

International criminal courts

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Abstract

The International Criminal Courts as such emerged after the end of WWII and as such take an international character. Crimes committed by the state or individuals on civilians must be prosecuted through operating criminal courts. The purpose of this manuscript is an analysis of the international criminal courts about war crimes committed by aggressor nations.

Keywords: Criminal court, crimes, trial, statute, tribunal.

Introduction

In this paper we have elaborated the development of the international law following WWII, taking into consideration creation and operation of international courts such as the Nuremberg and Tokyo courts. During the Second World War there were a lot of victims and material damages, for which – people started to think that the countries that caused them were responsible. The agreement between the war winning countries was reached on 8 August 1945 in London. Putting the war criminals on trial was the priority of these courts that started work on 1 October 1946. The International Community seeing that the creation and operation of the international courts was an enviable success did not stop with this type of organization but continued to work towards the creation and operation of other courts, such as the International Criminal Court in Den Haag, for the crimes committed in the territory of former Yugoslavia, the International Criminal Court for Rwanda, The Permanent International Criminal Court, etc.. All these courts operate under the mandate of United Nations and have their respective statutes.

Development of international criminal law following WWII

Development of international criminal law is also related to the creation of international courts such as the International Criminal Courts of Nuremberg and Tokyo that were created after the end of WWII. This development is also characterized with other internal and external developments, but following the end of WWII, brutal crimes are analyzed, the miseries exercised on humanity by the German Nazis and the other allies of the fascist block.

The military agreement between the forces that won the war such as USA, France,

England and USSR was reached in London, on August 8, 1945.¹ The reached agreement consists in creating the International Military Tribunal for the prosecution and punishment of the major war criminals, for the prosecution of the war criminals of WWII for the crimes committed, which are not included in the competency of the national courts. Two international courts were created, the Courts of Nuremberg and Tokyo.

The main principal of operation of these courts was international cooperation related to finding, arresting, extradition and punishment of war criminals. By the status of international courts it was provided that the perpetrators appear in the court and be prosecuted for war crimes, crimes against humanity, crime of genocide, without the right of statutory limitation.

The Nuremberg Court

On August 9, 1945² the winning countries of WWII: Great Britain, USA, France and USSR, signed the agreement on prosecution and punishment of the main war criminals. The statute of the international military tribunal (Salihu, 2005, 275) anticipated the court competencies, general principles, prosecution and search for perpetrators and guaranteeing of the rights of the other accused.

Prosecution of the following crimes fall under the competencies of these courts:

- the crimes for which the jurisprudence within the national border of neither of the countries could be competent;
- war crimes, violation of war laws and habitudes;
- crimes against peace, murders, deportations, slavery and other inhuman acts against civil population and others.

The objective of the Nuremberg Court was to bring to trial the criminals or the perpetrators that were in adverse with principals envisaged by the Statute of the Court. Thus this court established on November 20, 1945 started operating on October 1, 1946. Twelve persons were found guilty and sentenced to death, three to life imprisonment, four to 10 to 20 years of imprisonment, and 3 defendants were found not guilty and acquitted.

A total of 132 trials were held from 1945 to 1949. It is significant to point out that the organizations such as the Nazi Organizations SS, SD and Gestapo were tried as well. The people found guilty and sentenced were:

- Streicher was sentenced to death and executed by hanging on October 6, 1946 for committing the offense murder and liquidation at the time when Hebrews in the East were being murdered in the most terrible and harsh way, it consisted to political and racial persecution related to war crimes, crimes against humanity, pursuant to the Statute.³

The other defendants were: Herman Goering (committed suicide), Joachim von Ribbentrop, Wilhelm Keitel, Hans Frank, Wilhelm Frick, Walter Funk, Baldur von

¹ The Agreement of August 8, 1945 in London between USA, England, France and USSR.

² Agreement on creating the International Military Tribunal of Nuremberg – August 9, 1945.

³ Genocide in International Law - William A.Schabas – p.62.

Schirach, Arthur Seyss – Inquart and Martin Bormann.⁴

The Soviet Judge I.T. Nikitchenko challenged the sentence saying that the acquitted defendants Hailmar Schact and Hans Fritzcre should have been found guilty for the crimes committed, but with the majority of votes they were acquitted.

According to this Judge, Rudolph Hess sentenced to life imprisonment who left Germany in 1941, later a prisoner in England, was involved in the Anti-Semitic persecutions, should have been given a harsher sentence, even though the majority of Judges had a different opinion about this.

The Court consisted of judges and prosecutors of the countries that won the Second World War, represented equally by one judge and one prosecutor.

The Tokyo Tribunal

The Tokyo Tribunal based its work on the same principles as the Nuremberg Court. It was established on January 15, 1946 as an international military criminal tribunal in Tokyo (Japan), and started with regular trials on September 12 1948.⁵ Part of its operation was prosecution of Japanese criminals who committed crimes pursuant to the Statute of the Nuremberg Court. This tribunal sentenced 5 defendants to death, 16 to life imprisonment and 2 defendants to 7-20 years of imprisonment.

The Tribunal consisted of 11 judges, who worked under the mandate of United Nations, while for its complete operation it is significant that they appointed the prosecutors based on the same procedure as for the judges. The General Assembly of United Nations was interested about the fact that the accountable persons for crimes against humanity⁶ are the people who committed war crimes, crimes against humanity; to find, arrest, extradite and punish the accountable persons for the crimes committed with the purpose of protecting the basic human rights and freedoms, thus it called upon all the countries to collaborate in this direction.

Since the emphasized principals were put into perspective, one of the most distinguished principles was the principle of the war crimes not having a statute of limitation as well as the crimes against humanity which principle is protected in the project of the year 1967 by the General Assembly of the United Nations, approved on November 26, 1968.

Establishment of the International Criminal Tribunal in Den Haag for the crimes committed in former Yugoslavia

Since in the territories of the former Yugoslavia the turmoil for obliteration of the former state of Yugoslavia from 1990, and that country could not stand and function due to political polarizations, the hegemonic tendency of the “most privileged Serb nation, the tendencies of dominance of the Serb nation over the other nations, the disintegrations of this now nonexistent state began. During this disintegration, Slovenia’s disintegration lasted 40 days with a few victims and little material damage,

⁴ Genocide in International Law - William A.Schabas – p.62.

⁵ Agreement on creation of the Military Tribunal in Tokyo.

⁶ Resolution 2583 (24) of the United Nation’s Security Council.

in Croatia and Bosnia and Herzegovina from 1991 and forth, big crimes against people took place, 300.000 were killed and over 1.000.000 were violently expelled from their territories. For the sake of scientific objectivity and as a consequence of an international reaction towards this terror of the Serb regular and paramilitary formations, the International Criminal Tribunal in Den Haag was established for the crimes committed in the territory of the former Yugoslavia, with the purpose of punishing the war criminals.

During this disintegration it was established that there were violations of rights guaranteed by international norms such as harsh violations of the international humanitarian rights, intentional murders, ethnic cleansing, torture, rape, looting, and initially this was the characteristic of the combat that started in 1991 in Croatia, later in Bosnia and Herzegovina, Macedonia and at the end in Kosovo, and the crimes of Kosovo are still being tried in courts. The Security Council of the United Nations approved the Secretary General's recommendation by resolution no. 827 dated 22.02.1993 to establish the International Criminal Tribunal in Den Haag for the crimes committed in the territories of the former Yugoslavia (Salihu, 2005). The trial of the people for war crimes committed in the territory of former Yugoslavia since 1990 obliges all the federal units of the former state of Yugoslavia to collaborate with the Hague Tribunal.

The role of the trial is ad hoc, meaning that following ongoing investigations and trials, the same would cease operating. Many principals of the Nuremberg and Tokyo Courts are also included in the Statute of the Hague Tribunal, establishing operation competencies such as subject and personal competencies. The organizational structure of the court is anticipated, the procedure of selection of judges, all these are anticipated in the statute dated 25 May, 1993, appended on 13 May, 1998, 30 October, 2000 and 17 May, 2002.⁷

The objectives of the Hague Tribunal

Like with all the international tribunals having their objectives, the establishment of the Hague Tribunal also had its objective, but the main objective is to contribute in establishing and preserving peace, with priorities:

- bringing before justice responsible persons for harsh violation of the international humanitarian rights;
- by doing justice to victims;
- by preventing further crimes, banishments, and other.

The Tribunal's jurisdiction stretches on the spatial and time range, for the crimes committed in the territory of former Yugoslavia since 1991, in the personal direction only on natural persons and not on organizations, political parties, administrative entities or other legal entities.

Harsh violations of the Geneva Conventions of 1949 was their scrutinizing subject, violation of war Laws or habitudes, genocide and crimes against humanity.

In relation the international courts that have jurisdiction within the country, dealing with trials of harsh violation of international rights, the Hague Tribunal for the crimes committed in the territory of former Yugoslavia has an advantage of proceeding with

⁷ Statute of International Tribunal in Hague, <http://www.icty.org/en/documents/statute-tribunal>.

every case, because it can proceed with the case as soon as it is informed that crimes have been committed as anticipated by the statute of the Hague Tribunal, always protecting the interest of the international justice by exercising the supranational principle.

The organs of the Hague Tribunal

The Tribunal consists of 3 chambers of 16 judges each and with maximum 9 other ad litem judges at any time. Three ad litem judges will be members of every chamber of the court at all times, consisting also of permanent judges. Seven permanent judges are the members of the Appeals Chamber, and each Appeals Chamber should consist of 5 members – permanent judges. The International Criminal Tribunal for Rwanda (ICTR) is structured in the same manner too.⁸

The appointed judges of the Hague Tribunal are one representative for each state, there could not be two judges of the same citizenship. This is significant since the member states represented by judges also represent the legal system of the country they represent; they adapt the knowledge of the country to the Tribunals' legal infrastructure. The proposals of judges following the anticipated procedure are submitted to the General Assembly of the United Nations in order to be appointed. After they are appointed they give the oath and start work at the respective Tribunal. As the judges have respective knowledge and necessary professionalism, during their work they start applying the Tribunal legislation. After they receive the case they get informed about all the case writs which are scrutinized and they start listing the evidence. Later on they continue systemizing the tasks on the respective case and after the provided conditions are met the case is assigned. All the necessary work is performed by the Registry. After this the materials are prepared, the testimonies are obtained, the evidence is provided and decision is taken about the guilty verdict or not guilty verdict of the accused who are sentenced accordingly.

The Office of the Prosecutor operates independently; it is established by the UN Security Council. The job of the prosecutor is to investigate crimes by collecting evidence, by identifying evidence and witnesses, by proceeding witnesses; it issues orders to investigate massive graves, all these in collaboration with experts of respective fields such as experts of criminology, pathologists, jurists, lawyers and others. It has its Registry with its organizational and administrative work for the normal functioning of the tribunal.

The trial can commence only when the accused is present after establishing conditions to start with the trial, the accused gives his guilty or non-guilty plea for the accusations he is accused of by the office of the prosecutor in order to proceed with the procedure.

Competencies of the Hague Tribunal

The Hague International Court exclusively tried the cases of the crimes committed on violation of the Geneva Convention as follows:

- premeditated murder;

⁸ <http://unictr.unmict.org>.

- torture or inhumane treatment including biological experiments;
- causing great premeditated suffering or serious injury to body or health;
- forcing the prisoner of war or the civilian person to serve the enemy forces;
- purposeful deprivation of the prisoner of war or of the civilian person of his right to a fair and impartial trial;
- deportation;
- transfer or unlawful deprivation of freedom of the civilian person;
- taking a civilian person hostage;

This Court also attends serious cases of violation of laws and habitudes of war, crimes against humanity, genocide and many other crimes. It is significant that during the operation of this court special care must be paid to the principal non bis idem,⁹ also anticipated by paragraph 2, article 10 of the Statute of the Hague Tribunal¹⁰ that states the following *“A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal”*, meaning that the procedure for the criminal act anticipated by the Statute of the Hague Tribunal or have been tried by the Hague tribunal will not be tried by national courts. The right to a fair trial, within reasonable time, respecting the lawful rights of the parties in the procedure, is guaranteed to the accused by all the laws that the Hague Tribunal operates with.

Punishments

The Statute of the Hague Tribunal anticipated punishing perpetrators of criminal offenses with respective lawful punishments, depending on confirmation of their

⁹ Salihu, Ismet, *International Criminal Law*, p. 58.

¹⁰ The Statute of the Hague Tribunal article 10, paragraph 2 with clarifications in item a - the act for which he or she was tried was characterized as an ordinary crime and b - the national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted. The Hague tribunal is always careful to respect the rights of the accused, to provide conditions of serving the prison sentence within the scope of international standards. It takes due care to shelter the witnesses, with the contribution of member states, through the Tribunal Voluntary Fund. Since the Tribunal commences operation, we have cases of trial session from the territory of former Yugoslavia, the accused from Serbia for crimes committed in Croatia and Bosnia and Herzegovina. The persons accused for crimes pursuant to the Statute of the Hague Tribunal are also from Bosnia and Herzegovina, Croatia, and there also accused persons from Macedonia, and they are prosecuted for crimes committed against population or the country. The beginning of the trial of the former dictator – of the Yugoslav President Slobodan Milosevic which did not end (the accused died in 2006, so that the trial was not concluded). Other cases are the trial of Milan Milutinovic who was the President of Serbia at the time of the combats in Kosovo, together with 4 other accused who had been high officials of Serbia (The Hague, 20 January 2003, JL/P.I.S./724. All these actions resulted in the forced deportation of approximately 800,000 Kosovo Albanian civilians. The Indictment charges Milan Milutinovic on the basis of the following: Individual criminal responsibility (Article 7(1) of the Statute of the Tribunal) and superior criminal responsibility (Article 7(3)) with: Violations of the laws or customs of war (Article 3) – Murder, Crimes against humanity (Article 5(d)) – Deportation, Crimes against humanity (Article 5 (i)) – Other Inhumane Acts (Forcible Transfer), Crimes against humanity (Article 5 (a)) – Murder and, Crimes against humanity (Article 5 (h)) – Persecutions on political, racial and religious grounds.

being guilty, during the procedure:

- Punishment of lifelong imprisonment;
- Punishment of imprisonment;
- Punishment of a fine;
- Also the confiscation of property is anticipated.

The gravest punishment of lifelong imprisonment, which after it is announced to the accused, it will undergo the procedure of execution. Execution is performed in one of the countries that signed the agreement with United Nations to accept the persons punished by the Tribunal and to serve their sentence there.

Concluded cases at the Hague Tribunal

A special regard should be paid to the trials held against the most influential accused Serbs from Bosnia such as Momcilo Krajsnik¹¹ that started in 2004 and ended in 2006. He was sentenced to 27 years imprisonment as he was accused of committing crimes against humanity, while he was acquitted of the charge of involvement in genocide. The trial was conducted by the presiding judge Alphosis Orije who at the end, following the judgment in the reasoning said: „*the role of Mr. Krajsnik in encouraging committing crimes was vital, to try the criminal*” (the accused is now serving his sentence).

Also this court filed charges against the accused Biljana Plavsic¹² who pleaded guilty before the court and after she surrendered willingly, she reached an agreement with the executors of the trial procedure, at the court she asked for forgiveness for the crimes committed against the Bosnian people during the war in Bosnia and she was sentenced to 11 years imprisonment. The trial was held in 2003, she is now serving the sentence.

The accused Plavsic was interviewed in the capacity of the witness against the accused Krajsnik. The Hague Tribunal held trial sessions and punished senior officers, Bosnian citizens for collaboration in crimes against humanity and genocide, one of them is the case of Radoslav Krstic¹³ and the case of the trial of Ramush Haradinaj and the others¹⁴. While we are at this, the Tribunal deserves a special comment for war crimes in the case of Serb genocide in Srebrenica where 8.000 people, mainly men, were murdered. This trial is interesting as well as the decision by which Serbia is not guilty of genocide, but Serbia is condemned by the court for the events in Srebrenica in 1995. The role of Serbia is condemned since Belgrade did not do anything to prevent the crime defined as genocide. This decision is considered as an unjust court verdict because the role of Serbia was not observed in committing crimes against the innocent

¹¹ <http://www.icty.org/cases/party/709/4>.

¹² <http://www.icty.org/cases/party/758/4>

¹³ <http://www.icty.org/cases/party/711/4>

¹⁴ Haradinaj Case at al. No. IT-04-84, for more detail visit: <http://www.icty.org/case/haradinaj/4>. International Criminal Tribunal for Crimes in former Yugoslavia, ICTY, acquitted Haradin Bala, the former guard at the prison camp of the Kosovo Liberation Army who served 13 years for war crimes committed at the end of 90's. Bala was arrested in 2003 and convicted in 2007. "He played a role in managing and giving orders for inhuman conditions at the prison camp in Llapushnik. Bala, with one or two other KLA guards murdered nine prisoners of the prison camps at the Berisha Mountains, on 25 and 26 July 1998."

Bosnian population. The trial is commented by analysts and human rights protection organizations, among others, the HUMAN Right Watch stating among other things "the court decided that genocide was committed and this fact should not be diminished or get lost in the context of the fact that the court failed to find Serbia directly accountable", (comment dated 27.02.2007). It is important to point out that despite the fact that the Serb state was not found guilty, the leaders of this country asked for forgiveness for the crimes committed against the Bosnian population.

International Criminal Court for Rwanda

The United Nations Security Council established the International Criminal Tribunal for Rwanda by Resolution no. 955 dated 05 November, 1994¹⁵. Noting that serious crimes against humanity were committed in Rwanda, it was necessary that the perpetrators of crimes – the members of the tribe "TUTU" who murdered, massacred and terrorized over 800.000 members of the tribe Hutu, that all the perpetrators of crimes are to be brought before justice and deservingly punished. The International Criminal Court for Rwanda from 1994 to 1999 tried 1.300 accused persons. From all the persons that the procedure was initiated against, 20% of them investigated for various possible crimes, were acquitted. The operation of this court had very big expenses and in lack of funds, the operation of the court was transferred to the reactivation of traditional mechanism of justice known as "Gacaca"¹⁶ when the perpetrators were tried by local community leaders who selected many cases to be tried.

The permanent international court

Ideas for establishing a permanent international court were put forward in 1920 by the League of Nations, the Association of the International Law, the Inter-Parliamentary Union and the Criminal Law International Association. There were constant efforts to establish a permanent international court but in lack of it the ad hoc International Criminal Courts of Nuremberg, Tokyo, Hague and Rwanda were established. Activity for establishing this court was constant and at the UN General Assembly meeting by resolution no. 47/33 of the year 1992, the commission for the international law demanded that the Statute of the Permanent International Criminal Court be prepared. In 1998 the proposal of the Statute with 60 articles was prepared and by Resolution no. 49/53 of the year 1994, the UN General Secretary was asked to establish the ad hoc council, and in 1958 two meetings of the aforementioned council were convoked regarding the efforts for the establishment of the Court (Salihu, 2005, 290).

"On July 17 1998, at the United Nation's Conference held in Rome with the participation of 160 countries, with the absolute majority, the representatives of 120 countries voted for the establishment of the Permanent International Criminal Court, being the first court in the human history for protection of all people in the world from the crimes of the types anticipated by the Statute. The seat of the Permanent International Criminal Court will be in Hague"

¹⁵ Resolution no.955 of the United Nation's Security Council.

¹⁶ William A Schabas, Genocide in International Law.

Eighteen judges were appointed to work at this Court, who will have competencies to try persons accused of genocide, war crimes, aggression and in general, crimes against humanity. The agreement was signed in Rome and the operation of the Court will start following ratification by the 60 countries despite the fact that he same was signed in 1998, but later it was abrogated with the justification that USA should fight terrorism and terrorists who are operating all over the world. Also in solidarity with USA this convention for the operation of the Court is not signed by Albania and Bulgaria. Since many of the aforementioned conventions are in force with the purpose of keeping under observation the most serious crimes such as genocide, the prosecution of perpetrators of the criminal offences of genocide, terrorism, criminal offenses against humanity, then the role of the criminal court is significant in the constant fight against crimes and of other various forms anticipated by the statute.

Conclusions

The subject deliberated in this study deals with scrutinizing the courts from the international criminal law point of view as well as the culpability of the people who committed the crimes. In the study various cases were taken that the international criminal courts dealt with. As for the operation of these courts, from the aspect of time, they were always established following the end of wars that caused large number of victims. The operation of the international criminal courts commenced in 1907 and continues up to this day.

A specific of the trials are criminal offense against humanity, war crimes, genocide, terrorism, as well as many other cases that were not elaborated in this essay as due to the content we have focused only on the courts.

We tried to study all the courts elaborated in this essay in the most obvious way for the readers and for them to have a basic knowledge about their existence and operation.

The work performed in international criminal courts is specific for every court, as they must obey respective statutes that the international acts and instruments (international conventions) are based upon and strengthening of rule of law. The appointed staff working in international courts, judges, prosecutors and supporting staff, perform their work with the support of the United Nation's Trust Fund that financially supports the operation of courts.

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