

CHAPTER ONE

INTRODUCTION

A. Background of Research

In the ongoing Syrian case, human rights violations have occurred, and both the Netherlands and Canada have embarked on a mission to pursue justice for the multitude of victims affected by the Syrian regime, with the aim of ensuring the accountability of the perpetrators.¹ Foreign Minister Wopke Hoekstra stated, "Syrians have been tortured, killed, disappeared, gassed, or forced to flee for their lives, abandoning everything they own".²

International organizations have extensively reported on this massive atrocity. Establishing accountability and combating impunity are crucial to attaining a permanent political resolution to the Syrian conflict. Taking this case to the International Court of Justice (ICJ) is a significant step toward achieving this objective. According to the Dutch government, there is ample evidence that Syria has perpetrated grave human rights violations against Syrian citizens on a massive scale.³ Multiple entities, including the International, Impartial, and Independent Mechanism, the UN investigative authority for Syria, have gathered this evidence. This is why the Netherlands

¹ Michael Freeman, 2022, *Human Rights*, Cambridge: Polity Press, p. 8

² Abe Oudshoorn, Sarah Benbow, Matthew Meyer, "Resettlement of Syrian refugees in Canada", *Journal of International Migration and Integration*, Vol. 21, No. 1, (January, 2020), p. 903.

³ Sharynne McLeod, "Communication Rights: Fundamental Human Rights for All", *International Journal of Speech-Language Pathology*, Vol. 20, No. 1, (September, 2018), p. 9.

resolved in September 2020 to hold states accountable for Syria; Canada joined the initiative in March 2021.⁴

The Netherlands and Canada have worked for more than two years to reach a negotiated settlement with Syria, in accordance with the dispute resolution mechanisms outlined in the UN Convention Against Torture. These conversations have not yet yielded a solution.⁵ In addition, Syria did not accept the proposed arbitration within the Convention's six-month deadline. In an endeavor to compel Syria to comply with its obligations under the Convention, to which Syria is a State Party, it was determined to bring the case before the ICJ on 8 June 2023. This decision was communicated to Syria via a diplomatic communication from the Permanent Representative of the Netherlands to the United Nations in Geneva. Since 2011, the Netherlands and Syria have not had diplomatic relations, but both countries have UN representatives in Geneva.⁶

The Netherlands and Canada have lodged a complaint with the ICJ regarding allegations of torture by Maltese authorities. The complaint accuses the Syrian government of "countless violations of international law" since the country's civil conflict broke out in 2011. The Netherlands and Canada have petitioned the court to order Syria to immediately cease all acts of torture. This

⁴ Sandeep Kumar Agrawal, "Canadian Refugee Sponsorship Programs: Experience of Syrian Refugees in Alberta, Canada", *Journal of International Migration and Integration*, Vol. 20, No.2, (March, 2019), p. 957.

⁵ Shauna Labman, Madison Pearlman, "Blending, Bargaining, and Burden-sharing: Canada's Resettlement Programs", *Journal of International Migration and Integration*, Vol. 19, No, 1, (January, 2018), p. 441.

⁶ Aula Abbara, Mohamed Almalla, Ibrahim AlMasri, Hussam AlKabbani, Nabil Karah, Wael El-Amin, Latha Rajan, Ibrahim Rahhal, Mohammad Alabbas, Zaher Sahloul, Ahmad Tarakji, Annie Sparrow, "The Challenges of Tuberculosis Control in Protracted Conflict: The Case of Syria", *International Journal of Infectious Diseases*, Vol. 90, No. 2, (July, 2020), p. 56.

case is significant because, if the ICJ determines it has jurisdiction, it will be the first time an international court has ruled on allegations of torture in Syria.⁷

The Netherlands initiated proceedings against Syria before the ICJ in 2020, a year after Russia, an ally of Bashar Assad's regime, announced it would block the United Nations Security Council from referring the situation in Syria to the International Criminal Court. Canada joined the process in 2021, demonstrating their commitment to holding Syria accountable for its actions. The joint initiative by Canada and the Netherlands is based on the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁸

Over the years, efforts to assure accountability for human rights violations in Syria have taken a variety of forms. In order to investigate and document violations of international humanitarian law and human rights law in Syria, the Independent International Commission of Inquiry on Syria and the International, Impartial and Independent Mechanism (IIIM) have been established. In addition, cases have been submitted to UN human rights mechanisms to cast light on the war crimes that have been committed.⁹

Due to the limited avenues for accountability, however, criminal accountability has been the primary focus. The unsuccessful attempt to refer

⁷ Blanchard, Christopher M.; Humud, Carla E.; Nikitin, Mary Beth D, "Armed Conflict in Syria: Overview and Us Response", *International Journal of Terrorism & Political Hot Spots*, Vol. 10, No. 4, (December, 2015), p. 390.

⁸ Terry D. Gill, "Classifying the Conflict in Syria", *International Law Studies*, Vol. 92, No. 1, (January, 2016), p. 11.

⁹ Michelle Burgis-Kasthala, "Assembling Atrocity Archives for Syria: Assessing the Work of the CIJA and the IIIM", *Journal of International Criminal Justice*, Vol. 19, No. 5, (June, 2021), p. 1223.

the situation in Syria to the International Criminal Court has resulted in proceedings in the tribunals of third states, such as Germany, based on the principle of universal jurisdiction. The joint initiative of Canada and the Netherlands is a significant step towards pursuing justice and culpability for violations of human rights in Syria.¹⁰

The application filed by Canada and the Netherlands emphasizes the use of specific forms of torture against Syrian civilians, including sexual and gender-based violence (SGBV).¹¹ It highlights the need to address these egregious violations of human rights and hold the Syrian government responsible for its actions. Based on the reasons above, the researcher will produce an academic paper titled **“EXPLORING ACCOUNTABILITY IN INTERNATIONAL LAW: A CASE STUDY OF THE NETHERLANDS AND CANADA'S LAWSUIT AGAINST SYRIA FOR CIVILIAN TORTURE AT THE INTERNATIONAL COURT OF JUSTICE”**.

B. Problem Formulation

Based on the background, the research formulates a research problem on how law enforcement against crimes committed by Syria against certain Netherlands and Canadian civilians can be analyzed from a legal perspective in the International Court of Justice (ICJ), and what steps should be taken by

¹⁰ Brigitte Herremans, Tine Destrooper, "Stirring the Justice Imagination: Countering the Invisibilization and Erasure of Syrian Victims' Justice Narratives", *International Journal of Transitional Justice*, Vol. 15, No. 3, (December, 2021), p. 583.

¹¹ Ozcurumez, Akyuz, Bradby, "The Conceptualization Problem in Research and Responses to Sexual and Gender-based Violence in Forced Migration", *Journal of Gender Studies*, Vol. 30, No. 1, (June, 2021), p. 74.

the ICJ in relation to resolving the demands by the Netherlands and Canada for Syria's actions?

C. Objective of Research

The research aims to achieve several objectives. Firstly, it seeks to thoroughly assess the legal implications stemming from the submissions presented by the Netherlands and Canada to the ICJ concerning the criminal actions committed by Syria. Furthermore, it endeavors to provide a comprehensive analysis of the ICJ's decisions, delving into the legal foundations that underpin these decisions as well as their potential impact on international relations and global justice.

D. Benefits of Research

There are some benefits of this research, as follow:

1. Theoretical Aspect

This research will provide benefits to better understand the ICJ's perspective on the Netherlands and Canadian lawsuit against Syria for torture of civilians.

2. Practical Aspect

This research will contribute to the development of the ICJ's responsibility in resolving cases of torture of civilians in Syria.