



Evolution of the Individual Criminal Accountability Principle in International Law

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Abstract: The creation of Special Tribunals with authority to prosecute those accused of "grave breaches" and infringements of the law towards humanity was among the most significant breakthroughs in international law. Unquestionably, this is a recent worldwide development that has raised questions about sovereignty and impunity. Since the horrors committed by the Nazis and the Nuremberg trials, war crimes legislation has expanded its definition to include several offenses that are now referred to as "international crimes" and "crimes of genocide." Although it was created to combat the politics of punishment for those who commit these crimes, some member states are unwilling to prosecute people who commit these recognized international crimes. In fact, the Rome Statute for the International Criminal Court (ICC) was drafted due to the jurisprudence established by these Special Tribunals. More precisely, it has been maintained that Act of war crimes and Act of crimes against humanity are perpetrated by individuals and not by impersonal forces, and that international law can only be upheld and implemented by punishing those responsible for such horrible crimes. Nevertheless, a convincing argument could be made that the establishment of these tribunals heralds a revolutionary change in international law. The qualitative research methodology has been applied to the following article.

Introduction

World Wars I and II have a solid connection to how the international community responded to mass atrocities committed by state leaders. Plans were made to bring state heads, generals, and representatives to justice rather than simply grant them amnesty for holding office. However, there was a massive disagreement over whether or not they could be tried for the crimes they had committed on a global scale. Because of the West Pallia Treaty, most nations were sovereign, and their leaders and heads of state were exempt from all types of litigation under their national legislations, as implied by the idiom "The king can do no wrong." It ended up taking more than a thousand years to come to the conclusion that

states are not abstract entities—rather, criminals are committed by specific individuals. The legal foundation for individual criminal accountability has yet to be established. Nonetheless, it was ultimately decided that each offender should be held responsible for the violations committed by them and that they should be tried before an international permanent criminal court in order to prevent retribution wounds from festering (Sayapin, 2014). There are two categories of individual criminal accountability currently available: criminal accountability and individual accountability. The former, which is the focus of this paper, contracts with a natural person's individual criminal liability rather than that of a

synthetic person or conceptual entity. As explained by the latter phrase, a person can be held accountable for their actions or the actions of others. Individual criminal accountability refers to the situation in which a person is responsible for the crime he or she committed, as contrasted to collective criminal accountability, which is sometimes used to refer to accountability for the illegal actions of another person (Bilsky, 2012, p.355).

In "1386, *King Richard II of England*" granted and issued an ordinance establishing criminal accountability. The ordinance forbade specific actions while engaging in hostilities in an enemy country, and those who disobeyed were subject to capital punishment. Subsequently, other countries copied these laws (Kaczorowska-Ireland, 2015, P.250). Furthermore, rather than being decided to commit in an individual capacity, the concept of state accountability served as the guiding principle. Although the "*Francis Lieber Code*" was only intended to govern the behavior of the US Army, it had an impact on how other state armies behaved as well. This was done at the beginning of the nineteenth century (Meron, 1998, p. 120-140).

Further, the widespread atrocities and breaches of wartime regulations and traditions have raised some concerns about state accountability. The "*Articles on Accountability of States for Internationally Wrongful Acts*" were created by the "*International Law Commission (ILC)*." These articles are binding on the states because the ILC was created to carry out the charter's obligations. In this first step towards codifying this new area of international law, the articles incorporated preexisting precepts, state and judicial practices, and customary law (Malcolm, 2008, p. 778). "Article 8 of the Draft Articles on Internationally Wrongful Behavior demands that states be held accountable.

The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is, in fact, acting

on the instructions of, or under the direction or control of, that State in carrying out the conduct" (Acts (International Law Commission, 2001).

When mass atrocities and breaches of human rights were planned and supervised by a command structure, it was desirable to hold the state accountable for these actions. The immunity of state leaders and political concerns made it difficult for individual prosecutions to occur. As a result, only former state officials have been the focus of all post-World War II tribunals. Thirdly, in a post-conflict setting, only a state may determine the amount of monetary compensation necessary to offset the harm to the affected party's infrastructure and economy (Sell, 2003).

While alluding to the Nicaragua case and the Yugoslavia Tribunal, the appeal judge examined the matter in light of "*Art. 8 of the ILC Articles, which specifies Conduct directed or controlled by a State.*" Only those actions by a single person or group of people were recognized as state actions under Art. 8. Additionally, the Appeal Chamber ruled that:

"groups should be judged differently; action ultra vires by a person may not be as attributable as by a group because if the group is under the overall control of the state it must perforce engage the accountability of that State for its activities, whether or not each of them was specifically imposed, requested or directed by the state" (Nicaragua v. United states of America).

The state has been the primary factor behind worldwide society's efforts to curb violence via the rule of law. Collective accountability, which according to Hans Kelsen, was a hallmark of primitive cultures, was commonly defined as the state's accountability for the actions of its representative. He contends that individual accountability should be established to take the place of the state's communal obligation. Kelsen also predicted that the unification of the global community of law would supplant regional and international law. Although Kelsen's concept was brilliant, the moment had come to take the

criminals of the mass atrocities to legitimacy (Von Bernstorff, 2010, p. 04).

The Treaty of Versailles (1919), which was negotiated on the worldwide platform, was the first treaty establishing individual criminal liability due to the expanding force of international law. The agreement acknowledged:

"The right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war" (Hay, J. (Ed.). 2002)

In the Treaty of Versailles, accountability was upheld to penalize the criminals of the greatest crime against morality and peace in history. Article 227's provision gave the allied powers the authority to establish a special court to try the alleged offenders and simultaneously grant them the right to a defense. Unfortunately, those efforts were unsuccessful, and only a small number of trials—notably the Leipzig trials—were upheld (Newman, 1999). Nevertheless, in the middle of World Wars I and II, the issue of identifying the standard of culpability for international crime piqued the interest of the global community and international intellectuals. Drafts of the criminal code and jurisdiction of international courts first concentrated on criminal liability but also established state accountability as being worldwide responsible. In the aftermath of World War I and World War II, which developed in the death of millions of innocents, the world community realized that only criminals should be held accountable who were accused of horrible crimes and responsible for the deaths of innocents. As a result, this response gave rise to personal criminal liability for transnational crimes. As the international community gained a better understanding of international criminal law, it became imperative that those who violate it be held accountable. Several international military tribunals have been established based on the principle of accountability, including Nuremberg and Tokyo. Several reasons led to the formation of the two military tribunals:

"For the trial of war criminals whose offenses have no particular geographical location whether they be accused individually or in their capacity as members of organizations or groups or in both capacities" (Heller, 2011).

The creation of Special Tribunals with the mandate to prosecute those alleged of *"grave breaches"* and infringements of the law towards humanity was among the essential breakthroughs in international law. Unquestionably, this is a recent worldwide development that has raised questions about sovereignty and impunity. Since the terrors perpetrated by the Nazis and the Nuremberg trials, war crimes legislation has expanded its definition to include several offenses that are now referred to as *"international crimes and crimes of genocide."* Although it was created to combat the politics of punishment for those who commit these crimes, some member states are unwilling to prosecute people who commit these recognized international crimes. In fact, the Rome Statute for the ICC was drafted due to the jurisprudence established by these Special Tribunals. More precisely, it has been maintained that Act of war crimes and Act of crimes against humanity are perpetrated by individuals and not by impersonal forces, and that international law can only be upheld and implemented by punishing those responsible for such horrible crimes. Nevertheless, a convincing argument could be made that the establishment of these tribunals heralds a revolutionary change in international law (Kreß, 2006).

International Military Tribunal (IMT) at Nuremberg

Within an international treaty between the victorious countries, the Nuremberg Military Tribunal's foundational hearings were convened. The officials of the allied countries, the US, France, the UK, and the USSR, stated earlier in 1942 that they intended to swiftly punish anyone guilty of committing mass atrocities and cruelties. Trials of war criminals were conducted at the IMT for Nuremberg for the first time.

Despite the world community's longtime condemnations of crimes such as piracy and war crimes, the Nuremberg trial actually established international laws for crimes. Aside from establishing the concept of individual criminal accountability, the Nuremberg concept emphasized that the Act of the state or higher authorities cannot be used to defend an international crime charge. The Tribunal also stated that people should be held accountable for Acts of crimes against humanity, acts of war crimes, and crimes against peace, which are today known as aggression, regardless of their status or superiority. It is firmly entrenched that individual criminal culpability is actionable on a global level. Several other principles relating to armed conflict (international and non-international, as well as internationalized non-international) were codified by the Tribunal as a result of its principles, including the Geneva Conventions (GC) of 1949, the Additional Protocols I, II, and III. The ICC rulings are markedly influenced by the Nuremberg concept of individual criminal accountability adopted by the ICTY and ICTR.

The Tribunal also trialed for what would now be considered a crime of aggression for the initial time in history. Art. 6 of the IMT's charter designates a crime against peace. Planning, preparing, starting, or declaring war against another sovereign government in defiance of international law and treaties was depicted as an act of crime against peace. The court explained that crimes are perpetrated by real people, not by impersonal forces. Due to the Tribunal's description of crimes as committed by individuals rather than states, international corporations and businesses were left in a bind regarding whether or not they were invulnerable to the court's jurisdiction if they were found to have participated in conspiracy or provided support for an aggressive war (Krupp et al.). Individual criminal responsibility for aggression has become a more important issue since then. In the conflict, researchers such as Brownie and others believe that the *"International Association of Penal Law,*

founded in Paris on March 14, 1924", played an essential role.

After WW II, Nuremberg was the first-place individuals held accountable for breaches of international law and acts of aggression. However, the Nuremberg Tribunal's jurisdiction included crimes that could not be attributed to other nations. *"Control Council Law No. 10"* was introduced and passed by the allied powers to expand the Tribunal's jurisdiction to more war criminals because the Tribunal focused primarily on the offenses specified in its constitution. Nuremberg tribunal trials were allowed by the *"Control Council No. 10"* law, directly supervised by allied forces. A criminal offense committed against peace, a crime against peace or an act of war crimes will lead to personal liability under article 2 of the law. There is no distinction between nationality or circumstances surrounding a crime commission when it comes to criminal responsibility. It also stated that anyone found guilty of almost any Act covered by art. 2 (1) may face trial and have the outcome decided by the Tribunal. International law has established precedents for the notion of personal criminal accountability as a result of numerous cases brought and pending. By introducing codification through treaties, the international community, including organizations like the UN and all other organizations, initiated a slow and methodical process during which rules and principles were formulated and consolidated. This is marked by the fact that it has jurisdiction over acts of war crimes and mass atrocities within its *"jurisdiction. Resolution 95 of the UN General Assembly"* was adopted unanimously and confirmed the Nuremberg Tribunal's premise. As a result, this principle is now part of international law (Bassiouni, 2001). According to the General Assembly's perspective on the charter concept of the IMT, this principle is already a part of international law. Thus, the UN resolution confirmed individual criminal culpability as well as several other fundamental principles that the Nuremberg tribunal had taken into consideration.

The General Assembly felt that in addition to acknowledging the Nuremberg Charter and Judgments, it was also crucial to include and formalize them in significant international institutions. The Nuremberg Charter, commonly known as "*the London Agreement of August 8, 1945*", was also acknowledged by the resolution. It is essential to keep in mind that the Nuremberg tribunal proceedings were held before the creation of military tribunals, particularly for the trial of decision-makers and their top helpers. The majority of those who were convicted for crimes had no single place of residence, and the London Agreement served as the foundation for these tribunals' authority and jurisdiction (Bassiouni, 2001).

The IMT for the Far East (Tokyo Trial)

The Tokyo tribunal mimicked and further altered the IMT's Nuremberg policies. In opposition to the unlawful wars of aggression of the Axis Nations, the allied forces, particularly the United States, occasionally published pronouncements of their determination to see war criminals brought to justice. Eventually, on January 19, 1946, another IMT was established in Tokyo due to three declarations made by allied powers between 1943 and July 1946. In Article 5 of the Tribunal's charter, it is stated that the court's jurisdiction is based on personal criminal responsibility and extends to crimes against peace, now referred to as Act of crimes of aggression under the ICC Rome Statute. The statute to the Tribunal prosecuted everyone accused of crimes listed in art. 5 despite their authority, rank, or position. A clause governing the punishment of offenses committed within the Tribunal's jurisdiction was incorporated into the Tribunal's charter:

"The Tribunal shall have the power to try and punish Far Eastern war criminals who as individuals or as members of organizations are charged with offenses which include Crimes against Peace" (McDonald, G. K., & Swaak-Goldman, O. 2000)

The Tribunal's charter stipulates that the main charge against a defendant is a crime against peace, and other offenses, such as acts of war crimes and acts of crimes against humanity, are optional. The Tribunal also reinforced the idea of accountability and personal criminal accountability, according to which even higher authorities were responsible for the deeds of their subordinates (Sheldon, C. D. 1980). There was significance to the writing of the charter in the Nuremberg Tribunal's rules, which stated that an individual who perpetrated a crime while working for a government or superior did not escape legal consequences. In Hirota, Koki, the Tribunal ruled in its ruling that;

"The Tribunal is of the opinion that, Hirota was Foreign Minister, at the time hundreds of murders, violations of women and other atrocities were committed daily, He was content to rely on assurances which he knew were not being implemented. His inaction amounted to criminal negligence".

The prosecution, which was filed on April 29, 1946, included 55 counts of aggression and three groups of accusations against 28 defendants. This paper's influential group of counts were those dealing with crimes against peace and counts One through 36. Seven counts dealt with the standard scheme or conspiracy to obligate Acts of crimes against peace, six amounts dealt with the planning and preparation for wars of aggression, and eight counts dealt with the beginning of wars of aggression. Nine counts dealt with the conduct of wars of aggression (Stone, 1976, p. 522-527). The Tribunal declared all 25 defendants to be equally guilty of the crime and held each of them personally criminally accountable for the crime of peace; "Araki, Sadao, Dohihara, Kenji, Hashimoto, Kingoro, Hata, Shunroku, Himanuma, Kiichiro, Hirota, Koki, Hoshino, Kaoki, Itagaki, Seishiro, Kaya, Okinori, Kido, Koichi, Kikura, Heitaro, Koiso, Kuniaki, Matsui, Iwane, Matsuoka, Yosuke, Minami, Jiro, Muto, Akira, Magano, Osami, Oka, Takasumi, Okawa, Shumei, Oshima, Hiroshi, Sato, Kenryo, Shigemitsu Mamoru, Shimada, Shigetaro, Shiratori, Toshio,

Suzuki, Teiichi- Togo. Shigenori, Tojo, Hideki, Omezu, Yoshijiro" (United States et al. v. Araki et al.)

While the Tribunal spent considerable time discussing the crime of aggression, it did not discuss individual criminal accountability for this crime, nor did it elaborate on the leadership benchmark. The report also failed to set out the parameters that would have made it easier to establish individual criminal responsibility. Nevertheless, anyone may concede that there were some criteria that the court examined in assessing the leadership roles of the defendants by scrutinizing all of the decisions handed down by the court (Schuster, 2003, p. 41). For an individual to be held accountable for committing crimes against peace, he must meet two critical requirements, as in the case of Kenryo Sato, a lieutenant general in the "Imperial Japanese Army during World War II." How difficult was it to influence Japan's aggressive policy decisions? A second criterion related to the management standard was that the accused knew about the aggressive foreign policy and developed and implemented such plans.

The Tokyo Tribunal's verdict's conviction of Heitaro Kimura on counts 1, 27, 29, 31, 32, 54, and 55 and the subsequent death penalty was its most intriguing section. Because although Kimura was not a commander, he was the chief conspirator in the war of aggression and gave orders to his subordinates to use force to enslave people and cause plenty of POWs.

Nuremberg's Legacy: Implicating Individual Criminal Accountability

There has already been mention of the significant impact the Nuremberg trials and the Tokyo trials had on international law. The world saw 22 senior leaders of defeated nations prosecuted for heinous crimes that threatened the foundations of civilization for the first time in history. Numerous concepts were created by the Nuremberg trial, individual criminal

accountability being one of them. International law has benefited from these principles for a long time.

It was also mentioned that these trials serve as a concrete example of the principle of ending international crime impunity. Following World War II, the Nuremberg Tribunal started several proceedings and left a significant legacy. Nazi officials were held individually responsible for mass atrocities and international law violations during the Nuremberg trials, firstly recognizing that all people have international human rights regardless of their nation-state recognition (Rotberg, R. I. (Ed.). 2010). This tribunal move was a significant advance in developing a civilized society. Second, the Nuremberg trial officially began the global campaign for human rights by launching international human rights adjudication for the first time. The "United Nations Universal Declaration of Human Rights," the "American Convention on Human Rights," and—most importantly—the "European Convention on Human Rights and Fundamental Freedoms," which is a straight legacy of Nuremberg—all have global implications today (General Assembly, 2017). As a third point, the UN tribunal operating in The Hague, which is trying defendants like Dusko Tadic for crimes similar to those decided at Nuremberg, has adopted the Nuremberg tribunal's principles of accountability and individual criminal responsibility.

Further, Nuremberg is seen in the current emphasis on crimes against humanity and war crimes by the ICTY and ICTRY. The fourth point is that the Nuremberg principles that regulate how war is conducted are combined into the battlefield manuals of the leading powers. According to the US Army field manual, for example, hostages are now prohibited, and partisans and resistance movements are granted legal status. Nuremberg principles are also included in the "1949 Geneva Convention", which governs the conduct of prisoners of war (PoW) and the protection of civilians during wartime. Lastly, Nuremberg served as the examination of the first

dictatorship. Beyond Nuremberg, we gained a thorough understanding of the intricate workings of a functional dictatorship (Tusa, A., & Tusa, J. 2010). The Third Reich had no checks and balances, as seen by its terrible past. Hitler's Germany lacked a free press and an independent court, which are essential to a system of checks and balances. The Nuremberg Trials record vividly illustrates the effects of this period.

Conclusion

In summary, the study concluded that personal criminal responsibility was intended for international law since nations were manufactured entities, and crimes, on the other hand, were only committed by people, not intangibles. Moreover, since state accountability was initially problematic because of the state's existence, individual criminal liability eventually developed. State accountability, therefore, had an indirect impact on persons who lived in the responsible state, and according to the idea of sovereign immunity, the perpetrator or serious offender was exempt. Despite numerous attempts, none of them were successful in apprehending the actual offenders. Prior to the establishment of the Nuremberg Military Tribunal, individuals found guilty of war crimes or other international crimes horrors were not prosecuted under the concept of individual criminal accountability. A number of the Nuremberg Trial's decisions laid the groundwork for individual criminal accountability, written into the charters of the "*International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for the Republic of Korea*." These decisions also condemned war criminals and other offenders.

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