

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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EVOLUTION OF INTERNATIONAL CRIMINAL COURTS UNDER NUREMBERG TRIBUNAL

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ABSTRACT

Any kind of violence is a pathological force that hinders or eliminates processes that are necessary for maintaining and improving life. There are several examples of violence against other people throughout the history of human civilisation. The current period, which has been dubbed the age of science and technology, globalisation, and liberalisation, has also brought with it new ways for serious and horrible crimes to be committed on a worldwide scale. It presents a problem for the upholding of international law's principles in an effort to improve and create a more contented and peaceful world¹. It is possible to get the conclusion that worldwide criminal activity is expanding at a very rapid rate from a comparative analysis of world history with relation to criminal activity that has taken place during the previous centuries. Due to the extraordinary rise in international criminal activity, this is presenting a grave danger to global peace and security. ²Over one hundred million people are thought to have died as a result of internal wars, despotic regime persecution, and non-international conflicts throughout the twentieth century. In addition to the issue of war, a number of new technologies have been developed and used for destructive purposes. There are now new ways to instill dread and panic in people's brains. All of these offences violate humanitarian law, human rights, and, consequently, international law. Therefore, it may be concluded that the world's and the international community's security is at risk and that action must be made to stop this threat. The obvious question, given the reasoning presented above, is how to prevent crimes against humanitarian law, human rights, and international law in general. "By punishing the offenders, one can curb these crimes," is the rational response. By establishing courts to punish the criminals, international crimes were reduced by penalising the offenders. It was decided during and soon following World War II that the crimes perpetrated during that conflict would not go unpunished. The United Nations War Crimes Commission (UNWCC) was

¹ Anupam Jha, "Challenges before International Criminal Tribunals: A Special Focus on International Criminal Court", ISIL Yearbook International Humanitarian and Refugee Law, Vol. III, 2008, pp. 178- 193, at p. 178.

² M. Cherif Bassiouni, International Criminal Law, Transnational Publishers, New York, 2000, at p. 3

established by an agreement signed by the Allied Powers at the Palace of St. James in 1942. The International Military Tribunal of Nuremberg and the International Military Tribunal for the Far East were established as autonomous tribunals as a result of the Declaration of St. James. The heinous atrocities of the Nazi Holocaust in Europe and the Japanese atrocities committed during the wartime subjugation of several South Asian nations prompted the creation of both tribunals.

MEANING OF TRIBUNAL

Any war between two or more states includes both the political leadership and armed forces of those states. The lawful authority to command the military rests with the military leadership. It takes coordinated military and political action for a state to declare war. Only after the components of aggressiveness are identified can the topic of how to hold someone accountable for violence be addressed. It is crucial to remember that the path to the establishment of an international criminal court for the culpability of aggression was convoluted and protracted. Tribunals were created in order to do this. How we define a tribunal is a crucial topic that comes up in this situation. The phrase "tribunal" refers to a court of justice, a bench where a judge or other presiding officer sits in court, a committee or board that has been constituted to decide a specific case, or anything that has the authority to decide or make a decision. Establishing "a system of accountability and the maintenance of international peace and security" was the fundamental goal behind the creation of these courts.³ "To put an end to [international atrocities] and to take effective measures to bring to justice the persons who are responsible for them" is the tribunal's stated mission⁴. As correctly stated, "the pursuit of justice and accountability fulfils fundamental human needs and expresses key values necessary for the prevention and deterrence of future conflicts" was the main justification for the establishment⁵.

³ Akhavan, P, "Justice in The Hague, Peace in Yugoslavia? A Commentary on the United Nations War Crimes Tribunal", *Human Rights Quarterly*, Vol. 20, 1998, pp 738- 817, at p. 740

⁴ S.C. Res. 827, at 1, U.N. Doc. S/RES/827 (May 25, 1993), available at <http://www.un.org/Docs/scres/1993/scres93.htm> retrieved on 1/November/2013

⁵ M. Cherif Bassiouni, "Justice and Peace: The Importance of Choosing Accountability over Real Politik", *Case Western Reserve Journal International of Law*, Vol. 35, 2003, pp. 187- 197, at p. 191

BACKGROUND, IMPORTANCE AND MEANING OF NUREMBERG

Previously, nation states had supreme authority in the world⁶. It was a world full of violent wars between independent states that resulted in devastation and fatalities. International law, as it existed at the time, did not effectively prevent nation-states and their leaders from initiating and waging aggressive conflicts. In the world before Nuremberg, people were under no duty to behave in a way that would not harm the people of other countries. The Second World War brought about a significant shift in the international criminal justice system due to the massive abuses of human rights and acts of aggression. International Military Tribunals were founded in Tokyo and Nuremberg as a result of the international community being persuaded to have a specific focus on international criminal law. Individual criminal responsibility for the crimes committed was acknowledged on a global scale for the first time in human civilisation. Along with its fundamental tools, these international criminal tribunals invoked a number of reasons for punishing those who commit extreme international crimes, such as aggression. Retaliation, deterrence, and, at the subaltern level, rehabilitation, reintegration, reconciliation, and incapacitation are some of these explanations⁷. With its roots in the rulings of the Nuremberg and Tokyo Tribunals, the developing body of international criminal law affirmed the necessity of taking action to include acts of aggression on the list of crimes covered by international law. Since using force was the primary element of aggression, both states and people should be barred from using force, since this would be against *jus contra bellum*. The establishment of the International Military Tribunals (IMT) distinguishes international criminal law from other areas of international law. Usually, the same treaty that enacted a certain set of legislation also creates an IMT. In the past, these tribunals were ad hoc in character, established to decide on a particular case, and had temporal or territorial limitations. For instance, the London Charter of the International Military Tribunal established the Nuremberg IMT. It was established in the years following World War II specifically to prosecute cases involving crimes related to that conflict. The trials were held in the German state of Bavaria in the city of Nuremberg (sometimes called Nurnberg), whose Palace of Justice had a sizable jail area and was mostly unaffected by the war. Furthermore, Hitler's Third Reich rule was symbolically ended by conducting the postwar trials in Nuremberg, which had also hosted yearly Nazi propaganda

⁶ Nation is a contested concept that refers to self-conscious community of people who differentiate themselves from others on the basis of one or several more shared and exclusive traits such as language, common history, culture, religion and/ or ancestry. Mark Beeson and Nick Bisley, *Issues in 21st Century World Politics*, Palgrave Macmillan, New York, 2010, at p. 109

⁷ Mark A. Drumbl, "The Push to Criminalize Aggression: Something Lost Amid the Gains?", *Washington and Lee University - School of Law*, Vol. 41, 2009, pp. 291- 319, at p. 311.

rallies. The establishment of the International Military Tribunal to try and punish the main war criminals in the years after World War II marked the beginning of modern international criminal law.

THE NUREMBERG TRIBUNAL

The Law of Force has been in effect since the dawn of civilisation about 5,000 years ago. It is important to remember that the Law of Force is savage, transient, and causes a great deal of confusion for the general public. It implies that both domestic and foreign predators who have no boundaries to their behaviour have decimated highly cultured, peace-loving people. One of the main defendants at Nuremberg, Albert Speer, understood the conundrum that the Laws of Force presented. He vividly conveyed his worries in his final remarks at Nuremberg about a future where some countries would concentrate their energies on creating more devastating weapons while others would concentrate on fostering cultural development and peaceful endeavours. He anticipated that Nuremberg would guarantee that the development of international law has kept up with advancements in destructive technology. The goal of Nuremberg was to alter the anarchic framework that governed the interactions between nations and people worldwide. Human rights efforts arose from Nuremberg, which served as their main source. Nuremberg led to the creation of the Universal Declaration of Human Rights⁸, the European Convention on Human Rights⁹, the Genocide Convention¹⁰, and other related agreements. The first post-mortem examination of a totalitarian state was Nuremberg. It helped people throughout the world understand how a dictatorship works and the safeguards that must be in place to stop dictatorships and their negative impacts. Nuremberg is more than just a German city. It is a representation of the resurgence, regeneration, and awakening of Natural Law from its slumber. We learn about the strength of justice and natural law from the Nuremberg Trials. It signalled the start of a new age with established principles that would provide a set of legally binding guidelines for how people and nation-states should behave towards one another. In actuality, it signalled the emergence of international law as a powerful tool for preserving world peace.

⁸ Universal Declaration of Human Rights, Art. 21, GA. Res. 217 (III), UN Doc. A/810 (1984).

⁹ Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221, 224 [hereinafter Convention for the Protection of Human Rights and Fundamental Freedom].

¹⁰ The Convention on the Prevention and Punishment of the Crimes against Genocide, 1948

ESTABLISHMENT OF NUREMBERG TRIBUNAL

The Second World War itself marked the beginning of the effort to create an international criminal court to try Nazi offenders. The States began investigating the idea of making hostility a crime on a global scale during this period. The current Laws of War were created by the Nuremberg Trials, which also set the stage for the permanent International Criminal Court (ICC) and the ad hoc international courts that have been established during the last fifteen years. It is true that the creation of courts to trial criminals was a ground-breaking idea for preserving world peace and security. By an agreement made in London on August 8, 1945, the United States of America, France, the Soviet Union, North Ireland, and the United Kingdom of Great Britain created it. 31 According to the Tribunal's Charter, an International Military Tribunal will be established in accordance with the agreement signed on August 8, 1945, by the governments of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the Union of Soviet Socialist Republics. This tribunal will be used to try and punish the major war criminals of the European Axis in a fair and timely manner. To provide the legal foundation for the prosecution of crimes against peace, Control Council Law No. 1032 was approved. The global acknowledgement of international human rights beyond national boundaries was the importance of Nuremberg. The indictment included charges for each of the three types of crimes recognised by Article 6 of the Tribunal's Charter:

- i) Crimes against peace, which include organising, preparing, starting, or carrying out an aggressive war, a conflict that violates international agreements, treaties, or guarantees, or involvement in a group scheme or conspiracy to carry out any of the aforementioned;
- ii) War crimes, which are transgressions of the rules or traditions of war. These offences will include, but not be limited to, killing hostages, plundering public or private property, wanton destruction of cities, towns, or villages, devastation not warranted by military necessity, murdering or mistreating prisoners of war or persons on the seas, or deporting civilians in occupied territory or to slave labour or for any other reason;
- iii) Crimes against Humanity: these include killing, eradicating, enslaving, deporting, and other cruel acts against any civilian population, either before or during the war; or engaging in political, racial, or religious persecution in the course of or in connection with any crime under the Tribunal's jurisdiction, whether or not it violates the domestic laws of the nation in which it is committed. All actions taken

by anyone carrying out a common plan or conspiracy to conduct any of the aforementioned crimes are the responsibility of the leaders, organisers, instigators, and accomplices involved in its creation or execution.

If we attempt to analyse the Nuremberg trials, we may conclude that they were founded on two crucial ideas:

- i) People can and should be held responsible for the most heinous international crimes. "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced," the Nuremberg Tribunal's famous ruling stated.
- ii) Ensuring responsibility is crucial in and of itself, but it's also critical because allowing widespread or systematic atrocities to go unpunished can have detrimental effects on global peace.

The following are some other Nuremberg Trial tenets that were relevant at the time and are still relevant today:

- i) That it is illegal to start and carry out an aggressive war, as well as to conspire to do so;
- ii) That it is illegal to violate the laws and customs of war;
- iii) That it is illegal to commit cruel acts against civilians during or in connection with an aggressive war;
- iv) That people can be held accountable for crimes they commit while serving as heads of state;
- v) That they can be held accountable for crimes they commit in response to orders from higher authorities; and
- vi) That a person accused of a crime under international law has the right to a fair trial.

ANALYSIS OF CHARTER VIS-À-VIS AGGRESSION

According to a review of the Nuremberg Tribunal's Charter, the term "war of aggression" was not defined, and the Tribunal's ruling did not include any definition or interpretation of the term. The Tribunal only discovered that some of the defendants had planned and carried out aggressive wars against twelve nations, and as a result, were guilty of a number of crimes, after examining the historical events leading up to and during the conflict. According to the Tribunal, "planning" and "preparation" of a war of aggression encompassed every step of starting a war of aggression, from planning to the actual start of the conflict. Because of this, the Tribunal did not clearly distinguish between preparation and planning. However, the ruling basically said

that "the making of war requires planning and preparation." In addition to the aforementioned idea, Justice Jackson's focus at Nuremberg was on the aggressive war count, which assigned responsibility for organising, organising, and executing aggressive warfare. Less progress has been achieved in applying the Nuremberg legacy in this regard.

INDICTMENT OF NUREMBERG TRIBUNAL

The Trial of Major War Criminals, which took place from November 20, 1945, to October 1, 1946, is the most well-known of the Nuremberg trials. The trial followed a combination of legal traditions: prosecutors and defence lawyers were present in accordance with both American and British law, but a tribunal—a group of judges—rather than a single judge and jury rendered the verdicts and punishments. Robert H. Jackson (1892–1954), an associate judge of the U.S. Supreme Court, served as the lead American prosecutor. A primary judge and an alternative judge were provided by each of the four Allied nations. Twenty-four people were charged. One of the accused men committed himself before the trial, while another was declared physically incapable of standing trial. Before they could stand trial, Hitler and two of his closest colleagues had each killed themselves in the spring of 1945. The defendants were free to select their own solicitors, and the most popular defence was that the crimes listed in the London Charter were instances of *ex post facto* legislation, or laws that made acts done before to the creation of the laws illegal. Another argument was that the trial was a kind of victor's justice, with the Allies leniently punishing the crimes of their own soldiers while imposing high standards on the crimes of the Germans. The Nuremberg trials are now recognised as a significant step towards the creation of a permanent international court and a crucial precedent for handling subsequent cases of genocide and other crimes against humanity, despite the fact that the legal grounds for the trials and their procedural innovations were contentious at the time¹¹. Two charges pertaining to aggressiveness were included in the indictment at the IMT:

- i. Count One: By planning, preparing, starting, and waging wars of aggression—wars that also violated international treaties, agreements, or assurances—the defendants engaged in a single plan or conspiracy that supported the commission of crimes against peace.
- ii. Count Two: Over the years leading up to May 8, 1945, all of the defendants and many other individuals took part in the planning, preparation, commencement, and conduct

¹¹ <http://www.history.com/topics/world-war-ii/nuremberg-trials> retrieved on 30 April 2015.

of aggression, which included wars that were conducted in defiance of international treaties, agreements, and guarantees.

Thus, this tally represented what were referred to as "crimes against peace," and it was evident that acts of aggression, such as the German invasion of Poland on September 1, 1939, had to be included, even though it was unstated that the act of war was carried out as part of a collaborative plot with the Soviet Union. The Nazi government must have been aware that the aggressive foreign policy of Germany violated agreements like as the Kellogg-Briand Pact, which prohibited the use of force. The Tribunal further supported its view that there might be retroactive criminal liability for aggression by citing the example of criminal liability for war crimes, as well as the specific history of the Kellogg-Briand Pact and other international agreements and draft agreements that actually criminalise aggression.

THE JUDGEMENT OF IMT:-

The Second World War, in particular, was "the greatest man-made catastrophe of all time," according to historical analysis. It is astounding to think that around 1.3% of the world's population died in this conflict. Thus, the Nuremberg Tribunal's observation on the charges related to the Crime against Peace and War was accurate and runs as follows: The indictment of the guilty contains extremely serious accusations that the defendants organised and fought hostile conflicts. In essence, war is a bad thing. The globe is impacted by its effects, which are not limited to the warring states. Therefore, starting a war of aggression is not only an international crime; it is the most serious one, and the only way it differs from other war crimes is that it encompasses all of the collective evil. All but three of the defendants were ultimately found guilty by the International Tribunal. Twelve received death sentences, one was condemned in absentia, and the remaining individuals received jail terms ranging from ten years to life in prison. On October 16, 1946, ten of the convicts were hanged.

CHALLENGES TO THE NUREMBERG POLICY:-

Is the Nuremberg legacy in danger now, given the flurry of activity occurring both domestically and internationally? In this context, I have two sets of worries. The "unfinished" business of Nuremberg itself comes first, followed by governmental challenges to the legacy.

- A) THE UNFINISHED WORK OF NUREMBERG- Despite the significant accomplishments mentioned above, which only represent a portion of the Nuremberg Charter's impact on our contemporary society, more has to be done. The first challenge

is to make Nuremberg's legacy and message really international so that it is neither "American" nor "Western." This entails keeping up the pressure for the Rome Statute of the International Criminal Court to be ratified by all countries. Although the rules of war are extensively codified in terms of the Charter's substantive law, there are still certain gaps, and constant attention to detail is required. In order to defend assaults that kill a lot of people or target civilian property, several nations are creating tight definitions of proportionality, expanding the definition of "combatants" to include more lethal targets, and creating risky new weaponry. Particularly, nuclear weapons continue to pose a threat to our existence as well as our safety. The so-called "global war on terror" has weakened the consistent meaning and implementation of international humanitarian law, and the regulations governing non-international armed conflict are less established than those governing international armed conflict.

- B) THE NON-COMPLIANCE OF STATES- What prevents countries from adhering to the conventions' rules is the problem of sovereignty compromise and the suspicion that strong governments may abuse them to interfere in internal affairs.

CONCLUSION:-

There is conflicting evidence on adherence to the Nuremberg principles. However, the Nuremberg legacy is remarkable in and of itself, and its significance cannot be overstated. The International Criminal Court is no different. Jackson maintained that he was requesting that the Tribunal place international law and its principles solidly on the side of peace, not to prohibit the commission of war. There are other options available to establish responsibility for the conduct of international crimes outside international criminal proceedings. The Nuremberg principles and international humanitarian law can be used in a variety of ways. UN human rights bodies, national civil law actions, truth commissions, the International Criminal Court, the International Court of Justice, fact-finding commissions of inquiry, human rights courts, national courts, and ad hoc and mixed model international criminal tribunals are a few examples. We must expand our perspectives, be more inventive, and utilise the wealth of talent that exists worldwide in order to strengthen the international criminal justice system and increase the efficacy of the Nuremberg principles. Many intelligent observers at the time could not anticipate or predict the Nuremberg trials, which will never be forgotten, or the creation of the International Criminal Court fifty years later. Both events were nothing short of miracles. The trials had a huge influence on the development of international criminal law.