



The criminal responsibility of the individual at the international plan

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1 INTRODUCTION

With the occurrence of the two world wars in the 20th century, in addition to other international and non-international conflicts, the search for the criminalization of individuals who committed human atrocities, at a global level, was strengthened. Consequently, the Nuremberg and Tokyo tribunals were established as a reflection of the outcry of the international society in the face of war crimes. Thus, the principle of the criminal responsibility of the individual and the existence of international criminal courts are directly linked, above all because the absence of these courts would make it impossible for the individual to be effectively criminally responsible at the international level (WOOTTON, 1981).

After the creation of military tribunals – Nuremberg and Tokyo-, the United Nations Security Council authorized the creation of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).), under Chapter VII of the UN Charter, ratifying the principle of individual criminal responsibility, as well as universal justice. Given this, the principle of the individual's criminal responsibility took shape in the international system, regarding the effectiveness of criminal jurisdiction, essentially concerning the processing and judgment of individuals accused of international crimes (ZAHAR, 2008).

2 OBJECTIVE

The objective is to present the relevance of the international criminal courts for the realization of the criminal responsibility of the individual in the international scope.

3 METHODOLOGY

A reading review on the subject was adopted, in addition to the dialectical methodology, since this allows a critical approach to the object of study.

4 DEVELOPMENT

It is observed that although efforts to create an international criminal court are not something new in the global context, only after the Second World War did this objective become concrete. With the end of the First War (1914-1918), the Commission on the Responsibility of War Authors and on the Execution of Penalties sought to implement a criminal court to prosecute individuals accused of having violated the laws and customs of war (TRINDADE, 2019).



However, only in 1919, through the Treaty of Versailles, the criminal responsibility of the individual was legitimized, although the German State refused to hand over the former emperor, Kaiser Wilhelm II, to be judged. Therefore, only with the end of World War II did the idea of an international criminal court to prosecute and judge individuals responsible for war crimes become reality (WOOTTON, 1981).

The United Nations, in 1944, established a War Crimes Commission to investigate the crimes committed by the Germans and Japanese, which is why the military courts of Nuremberg and Tokyo were created to judge such accused. These tribunals, although considered exceptional, reveal their importance, essentially about the conceptual construction and classification of war crimes, as can be seen from Article 6 of the Statute of the International Military Tribunal:

(a) Crimes Against Peace: i.e. planning, preparing for, initiating, or waging a war of aggression, or a war in violation of international treaties, agreements, or guarantees, or participation in a Common Plan or Conspiracy for the carrying out of any one of the above;

(b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but are not limited to, murder, ill-treatment or deportation for slave labor or any other purpose of the civilian population in occupied territory, murder or ill-treatment of prisoners of war or persons at sea, murder of hostages, looting of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(c) Crimes Against Humanity: i.e. murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial, or religious grounds in pursuance of or in connection with any crime within the jurisdiction of the Court, whether or not it is a violation of the domestic law of the country where it was committed (INTERNATIONAL MILITARY TRIBUNAL - NUREMBERG, 1946).

After the experiences with the creation of said courts, the United Nations, through the Security Council, authorized the creation of ad hoc International Criminal Courts for the former Yugoslavia and for Rwanda, intending to judge and impute the due criminal responsibility for individuals accused of committing genocide and other crimes. Soon, the military tribunals of Nuremberg and Tokyo, as well as the ad hoc international criminal courts, made it possible to enforce the criminal responsibility of the individual. However, since the principle of legal certainty is vitiated, in a way, in the existence of the aforementioned courts, given that they were created after the criminal facts were committed, it is essential to create a permanent international criminal court (WERLE, 2020).

The International Criminal Court (ICC) was created in 2002, to exercise jurisdiction over people who have committed more serious crimes of international interest, as well determined by the Rome Statute – its constitutive document. In this way, it exercises complementary jurisdiction to national ones. Its headquarters are in The Hague, although nothing prevents it from operating elsewhere, whenever it deems necessary. Therefore, it is an institution with international legal personality, authorized to exercise its power



in any territory of a State Party and, by special agreement, in the territory of any other State (BASSIOUNI, 2008).

In short, the ICC's jurisdiction will be limited to the most serious crimes of international interest, namely: the crime of genocide; crimes against humanity; war crimes; crimes of aggression. That said, for the correct application of the principle of individual criminal responsibility, the Rome Statute, in its article 25, determines that the ICC has jurisdiction over persons who have committed a crime within its competence and, therefore, must be individually prosecuted and judged. (TRINDADE, 2019).

5 FINAL CONSIDERATIONS

International criminal courts are directly related to the principle of international criminal justice, as they seek to guarantee criminal jurisdiction at the international level, by making it possible to prosecute and judge individuals accused of committing international crimes.

After the two world wars in the 20th century, the effort of the international society in favor of the realization of the principle of criminal responsibility of the individual was strengthened. Accordingly, several ad hoc tribunals were set up – for Nuremberg and Tokyo, as well as for the former Yugoslavia and Rwanda. With the creation of the ICC, the ideal of a permanent criminal court took shape, guaranteeing the principle of legality and legal certainty.

In summary, it can be said that international criminal courts appear on the international scene as institutions that aim to promote international justice, being indispensable instruments for the processing and judgment of crimes of the greatest repugnance to humanity - war crimes, crimes against humanity, genocide, and ethnic cleansing-, seeking to prevent the recurrence of such crimes.



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