

DOI: <https://www.doi.org/10.36719/2663-4619/78/97-101>

Aytaj İlgar Adgozalzade

Baku State University

master

aytac.adigezalzade@gmail.com

INTERNATIONAL CRIMINAL TRIBUNALS IN THE HISTORY OF INTERNATIONAL CRIMINAL PROCEDURE

Abstract

This article is about International Criminal Tribunals as important bodies of International Criminal Procedure. The London Agreement. Nuremberg and Tokyo Military Tribunals in legal history, their influence on international criminal jurisdiction. What is the role of International Criminal Tribunals? The Declaration of Atrocities one of main documents about jurisdiction of international criminal procedure. International Criminal Tribunal for Rwanda and former Yugoslavia. Statute of International Criminal Court. International Criminal Court as an independent body, its functions, role and jurisdiction. Other legal acts that regulate international criminal procedure.

Key words: *international criminal tribunal, declaration, International Criminal Court, military tribunals*

Aytac İlqar qızı Adgözəlzadə

Beynəlxalq cinayət prosesi tarixində beynəlxalq cinayət tribunalları

Xülasə

Bu məqalə Beynəlxalq Cinayət Prosesinin vacib hissəsi olan Beynəlxalq Cinayət Tribunallar haqqındadır. London razılaşması. Nyuremberg və Tokio Hərbi Tribunalları hüquq tarixində və onların beynəlxalq cinayət prosesinə təsirləri. Beynəlxalq Cinayət Tribunallarının rolu nədir? Vəhşiliklərə qarşı qəbul olunan bəyannamə beynəlxalq cinayət prosesinin yurisdiksiyasını tənzimləyən mühüm sənədlərdən biri kimi. Keçmiş Yuqoslaviya və Ruanda Beynəlxalq Cinayət Tribunalları. Beynəlxalq Cinayət Məhkəməsinin Statutu. Beynəlxalq Cinayət Məhkəməsi müstəqil qurum kimi, onun səlahiyyətləri, rolu və yurisdiksiyası. Beynəlxalq Cinayət Prosesi tənzimləyən başqa normativ aktlar.

Açar sözlər: *beynəlxalq cinayət tribunalları, bəyannamə, Beynəlxalq Cinayət Məhkəməsi, hərbi tribunallar*

Introduction

What is International Criminal Tribunal? As it is established by the United Nations, they are formed for the purpose of prosecuting war criminals. As the host country for them we can point Netherlands, it was a host country to a number of these tribunals. One of them was International Criminal Tribunal for the former Yugoslavia (ICTY).

One of main trials in the history of humanity were the Nuremberg Trials. After the War, Allied powers- the Soviet Union, France, Great Britain and the United States came together to form the International Military Tribunal (IMT). Nazi Germany leaders stood trial for crimes against peace, crimes against humanity, war crimes and conspiracy to commit any of these crimes from 1945 till 1946.

President Harry S Truman appointed Associate Supreme Court Justice Robert H. Jackson to be the chief prosecutor who would represent the United States in the proposed trials for the European Axis powers. It was even if before Germany surrendered on May 8, 1945. An agreement called the London Charter, setting the procedures for the Nuremberg Trials was lead the Allies with the help of Jackson

The London Agreement created the International Military Tribunal (IMT) on August 8, 1945, where each of the four Allied nations appointed a judge and a prosecution team. As the court's presiding judge Lord Justice Geoffrey Lawrence of Great Britain would serve. The proceedings itself would be simultaneously translated into English, Russian, French and German. The trial would make history as the first of its kind with judges from four different countries with various legal systems.

Main Part

The Declaration of Atrocities one of main documents about jurisdiction of international criminal procedure was signed by President Franklin D. Roosevelt, British Prime Minister Winston Churchill, and Soviet Premier Joseph Stalin during the Moscow Conference on October 30, 1943. Main ideas were: "The United Kingdom, the United States and the Soviet Union have received from many quarters evidence of atrocities, massacres and cold-blooded mass executions which are being perpetrated by Hitlerite forces in many of the countries they have overrun . . . those German officers and men and members of the Nazi party who have been responsible for or have taken a consenting part in the above atrocities, massacres and executions will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of free governments which will be erected therein..." (15)

Why did the Allies choose Nuremberg for trials? Nuremberg, Germany was chosen as the location of the trials for being a focal point of Nazi propaganda rallies leading up to the war. The Allies wanted Nuremberg to symbolize the death of Nazi Germany and its inhuman propaganda. One of interesting moments in this trial was: the court convened in the Palace of Justice in Nuremberg that was previously expanded by German prisoners to fit up to 1,200 detainees (15)

Indictment of perpetrators was a bit different. The indictment of 24 Nazi government officials and organizations was filed on October 18, 1945 by the four chief prosecutors of the International Military Tribunal: Robert H Jackson of the United States, Sir Hartley Shawcross of Great Britain, Francois de Menthon of France, and Roman A. Rudenko of the Soviet Union. The **jurisdiction** of the Tribunal included war crimes, crimes against peace and crimes against humanity. The International Military Tribunal defined crimes against humanity as "murder, extermination, enslavement, deportation...or persecutions on political, racial, or religious grounds" (15)

The indictment was read on November 20, 1945. 21 defendants were appearing in court. The suicides of top Nazi leaders such as Adolf Hitler, Joseph Goebbels and Heinrich Himmler prevented them from standing trial (that was their "rescue"). The day before the trial Head of the German Labor Front, Robert Ley, committed suicide so he prevented himself from standing trial, too. (15)

Between November 20, 1945 to October 1, 1946, the Tribunal tried twenty four of the most important political and military leaders of the Third Reich and heard evidence against twenty one of the defendants. During the trial, the Tribunal—and the world—learned about the the Nazi Party and its "planning, initiating and waging of aggressive war" from the beginning. Footage of Nazi concentration camps taken by Allied military photographers during liberation was shown to the court. The graphic scenes of what had taken place in Europe were the most powerful evidence presented at the trial. Other memorable moments of the trial were the screenings of the *Nazi Concentration and Prison Camps* and *The Nazi Plan* films, the detailed description of the Final Solution, the murders of prisoners of war, atrocities in extermination camps, and countless cruel acts to prosecute Jews (15)

On October 1, 1946, the Tribunal convicted 19 of the defendants and acquitted three. Of those convicted, 12 were sentenced to death. Three defendants were sentenced to life imprisonment and four to prison terms ranging from 10 to 20 years. On October 16, executions were carried out by hanging in the gymnasium of the courthouse. Hermann Göring committed suicide the night before his execution. In 1947, the prisoners sentenced to incarceration were sent to Spandau Prison in Berlin. From December 1946 to April 1949, a series of twelve additional military tribunals for war crimes against Nazi Germany leaders were held by the United States in the Palace of Justice. The defendants were 177 high-ranking physicians, judges, industrialists, SS commanders and police commanders, military personnel, civil servants, and diplomats. The trials uncovered the German leadership that supported the Nazi dictatorship. Of the 177 defendants, 24 were sentenced to death, 20 to lifelong imprisonment, and 98 other prison sentences. Twenty five defendants were found not guilty. Many of the prisoners were released early in the 1950s as a result of pardons. Thirteen of the 24 death sentences were executed (16)

After giving information about Nuremberg Tribunal we should give a bit information about Tokyo Military Tribunal, too. The International Military Tribunal for the Far East (IMTFE), also known as the Tokyo Trial or the Tokyo War Crimes Tribunal, was a military trial that was convened on April 29, 1946 to try leaders of the Empire of Japan for crimes against humanity, conventional war crimes and crimes against peace leading up to and during the Second World War. It was modeled after the International Military Tribunal (IMT) formed some months earlier in Nuremberg, Germany to prosecute senior officials of Nazi Germany. (17) Both of these tribunals have similar features.

The Tokyo War Crimes Tribunal was composed of judges, prosecutors, and staff from eleven countries that had fought against Japan: Canada, Australia, France, China, India, the Netherlands, New Zealand, the Philippines, the Soviet Union, the United Kingdom, and the United States; the defense comprised Japanese and American lawyers (17)

Where were the trials held? The trials were held in the former building of the Japanese Ministry of War in Ichigaya, Tokyo. Before World War II, the building housed the Japanese Army Academy. It wasn't accidental because it was a building where the Japanese advanced the country's military ideologies for the young generation. During the war, the Imperial General Headquarters made up the Ministry of War, the Army General Staff Office, and the Ministry of the Navy—acting as a center for the direction of war tactics. Over three quarters of Tokyo's buildings were demolished by fires and bombing, but this building was left standing (17)

The trial was held on the first floor, the second floor was for judges and deliberating, and the third was for the prosecution teams. The office of the Tribunal President, Sir William Flood Webb of Australia, was used by Imperial Japanese Army general and Prime Minister of Japan, Hideki Tojo, during the war (17)

Unlike its counterpart in Nuremberg, the Tokyo Trial exercised broader temporal jurisdiction, beginning from the 1931 Japanese invasion of Manchuria. Twenty-eight high-ranking Japanese military and political leaders were tried by the court, including current and former prime ministers, foreign ministers, and military commanders. They were charged with fifty-five separate counts, including waging aggressive war, murder, and various war crimes and crimes against humanity (such as torture and forced labor) against prisoners-of-war, civilian internees, and the inhabitants of occupied territories; ultimately, 45 of the counts, including all the murder charges, were ruled either redundant or not authorized under the IMTFE Charter (17)

By the time it adjourned on November 12, 1948, two defendants had died of natural causes and one was ruled unfit to stand trial. All remaining defendants were found guilty of at least one count, of whom seven were sentenced to death and sixteen to life imprisonment. Thousands of other "lesser" war criminals were tried by domestic tribunals convened across Asia and the Pacific by Allied nations, with most concluding by 1949 (13)

The Tokyo Trial lasted more than twice as long as the better-known Nuremberg Trial, and its impact was similarly influential in the development of international law; similar international war crimes tribunals would not be established until the 1990s (13)

The history of the first international criminal tribunals begins from the 1990s. International criminal tribunals exist to investigate and prosecute individual people for serious violations of international criminal law or international humanitarian law – such as war crimes, genocide, and crimes against humanity – when national authorities are unable or unwilling to do so. Such courts may be established by a multilateral international agreement (“international tribunals”) or by an agreement between one State and an intergovernmental organizational (“hybrid tribunals”) (8)

The only permanent supranational court dedicated to atrocity crimes is the International Criminal Court (ICC), which began operating in 2002. While the ICC's authority is limited by certain requirements, it is designed to address atrocities around the world and into the future (8)

In contrast, the international community has established other criminal tribunals that are each focused on a specific place and time, corresponding to a particularly intense period of past conflict or unrest involving widespread human rights abuses. International criminal tribunals established to prosecute war crimes, crimes against humanity, or genocide, include: International Criminal Tribunal for the former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR), International Military Tribunal for Germany (Nuremberg Tribunal), International Military Tribunal for the Far East (Tokyo trials) (8)

The international community has also cooperated with national governments to establish “internationalized” or “hybrid” tribunals to prosecute international crimes. These courts may operate exclusively within a national judicial system or may have been established by an agreement between the United Nations and the national government, and as such, their staffing and judicial composition may be national or international in nature. Some examples include the following:

- Special Court for Sierra Leone
- Extraordinary Chambers in the Courts of Cambodia
- Special Tribunal for Lebanon

- Serious Crimes Panels of the Dili District Court (East Timor)
- Regulation 64 Panels of Kosovo
- War Crimes Chamber of the Court of Bosnia and Herzegovina
- Special Department for Adjudicating in Trials Against Perpetrators of War Crimes of the Belgrade District Court (Serbia)
- Iraqi Special Tribunal
- Scottish High Court of Justiciary, sitting in the Netherlands (Lockerbie trial). (8)

After giving information about international criminal tribunals it is naturally necessary to analyze the Rome Statute of the International Criminal Court and ICC itself.

The **Rome Statute of the International Criminal Court** is the treaty that established the International Criminal Court (ICC). It was adopted at a diplomatic conference in Rome, Italy on 17 July 1998 and it entered into force on 1 July 2002. As of November 2019, 123 states are party to the statute. Among other things, the statute establishes the court's functions, jurisdiction and structure (12)

The Rome Statute established four core international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression. Those crimes "shall not be subject to any statute of limitations". Under the Rome Statute, the ICC can only investigate and prosecute the four core international crimes in situations where states are "unable" or "unwilling" to do so themselves; the jurisdiction of the court is complementary to jurisdictions of domestic courts. (Yudan Tan, 2021: 10) The court has jurisdiction over crimes only if they are committed in the territory of a state party or if they are committed by a national of a state party; an exception to this rule is that the ICC may also have jurisdiction over crimes if its jurisdiction is authorized by the United Nations Security Council (12).

The ICC has jurisdiction over these crimes in three cases: first, if they took place on the territory of a State Party; second, if they were committed by a national of a State Party; or third, if the crimes were referred to the Prosecutor by the UN Security Council. The ICC may begin an investigation before issuing a warrant if the crimes were referred by the UN Security Council or if a State Party requests an investigation. Otherwise, the Prosecutor must seek authorization from a Pre-Trial Chamber of three judges to begin an investigation *proprio motu* (on its own initiative). The only type of immunity the ICC recognizes is that it cannot prosecute those under 18 when the crime was committed. In particular, no officials – not even a head of state – are immune from prosecution (12).

The Rome Statute established three bodies: the ICC itself, the Assembly of States Parties (ASP), and the Trust Fund for Victims. The ASP has two subsidiary bodies. These are the Permanent Secretariat, established in 2003, and an elected Bureau which includes a president and vice-president. The ICC itself has four organs: the Presidency (with mostly administrative responsibilities); the Divisions (the Pre-Trial, Trial, and Appeals judges); the Office of the Prosecutor; and the Registry (whose role is to support the other three organs). The functions of these organs are detailed in Part 4 of the Rome Statute (12).

Any amendment to the Rome Statute requires the support of a two-thirds majority of the States parties, and an amendment (except those amending the list of crimes) will not enter into force until it has been ratified by seven-eighths of the States parties. A state party which has not ratified such an amendment may withdraw with immediate effect. Any amendment to the list of crimes within the jurisdiction of the court will only apply to those states parties that have ratified it. It does not need a seven-eighths majority of ratifications (12)

Conclusion

At the end it is important to give a bit information about other legal acts that are part of international criminal jurisdiction.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (commonly known as the United Nations Convention against Torture (UNCAT)) is an international human rights treaty, under the review of the United Nations, that aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world.

The Convention requires member states to take effective measures to prevent torture in any territory under their jurisdiction, and forbids member states to transport people to any country where there is reason to believe they will be tortured.

The text of the Convention was adopted by the United Nations General Assembly on 10 December 1984 and following ratification by the 20th state party, it came into force on 26 June 1987. 26 June is now recognized as the International Day in Support of Victims of Torture, in honor of the Convention.

Since the convention's entry into force, the absolute prohibition against torture and other acts of cruel, inhuman, or degrading treatment or punishment has become accepted as a principle of customary international law. As of April 2022, the Convention has 173 state parties.

The Inter-American Convention to Prevent and Punish Torture (IACPPT) is an international human rights instrument, created in 1985 within the Western Hemisphere Organization of American States and intended to prevent torture and other similar activities (5)

The Inter-American Convention entered into force on February 28, 1987, and, as of 2013, 18 nations are party to it, with another two having signed but not yet ratified (5).

The Inter-American Convention defines torture more expansively than the United Nations Convention Against Torture, including "the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish." The Convention is one of a series of OAS agreements that seek to protect human rights, within the framework of the American Convention on Human Rights, which bans torture in less detail (5).

The Convention also requires states to take effective measures to prevent torture within their borders, and creates an ability to extradite persons accused of torture (5).

References

1. An Introduction to the International Criminal Court. William Schabas, Cambridge University Press; 6th edition August 2020.
2. Beth Van Schaack's 2013 article, *Universal Jurisdiction Cases Involving U.S. Defendants*, on Just Security catalogs universal jurisdiction cases brought in non-United States courts against U.S. personnel.
3. Carsten Stanh: A Critical Introduction to International Criminal Law. Cambridge University Press, August 2018.
4. Futures of International Criminal Justice- 1st Edition Emma Palmer. December 2021.
5. Inter-american convention to prevent AND PUNISH TORTURE (oas.org)
6. International Criminal Justice: Legitimacy and Coherence. Gideon Boas, William A.Schabas, Michael P.Scharf.
7. International criminal law - Volume I: History and Structures on the International Criminal Court Paperback – July 28, 2021.
8. Internationalized Criminal Tribunals – International Justice Resource Center (ijrcenter.org).
9. International Criminal Tribunals: Politics, Law & Business Kindle Edition; May 2010.
10. Robert Cryer, Darryl Robinson, Sergey Vasiliev: *An introduction to International Criminal Law and Procedure*. 4th edition, August 2019.
11. Roger O Keefe, International Criminal Law; 4th June 2015.
12. RS-Eng.pdf (icc-cpi.int).
13. The International Military Tribunal for the Far East, Digital Collection (virginia.edu).
14. The International Criminal Responsibility of War's Funders and Profiteers. Nina.H.B.Jorgensen Cambridge University Press, September 2020.
15. The Nuremberg Military Tribunals and "American Justice" , The National WWII Museum | New Orleans (nationalww2museum.org).
16. The Nuremberg Trials, The National WWII Museum, New Orleans (nationalww2museum.org).
17. Tokyo War Crimes Trial, The National WWII Museum, New Orleans (nationalww2-museum.org).
18. Yudan Tan: (2021)The Rome Statute as Evidence of Customary International Law (International Criminal Law, 16); Brill , Nijhoff (July 29).

Rəyçi: h.ü.f.d. Könül Hüseynova

Göndərildi: 05.04.2022

Qəbul edildi: 07.05.2022