The Importance of the International Military Tribunals at Nuremberg and Tokyo

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Abstract

The war of aggression of the Axis powers (Germany, Italy and Japan) was characterized by numerous crimes against the population of the occupied countries.

The Member States of the International Commission for the Punishment of War Crimes, signed at London, in 1942, are obliged to seek out perpetrators, to push the criminal responsibility, irrespective of their nationality or their victims, the place of the offence, to extradite to the State concerned, if this state does not consider that appropriate sanctions, to cooperate, so that perpetrators do not remain unpunished, exercising the universal competence as an alternative. They have pledged to punish criminally the guilty, but, they did not, set certain rules of procedure.

Keywords: international military tribunals, war of aggression, conventions, regulations, rights

1. Introduction

The typical war of aggression of the Axis powers (Germany, Italy and Japan) was characterized by numerous crimes against the population of the occupied countries.

Allied governments have taken a series of measures to punish the culprits, so in 1942, premiered the International Commission for the Punishment of War Crimes, signed at London, “Saint James Palace Statement”, aiming at the application of punishments for war criminals, on the path of organized justice, but in the absence of criminal jurisdictions, sanctioning the international offences continues to be carried out by the criminal courts of each State.

Thus, the Member States are obliged to seek out perpetrators, to push the criminal responsibility, irrespective of their nationality or their victims, the place of the offence, to extradite to the State concerned, if this state does not consider that appropriate sanctions, to cooperate, so that perpetrators do not remain unpunished, exercising the universal competence as an alternative.

2. First International Instruments Relating To International Crimes

Charact

Though they have pledged to punish criminally the guilty, they did not, however, set certain rules of procedure.
The Geneva Conventions of 1949 (article 49 of the Convention I, article 50 of the Convention II, article 105-108 and 129 of the Convention III, and article 146 of the Convention IV), the additional protocol to this Convention, concluded in 1977 (art. 85, para. I), as well as the Geneva Convention of 1954 (art. 28) for the protection of cultural property in the event of armed conflict, the States parties have three categories of obligations: to prosecute serious acts in national legislation, to punish those guilty of such acts, to ensure procedural guarantees for defendants, the right of defence, the ordinary remedies and enforcement of sentences.

We emphasize that the Treaty of Versailles had brought to the fore the States trying to punish persons guilty of committing international crimes.

Numerous other international legal acts put in the spotlight the punishment of war criminals, especially after the outbreak of the Second World War and, especially, after the attack on the Soviet Union by Germany [1].

The Ministry of Foreign Affairs of the USSR of November 25 and 27 April, 1942, then in the “Soviet Government Statement on the atrocities committed by the invading Germans in the countries of Europe from October 14, 1942”, shows the need for the establishment of a special international tribunal.

The same premise can be found in the Declaration of December 1943 to the Governments of the USSR, the USA and the United Kingdom, the war criminals to be tried and punished instead of having committed atrocities under the laws of those countries, according to a joint decision of the Allied governments.

Thus, the provisional Government of French and US Governments have drafted and signed at London on 8 August 1943, “The Agreement on the prosecution and punishment of the major war criminals of the European Axis Powers”, also called “The London Declaration” by which it was established an international military tribunal for purposes of prosecution and punishment of war criminals whose crimes are without geographical location.

The agreement included in the Statutes of the Tribunal, their setting out rules of incorporation, jurisdiction and operation.

After the Second World War, the establishment of guilt and punishment of persons guilty of war crimes has become a necessity; an agreement called the “The London Agreement” of 8 August 1945 was recognized by the UN General Assembly [2].

This accomplishment resulted in the establishment of the two international military tribunals at Nuremberg and Tokyo, the first established by the London agreement of 1945, the second by the Supreme Commander Statement of allied forces in 1946 [3].

These courts [4] have been created on a temporary basis for prosecuting war criminals of the European Axis countries and Far East for committing crimes against peace, war crimes and crimes against humanity, these types of crimes are listed in article 6 of the Statute of the Military Tribunal at Nuremberg (entitled “jurisdiction and general principles”).

The Nuremberg Tribunal [5] was composed of four judges and four alternates; four of the winning power, the chairmanship by one of the judges, decisions being taken by a majority of the members, in case of a tie vote, the President’s being decisive. The conviction was necessary with the votes of at least three judges.

Competence ratione materiae may refer to:

1. crimes against peace: preparation, starting or fighting a war of aggression in violation of international treaties;
2. war crimes: murder, inhumane treatment, plundering public goods, execution of hostages, destruction of towns and villages without reason;
3. crimes against humanity: extermination, subjection to slavery, deportation, persecution on political, racial or religious reasons.

The statute stipulates judgments and punishments for the main war criminals, who have committed international crimes, either individually or as members of organizations.

Regardless of the fact that they were heads of States, senior officials, responsible for their deeds, not exonerating them, but only being a disclaimer to be considered a mitigation of the sentence by the Court.

Article 9 of the Statute shows that the criminal organizations or groups are, for example: the Gestapo, the SS, and the Nazi German Party Leadership.

Thus, according to the Statute, a Commission of inquiry and tracking the main war criminals was established, consisting of Robert H. Jackson – from the United States, François de Menthon – from France, Sir Shauwcross-Hartlez – from Great Britain, Roman A. Rudenko – from the Soviet Union, aiming to rally the necessary samples, preparation, and approval of the prosecution indictment.

The statute further provides, in article 16, to guarantee the fundamental rights of the defendants, judging them within the framework of a fair trial based on a series of rules as stated in the Statute, the judgment of the Court remains definitive, non-reviewed, but must be attributed pursuant to article 26 of the Statute.

Where the guilt is found, the Court could decide to have the death penalty or other punishment which it considers fair, having also the right to confiscate any property stolen by convicted and submitted by them to the guilt of Allied Control Board of Germany in accordance with articles 27 and 28.

In the judgment of the main war criminals [6], the Defence brought a series of criticisms against the Statute, in that he has raised to the rank of crime, which before had at most one illegal feature, but in no event as a murder case and likely to attract criminal sanctions.

It also shows that several principles were breached, including the principle of criminal law, the lex mitior, because convictions are based on facts that, at the time it was committed was not established as crime of international law or national law of any State.

However, the Tribunal at Nuremberg had relied on a number of international documents declaring the war of aggression, which was considered the most serious international crime, a clear example of this is the preamble of the Protocol of Geneva in 1924, showing that the war of aggression constitutes a violation of international solidarity, the Declaration in 1927 of the League of Nations’ Assembly that called the war of aggression as an international crime The Fourth Convention of the Hague of 1907, in the preamble there is so-called “Martens clause”, from which it emerges very clearly that the facts had been qualified by the statutes relating to crimes long before they were committed [7].

We estimated and we referred above to the Kellogg-Briand Pact, together with the provisions of the UN Charter with regard to the war of aggression, as well as the statutes of the tribunals at Nuremberg and Tokyo [8].

The Tribunal’s deliberations began on November 20, 1945, in total there were 403 main hearings being investigated over 3,000 authentic acts and about 200 witnesses heard, the Act of indictment which ended on 6 October 1956 did not target but 22 names, although there were suspicions of 120,000 names, and they belonged to the head of the Reich, the fascist political leadership of the Nazi Party, the Gestapo, the SS, the SD, and the SA and to the General Commandment of the Wehrmacht, and the jurisdiction ratione personae was laid down in article 1 and article 6 of the Statute of Nuremberg.
having the quality of subjects of crimes-war criminals who acted individually or as members of an organization, who have committed crimes against humanity, war crimes and the crime against peace.

The determination of the jurisdiction ratione personae is twofold, on the one hand referring to the interest that these people have acted, and, on the other hand making the connection with the jurisdiction ratione materiae of the Court.

Twelve people were sentenced to death, four people from forced labour, four people to prison sentence of 10 to 20 years, and three people were acquitted.

The competence ratione temporis is not provided by any of the Rules for the operation of the two military tribunal, but we cannot appreciate that these crimes are closely linked to the onset of World War II and the period in which it took place, so the competence ratione temporis, as laid down in the period before or during World War II.

As the competence ratione temporis, neither the jurisdiction ratione locii is explicitly delineated.

In the preamble of the Statute of the Tribunal at Nuremberg, it was stated that the crimes perpetrated by the war criminals, irrespective of their geographical location, but taking into account that the Tribunal has been created for the criminal prosecution of war criminals of the European Axis countries, limiting the location relates clearly to the work of the European Axis.

As we know, a precedent for the prosecution of those guilty of war crimes was established at the end of World War I, in the case of the Leipzig trials for war crimes (June-July 1921), though it was at a very limited scale and considered ineffective [9].

The Tribunal has determined that “crimes against international law are committed by men, not by abstract entities, and only by punishing individuals, can be put into force the provisions of international law” [10].

The creation of the Tribunal at Nuremberg has served as a model for the International Military Tribunal for the Far East, which judges the crimes against peace and against humanity.

This served as a model for the process of Eichmann and the courts today in the Hague for crimes committed during the Balkan wars of the early 1990s and from condemnation to Hrusha of the persons responsible for the genocide in Rwanda [11].

The Nuremberg trials had a great influence on the development of international criminal law, the findings of the processes serving as models for:

- The Convention on genocide, 1948;
- The Universal Declaration of Human Rights, 1948;
- Nuremberg Principles, 1950;
- The Convention on imprescriptibility of war crimes and crimes against humanity, adopted by the UN General Assembly on 26 November 1968 (Resolution 2391/XXIII);
- Geneva Convention on the laws and customs of war, 1949;
- The additional protocols thereto, 1977.

The influence of the Tribunal [12] can be seen in the creation of a permanent International tribunal, in developing international criminal codes through the creation of the International Law Commission.

This orientation has been driven by conflicting methods of law between the judiciary and the judicial system in the U.S. (the crime of conspiracy, the plot being a rarity in civil law systems on the continent)-so, after 50 years, it has adopted the Statute of the International Criminal Court, a permanent international criminal tribunal [13].

The Nuremberg trials were held in the four official languages: English, German, French and Russian, using interpreters, initially for the project procedures, they used the equipment provided by IBM.
(“cables with headphones”), which simultaneously sent the information in the four official languages on four channels, switching channels being made on the dial, being revolutionary [14] for later processes.

The International Criminal Tribunal at the International Military Tribunal in Tokyo called for the Far East was established as the Tribunal at Nuremberg, being convened on 29 April 1946 for the condemnation of Japan’s leaders for three types of crimes: “class A” crimes-reserved for those who have participated in joint conspiracy to start war against employees of the highest decision-making bodies crime, “class B” – planning, ordering, authorization or inability to prevent such mistakes at higher levels in the command structure, and “class C” - atrocities, crimes against humanity [15].

Twenty-eight Japanese military and political leaders were charged with class A crimes, more than 5,700 Japanese nationals were charged with crimes of class B and C.

A number of 50 suspects, such as Nobusuke Kishi, later became Prime Minister, and Yoshihisa Aikawa, head of Nissan, were charged, but released in 1947 and 1948.

In addition, Shiro Ishii received immunity in Exchange for data collected from the experiments on live prisoners, the only dissenting judge who relieved all indictees being the Indian lawyer Radhabinod Pal [16].

The Tribunal was adjourned on November 12, 1948.

The Tribunal was created to implement the Cairo Declaration, Potsdam Declaration, the instrument of Surrender and the Moscow Conference. The Potsdam Declaration was required to sanction those who “deceived and misled” into war [17], but there were big disagreements among the allies and their administrations with respect to the reasons of liability and how to be drawn [18].

However, Douglas MacArthur, the Supreme Commander of the Allied Powers decided to give orders for arrests on 19 January 1946, MacArthur by issuing a special proclamation was the creation of an International Military Tribunal for the Far East, the same day approving the Charter of the Tokyo Tribunal, whereby it was established how to be formed, its jurisdiction and how it works [19]. On 25 April 1946, in accordance with article 7 of the Charter IMTFE, the regulations of procedure of this original courthouse were promulgated [20].

It has named 12 judges from 9 countries that have signed the instrument of Surrender, prosecutors, including the Chief Prosecutor, who was appointed by President Harry S. Truman in the person of Joseph B. Keenan.

As the Tribunal at Nuremberg, the Tokyo Tribunal had as jurisdiction ratione materiae the crimes against peace, the war crimes and the crimes against humanity, the differences between the Nuremberg Charter (art. 6) and the Tokyo Charter (art. 5) referring only to acts that represent the three categories of crimes.

The Jurisdiction ratione personae is the punishment of the major war criminals of the World War II, art. 5 of the Charter by limiting its jurisdiction to the war criminals from the Far East who are individuals or members of an organization who have committed crimes against peace, war crimes, crimes against humanity.

Competence ratione temporis is laid down in the period before or during the World War II. For competence ratione locii, the same reasoning applies in the case of the Tokyo Tribunal, bounding the location of crimes which entered its competence in the area of action of the war criminals from the Far East.

Following the model used at the Nuremberg trials, the allies established three categories of crimes: “class A” crimes-crimes against peace, against the
leaders who planned and directed the war crimes and “class B” and “class C”, which could be committed at any level, as war crimes and crimes against humanity.

However, unlike the Nuremberg trials, on charges of crimes against peace was a prerequisite for the commencement of criminal proceedings against persons who have committed crimes.

Article 13 of the Charter states that “the evidence against the accused could include any document without proof of his signature or proof issue”; the Tribunal is not obliged to “comply with the rules of evidence, admitting any evidence which it deems to have probative value” [21]. “It is almost impossible to define the concept of initiating or wear a war of aggression both accurately and comprehensively,” says one of the judges, making a separate opinion in the case of Hirohito, but it was overwhelming evidence that atrocities were committed by members of the Japanese armed forces against the civilian population of occupied territories by them [22].

Thus, 5700 people were sanctioned for the crimes of class B and class C, of this number 984 were sentenced to death, 475 commuted to life sentences, 2944 sentenced with jail time-limited, 1018 were acquitted and 279 were not brought to trial (e.g.: Ishii-immunity granted by MacArthur) [23].

Unlike the Nuremberg Court, there has been a single prosecution team led by an American, although the members of the Court were 11 different allied countries [24].

For crimes of “class” were penalized 3 groups: the first 28 – leaders in the field of military, political, diplomatic; the second group consists of 23 people – financial and industrial tycoons and the third group – 19 people were charged with drug trafficking [25].

In accordance with article 11 in the Peace Treaty of San Francisco, signed on September 8, 1951, Japan has accepted the competence of the Tribunal in Tokyo [26].

It must be said that, by the end of 1958, all Japanese war criminals were released from prison and rehabilitated from the political point of view, although a 2006 poll shows that 70 % of those questioned acknowledged the Japanese aggression during the war, only 7 percent considering it a war for self-defence, a governmental Commission of Korea, taking off 83 of 148 people on the list of war criminals [27].

3. Conclusions

After the World War II, the first special ad-hoc courts created temporarily, with precisely determined object and limited jurisdiction ratione personae was the International Military Tribunal at Nuremberg

The paper analyses the relevant aspects of the international military tribunals, the exception established by the London Agreement of 8 August 1945 for the prosecution and punishment of the major war criminals, which according to the Statute, it had jurisdiction “to prosecute and punish those persons who, acting on behalf of the European Axis powers, have committed crimes against peace” [28].

The merit of this instance lies in the fact that, for the first time in an international document, three important categories of international crimes are defined, sensu stricto -crimes against peace, war crimes and crimes against humanity, all having in common the violation of supreme values of the international community. The Act of indictment at the Nuremberg Tribunal, on 18 October 1945, constitutes the first legal document that refers to the deliberate and systematic genocide, namely the extermination of social, racial, national and religious groups within the civilian population in the occupied territories, in order to destroy certain breeds or classes of populations and national, racial or religious groups.

The main criticism against this jurisdiction is concerned with the violation
of the principle of legality in that the acts for which they were accused the judge of the tribunal, crimes against peace and war crimes, according to the decision – these were not provided for in the international law in the committal-time, criminalization occurring after committing them.

In the same historical conditions, the International Tribunal was established for the prosecution and punishment of the major war criminals of the Far East, known as the Tokyo Tribunal, whose status was approved by Supreme Allied Commander’s Proclamation, the American General McArthur, of 19 January 1946, on the basis of the provisions of the Potsdam Declaration of July 26, 1945.

Through these it is highlighted that the process [29] at Nuremberg has the merit of being propelled by the concepts of genocide and crimes against humanity [30], and by the processes of Tokyo that describe criminal acts committed against prisoners of war which led to a new meaning of the word: inhuman.

It must be said, however, that the Tribunal from Tokyo could not fulfil its fundamental function, the political element was the one who had an important contribution to the implementation of Justice, due to the fact that the decision belonged to a single power – USA [31], who decided to exempt from the process of Japanese industrialists who were involved in supporting the war, as well as scientists from units in Manchuria that killed thousands of people during medical experiments but in the first place, decided to exempt criminalization of Emperor Hirohito, who approved all of the Japanese army’s missions. This decision led to impossibility of judging by this Court of the principal responsible, with negative repercussions on the whole process [32].

The perseverance for the creation of a permanent criminal court did not end even after the demise of the cold war, which was supposed to end the heavy domestic and international conflicts during which they committed genocide crimes, against humanity and war crimes, in which case the practice of ad hoc courts continued, being set up criminal tribunals for the former Yugoslavia, for Rwanda.

REFERENCES

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3. The text of the Agreement and the Statute of the International Military Tribunal, for gathering documents and international treaties (George Hamilton, Mariana Drăghici), 1972.


10. Heller 2011, 9, *Marrus According to 1997*, 563, Roosevelt had already written to Rabbi Stephen Wise, president of the American Jewish Congress, in July 1942, saying: “The American people not only sympathise with all the victims of Nazi crimes, but will hold the perpetrators of these crimes to strict accountability in a day of reckoning which will surely come”.

17. Within documents relating to the IMTFE, it is also referred to as the “Charter”.
28. See the *Statute of the International Nuremberg Military Tribunal* (art. 6).
29. Stelian Scăunaș, *cit.ed.*, 81
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