



War Crimes In Palestine From The Perspective Of The International Criminal Court (ICC)

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ABSTRACT

The purpose of this study is to find out what becomes the main considerations of an entity recognized as a state by law war crimes from an International Criminal perspective Court (ICC) . Types of research used in this study is juridical normative, with the approach of legislation, case study, and historical approach. The results of this study Article 1 of the montevidio Convention states that there are four criteria that must be met by a new state to become a sovereign state, namely; the existence of a permanent population, Territory, government, and the capacity of the state as a support in relations with other countries. There is also a recognition of a state that is divided into two forms, namely de jure recognition and de facto, Palestine has been recognized de jure because in its practice as evidenced by conducting international agreements with several countries. The ICC has four types of jurisdiction: personal, criminal, temporal and territorial. Pleased that we can return to the automatic principle of locus delicti that Israel commits war crimes in the Palestinian territories and supported by the jurisdiction of the court, then the ICC is more than enough to judge Israel using the jurisdiction of the automatic principle contained the Rome statute of 1998. The unwilling and unable criteria can be extended by Article 13 of the 1998 Rome Statute, which states that the ICC has three powers to investigate international crimes, if there is a conviction that one or all of the parties committed international crimes in accordance with Article 5 of the 1998 Rome Statute.

INTRODUCTION

State sovereignty in international law also can not be separated from the Treaty of Wesphalia 1648 which introduced the concept of nation state where the state has external and internal sovereignty, sovereign states have exclusive authority over a certain territory without interference from outside parties. any form of intensity a country against

another country by using coercive measures and even violence in peaceful situations is considered a violation of state sovereignty (Edi Saputra Hasibuan, 2022).

Acts of war crimes are prohibited in international criminal law institutions. In International Criminal Law, a person is considered to have committed a war crime if he has committed a violation of the Geneva Conventions of 1949

(Geneva Law) or has violated the provisions of the laws and customs of war (Hague Law). Surely everything was done in the situation and in the context of an armed conflict. War crimes always involve a serious violation of international law, or in other words a violation of a provision that protects important values, and such a violation must have consequences for the perpetrator of the crime (Ardayan, Ariman Sitompul, 2023).

The affirmation of these fundamental rights is reinforced by the obligation of each state party to the convention to preserve and secure the fundamental rights of all persons within its territory and area of jurisdiction without distinction on the basis of race, colour, sex, language, religion, politics, nationality, or descent of property, birth or status others (Article 2 Paragraph 1). One of the foundations that is universal and all religions recognize this right, is the "right to life" (the right to life in Article 6).

The Rome Statute is a treaty adopted at the 1998 Rome conference to form the basis for the International Criminal Court (ICC) (Human Rights Watch 1998). The agreement, which was drafted and approved on the same day, July 17, 1998, has so far been ratified by 124 countries, while the number of signatory countries reaches 139 countries.

Article 34 of the 1969 Vienna Convention on the Law of Treaties states that "a treaty does not create either obligations or rights for a third State without its consent". This article shows the relationship between non-party states with international agreements is by consent. This principle is known as the principle of *pacta tertias nec nocent nec prosunt*. This principle simultaneously confirms that only states parties to an international treaty are bound by the norms in the treaty.

According to Schabas, the permanent nature of the ICC and the open nature of the ICC to all countries require that the ICC is not given too much room for the emergence of judge-made law, which some countries can be seen as a form of uncertainty contrary to the principle of *nullum crimen sine lege* as a whole, the Rome Statute 1998 contains a list of fifty acts that can be categorized as war crimes (war crimes). there are norms of customary international law that are not included in the formulation of the Rome Statute of 1998, for example, norms prohibiting the use of biological and chemical weapons (Hadju, 2019).

Israeli war crimes against Palestinians that cause harm and the number of fatalities as the violation of which do attacks on civilians, attacking

civilian objects, public facilities, disproportionate use of prohibited weapons, aerial assault. Aftermath of these attacks resulted in more than forty Palestinians have been killed and 5,511 injured in Gaza march along border fence between strip Gaza and Israel since March 30, 2018. From those in the hospital government, 1,499 hit by live ammunition, 107 with sponge-edged bullets, 408 suffered gas inhalation and 582 suffered other injuries; 2,142 were persons adults and 454 were minors.¹³ other underlying problems the difficulty of prosecuting Israel is a question of the Palestinian entity as a country although administratively has fulfilled a state but politically the Palestinian position is still weak (Sitompul, 2023).

The ICC has the authority to prosecute the most serious crimes-crimes against humanity, genocide, war crimes, and aggression. In Article 12 paragraph (2) of the Rome Statute¹⁵ it is stated that the ICC has the authority to judge an individual who commits a crime in the territorial territory of a state party to the ICC or an individual originating from a state that is already a party to the ICC. Article 16 states that the ICC cannot only prosecute individuals from countries that have recognized ICC jurisdiction or are parties to the Rome Statute (Gracia In Junika Tatodi, 2019).

This shows that Israel both implicitly and explicitly violates international law based on Article 12 and the ICC has the authority to prosecute Israel that has committed human rights violations in Palestinian territory in addition to the need for a spirit from the International Criminal Court (ICC) regarding the principle of Unable and Unwilling to a country's court in resolving serious human rights non-state and Article 12 as the cornerstone of ICC jurisdiction. Based on the above explanation, the author is interested in writing an article about " War crimes in Palestine from the perspective of the International Criminal Court (ICC)"

METHOD

This research is a normative research that uses primary and secondary legal materials, in the form of legislation, literature, and research results relevant to this research. The Data is studied and analyzed through the study of literature to further draw conclusions. Approach taken is the approach of legislation, historical approach and approach to the case. Data analysis is done using descriptive analytical and historical approaches.

RESULTS AND DISCUSSION

Montevideo Convention on the rights and duties of states formulated the seventh International Conference of the countries of the Americas December 26, 1933 in Uruguay. This convention encourages the theory declarative can be accepted as part of customary international law (international customary law) (Evi Deliana HZ, 2011).

This convention was signed by nineteen states and has become a reference main in an effort to translate the meaning and characteristics of a country Article 1 of this convention mention that there are four criteria that must be met by a new country to become a sovereign state, namely; the existence of a permanent population (permanent population), the existence of a clear and fixed territory (defined territory), the government (government) and the capacity (state) to take action or legal relations with other countries.

Recognition of Palestine as a under Article 1 of the Montevideo convention, the status and position of Palestine itself already contains provisions in Article 1 of the Montevideo convention, but which becomes a problem when there is a conflict in a country that makes changes in the status and position of the conditions for recognition of a state under the convention. There are several criteria for recognition of a country namely (Rim, 2021):

- a) The population is defined as permanent residents who inhabit a place in a particular area continuously in this case the population that has occupied a country (permanent population). When examined through the state of Palestine that it is not the same problem long before the declaration of the state of Palestine was made, there were 21 people living in the area. But when that conflict happened with Israel in 1948 some of the Palestinian population forced they left their homes and returned after the war.
- b) The existence of a territory in a country is one of the supporters of the existence of a state because in a region where the state can conduct government of a country, without sovereignty it is clear that it cannot be said to be a country. As we know the territory of Palestine is currently divided into three the main areas, namely; the Gaza Strip, east Jerusalem and the West Bank. Basically Palestine has lost some of its territory due to the conflict that occurred

such as several Palestinian territories in East Jerusalem that have been controlled by Israel.

- c) Has a government, the determination of criteria existence of this government has been it is also an important step in establishing a new state. Actually, for the Palestinians, the provision is not yet very clear whether the current government can be called an effective government as referred to in this criterion or not because they honestly do not have complete control over the territory-that territory. Some parts of the Palestinian territories are still controlled by the Israeli government, such as the West Bank.
- d) Ability to perform legal acts or liaison with other countries, this criterion is difficult to differentiate considering that with the status of independence by itself a country can carry out legal acts or legal relations with other countries.

One of the problems that hinder the investigation of human rights violations committed by Israel is the unclear position of Palestine as a state because until now the sovereignty of the Palestinian state both implicitly and explicitly has been reduced by the conflict with Israel which resulted in the Palestinian territory continues to decrease (Khairani et al., 2021).

Palestine in practice has fulfilled the elements of the state according to the Convention Article 1 of the Montevideo Convention, but the four elements that are owned are a problem when fulfilling the provisions but in which there is a conflict, whether Palestine can be said to be a state, this is still a problem considering that Palestine itself has been recognized in practice by states through international relations with other countries through international agreements (Savitri, 2019)

As a co-ordinating law, international law is not superior to the state. This legal system does not recognize legislative, executive, and judicial institutions like National Law. International law is a horizontal legal system. The United Nations (UN) is not an institution world (world legislature) 27 which has the authority to regulate, measure and force the enactment of an international rule, so the recognition of a country back to the nature and essence of international law it self.

CONCLUSION

Spirit International Criminal Court (ICC) is a complementary institution of national law that has power to exercise jurisdiction over those who do the most serious crimes listed in Article 5, the ICC also has four kinds jurisdiction-personal, criminal, temporal and territorial jurisdiction. Article 17 paragraph 2 and verse 3 defines the state that is considered unwilling (unwilling). Unpreparedness (unable). Deign with that we can return to the automatic principle of locus delicti that Israel committed war crimes in the Palestinian territories and supported with the jurisdiction of the court, the ICC is more than sufficient to judge Israel by using the jurisdiction of the automatic principle contained the Rome statute of 1998. Unwilling and Unable criteria can be expanded enforcement Article 13 of the Rome Statute of 1998 states that the ICC has three authority to investigate international crimes, if there is a belief that one or all of the parties committed a crime in accordance with Article 5 of the Rome Statute of 1998.

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