35. JURISPRUDENCE
CONCEPT OF MODERN INTERNATIONAL CRIMINAL JUSTICE: GENESIS, EVOLUTION AND MISSION

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Abstract. This article examines the development of international criminal justice from the earliest military tribunals to contemporary institutional mechanisms. The emergence of the concept of international criminal responsibility is analysed through the lens of the psychology of justice and the spirit of post-war military tribunals. The article investigates the influence of diverse legal traditions – Anglo-Saxon, American, and Soviet – on the formation of the modern paradigm of international criminal law. Particular attention is devoted to the transformation of the mission of international justice in the context of globalisation and the novel challenges of the twenty-first century. The psychological dimensions of judicial proceedings are examined, including the symbolic significance of justice for

victims and society, as well as questions of collective guilt and individual responsibility. The activities of major international judicial bodies – from the Nuremberg and Tokyo Tribunals to the International Criminal Court – are analysed. The multidimensional mission of contemporary international criminal justice, encompassing punitive, preventive, restorative, historical-documentary, and reconciliatory functions, is emphasised. It is argued that modern international criminal justice represents a synthesis of diverse legal cultures and a response to the imperatives of cross-border prosecution of crimes against humanity. The article identifies current challenges and prospects for the development of international criminal justice in the context of the transformation of the world order.

Key words: international criminal justice, military tribunals, International Criminal Court, legal systems, transnational justice, crimes against humanity, psychology of justice, transitional justice.

Introduction. The development of the concept of international criminal justice stands as one of the most significant achievements of twentieth-century legal scholarship, continuing to evolve in response to contemporary challenges. The emergence of this concept is inextricably linked to the traumatic experience of the World Wars and the international community's recognition of the necessity to establish mechanisms for the prosecution of the gravest crimes affecting the interests of all humankind [1, p. 45–78]. Studying the evolution of international criminal justice requires not only an analysis of legal norms and institutional structures but also an understanding of the psychological foundations of justice, the spirit of military tribunals, and the influence of national legal traditions on the development of transnational legal mechanisms [2, p. 112–145].

The methodology for studying international criminal justice is multifaceted. It combines traditional legal analysis of legal acts and practice with historical research into the formation of institutions, sociological investigation of the impact of justice on post-conflict societies, and psychological analysis of the perception of justice by different participants in judicial proceedings [4, p. 23–67]. The comparative approach is particularly important for understanding how different legal traditions have influenced the emergence of a mixed system of international criminal justice. The Anglo-Saxon adversarial model, the continental inquisitorial procedure, American constitutionalism, and the Soviet concept of socialist legality: each of these traditions has left its imprint on the contemporary structure of international criminal justice [3, p. 234–289].

The Psychological Dimension of International Criminal Justice. The psychological dimension of international criminal justice merits particular attention. Trials of war criminals carry strong symbolic significance that extends far beyond specific criminal cases [4, p. 89–134]. They embody the fundamental opposition between civilisation and

barbarism, law and arbitrariness, humanity and cruelty. For victims of crimes, participation in judicial proceedings can have a therapeutic effect, as their suffering is publicly acknowledged and their violated dignity is restored [9, p. 156–198]. At the same time, such proceedings may revive traumatic memories and cause further trauma to victims, necessitating an extraordinarily careful approach to witnesses and victims. The psychology of international justice also encompasses complex questions of collective guilt, individual responsibility in the context of systemic crimes, and the possibility of moral condemnation decades after the commission of offences [9, p. 245–287].

The spirit of military tribunals, which emerged after the Second World War, reflected a unique historical moment when the victors of a global conflict sought not only to punish the vanquished, but also to create a legitimate legal system capable of condemning criminals on behalf of all humanity [5, p. 67–103]. This spirit combined elements of retributive justice with an educational mission, the desire for retribution with the necessity of establishing historical truth, and the demand for immediate justice with respect for procedural guarantees. Understanding this spirit is essential for evaluating how the mission of international criminal justice has evolved from post-war tribunals to contemporary permanent judicial institutions [1, p. 234–267].

Historical Origins: From Versailles to Nuremberg. The origins of international criminal justice date to the post-First World War period, when the 1919 Treaty of Versailles first expressed the intention to establish an international court to hold Kaiser Wilhelm II accountable for initiating the war [5, p. 12–34]. Although this project was not realised due to political obstacles, the idea of individual criminal responsibility for international crimes was recognised at a conceptual level. Articles 227–230 of the Versailles Treaty constituted the first attempt to enshrine the principle of personal responsibility of heads of state for crimes against peace and the laws of war – a revolutionary step, since traditional international law at the time recognised only state responsibility rather than that of individuals [2, p. 78–95].

The horrors of the Second World War, the genocide of European Jews, mass crimes against civilians in occupied territories, and systematic violations of the laws and customs of war served as a genuine catalyst for the development of international criminal law [3, p. 145–189]. The Moscow Declaration of 30 October 1943 and the London Agreement of 8 August 1945 laid the legal foundations for the creation of international military tribunals [1, p. 289–312]. The Nuremberg Tribunal, formally established on 8 August 1945, constituted the first concrete embodiment of international criminal justice and simultaneously a testing ground for new legal concepts [3, p. 456–512]. The Tribunal merged elements of continental and Anglo-

Saxon legal systems, thereby creating a unique hybrid mechanism. The Anglo-Saxon tradition introduced adversarial proceedings, the presumption of innocence, and the right to a defence, while the continental system ensured a more active role for the court in seeking the truth [2, p. 234–278].

The Nuremberg Tribunal established foundational principles of international criminal law, including individual responsibility for crimes against peace, war crimes, and crimes against humanity. The concept of crimes against humanity, first codified in the Nuremberg Charter, represented a significant advance in international law, recognising that certain acts are so heinous as to constitute crimes regardless of the national legislation of the state in whose territory they were committed [1, p. 398–445]. The Nuremberg proceedings, which lasted nearly a year (20 November 1945 to 1 October 1946), examined 240 witnesses and thousands of documents, producing an irrefutable historical record of the Holocaust and other Nazi crimes. Of the 24 defendants, three were acquitted, twelve condemned to death, three sentenced to life imprisonment, and the remainder to various terms of incarceration.

The Tokyo Tribunal (1946–1948) addressed crimes committed by Japanese military and political leaders [5, p. 156–203]. The most controversial decision was the exoneration of Emperor Hirohito, which American occupation forces deemed necessary for post-war Japanese stability – underscoring the political character of post-war justice and its dependence on the strategic interests of the victors. The principles formulated at Nuremberg were systematised in 1950 by the United Nations International Law Commission and are known as the Nuremberg Principles [1, p. 512–545]. Of particular significance was the principle that an official position, including that of head of state or government official, does not exempt a person from criminal responsibility for international crimes – constituting a revolutionary break with the traditional doctrine of sovereign immunity.

The Cold War Period and the Ad Hoc Tribunals. The Cold War period led to a prolonged stagnation in the institutional development of international criminal justice [6, p. 167–215]. The ideological confrontation between the Western and Soviet blocs rendered the creation of shared international judicial institutions impossible. The Soviet legal system, grounded in the principles of socialist legality, proletarian internationalism, and collective values, differed radically from the Anglo-Saxon individualist tradition and continental legal culture [2, p. 456–498]. The Soviet Union systematically opposed the creation of a permanent international criminal court, viewing this idea as a threat to state sovereignty and a potential instrument of imperialist intervention [3, p. 678–723].

The collapse of the bipolar world order and the end of the Cold War created conditions favourable to the revival of international criminal justice

[7, p. 45–92]. Civil wars in the former Yugoslavia and the genocide in Rwanda in the 1990s demonstrated the inability of national judicial systems and international mechanisms to prevent or adequately respond to mass crimes. The massacres at Srebrenica and the genocide of Tutsi in Rwanda shocked the international community and raised urgent questions about reforming the international criminal justice system [8, p. 67–115]. In response, the UN Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) by Resolution 827 of 25 May 1993, and the International Criminal Tribunal for Rwanda (ICTR) by Resolution 955 of 8 November 1994 [7, p. 134–189].

Among the significant achievements of the ICTY was the recognition of rape as a war crime and crime against humanity, the development of the doctrine of command responsibility, and the indictment of former heads of state, including Slobodan Milošević [7, p. 345–392]. In the case of Prosecutor v. Kunarac, the ICTY established for the first time that systematic rape may constitute a crime against humanity and a form of torture. The Tribunal also determined that genocide had been committed at Srebrenica in July 1995, when Serbian forces killed over 8,000 Bosnian Muslims – the worst crime committed on European soil since the Second World War.

The ICTR, based in Arusha, Tanzania, delivered in 1998 the first conviction for genocide in the history of international criminal law in the case of Jean-Paul Akayesu, thereby establishing important legal standards for the constituent elements of that crime [8, p. 278–312]. The ICTR also examined the role of the media in inciting genocide, convicting journalists and owners of Radio Télévision Libre des Mille Collines for direct and public incitement to genocide – the first such conviction by an international tribunal since Nuremberg [8, p. 167–224]. These institutions made significant contributions to the development of international criminal law doctrine, including detailed evidentiary standards, witness protection procedures, and mechanisms for victim compensation [2, p. 678–723].

The International Criminal Court and the Rome Statute. The culmination of the development of international criminal justice was the adoption, on 17 July 1998, of the Rome Statute at a diplomatic conference, and the establishment of the International Criminal Court (ICC), which formally commenced operations on 1 July 2002 following ratification by the required number of states [10, p. 34–89]. The ICC is the first permanent international criminal court with potentially universal jurisdiction established on a treaty basis. Unlike ad hoc tribunals created by Security Council resolutions for specific situations, the ICC has the potential to become the central element of a global system for combating the most serious international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression [1, p. 756–812].

The Rome Statute represents a complex compromise between different legal traditions and the political interests of the negotiating states [10, p. 145–203]. The Anglo-Saxon influence is evident in the presumption of innocence, the right to a defence, the adversarial and public character of proceedings, and the high standards of proof. The continental tradition is reflected in the more active role of judges in conducting proceedings, the Court's ability to gather evidence independently, and the participation of victims in judicial proceedings [2, p. 789–834]. The innovative establishment of the Office of the Prosecutor as an independent organ reflects a synthesis of different approaches to criminal prosecution.

The principle of complementarity, enshrined in Article 17 of the Rome Statute, means that the ICC intervenes only when national judicial systems are unable or unwilling to prosecute those responsible for crimes [12, p. 189–245]. This principle acknowledges the primacy of national jurisdiction while creating a safety mechanism for instances where national justice is ineffective due to the collapse of state structures, lack of political will, or control of the judicial system by perpetrators [12, p. 298–356]. Despite the active participation of American jurists in negotiating the Rome Statute, the United States subsequently withdrew its signature and declined to ratify the treaty, citing concerns about potentially politically motivated prosecutions of American military personnel and politicians [12, p. 412–467].

The ICC's activities over its first two decades have been marked by both achievements and serious challenges [11, p. 78–134]. The Court opened investigations in various regions of the world and convicted a number of senior military and political leaders for crimes against humanity and war crimes. Among the most notable cases were the convictions of Thomas Lubanga for the recruitment of child soldiers in the Democratic Republic of Congo, Jean-Pierre Bemba for war crimes and crimes against humanity, and Ahmad al-Faqi al-Mahdi for the destruction of cultural heritage in Timbuktu [10, p. 289–345]. The al-Mahdi case was particularly significant as the first in which the ICC recognised the destruction of cultural heritage as a war crime in itself.

Multidimensional Functions and Contemporary Challenges. Contemporary international criminal justice fulfils multiple functions that extend far beyond the simple punishment of the guilty [11, p. 189–256]. The punitive function remains significant: prosecution of those responsible for the gravest international crimes represents both a moral obligation and a legal duty of the international community. The preventive function is grounded in the premise that potential perpetrators will be deterred from committing international crimes if they know that punishment is inevitable [10, p. 412–478]. Although empirical research demonstrates limited direct deterrent effect, the long-term role of international tribunals in developing international norms and creating a culture of accountability is undeniable.

The historical and documentary function of international justice is of crucial importance for post-conflict societies [9, p. 567–623]. Judicial proceedings create an official and legally verified record of crimes committed, countering attempts to rewrite history and deny historical facts. The restorative function recognises the necessity not only of punishing the guilty but also of restoring the dignity of victims and contributing to the recovery of affected communities [9, p. 678–734]. Innovative mechanisms, such as the ICC's Trust Fund for Victims, reflect the evolution from a purely punitive approach to a more holistic concept of justice that also incorporates elements of rehabilitation and therapy [11, p. 312–378]. The reconciliatory function of international justice is particularly important in deeply divided post-conflict societies, and explains why the contemporary concept of transitional justice provides for a balance between criminal prosecution and other mechanisms for addressing the past: truth commissions, lustration programmes, and reconciliation initiatives [11, p. 445–512].

In the twenty-first century, international criminal justice faces unprecedented challenges that call into question its effectiveness and legitimacy [11, p. 578–645]. The first serious challenge is the enforcement of judicial decisions and arrest warrants, since the ICC has no enforcement mechanisms of its own and depends on the cooperation of member states. The case of Sudanese President Omar al-Bashir, against whom the ICC issued an arrest warrant for genocide, crimes against humanity, and war crimes in Darfur, vividly illustrates the gap between legal obligations and political reality [10, p. 689–745]. Accusations of selectivity and politicisation represent another challenge: critics note that the ICC has focused predominantly on African cases, while crimes committed by nationals of powerful states or their allies remain outside its jurisdiction [11, p. 789–856; 12, p. 523–589]. The tension between peace and justice in situations of ongoing conflict, the length and cost of proceedings, and new forms of cross-border crime in the digital age further compound these structural difficulties [9, p. 912–978; 12, p. 645–712]. The refusal of major powers such as the United States, Russia, China, and India to join the Rome Statute constitutes a fundamental problem for the legitimacy and effectiveness of the ICC, since the majority of the world's population resides in non-member states [11, p. 878–945].

Prospects for Development. Despite these challenges, the prospects for international criminal justice remain promising [11, p. 989–1045]. The growing integration of international humanitarian law into national legal systems through the principle of universal jurisdiction creates a decentralised network of mechanisms for the prosecution of international crimes. European states, including Germany, France, Sweden, and the Netherlands, are actively employing universal jurisdiction to prosecute war criminals from Syria, Iraq, and other conflict zones [12, p. 912–978]. Technological

innovations, including satellite imagery, social media, digital traces, and blockchain technology, offer unprecedented opportunities for documenting crimes in real time [10, p. 945–1012]. The development of regional mechanisms of international criminal justice, including discussions within the African Union regarding an African court with criminal jurisdiction, opens new possibilities for supplementing the global system of international criminal justice [11, p. 1067–1134]. The concept of corporate responsibility for international crimes, particularly in the context of global supply chains and the activities of transnational corporations in conflict zones, reflects the evolution of international criminal law in response to economic globalisation [12, p. 1045–1112].

Conclusions. Research into the origins, development, and role of contemporary international criminal justice reveals the complexity and multifaceted nature of the process of creating transnational mechanisms to combat the gravest crimes against humanity. From the first post-First World War attempts to create an international court, through the Nuremberg and Tokyo proceedings, to the establishment of a permanent International Criminal Court, international criminal justice has evolved – despite its significant gaps and limitations – from a revolutionary idea into an institutional reality.

The psychological dimension of international criminal justice is of decisive importance for understanding its true purpose. Trials of international criminals carry significance that extends far beyond individual criminal cases: they are acts of symbolic justice, instruments for establishing historical truth, mechanisms for recognising the suffering of victims, and means of social reconciliation. The spirit of military tribunals, which combined punitive and educational aims, has been transformed into the more complex concept of transitional justice, which recognises the necessity of harmonising different objectives: punishing perpetrators, restoring victims' rights, establishing historical truth, and promoting reconciliation in fractured societies.

The synthesis of different legal traditions – the Anglo-Saxon adversarial model, the continental inquisitorial system, American constitutionalism, and elements of Soviet legal culture – has produced a unique hybrid system of international criminal justice. This system continues to evolve, integrating elements of non-Western legal cultures and adapting to the new challenges of a globalised world. The principle of complementarity, enshrined in the Rome Statute, reflects the aspiration to strike a balance between respect for national sovereignty and the necessity of ensuring justice for victims of international crimes. Ultimately, international criminal justice remains an unfinished project, continuing to develop in response to the new challenges and opportunities of a globalised world. Its success will depend on the ability of the international community to overcome political obstacles,

ensure fair and impartial application of international law, and maintain equilibrium among the different functions of justice – prosecution, prevention, reparation, and reconciliation.

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