. [Accessed May. 05, 2024].
- [22] CFR. "Americans Lack Knowledge of International Issues Yet Consider Them Important, Finds New Survey." 2019. [Online]. Available: <https://www.cfr.org/news-releases/americans-lack-knowledge-international-issues-yet-consider-them-important-finds-new>. [Accessed May. 05, 2024].
- [23] ICC. "Understanding the International Criminal Court". 2020. [Data]. Available: <https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf>. Page 10. [Accessed May. 01, 2024].
- [24] Keohane, Robert O. "International institutions: Can interdependence work?" *Foreign policy*, pp.85–86, 1998.

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