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International Criminal Court

Topic I:

Prosecutor v. Jean-Pierre Bemba: Command Responsibility

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Topic Overview

Commanders hold great responsibility over their soldiers in the military. When military commanders and superiors fail to stop crimes happening under their control, then command responsibility is a legal principle that holds them accountable. In the case of The Prosecutor v. Jean-Pierre Bemba Gombo,

During the liberation movement that occurred in Congo, the troops of the (MLC) who were under the command of the commander in chief Bemba who allegedly committed various crimes in the Central African Republic between the years 2002 and 2003. Bemba was accused of failing to take the proper measures to prevent crimes such as murder, sexual violence and pillaging. The ICC trial chamber found Bemba guilty in the year of 2016, and he was later sentenced to 18 years in prison. This was later appealed in 2018 by the ICC trial chamber and he was acquitted. They later stated that there had been a serious error in the trial chambers assessment. This question remains important because it raises concerns about the responsibilities of military commanders and how command authority should be applied under international law

BACKGROUND INFORMATION

The MLC were militias in the Democratic Republic of Congo who were under command of Jean-Pierre Bemba. During the conflict the troop was sent to the Central African Republic. The members of these militias were convicted of committing serious crimes against civilians including muder, sexual crimes, etc.

Jean-Pierre Bembas served as the commander in chief and president of the MLC troops. Prosecutors say that Bemba should be held accountable as his role as commander in chief should have meant that he knew these crimes were happening and he did not take the correct measures to prevent them or punish them.

Moreover, an investigation was opened by the ICC trial chamber in the Central African Republic in 2007 for the crimes committed. In May of 2008 Bemba was arrested and transferred to the ICC. In November of 2010 his trial began and it focused on his responsibility as the military commander rather than his direct participation in the crimes.

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International Frameworks and Previous Actions

- Article 28 explains clearly the responsibility and consequences of military commanders when they fail to control their soldiers, and this was established by The Rome Statue who established the ICC.
- Additionally, article 86 states the responsibilities of commanders in addition to requiring states to take action against violations of international humanitarian law. It also highlights the correct measures and duties commanders need to follow to report violations.
- The international Criminal Tribunal for the Former Yugoslavia (ICTY) also helped create the principal using former examples of failed preventions from commanders
- During the 1994 Rawdan genocide the ICTR prosecuted indivisuals accountable for crimes that were committed. Its cases helped establish how superiors could be held accountable for crimes committed by people under their authority.

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Key Challenges

- Proving if there was or wasn't an effective role that the commander led and the influence of the commanders control over the soldiers, without enough authority to prevent their actions, establishing command responsibility becomes rather difficult.
- Proving with evidence that a commander was aware of the doings of his soldiers and should have known if they were or are being committed, it's difficult to record evidence during an armed conflict.
- Determining if the commander took correct and necessary measures to stop crimes that were going to happen, and crimes that happened.
- The extreme lack of evidence due to the armed conflict and lost evidence from missing witnesses, destroyed records, and limited access to crime scenes.
- Protecting the rights of the commander while also correctly and justly holding them accountable for their crime and failure in communicating the correct measures in prevention of crime.

Possible Areas for Resolution

- Strengthening the application of Article 28 to clarify and explain the correct measures and duties of a commander to prevent serious violations and that it is consistently applied.
- The promotion of commander training on international humanitarian law by the military forces.
- To collect evidence and resources in order to protect the rights of witnesses during investigation strengthen the connection between ICC, national authorities, and international organizations.
- Establish internal disciplinary systems that encourage commanders to investigate and report any serious violations within their own personnel.
- Create a fair system of discipline in which commanders are fairly judged and have fair trials for the convicted crime with the availability of evidence rather than military rank or position purely.

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Guiding Questioins

1. Under what circumstances should military commanders be held responsible for crimes committed by their soldiers?
2. How can the ICC determine whether a commander had effective control over their forces?
3. What actions should commanders take to prevent or punish crimes committed by their troops?
4. How can international law distinguish between direct responsibility and command responsibility?
5. Should commanders be held responsible if they knew about crimes but failed to take reasonable action?
6. How can the ICC ensure that command responsibility is applied fairly and consistently?
7. What lessons can be learned from the Bemba case to prevent similar crimes in future conflicts?
8. How can the international community strengthen accountability for military commanders while protecting their right to a fair trial?

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Resources

International Criminal Court (ICC) – The Prosecutor v. Jean-Pierre Bemba Gombo
https://www.icc-cpi.int/car/bemba

International Criminal Court (ICC) – Appeals Chamber Judgment, 8 June 2018
https://www.icc-cpi.int/court-record/icc-01/05-01/08-3636-red

International Criminal Court (ICC) – Summary of the Bemba Appeal Judgment
https://www.icc-cpi.int/sites/default/files/itemsDocuments/180608-bemba-judgment-summary.pdf

Rome Statute of the International Criminal Court – Article 28: Responsibility of Commanders and Other Superiors
https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf

International Criminal Court (ICC) – Trial Judgment in the Bemba Case, 21 March 2016
https://www.icc-cpi.int/court-record/icc-01/05-01/08-3343

International Criminal Court (ICC) – Situation in the Central African Republic
https://www.icc-cpi.int/car

1. **United Nations – Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**
https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel