THE INTERNATIONAL MILITARY TRIBUNAL: LANDMARK IN THE INTERNATIONAL CRIMINAL JUSTICE

Kondro Mariia
PhD Student National Academy of Sciences of Ukraine
V.M. Koretsky Institute of State and Law, Ukraine

Scientific adviser: Volodymyr Denysov
V.M. Koretsky Institute of State and Law, Ukraine

Summary. The establishment of the International Military Tribunal in Nuremberg is one of the most significant events in the history of modern international law. For the first time in history, the legal mechanism was used to bring to justice those who committed crimes against peace, serious war crimes, crimes against humanity. In this regard, he laid the foundations of international criminal justice, was the first stage of its formation.

Keywords: International Criminal Tribunal, criminal prosecution, proceeding, criminal law, responsibility.

The idea that those accused of international crimes should be brought before a tribunal was an innovation in international law, before the Ministry of Internal Affairs, the objects of responsibility under international law were States, not individuals. Although some agreements were concluded that established individual criminal liability, none of them was successful. The Sevres Peace Treaty with Turkey (1920) on the responsibility of the "Young Turks" for the Armenian Genocide of 1915 was replaced by a new Treaty of 1923 without a similar position. In the norms of the Treaty of Versailles (1919) (art. 227-229) establishes the responsibility of individuals, including Emperor Wilhelm II, for crimes against "international morality" and "violations of international treaties" and violations of the laws and customs of war [1].

However, the Netherlands refused to extradite Wilhelm II, as he was accused of political crimes not punishable by the Netherlands-Russian legislation. The Leipzig trials turned out to be a farce. The Convention on the Establishment of the International Criminal Court, which was to hear cases on charges of persons committing terrorist acts in 1937, has not entered into force. Thus, the persecution of individuals remained a matter for individual States under national law. The situation changed with the creation of the Nuremberg Tribunal and the consolidation of the principle that any person, regardless of duty or military rank, should be held accountable for international crimes. This principle has become universally recognized and has been developed in the practice of the International Criminal Tribunals for the Former Yugoslavia and Rwanda, the International Criminal Court,
the Special Court for Sierra Leone and other mixed tribunals, as well as in the activities of national courts carrying out criminal repression based on the principle of universal jurisdiction.

The legality of the International Military Tribunal was determined by the following:

1) The legal basis. The idea of the responsibility of the Nazis during the Second World War was realized after the victory of the anti-Hitler coalition at the London Conference on August 8, 1945 [2]. An international treaty on the establishment of an international court of justice was signed in London — an agreement between the governments of the USSR, The USA, Great Britain and France dated August 8, 1945, the annex to which was the Statute of the Ministry of Internal Affairs for the Prosecution and Punishment of the Main War Criminals of the European Axis countries, on the basis of which an international judicial body was established.

Thus, the legal basis of the tribunal was an international treaty concluded by four Powers, and later 19 more countries (Denmark, Norway, Belgium, the Netherlands, Luxembourg, Portugal, Czechoslovakia, Yugoslavia, Poland; six American countries: Haiti, Venezuela, Paraguay, Uruguay, Panama, Honduras, as well as Australia, New Zealand, India, Ethiopia) joined it. This compares favorably with the International Tribunal for the Far East (Tokyo), which was established by a special proclamation of the Supreme Commander on January 19, 1946. (included representatives of 11 states — the USSR, the USA, Great Britain, France, the Netherlands, China, Canada, Australia, New Zealand, India, the Philippines).

The International Tribunals for the Former Yugoslavia and Rwanda were established on the basis of the resolutions of the Security Council, as a result of which their legitimacy is controversial. The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY) was established by UN Security Council Resolution No. 827 of May 25, 1993 on the basis of Chapter VII of the UN Charter ("Actions against Threats to peace violations of the peace and an act of aggression") as one of the coercive measures within the meaning of this chapter. In 1994 Security Council resolution No. 955 of November 8 established the International Criminal Tribunal for the Prosecution of Persons Guilty of Genocide and Other Serious Violations of International Humanitarian Law Committed on the Territory of Rwanda and Rwandan citizens Guilty of genocide and Other Crimes Committed on the Territory of Neighboring States in the period from 1 January 1994 to December 31, 1994 (ICTR). The Special Court for Sierra Leone operates on the basis of a 2002 agreement between the UN and the Government of that State.

The International Military Tribunal has been criticized in literature [3] as a court of winners. However, even in his opening speech, the Prosecutor from the United States, R. Jackson, said that the aggressive war unleashed by Germany was a world war that did not leave any state of the world aside [4]. The Preamble of the Agreement states that the governments of the four Powers "act in the interests of all United Nations in the person of their properly authorized representatives". The verdict stated that the tribunal considers the Charter as "the product of the exercise of sovereign legislative powers by the countries in relation to which the German
Empire recognized its unconditional surrender", it confirmed "the undoubted right of these countries to exercise legislative power in the occupied territories, recognized by the civilized world" [5].

2) Its substantive jurisdiction (ratione materiae) extended to three groups of crimes:
   a) Crimes against peace, namely: planning, preparation, unleashing and waging an aggressive war:
   b) War crimes, namely: violation of the laws and customs of war, which include murder, torture or enslavement or for other purposes of the civilian population of the occupied territory; murder or torture of prisoners of war or persons at sea, murder of hostages; looting of public or private property; senseless destruction of cities or villages; destruction unjustified by military necessity and other crimes.
   c) Crimes against humanity: murder, extermination, enslavement, exile and other atrocities committed against the civilian population before or during the war, or persecution on political, racial or religious grounds in order to carry out or in connection with any crime subject to the jurisdiction of the Tribunal.

The Tribunals for Yugoslavia and Rwanda have jurisdiction over these crimes, except crimes against peace, and over the crime of genocide. The ICC has jurisdiction over four types of crimes (in relation to aggression, when the relevant provisions come into force, see below). Jurisdiction had grounds in international law. When applying the provisions of the Charter, the Tribunal rejected the argument that it violates the principle of legality by means of the ground given in relation to crimes against peace: "First of all, it should be noted that the maxim nullum crimen sine lege is not a limitation of State sovereignty, it is a general principle of justice. It is quite obvious that it is not right not to punish those who, in violation of treaties and guarantees, attacked neighboring States without declaring war. Under such conditions, the aggressor should know that he acted improperly, and not only would it not be unfair to punish him, but, on the contrary, it would be unfair to leave the evil he committed unpunished" [5].

And further: "The Ministry of Internal Affairs was established for the implementation of justice, and it can be considered an illusion that the law applied by the Tribunal did not exist before the adoption of the Charter. The source of international law is not only treaties, but also customs, as well as general principles of law recognized by the community of nations." As for substantive jurisdiction over crimes against peace, they were an application of the principle of the prohibition of aggressive war, reflected in The Briand–Kellogg Pact of 1928. The Charter is the first international act that recognized aggressive war as an individual crime. In turn, the Charter provided the basis for the development of the concept of "aggression" committed by the State, expressed in the definition of aggression of 1974, adopted by the UN General Assembly (resolution 3314).

Moreover, the definition of the crime of aggression adopted at the Conference of the Assembly of States Parties to Review the Rome Statute in Kampala, [6] is based on the definition of "crimes against peace" set out in art. 6 a) The Nuremberg Tribunal's New Article 8 bis defines the crime of aggression as "planning, preparation, initiation or implementation by a person who is able to effectively control or direct the political or military actions of a State, an act of aggression"[6]. Despite, perhaps,
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some archaic definition, States considered that it was already firmly embedded in the fabric of customary international law, and fully accepted this formulation.

The Geneva Convention of 1929 was used as the basis for the Tribunal to exercise jurisdiction over war crimes, on the Protection of Victims of War and the Hague Convention on the Laws and Customs of the Land War, although these treaties did not provide for the possibility of applying criminal sanctions [7].

Crimes against humanity were a novelty of the Charter. The atrocities committed during the Second World War against Germans or against citizens of the allied States of Germany (Hungary and Romania), although they were not a violation of the laws of war, since they operated only between the belligerents, were declared crimes against humanity.

Prosecution for such crimes, according to the Charter, took place if they were committed "for the purpose of carrying out or in connection with any crime subject to the jurisdiction of the Tribunal" (war crimes or crimes against peace). On December 20, 1945, the Allied Control Council for Germany adopted Law No. 10, which authorized the Allied Powers to arrest "military and other criminals who were not under the jurisdiction of the Nuremberg Tribunal" and decided to establish tribunals for their trial. In 1946-1955, a large number of trials were held in the so-called "military tribunals"[8]. Thus, criminalization of this category of crimes has also found a basis in customary law through the adoption of Law No. 10, confirmation of the Nuremberg Principles in the Resolution of the GA of December 11, 1946, as well as the practice of military tribunals. Although this practice was not so widespread, opinio juris (in particular, the recognition of such acts as criminal at the international level and the provision that crimes against humanity should be punished) was expressed by most States [9].

3) The objective procedural basis of the tribunal laid down the principles of international criminal procedure - publicity, competitiveness, speed and fairness of the process and a set of rights to defense. For the first time, a unique judicial model was created and implemented, which combined the achievements of heterogeneous legal systems: the Anglo-Saxon adversarial (adversarial) and continental, inquisitorial (inquisitorial) forms of judicial proceedings.

The fact that three defendants were acquitted and seven were sentenced to imprisonment [10] (a total of 22 defendants were convicted) confirms that the tribunal was a legitimate court, and not a formal process where questions of guilt were predetermined. The unconditional confirmation of the generally accepted norms of the Charter was their approval as principles of international law in a Resolution unanimously adopted by the UN General Assembly on December 11, 1945. In 1950 at the second session of the UN International Law Commission, it approved the "Principles of international law recognized by the Charter of the Nuremberg Tribunal and expressed in the decision of this tribunal"[11].

These principles were at the same time a confirmation of the legality of the Ministry of Internal Affairs, as well as evidence of the progressive development of international law both through the proclamation of the institution of individual responsibility of individuals, and the establishment after the Second World War of new relations between individuals, the State and the international community. The Principles take as a basis the idea that the interdependence between States and the
Improvement of the means of warfare require new, stricter protective means of stability of international life.

In this regard, the Nuremberg Principles, together with the principles enshrined in the UN Charter represents an important part of the revolutionary changes that took place in the system of international relations after 1945 and which marked an unconditional turn from the right of war to the right of peace. The key point was the connection between the prohibitions established by international law and the fundamental foundations of the post-military world order [12].

The following points of the institution of responsibility of persons for committing "serious crimes" can be distinguished.

First. The responsibility of individuals for international crimes arises directly from international law.

Second. Criminal liability is imposed regardless of the official position of the individual. Central among the conceptual innovations enshrined in The Statute of the Ministry of Internal Affairs, is an individual responsibility for the commission of criminal acts in the performance of the official functions of the accused. The Nuremberg Tribunal did not take into account and the doctrine of the state act. Since the accused persons acted as agents of their State, and not as private individuals, the institute for the elimination of immunities for such persons became an essential moment for the effective implementation of the provisions of international law. According to the Nuremberg Doctrine, the position of a person as a head of State or a responsible official is not taken into account. Thus, the Nuremberg Charter "punched a hole" in the shell of state sovereignty, making the main officials of states and major military leaders as individuals directly responsible under international law for the actions they committed on behalf of states.

The third. Responsibility is not related to what provisions in this regard are contained in national law: it can bypass this issue with silence, or justify them, or question certain provisions - for example, actions according to an order. Responsibility under international law cannot be effectively implemented if national law justifies actions in pursuance of an order of the Government (prior legality) or a military commander (superior order). Therefore, the responsibility of the commanders, the illegality of actions in the execution of the preliminary order was confirmed. Committing a crime by order of the government or by order of a superior does not absolve from responsibility, but can serve as a mitigating circumstance (Article 8 of the Charter). The idea of punishability for the execution of a criminal order is preserved in the norms of modern tribunals.

The Nuremberg Principles defined the "core" of international law, which has been developed since the International Military Tribunal. This right imposes obligations on individuals, as a result of which they can be held accountable and punished. The Principles have shown that international law is not a law applied exclusively by States. The Statute of the Ministry of Internal Affairs and the Nuremberg Principles were the first acts that served as the basis for the birth of a new branch of law - human rights.

Although States remain the main subjects of international law, there is a wide list of rights and obligations that are shared by other, non-State entities. In the second half of the XX century, international law becomes applicable to individuals.
While public international law increasingly grants rights to individuals in the field of human rights protection, its provisions are more effective in the field of international criminal justice than in the traditional field of individual rights defined by the provisions of national law.

These postulates are best confirmed by a well-known excerpt from the verdict of the Nuremberg Tribunal: "People, not abstract categories, commit crimes that are punishable by the application of sanctions provided for by international law, and only by punishing them can the institutions of international law be strengthened" [13].

Thus, since the adoption of the Law, a provision has been established according to which an investigation can be undertaken against an individual guilty of serious international crimes, he can be charged and brought before a court acting as an organ of foreign authorities on the basis of universal jurisdiction, or by an international tribunal, regardless of which the provisions are contained in national law, regardless of where the crime was committed.

Almost immediately after the verdict of the International Military Tribunal in The International Law Commission began to discuss the idea of creating a universal international court of justice for individuals. There were proposals to establish a special court to administer justice in relation to crimes against peace, war crimes and crimes against humanity committed by heads of State. This issue has been referred to the General Assembly. However, due to disagreements about the establishment of an international criminal court, the efforts of States were directed to the elaboration of a draft Convention on the Prevention and Punishment of the Crime of Genocide, which recorded the potential for the creation of new international judicial institutions (also in Convention on the Prevention of the Crime of Apartheid). However, representatives of the Soviet Union, India, Poland and the Dominican Republic expressed that such a court constitutes a violation of sovereignty a State whose inherent attribute is the right to administer justice to all crimes within its territory. On 10 November 1948, the Sixth Committee of the General Assembly decided in the draft convention to delete the reference to the international Criminal Court. As a result, a compromise article appeared, providing for the jurisdiction of national courts or the International Court of Justice on an alternative basis. According to article VI of the Convention, persons accused of committing genocide "must be tried by a competent court of the State in whose territory the crime was committed or by an international criminal court that may have jurisdiction over the parties to this Convention that have recognized the jurisdiction of such a court." At the same time, the General Assembly, in its resolution of 9 December 1948 [14], invited the International Law Commission "to consider the desirability and possibility of establishing an international legal body entrusted with the consideration of cases of persons accused of committing the crime of genocide". The General Assembly has established a committee to prepare proposals concerning the establishment of such a court. But it was never created: the international community in the 1950s was not yet ready to implement the concept of the World Criminal court. The reason was often called the Cold War, during which the conclusion of international agreements regarding the prosecution of violators of international law was not possible. Nevertheless, as soon as the Iron Curtain fell, new efforts were made, eventually leading to an agreement on the establishment of a permanent International Criminal
Court based on the Rome Statute of 1998. The Statute of the International Criminal Court was adopted on July 17, 1998 by a majority of 120 States. It entered into force on July 1, 2002 after receiving the required number of certifications. The Statute has now been ratified by 114 States. Prior to this agreement, two ad hoc tribunals were established by the Security Council (ICTY and ICTR). The ICC operates on a permanent basis (unlike temporary tribunals) and is based on the principle of complementarity.

So, the ICC was the first international court to lay the most important foundations international criminal justice through the establishment of an institutional, legal and judicial mechanism.

1. The institutional foundations of international criminal justice have been laid. The international judicial body was established as consisting of two links - the tribunal proper, the judicial body (consisting of judges appointed by the participating States) and the investigative and prosecutorial body (representatives of States). The two-link MW system has evolved at the present time in The Statute of the ICC in a four-tier — Presidency, Judicial, Appellate Division and Department of Pre-Trial Proceedings, Prosecutor's Service and The secretariat. At the same time, for the first time, the principles of the institutional mechanism were also approved - the independence and impartiality of judges, the separation of the investigative and judicial bodies, the collegiality of making decisions by judges and (to some extent) prosecutors.

2. The Nuremberg Tribunal was an important step in the development and application of international humanitarian law. If attempts after the First World War showed only a hypothetical possibility of applying criminal sanctions for committing crimes, the Ministry of Internal Affairs made this possibility real. Up to MW international norms enshrined in the Geneva Convention of 1929 on Prisoners of War, as well as the Fourth Hague Convention of 1907 about the laws and customs of land warfare, did not work. The Statute of the Ministry of Internal Affairs has also made customary humanitarian law applicable. Whereas the prosecution after the First World War was focused on violations of the laws and customs of war [1], the jurisdiction of the Nuremberg Tribunal was focused on the prosecution of crimes against the civilian population.

In addition, the IMT was the impetus for the further development of IHL, which was reflected in the adoption of the Geneva Conventions of 1949 and the Genocide Convention of 1948. And finally, in the 1990s in In the Statutes of criminal tribunals, the norms on war crimes are being further developed. Jurisdiction has been established with respect to "serious violations of humanitarian law", which include: serious violations of the Geneva Conventions of 1949; violation of the laws and customs of war; genocide; crimes against humanity. The list of acts classified as a violation of generally recognized norms on the protection of victims of war, as reflected in the provisions of the Geneva Conventions of 1949, includes biological experiments, forcing a prisoner of war or a civilian to serve in the enemy's armed forces, taking civilians as hostages, deprivation of a prisoner of war or a civilian persons have the right to normal legal proceedings. It is also prohibited to seize, destroy or intentionally damage cultural, educational, charitable, artistic and scientific institutions, historical monuments, artistic and scientific works.

Jurisdiction for violation of the laws and customs of war includes, in addition to those established in The Hague Conventions of 1907 and their annexes, the use of
toxic substances and other types of weapons designed to cause unnecessary suffering.

Article 8 of the ICC Statute establishes jurisdiction over a wide list of war crimes. After a tense discussion, the article covers crimes taken not only from the Hague and Geneva Conventions, but also Additional Protocols, as well as from other treaties. Serious violations of the Geneva Conventions of 1949 are prohibited (any acts against persons or property protected by the provisions of the relevant Geneva Convention (8 compositions, including taking hostages); serious violations of laws and customs applicable in international armed conflicts and established within the framework of international law (26 reports). Separately, war crimes committed during an armed conflict of a non-international nature are charged: serious violations of Article 3 common to the Geneva Conventions; other serious violations of laws and customs applicable in non-international armed conflicts. Acts committed against UN peacekeeping forces and violations against children (recruitment or recruitment of children under the age of 15) are punishable. Nevertheless, offenses related to the conduct of hostile acts in an internal armed conflict, the use of weapons prohibited in relation to international armed conflicts, the use of nuclear weapons are not punishable. To implement jurisdiction over war crimes, it is necessary that they be committed as part of a plan or policy or in the large-scale commission of such crimes.

3. The concept of crimes against humanity is the most significant innovation of the Ministry of Internal Affairs. In criminal tribunals, jurisprudence on crimes against humanity may occur outside of the context of an armed conflict. The HRP category includes responsibility for rape, torture, and imprisonment.

In the ICC, jurisdiction over HRR takes place if the criterion of a widespread or systematic attack against any civilians is met, and such an attack is committed deliberately; the range of crimes is not finite. The most important contribution of the ICC is the criminalization of sexual crimes: in addition to rape and sexual slavery, forced prostitution, forced pregnancy, forced sterilization or any other forms of sexual violence of comparable severity. The persecution of any identifiable group on political, racial, national, ethnic, religious, cultural and gender grounds; enforced disappearance of people; the crime of apartheid is also criminalized.

4. The IMT marked an important contribution to the development of international criminal procedure law and human rights. It was the first valid international document that enshrined the rights of the accused in the process (Chapter "Procedural guarantees"). In 1948 The Universal Declaration of Human Rights in article 10 enshrined the right of a person to a fair trial and in article 11 the right of the accused to defense.

5. The Charter and the Process have consolidated the judicial foundations of international criminal justice, or the procedural law of international criminal tribunals: the principles of fair and speedy trial, competitiveness, publicity. The procedural norms and principles formulated by the States of the anti-Hitler coalition further influenced the procedural model of the International Tribunal for the Former Yugoslavia, the International Tribunal for Rwanda, the International Criminal Court and mixed courts.

CONCLUSIONS. Thus, the legitimate legal basis of the IMT, its institutional, jurisdictional and judicial mechanisms contributed to the success of the Nuremberg
Tribunal, as well as to the fact that the concept of using international criminal courts for justice against persons who have committed crimes under international law has remained relevant today, 65 years after the formation of the IMT. The formation and the beginning of the activities of the International Criminal Court is the most vivid confirmation that the form of the International Criminal Court turned out to be acceptable and vital at the turn of the XX-XXI centuries.

The principles of international criminal law, first embodied in the practice of the Ministry of Internal Affairs, and then in the practice of the Tokyo Tribunal, were confirmed and developed later by the Tribunals established by the decision of the Security Council, the ICC, mixed tribunals - the Special Court for Sierra Leone, the Extraordinary Chambers in Cambodia, the Special Tribunal for Lebanon, as well as by national courts through the exercise of universal criminal jurisdiction.

References: