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RESPONSIBILITY FOR WAR CRIMES IN THE ACTIVITIES OF INTERNATIONAL CRIMINAL TRIBUNALS

The main goal of this article is to research the legal issues of responsibility for war crimes in the activities of international criminal tribunals. The Nuremberg Tribunal also introduced a separate concept of "war crimes", which is an important step in bringing war criminals to justice. It should be noted that the Nuremberg and subsequent tribunals are international both in terms of their legal source and in terms of their jurisdiction.

The question of bringing to justice those responsible for war crimes raises not only scientific but also practical problems. These problems have become apparent in the work of the international criminal tribunals. Problems arise in the logistical, financial spheres, the search for the accused, evidence, collection of documents, etc. These issues are among these problems, but the main obstacle is the real support by states of the activities of these tribunals, the timely implementation of decisions and decisions of the tribunals. One of the common negative features of the tribunals in both the former Yugoslavia and Rwanda was that it was impossible to bring to justice those responsible for international crimes in a timely manner, and trials were lengthy. The International Criminal Tribunals for the Former Yugoslavia and Rwanda, which do not impose the death penalty, have a UN Security Council mandate, which distinguishes them from classical international tribunals established under an international treaty.

Key words: war crimes, tribunal, Nuremberg, Yugoslavia, Rwanda, jurisdiction, responsibility, UN General Assembly, UN Security Council, Geneva Conventions, Appeals Chamber, International Criminal Court.

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халықаралық қылмыстық трибуналдардың қызметіндегі әскери қылмыстар үшін жауаптылық

Осы баптың негізгі мақсаты халықаралық қылмыстық трибуналдардың қызметіндегі әскери қылмыстар үшін жауапкершіліктің құқықтық мәселелерін зерттеу болып табылады. Нюрнберг трибунал сонымен бірге «соғыс қылмыстары» деген жеке ұғымды енгізді, бұл соғыс қылмыскерлерін жауапқа тартудағы маңызды қадам. Айта кету керек, Нюрнберг және одан кейінгі трибуналдар өздерінің заңды көздері жағынан да, юрисдикциясы жағынан да халықаралық болып табылады.

Соғыс қылмыстарына кінәлі адамдарды жауапқа тарту туралы мәселе ғылыми ғана емес, сонымен бірге практикалық мәселелерді де көтереді. Бұл проблемалар Халықаралық қылмыстық соттардың жұмысында айқын болды. Бұл мәселелер осы проблемалардың қатарына жатады, бірақ басты кедергі-бұл соттардың қызметін нақты қолдау, соттардың шешімдері мен шешімдерін уақтылы орындау. Бұрынғы Югославияда да, Руандада да трибуналдардың ортақ жағымсыз белгілерінің бірі халықаралық қылмыстарға жауапты адамдарды уақтылы жауапқа тарту мүмкін болмады, ал сот процестері ұзаққа созылды. Бұрынғы Югославия мен Руандадағы өлім жазасына кесілмеген Халықаралық қылмыстық соттардың БҰҰ Қауіпсіздік Кеңесінің мандаты бар, бұл оларды Халықаралық келісім бойынша құрылған классикалық халықаралық трибуналдардан ерекшелендіреді.

Түйін сөздер: соғыс қылмыстары, трибунал, Нюрнберг, Югославия, Руанда, юрисдикция, жауапкершілік, БҰҰ Бас Ассамблеясы, БҰҰ Қауіпсіздік Кеңесі, Женева конвенциялары, апелляциялық камера, Халықаралық қылмыстық сот.

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Ответственность за военные преступления в деятельности международных уголовных трибуналов

Основной целью данной статьи является исследование правовых вопросов ответственности за военные преступления в деятельности международных уголовных трибуналов. Нюрнбергский трибунал также ввел отдельное понятие «военные преступления», что является важным шагом в привлечении военных преступников к ответственности. Следует отметить, что Нюрнбергский и последующие трибуналы являются международными как с точки зрения их правового источника, так и с точки зрения их юрисдикции.

Вопрос о привлечении к ответственности лиц, виновных в военных преступлениях, поднимает не только научные, но и практические проблемы. Эти проблемы стали очевидными в работе международных уголовных трибуналов. Проблемы возникают в материально-технической, финансовой сферах, поиске обвиняемых, улик, сборе документов и т.д. Эти вопросы относятся к числу этих проблем, но главным препятствием является реальная поддержка государствами деятельности этих трибуналов, своевременное выполнение решений и постановлений трибуналов. Одной из общих негативных черт трибуналов как в бывшей Югославии, так и в Руанде было то, что невозможно было своевременно привлечь к ответственности лиц, ответственных за международные преступления, а судебные процессы были длительными. Международные уголовные трибуналы по бывшей Югославии и Руанде, которые не выносят смертных приговоров, имеют мандат Совета Безопасности ООН, что отличает их от классических международных трибуналов, учрежденных в соответствии с международным договором.

Ключевые слова: военные преступления, трибунал, Нюрнберг, Югославия, Руанда, юрисдикция, ответственность, Генеральная Ассамблея ООН, Совет Безопасности ООН, Женевские конвенции, Апелляционная камера, Международный уголовный суд.

Introduction

Normative legal definition of war crimes, bringing to justice the perpetrators of war crimes, in short, international criminal tribunals have played an important role in the formation of this type of crime in the modern sense. For the first time, the Nuremberg Tribunal defined the term war crimes in the modern sense and strengthened its international legal framework. The charter of the Nuremberg tribunal, its judgments and decisions reflect the recognition of the principles of individual criminal liability in international law. The principles formed at the Nuremberg tribunal paved the way for interstate rule-making, which allowed to reach a new level of legal security and close its gaps. The Nuremberg Tribunal facilitated new historical changes in the development of a new legal culture and civilization, living in peace on the basis of the principles of peace and cooperation.

The Nuremberg International Military Tribunal had a significant impact on the development of international criminal law. Its Charter contains important provisions on the composition of international crimes, such as crimes against peace, crimes against humanity and war crimes. Thanks to the Nuremberg tribunal, for the first time in history, a large-scale and complete trial took place on the basis of international law.

Despite the fact that the Yugoslavia Tribunal is in the final stages of its work, many criminals who evade justice have not yet been prosecuted and punished, which is a major shortcoming both in terms of the implementation of international criminal law and the establishment of peace and justice in the world.

Statement of the main material

For the first time, the concept of war crimes, in the modern sense of the term, is practically summarized in the Charter of the Nuremberg Tribunal, as well as in the decisions of the Nuremberg Tribunal.

The Statute of the Nuremberg Tribunal defines war crimes as murder, torture, enslavement or other purposes of the civilian population of the occupied territories, torture or killing of prisoners of war and naval personnel, and looting of public or private property; unjustified destruction of cities or villages; crimes that violate the laws and customs of war, including non-military destruction and other crimes (Lachenmann 2014: 549).

The issues to be considered by the Nuremberg tribunal and the crimes within their jurisdiction were developed by the victorious states of the Second

World War, in particular, the USSR, Great Britain, France and the United States. Law 10, one of the main documents of the Nuremberg Tribunal, was characterized by two aspects.

First, it contained substantive law that defined crimes and provided penalties for those who violated them. It was the product of the legislative activity of the Supervisory Board, the only legal body in Germany, which had common legislative rights and exercised them.

The Statute of the Nuremberg Tribunal and Law No. 10 of the Supervisory Board were the result of the legislative activity of an international body. These documents did not refer to the national legislation of any state.

Lawyers for the main war criminals claimed that the Charter of the Nuremberg Military Tribunal was invalid, because had the characteristics the *lex post facto* legislative act, it means that the acts were adopted and punished after the act was committed. This means that the imposition of a penalty for an act, if not pre-determined, is illegal (Gabrielle 2000: 1872).

The Nuremberg tribunal responded to such claims by the following: "The Charter criminalizes the planning or conduct of an aggressive war or the commission of acts in violation of international treaties, so it is necessary to assess the war of aggression as a crime before the Tribunal's Charter." not a condition. "

The second aspect of Law 10 of the Supervisory Board is the procedural aspect. This Law provided for certain norms of international law for the implementation in Germany of procedural means that did not exist before, such as Order No. 7, which existed in all civilized states.

Until 1945, the absence of any governmental body in the world authorized to adopt the substantive norms of international law did not hinder the progressive development of this law.

The Statute of the Nuremberg Tribunal, its judgment, and Law No. 10 of the Supervisory Board for Germany provided for the recognition of the principles of individual criminal liability in international law.

We have already mentioned in the previous paragraphs that the resolution of the first session of the UN General Assembly on December 11, 1946 recognized the Charter of the Nuremberg Tribunal as a confirmation of these principles. The resolution noted that the General Assembly emphasized the important role of the statutes of the international tribunals of Nuremberg and Tokyo in the codification of crimes against peace and humanity (Isaacs 2011, 136).

In addition, UN General Assembly Resolution 177 (II) of 21 November 1947 drew the attention of the world community to the need for rapid codification of norms and principles on war crimes and crimes against the peace and security of mankind, taking into account the principles of international law. He noted that the definition of these crimes was given in accordance with the charter of the Nuremberg tribunal (http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/177(II)).

The verdict of the Nuremberg Tribunal stated that the Charter was not the embodiment of the free exercise of power by the victorious peoples, but, from the point of view of the Tribunal, the expression of the norms of international law that existed before its establishment (Gross 2014: 354).

A particularly important provision of the Nuremberg Tribunal's Statute on war crimes is the determination of individual criminal liability. Not only in theory, but also in the decisions of international tribunals, individuals are accepted as subjects of war crimes. At the same time, it should be noted that in the legal literature, a group of authors accept the responsibility of states for war crimes based on the decisions of the Nuremberg tribunal (Kimberley 2011).

Activities of the International Criminal Tribunal for the Former Yugoslavia

According to some international legal experts, the Yugoslavia Tribunal should have been not only a mechanism for punishing serious crimes in the Balkans, but also a preventive tool for representatives of Western countries whose geopolitical interests are a priority (Hazan 2004).

Article 2 of the Charter of the Yugoslavia Tribunal authorizes this body to prosecute persons who have seriously violated the provisions of the Geneva Conventions of 12 August 1949 and those who have ordered such violations. The Charter provides for liability for the following crimes against persons and property benefiting from the protection of the 1949 Geneva Conventions: 1) premeditated murder; 2) torture and inhuman treatment, including biological testing; 3) intentional infliction of severe suffering, infliction of grievous bodily harm; 4) illegal, free and large-scale appropriation and destruction of property without military necessity; 5) to force a prisoner of war or a civilian to serve in the armed forces of an enemy state; 6) intentional deprivation of a prisoner of war or a civilian of the right to an impartial and normal trial; 7) illegal deportation,

relocation or arrest of a civilian; 8) taking hostages as civilians.

The Yugoslavia Tribunal is hearing cases of war crimes and genocide in the former Yugoslavia. The tribunal's activities are limited by time and space. According to the charter, the territorial jurisdiction of the tribunal extends to the territory of the former Yugoslavia (except Slovenia), and the completion of the latter process means the abolition of the court itself.

The Yugoslavia Tribunal has the power to judge individuals, not organizations and governments. The maximum sentence of the tribunal is life imprisonment.

The tribunal planned to close all existing cases by 2009 (and all appeals in 2010). However, in December 2014, the Yugoslavia Tribunal heard the cases of Goran Hadzic, Ratko Mladic, Radovan Garadzic, Vojislav Seseljah, Yadranko Prlica and others. In this connection, the powers of the permanent judges and the ad litem judges of the Tribunal were extended until 31 December 2015. The UN Security Council has reappointed Serge Brammers as the Accuser of the Yugoslavia Tribunal.

The Yugoslavia Tribunal was established by a 1993 UN Security Council resolution in response to crimes committed during the 1991-92 armed conflict in the former Yugoslavia. Apparently, the Yugoslavia Tribunal has a mandate from the UN Security Council, which distinguishes it from classical international tribunals established on the basis of an international treaty.

The second feature that distinguishes the Yugoslavia Tribunal from its predecessors is the organizational conditions of its activities. By the time the Nuremberg and Tokyo tribunals opened, criminals were already under the control of the victorious states, and the Yugoslavia Tribunal took a long time to find and prosecute the perpetrators. This includes search, collection of evidence and so on. means the development of a number of new procedures and mechanisms on the issues.

Third, unlike the Nuremberg and Tokyo tribunals, the Yugoslavia Tribunal's legitimacy and authority have been widely criticized. In particular, the realization of the interests of some Western countries in the Balkans, the decisions expressed as double standards against the peoples. Despite all this, the activities of the Yugoslavia Tribunal were generally positively assessed, and the doctrine of international law also recognized the activities of this institution as an important contribution to the fight against international crime.

Although the Yugoslavia Tribunal has different characteristics from previous tribunals, it also has similar features, such as individual responsibility, the prosecution of everyone, regardless of position, and the jurisdiction of international crimes. In his case against Marnik, the prosecutor stressed that only the fact of the crime is sufficient to prosecute a person, his political or military position, social status does not release him from responsibility.

Let us give an example of a well-known case. In 2000, the Yugoslavia Tribunal convicted former Yugoslavia President Milosevic, accusing him of genocide, crimes against humanity and war crimes against Bosnian Muslims in Srebrenica in 1995. In addition, the Yugoslavia Tribunal in 2009 sentenced Milan Lukic to life imprisonment and Sredoe Lukic to 30 years in prison for war and crimes against humanity. It should be noted that these individuals were chosen for their special cruelty to the Muslim population of Bosnia, and even Milan Lukic was accused of burning people alive and violence against women and children (https://www.theguardian.com/world/2009/jul/20/milan-lukic-life-sentence).

The analysis of the cases before the Yugoslavia Tribunal has made innovations in the content of the principle of individual responsibility. Thus, according to the judges, personal responsibility arises not only when the crime is committed directly, but also when the crime can be prevented, not taken or no necessary steps are taken, ie the person's inaction, failure to take the necessary measures. is the basis for individual prosecution for war crimes. Examples of such cases are the deprivation of a detainee of a minimum of food, the deprivation of the right to a fair trial, and the refusal to provide assistance. It is more about the inaction of military commanders, the creation of conditions for such cases by those under their control, and the fact that they turn a blind eye to such cases if they are detected (the cases of Tikhomir Blaskic (Case № IT-95-14-T), Dario Kodrich and Mario Cherkess (Case № IT-95-14/2-PT)). According to the judges of the tribunal, the temporary nature of a military unit in itself cannot be a sufficient ground to exclude the subordinate relationship between the personnel of that military unit and its commander.

Among the cases before the Yugoslavia Tribunal is the issue of the responsibility of military commanders. A military commander or a person acting on his behalf is responsible for the activities of his subordinates, who should have taken or should have taken all necessary measures to deter their subordinates from committing crimes. The position of the tribunal judges in this matter is that

the military commander gives the order, it is not necessary that the order be written or oral, and the subordinates carry out the order.

One of the important points of the YugoslaviaTribunal in the matter of personal responsibility is that non-military commanders, but other leaders, can also be prosecuted for war crimes for their inaction. The main point here is that these individuals should have exercised their authority properly, which is a sufficient basis for criminal misconduct or abuse of office. All this shows once again that in order to bring a military commander or other leader to justice for inaction, it is enough to have a subordination rule, that is, a relationship between the leader and his subordinates.

The judges of the Yugoslavia Tribunal were of the opinion that leaders who ordered or acted in order to commit a crime should be held personally accountable on the basis of "guilty will" if they did not take any precautionary measures. The judges of the tribunal consider that the issuance of an order with a known outcome means the confession of the crime committed.

Therefore, it cannot be assumed that a person can be held responsible both as a leader and as an executor of a crime. These actions of the leader should be considered as aggravating circumstances of the crime. At the same time, the actions of those who carry out the orders of the leader can be considered as mitigating circumstances. It should be noted that the latter issue was also reflected in the decisions of the Nuremberg tribunal.

One of the points raised by the Yugoslavia Tribunal on personal responsibility is that it is not possible to acquit those who carry out the orders of a commander or leader. Thus, if a serviceman who carries out an order is accused of committing a war crime, this cannot absolve him of responsibility (Case № IT-96-22-T). In such a situation, it is enough to mention the rule "ignorance of the law does not absolve from responsibility", if a person has committed a war or a crime against humanity, then it is necessary to bring him to justice.

Activities of the International Criminal Tribunal for Rwanda

The Rwanda International Criminal Tribunal (hereinafter referred to as the Rwanda Tribunal), which existed as a subsidiary body of the United Nations from 1994 to 2015, was established by UN Security Council Resolution 955 of 8 November 1994. During its tenure, the Rwandan Tribunal indicted a total of 93 individuals, of whom 62 were convicted, 14 were acquitted, 10 were placed under the jurisdiction of the national court, 3 evaded justice, 2 died pre-trial, and 2 pre-trial. Recalled (http://unictr.unmict.org/en/tribunal).

On the eve of the establishment of the Rwandan Tribunal, an official report submitted by the UN Special Rapporteur on Human Rights, Rene Degni-Segui, on 28 June 1994, stated that genocide and other international crimes, including war crimes, had been brought to justice in Rwanda. The need for involvement was emphasized (UN Doc. E/CN.4/1995/7, 28 June 1994.). One week after the report, the UN Security Council expressed concern and proposed the establishment of a neutral commission. In addition, on September 28, 1994, the newly formed government of Rwanda appealed to the international community for help and demanded a trial for the crimes committed (UN Doc. S/1994/1115, 28 September 1994).

According to UN Security Council Resolution 955 of 1994, all States must cooperate fully with the tribunal and its organs in accordance with the present Resolution and the Charter of the Rwandan Tribunal, and all States shall therefore must take any action required by.

Pursuant to Article 1 of its Charter, the Rwandan Tribunal has the power to prosecute Rwandan citizens and serious violations of international humanitarian law in Rwanda and neighboring countries from 1 January 1994 to 31 December 1994 (UN Doc. S/RES/955(1994), 8 November 1994). Theodore Meron, chairman of the Yugoslavia Tribunal and former judge of the Rwandan Tribunal's Appellate Chamber, noted that the Rwandan Tribunal was concerned with serious violations of Article 3 of the 1949 Geneva Conventions and the 1977 Additional Protocol II. also looks at issues (Meron 1995, 55).

Thus, the Rwandan Tribunal prosecutes three categories of international crimes – genocide, crimes against humanity and war crimes. In general, the conflict in Rwanda is an internal armed conflict. According to the Statute of the Tribunal, matters relating to violations of Article 3 and the Additional Protocol II of 1977, which are common to the Geneva Conventions, fall under its jurisdiction (art. 4). Thus, in the Charter of the Rwandan Tribunal, the founders went further than in the Charter of the Yugoslavia Tribunal.

The Rwandan tribunal has a wider territorial jurisdiction, which is not limited to Rwandan territory and extends to neighboring states for serious violations of international humanitarian law committed by Rwandan citizens. Territorial jurisdiction has been expanded through the

application of the principle of private jurisdiction, which is now fully manifested.

In particular, the sentencing of John Kambanda. This person was the Prime Minister of Rwanda at the time of the genocide. His conviction was an important decision in principle, which strengthened the principle that international court decisions could be applied to the highest officials, which in turn led to charges against former heads of state (General Augusto Pinochet in Chile, President Hussein Hambre in Chad, Slobodan Milosevic in Serbia). set a new perspective.

The court managed to establish a special prison in the city of Arusha to hold the accused. This prison is characterized by a high level of security and compliance with international standards of detention. This is the first such prison built under the auspices of the United Nations.

The investigation of crimes has necessitated the establishment of special measures for the protection of witnesses around the world. So far, more than 400 witnesses have testified. Most of them are neutral for prosecution or defense and demand security guarantees from the risk of possible persecution. The Court has developed an effective witness protection program that is unique to Africa. The program allows witnesses to return home anonymously after testifying.

The decisions of the Rwandan Tribunal's chambers and the Court of Appeals have set interesting court precedents, which are already being used by the Yugoslavia Tribunal and in the practice of national courts around the world.

As in the case of the Yugoslavia Tribunal, the Rwandan Tribunal has been widely criticized for its work. One of the tribunal's first problems was that the UN Security Council could not establish such a judiciary. In the case of Joseph Kanyabashi, the defense argued that the establishment of the Rwandan Tribunal was contrary to the sovereignty of the Rwandan state, as it was not established by treaty and Chapter VII of the UN Charter does not authorize the Security Council to establish an international tribunal. The Rwandan Tribunal's Chamber of Deputies denied the allegations, saying that UN membership allowed for restrictions on state sovereignty, in particular Article 25 of the UN Charter 9 Prosecutor v. Joseph Kanyabashi, Case № ICTR9615T, 13-14).

At the same time, it was noted that the decision of the UN Security Council to establish the Rwanda Tribunal is completely legitimate, given the fact that there is a well-founded threat to peace and security in the world. Regarding the establishment of a special international tribunal, the Court added that although Article 41 of the UN Charter does not explicitly provide for the establishment of a special international tribunal, the establishment of such an institution on the fact of threat to peace and security is itself a step contrary to the UN Charter.

One of the common negative features of both the Yugoslavia and the Rwandan tribunal was that it was not possible to prosecute perpetrators of international crimes in a timely manner, and the trials took a long time. Taking all these issues into account, the UN Security Council adopted a resolution in 2003 to change the activities of both tribunals. These decisions stipulate that the cases considered should be completed by 2008 at the latest, and the cases pending appeal should be completed by 2010[16]. In order to speed up the proceedings in the court chambers, a group of 18 judges was launched, and a fourth courtroom was set up to increase technical capacity (UN Doc. № S/2002/1431, 8 August 2002). Following these changes, the Rwandan Tribunal's productivity has increased.

Following the changes, a number of important allegations were made and the perpetrators were quickly brought to justice. In particular, at this stage, important decisions have been made to prosecute and punish high-ranking officials on the basis of the principle of individual responsibility. On December 18, 2008, Teoneste Bagosoru, a former Rwandan army colonel, was sentenced to life in prison for genocide and the activities of the Interahamwe rebel movement. On May 17, 2011, another high-ranking military officer, General Augustin Bizimung, was sentenced to 30 years in prison. On December 20, 2012, former Rwandan Minister of Planning Augusten Ngirabatvare was convicted of genocide and sentenced to 35 years in prison.

Already in 2010, the process of dismissing the Rwandan Tribunal had begun. On December 31, 2015, the Tribunal officially ceased its activities.

Conclusion

The provisions of the Charter of the Nuremberg Tribunal were important contributions to the development of subsequent international legal instruments for prosecuting war crimes, in particular the 1949 Geneva Conventions, the 1977 Additional Protocols, the Statutes of the International Tribunals for the Former Yugoslavia and Rwanda and the 1998 played an important role in the formation of the Rome Statute of the International Criminal Court.

The Yugoslavia Tribunal has been able to incorporate the positive aspects of its predecessors

into its work, but the main negative feature of the Tribunal's work is that it takes a long time to find and prosecute criminals, and in some cases it has been criticized.

By the time the Nuremberg and Tokyo tribunals opened, criminals were already under the control of the victorious states, while in the former Yugoslavia and Rwanda tribunals, it took a long time to find and prosecute the perpetrators. This includes search, collection of evidence and so on. means the development of a number of new procedures and mechanisms on the issues. Despite the closure of the former Yugoslavia Tribunal and the end of the Rwandan tribunal, many fugitives have not yet been prosecuted and punished, which is detrimental to the implementation of international criminal law and the establishment of peace and justice in the world. Nevertheless, the work of the tribunals in Yugoslavia and Rwanda has been generally praised, and in the doctrine of international law, the work of this institution has been recognized as an important contribution to the fight against international crime.

The establishment and results of the Rwandan Tribunal, which played a special role in the development of international criminal law, led to radical changes, as it was able to draw the attention of the international community to the need to establish a permanent International Criminal Court. In addition, changes in this area will make it possible to prosecute criminals who have committed serious crimes in today's widespread internal armed conflicts, and in the future, in accordance with the principle of universal jurisdiction, national courts in many countries will prosecute such perpetrators. Although very few such cases have been reported so far, global changes in modern times, human rights activism, and the growing interest of states to respond to human rights abuses do not preclude an increase in the number of relevant processes.

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