
COMMAND RESPONSIBILITY UNDER INTERNATIONAL CRIMINAL LAW: ASSESSING THE LIABILITY OF LEADERS FOR WAR CRIMES

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ABSTRACT

War crimes are among the gravest violations of international law because they threaten human dignity, civilian protection, and the principles of humanity. In many armed conflicts, crimes are not committed only by individual soldiers but also occur because military commanders and political leaders fail to prevent or punish unlawful acts committed by persons under their authority. The doctrine of command responsibility was developed to address this problem by holding superiors accountable for their failure to exercise proper control over subordinates.¹

Command responsibility is an important principle of international criminal law because it recognises that leadership carries legal obligations. A commander may be held responsible when he or she has effective control over subordinates, knows or should have known about crimes, and fails to take reasonable measures to prevent or punish such conduct.

This paper examines the development of command responsibility, its legal basis under the Rome Statute of the International Criminal Court, and its application through international case law. It argues that the doctrine remains an essential mechanism to ensure accountability of leaders while maintaining the principle of individual criminal responsibility.²

Keywords: Command Responsibility, War Crimes, Rome Statute, International Criminal Law, ICC, Military Commanders.

¹ Rome Statute of the International Criminal Court art. 28, July 17, 1998, 2187 U.N.T.S. 90.

² William A. Schabas, *An Introduction to the International Criminal Court* 145–52 (6th ed. 2020).

INTRODUCTION

International humanitarian law seeks to regulate armed conflicts by limiting the methods and means of warfare and protecting civilians, prisoners of war, and other vulnerable persons. Despite these protections, many armed conflicts have witnessed serious violations such as torture, unlawful killings, sexual violence, and attacks against civilians. These acts are recognised as war crimes under international law.³

Traditionally, criminal responsibility focused on individuals who directly committed crimes. However, experience from major conflicts demonstrated that large-scale atrocities often occur within organised structures where commanders and leaders exercise authority over subordinates. Crimes may result not only from direct orders but also from failures of supervision and control.⁴

The doctrine of command responsibility developed to address this problem. It is based on the principle that leaders who possess authority over others have a legal duty to prevent crimes and punish offenders. A commander cannot escape responsibility merely by claiming that he did not personally participate in the crime if he had the power to prevent it.⁵

Today, command responsibility is firmly recognised under Article 28 of the Rome Statute of the International Criminal Court and remains one of the most important principles for ensuring accountability of military and civilian leaders for war crimes.⁶

CHAPTER I

EVOLUTION OF THE DOCTRINE OF COMMAND RESPONSIBILITY

The doctrine of command responsibility developed from the traditional principle that military commanders have a duty to maintain discipline and control over the forces under their command. Military organisations operate through a chain of command, and commanders are expected to supervise the conduct of their subordinates and ensure compliance with the laws

³ Rome Statute of the International Criminal Court art. 8; Geneva Convention Relative to the Protection of Civilian Persons in Time of War arts. 146–147, Aug. 12, 1949, 75 U.N.T.S. 287.

⁴ Antonio Cassese, *International Criminal Law* 238–41 (3d ed. 2013).

⁵ Prosecutor v. Delalić et al. (Čelebići Case), Case No. IT-96-21-T, Judgment ¶¶ 333–343 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998).

⁶ Rome Statute, supra note 1, art. 28.

of war.

The modern concept of command responsibility emerged after the Second World War through international military tribunals. The Nuremberg Trials established that high-ranking officials and military leaders could be held personally responsible for international crimes. The Tribunal rejected the argument that official position could shield individuals from criminal liability and emphasised that leaders must be accountable for unlawful acts committed under their authority.⁷

An important development occurred in the case of *In re Yamashita*. General Tomoyuki Yamashita, a Japanese military commander, was prosecuted for failing to control troops under his command who committed widespread atrocities in the Philippines. The judgment recognised that commanders have a legal duty to supervise their forces and may be held responsible when they fail to prevent serious violations of international humanitarian law.⁸

However, the Yamashita case also attracted criticism because it appeared to impose liability without clearly proving the commander's actual knowledge of the crimes. As a result, later international tribunals developed stricter standards to ensure that responsibility would be based on effective control, knowledge, and failure to act rather than mere rank or position.⁹

A major contribution to the doctrine came from the International Criminal Tribunal for the Former Yugoslavia (ICTY). In the *Čelebići Case*, the Tribunal held that command responsibility depends on three essential elements: the existence of a superior-subordinate relationship, the superior's knowledge or reason to know of the crimes, and the failure to take necessary and reasonable measures to prevent or punish the offenders.

The International Criminal Tribunal for Rwanda (ICTR) further expanded the doctrine by recognising that command responsibility could apply not only to military commanders but also to civilian superiors who exercise effective authority and control over subordinates. This development reflected the realities of modern conflicts, where political and civilian leaders often play a significant role in the commission of international crimes.¹⁰

⁷ Charter of the International Military Tribunal art. 7, Aug. 8, 1945, 82 U.N.T.S. 279.

⁸ *In re Yamashita*, 327 U.S. 1 (1946).

⁹ Robert Cryer et al., *An Introduction to International Criminal Law and Procedure* 399–402 (4th ed. 2019).

¹⁰ Prosecutor v. Delalić et al. (*Čelebići Case*), Case No. IT-96-21-T, Judgment ¶¶ 333–346 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998).

The doctrine was finally codified under Article 28 of the Rome Statute of the International Criminal Court. Today, command responsibility forms an important part of international criminal law and serves as a mechanism to ensure that leaders cannot avoid accountability by distancing themselves from crimes committed under their authority.¹¹

WAR CRIMES AND COMMAND RESPONSIBILITY UNDER INTERNATIONAL LAW

War crimes are serious violations of international humanitarian law committed during armed conflicts. They include acts such as wilful killing, torture, sexual violence, attacks against civilians, unlawful deportation, and destruction of protected property. International law recognises these acts as crimes because they violate fundamental principles of humanity and the rules governing armed conflict.¹²

The legal framework governing war crimes is primarily derived from the Geneva Conventions of 1949, their Additional Protocols, customary international humanitarian law, and the Rome Statute of the International Criminal Court. These instruments impose obligations on states and individuals to respect humanitarian principles during war and provide mechanisms for criminal accountability when violations occur.¹³

The Rome Statute grants the International Criminal Court jurisdiction over war crimes and lists various forms of prohibited conduct. The Court may prosecute individuals who commit such crimes directly or those who contribute to their commission through other forms of responsibility recognised under international criminal law.¹⁴

Command responsibility occupies a special place within this framework because war crimes are often committed within organised military or political structures. Leaders may issue unlawful orders, tolerate illegal practices, or fail to take action against persons committing crimes under their authority. In such situations, responsibility extends beyond the direct perpetrators to those who possess authority and fail to exercise proper control.¹⁵

¹¹ Rome Statute of the International Criminal Court art. 28, July 17, 1998, 2187 U.N.T.S. 90.

¹² Rome Statute of the International Criminal Court art. 8, July 17, 1998, 2187 U.N.T.S. 90.

¹³ Geneva Convention Relative to the Protection of Civilian Persons in Time of War arts. 146–147, Aug. 12, 1949, 75 U.N.T.S. 287.

¹⁴ William A. Schabas, *An Introduction to the International Criminal Court* 145–48 (6th ed. 2020).

¹⁵ Kai Ambos, *Treatise on International Criminal Law: Volume I* 180–85 (2013).

Therefore, command responsibility serves both a preventive and punitive function. It encourages leaders to maintain discipline and respect for international humanitarian law while ensuring that those who fail to fulfil their obligations do not escape accountability.

ARTICLE 28 OF THE ROME STATUTE AND LIABILITY OF LEADERS

The most important legal basis for command responsibility today is Article 28 of the Rome Statute of the International Criminal Court. This provision establishes that military commanders and other superiors may be held criminally responsible for crimes committed by persons under their authority when they fail to exercise proper control.

Article 28 requires the existence of a superior-subordinate relationship based on **effective control**. Effective control means that the superior has the actual ability to prevent crimes, stop ongoing violations, or punish those responsible. Therefore, liability is not based merely on rank or official position but on the practical authority exercised over subordinates.¹⁶

Another important requirement is **knowledge**. A military commander is responsible when he or she knew, or because of the circumstances should have known, that forces under their command were committing or preparing to commit war crimes. This rule imposes a duty on commanders to remain informed about the conduct of their forces and to establish proper systems of supervision and reporting. Article 28 also requires a **failure to take necessary and reasonable measures**. Once a commander becomes aware of crimes, he or she must take practical steps to prevent further violations, investigate the incidents, or refer the matter to competent authorities for prosecution. Failure to take such measures may result in criminal responsibility.¹⁷

The Rome Statute extends this doctrine not only to military commanders but also to civilian superiors. Political leaders, government officials, and other persons exercising effective authority may be held responsible if they knowingly fail to prevent or punish crimes committed by persons under their control. This provision reflects the reality that responsibility for international crimes may arise in both military and civilian structures. Article 28 therefore represents a careful balance between accountability and fairness. It ensures that leaders cannot

¹⁶ Prosecutor v. Delalić et al. (*Čelebići Case*), Case No. IT-96-21-A, Judgment ¶ 195 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 20, 2001).

¹⁷ William A. Schabas, *An Introduction to the International Criminal Court* 148–50 (6th ed. 2020).

avoid responsibility by remaining inactive while also requiring proof of authority, knowledge, and failure to act. The provision remains one of the most significant mechanisms for ensuring accountability of leaders for war crimes under international criminal law.¹⁸

INTERNATIONAL CASE LAW ON COMMAND RESPONSIBILITY

The doctrine of command responsibility has been developed and clarified through several important international judicial decisions. These cases have helped establish the conditions under which military commanders and civilian leaders may be held responsible for war crimes committed by their subordinates.

One of the earliest and most significant cases is *In re Yamashita*. General Tomoyuki Yamashita, a Japanese military commander during the Second World War, was held responsible for atrocities committed by troops under his command in the Philippines. The United States Supreme Court held that commanders have a duty to control their forces and may be held liable when they fail to prevent widespread violations of the laws of war.¹⁹

Although the Yamashita judgment strengthened the principle of accountability, it also attracted criticism because the Court did not clearly establish whether the commander had actual knowledge of the crimes. As a result, later international tribunals adopted more precise standards that required proof of effective control and knowledge before imposing liability.²⁰

A landmark decision was delivered by the International Criminal Tribunal for the Former Yugoslavia (ICTY) in *Prosecutor v. Delalić et al.*, commonly known as the *Čelebići Case*. The Tribunal held that command responsibility depends on three elements: the existence of a superior-subordinate relationship, the superior's knowledge or reason to know about the crimes, and the failure to take necessary and reasonable measures to prevent or punish the offenders.²¹

The International Criminal Tribunal for Rwanda (ICTR) further expanded the doctrine in *Prosecutor v. Akayesu*. The Tribunal recognised that civilian leaders, in addition to military commanders, could be held responsible when they exercise effective authority and fail to

¹⁸ Antonio Cassese, *International Criminal Law* 241–43 (3d ed. 2013).

¹⁹ *In re Yamashita*, 327 U.S. 1 (1946).

²⁰ Robert Cryer et al., *An Introduction to International Criminal Law and Procedure* 399–402 (4th ed. 2019).

²¹ *Prosecutor v. Delalić et al. (Čelebići Case)*, Case No. IT-96-21-T, Judgment ¶¶ 333–346 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998).

prevent international crimes committed by persons under their control.²²

Another important development occurred before the International Criminal Court in *Prosecutor v. Jean-Pierre Bemba Gombo*. The case examined whether Bemba, as a military leader, exercised effective control over his forces and whether he took reasonable measures to prevent crimes committed in the Central African Republic. Although his conviction was later overturned on appeal, the case remains significant for explaining the standards of command responsibility under Article 28 of the Rome Statute.²³

These judicial decisions demonstrate that command responsibility is not a form of automatic liability. International courts require clear evidence of authority, knowledge, and failure to act before imposing criminal responsibility. The case law therefore reflects an effort to balance accountability for war crimes with the principle of individual criminal responsibility.²⁴

CHAPTER V

CHALLENGES, ANALYSIS AND CONCLUSION

The doctrine of command responsibility plays an important role in ensuring accountability for war crimes. However, its application in practice faces several challenges. One of the major difficulties is proving **effective control**. In modern armed conflicts, military groups often have complex structures with divided authority, making it difficult to determine who had actual control over the persons committing crimes.

Another challenge is proving that a commander **knew or should have known** about the crimes. International prosecutors frequently rely on indirect evidence such as military reports, communications, patterns of violence, and the overall circumstances of the conflict. Establishing this element requires careful examination of facts and evidence in each case.²⁵

The doctrine has also faced criticism on the ground that it may impose liability on leaders who did not personally commit or order crimes. Therefore, international courts have consistently held that command responsibility is not based merely on rank or official position. Responsibility arises only when there is proof of authority, knowledge, and failure to take

²² Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment (Sept. 2, 1998).

²³ Prosecutor v. Bemba Gombo, ICC-01/05-01/08, Appeals Judgment (June 8, 2018).

²⁴ William A. Schabas, *An Introduction to the International Criminal Court* 148–52 (6th ed. 2020).

²⁵ Robert Cryer et al., *An Introduction to International Criminal Law and Procedure* 399–402 (4th ed. 2019).

reasonable measures to prevent or punish the crimes.²⁶

Despite these challenges, command responsibility remains an essential principle of international criminal law. Without this doctrine, military and political leaders could escape accountability by distancing themselves from crimes committed by their subordinates. The doctrine ensures that leadership carries legal obligations and that failure to exercise proper control may result in criminal responsibility.

The Rome Statute of the International Criminal Court has strengthened this principle by clearly defining the requirements for liability under Article 28. International case law has further clarified that commanders and civilian superiors must actively prevent violations of international humanitarian law and take appropriate action when crimes occur.²⁷

In conclusion, command responsibility represents one of the most important developments in international criminal law. It balances the need to hold leaders accountable with the principle of individual criminal responsibility.

The doctrine ensures that those who exercise authority cannot ignore war crimes committed under their control and thereby contributes to the broader goal of preventing impunity and promoting justice in armed conflicts.²⁸

²⁶ Antonio Cassese, *International Criminal Law* 241–43 (3d ed. 2013).

²⁷ Rome Statute of the International Criminal Court art. 28, July 17, 1998, 2187 U.N.T.S. 90.

²⁸ Prosecutor v. Delalić et al. (*Čelebići Case*), Case No. IT-96-21-T, Judgment ¶¶ 333–346 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998).

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