

Assessment of the Political and Security Decisions of the Nuremberg Trials from a Legal Perspective

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Abstract

The relevance of the study of the legal frameworks of the political and security decisions of the Nuremberg Trials is difficult to overestimate, because many so-called “substantive” and “procedural” aspects remain debatable, and sometimes understudied. The purpose of this study is to conduct a thorough examination of the legal elements associated with political and security decisions made in response to the activities of the International Military Tribunal. Formal and logical, systemic and structural, comparative and historical methods were used. The article provides a comprehensive, generalized, legal study of the legal aspects of the administration of justice during the Nuremberg Trials with a critical understanding of its individual foundations (principles). The article substantiates the understanding of the “ex post facto” principle from two aspects: substantive and procedural.

Keywords: International Military Tribunal, crimes against peace, war crimes, crimes against humanity, genocide, “ex post facto” principle, “jus cogens” norm.

Introduction

The Nuremberg Trials were trials that took place after World War II from 1945 to 1946 in the city of Nuremberg, Germany. The trial was a unique historical event, as it was the first time in the world that an international tribunal was established to try individuals accused of war crimes, crimes against humanity, and crimes against peace. The Nuremberg trials were prompted by the end of World War II and the victory of the Allied forces over Nazi Germany. The Allies, including the United States, the United Kingdom, the Soviet Union, and France, decided to assume responsibility for bringing Nazi leaders and other war criminals to justice. During the Nuremberg trials, 24 people were indicted, including high-ranking Nazi leaders, generals, lawyers, and others. The Nuremberg Trials played an important role in establishing judicial accountability for Nazi crimes and in establishing the principles of international law governing the conduct of military conflicts and the protection of human rights (Barabash and Berchenko, 2019).

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The Nuremberg Trials were designed to ensure the existence of fundamental human rights. However, as I. Nazarchuk (2021) rightly states “the International Military Tribunal did not become a strong institution, because less than half of the century later the terrible experience of genocide was repeated in Yugoslavia and later in Rwanda”. These events underscore the complexity of the problem of ensuring justice and preventing genocide and crimes against humanity. They point to the need for further efforts and improvements in international justice mechanisms to effectively bring those responsible to justice and prevent future mass crimes. The legal assessment of political and security decisions of Nuremberg Trials gains new meaning in terms of recent events. On February 24, 2022, Russia made a full-scale military attack on Ukraine. The lawlessness of the Russian military is difficult to correctly characterize, however, the issue of criminal liability of individuals Russians for crimes against peace, humanity, war crimes is already being raised. Given the brutality with which the Russian military bombed the civilian population in Ukraine, the legal framework for qualifying what was committed as genocide does not look illusory (Jeong et al., 2022).

Most of the materials devoted to the Nuremberg Trials focus on their general characteristics, without resort to the legal subtleties of this trial or have a so-called “encyclopedic” or “historical” nature, limiting themselves to listing of the historical facts of the Nuremberg Trials, dates, persons who were convicted according to the verdicts of the International Military Tribunal (IMT), quoting speeches or positions of the Nuremberg Trials participants, etc. I. Nazarchuk (2021) published a scientific work in which they generally characterise the Nuremberg Trials. In fact, this scientific publication is limited to the reproduction of Pavlo Kozlenko’s vision of the Tokyo Trial. I.I. Dereyko and M.V. Koval (2010) prepared a scientific publication of an encyclopedic nature dedicated to the Nuremberg Trials, which actually list historical facts (dates and personalities) on this topic. They obviously do not carry out legal assessment of IMT decisions. M. Davis (2018) studies the Nuremberg Trials more substantively from a legal perspective. Their publication is devoted to the issue of the retroactive effect of criminal law in time (the author also did not get around this issue, which will be discussed further). The scientist describes the Hart-Fuller debate and introduces readers with the main aspects of the trial legality principle.

Nevertheless, some publications by scientists were devoted to the legal aspects of the IMT administration of justice. Thus, part of the scientific publication of S.V. Kivalov (2009) considers the historical aspect of the legal and regulatory framework of IMT activities. M. Levene (2007) devoted their study to the legal aspects of understanding the crime of genocide. I.H. Zavorotko (2020) published a scientific work dealing with the perpetration of sexual and gender-based violence

by the Nazis. The scientist notes the limited jurisdiction of the IMT due to the fact that lists of war crimes and crimes against humanity which are “crimes against a person” do not include “classic” acts of sexual and gender-based violence. The author argues the qualification of sexual and gender-based violence precisely as an international crime, and also suggests considering such violence in terms of genocide.

However, a comprehensive, generalized, legal study of the legal aspects of the administration of justice during the Nuremberg Trials with a critical understanding of their individual bases (principles) is currently absent. Theoretical and practical aspects of this work are interrelated, because the identification of the “weak points” of the administration of justice during the Nuremberg Trials from a theoretical perspective will allow taking into account the shortcomings of the legal and regulatory activity of the IMT and improving the current international criminal law (both substantive and procedural) that indicates the practical significance of this work.

The objective of this study is to conduct a thorough examination of the legal dimensions pertaining to political and security decisions that emerged as a consequence of the activities of the International Military Tribunal. The primary aim is to elucidate the extent of their conformity with the international criminal law that was applicable during that era, as well as analyze their validity based on the theoretical advancements in legal doctrine. The study subject is the IMT activity.

The study of the Nuremberg trials is of great importance, as it contributes to understanding the development of international law, prosecution for war crimes and crimes against humanity, determining the historical context of the Second World War, and understanding the consequences of such crimes. Research on the Nuremberg Trials can influence future legal developments and practices by expanding the principles of international law on crimes against peace, war crimes, and crimes against humanity. The results of the study can serve as a basis for the formulation of new norms and standards, influence jurisprudence, and remind us of the horrors of war crimes, contributing to the prevention of similar crimes in the future.

Materials and methods

Initially, the author formulated a scientific hypothesis questioning the legal aspects of the Nuremberg Trials within the framework of international criminal law doctrine. Subsequently, their focus shifted towards examining various criticisms of the Nuremberg Trials put forth by different authors. This approach facilitated the development of a comprehensive and logically structured set of theses, highlighting the existence of legal ambiguities surrounding the legitimacy of the Nuremberg

Trials. In the main body of the publication, each thesis, which has generated debates in the scientific literature pertaining to the chosen research topic, was thoroughly explored. Consequently, the author not only identified a range of "shortcomings" or weaknesses in the regulatory framework governing the administration of justice during the Nuremberg Trials but also evaluated them, while also proposing avenues for further research on the subject matter.

Various methods were used for the study, such as formal-logical, system-structural, comparative and historical methods. The formal logical method allowed us to analyze the logical sequence and consistency of the decisions made, identify shortcomings or inconsistencies and assess their compliance with the law. The systemic-structural method is aimed at studying decisions in the context of the legal system, international relations and the political environment. It allowed us to consider the interconnectedness of decisions, the role of actors and factors that influenced their adoption, and to understand how they were based on legal principles. The comparative method was used to compare the decisions with other trials or legal systems. This allowed us to evaluate them in the context of case law, standards and norms of law used in other contexts. The historical method was used to examine the historical context and understand the political and security decisions made in the Nuremberg trials. It included an analysis of the events, circumstances, and factors that influenced these decisions and helps to understand their importance and consequences.

The materials used in this study can be divided into three groups:

1. Normative legal acts of the international nature, namely: normative legal acts of the international nature that provided for criminal acts and existed before the commission of criminal acts by the Nazis (Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 1907; Geneva Convention relative to the Treatment of Prisoners of War, 1929); normative legal acts of the international nature that arose to ensure the functioning of the IMT activity after the Nazis committed criminal acts (the most notable of them is the Charter of the International Military Tribunal (CIMT) (1945)); normative legal acts of the international nature that arose after the administration of justice in Nuremberg, but which contain norms that are important for characterizing the legal aspects of the Nuremberg Trials (Vienna Convention on the Law of Treaties, 1969).
2. Theoretical scientific publications that consider problematic aspects of the legal framework of the administration of justice during the Nuremberg Trials.

3. Empirical materials, namely the direct text of the IMT verdict. With a certain degree of convention, individual opinions (assessments) of the participants of the Nuremberg Trials can also be considered as empirical materials.

To fully and comprehensively study the subject study, the author used the following methods: formal and logical method, when establishing the relationship between individual groups of crimes, which were subject to the jurisdiction of the IMT, among themselves (due to this method, for example, the author were able to delimit individual groups of crimes that fell under jurisdiction of the IMT, one from the other); the systematic and structural method made it possible to generalize the available debatable problems of the legal and regulatory framework of IMT activities and to develop a logically constructed system of such debatable provisions; historical method helped to better understand the “historical context”, the genesis of the emergence and functioning of IMT; comparative method made it possible to compare the groups of crimes that fell under the jurisdiction of the IMT, as well as to compare the provisions of individual international treaties that are directly or indirectly connected with the IMT activities.

Results and discussion

Before assessing the political and security decisions of the Nuremberg Trials from a legal perspective, it is necessary to recall the actual results of the studied trial. Many sources, mostly encyclopedic ones, contain the following facts which can be considered as a result of the Nuremberg Trials: twelve main war criminals were sentenced to death by hanging; some of the main war criminals were sentenced to prison for various terms; three of them were acquitted (Nuremberg Trial Archives..., 2018; Nuremberg Trials, 2010). It is notable that D. Luban (2008) and V. Cranmer (2023) positively assess the three acquittals announced during the Nuremberg Trials. The scientist writes that during the Nuremberg Trials, prosecutors were concerned that acquittals would lead to the Tribunal delegitimization. Looking back, D. Luban notes, it quickly became clear that the three acquittals were the best that could have happened because they proved that the Nuremberg Trials were not a demonstration. And although at first glance it seems that such punishments for the terrible things that happened during the Second World War are either completely justified (those involving the death sentence) or even quite humane (those involving the deprivation of freedom for determined period), in the legal doctrine, separate legal frameworks of the IMT activity serve as the subject of scientific discussions, and in some places they are justifiably criticized (Gordon, 2022; Anatoliy, 2021).

Ph. Kirsch (2007) writes that the Nuremberg Trials were based on two fundamental principles. The first principle is that people can and should be responsible for the most serious international crimes. The provisions of the operative part of the judgment of the Nuremberg Trials are well-known: "Crimes against international law are committed by people, not abstract persons, and only by punishing people who commit such crimes can the provisions of international law be applied". Ensuring responsibility, Ph. Kirsch emphasizes, is important itself, but this principle takes on a special meaning in terms of international law, because the availability of impunity for widespread or systematic atrocities can have serious consequences for international peace. The second principle is that the guilty should be punished only by a fair trial that guarantees the rights of the accused. Let's recall the speech of the Chief Prosecutor for the United States of America R.H. Jackson (1945) before the Trials: "Let's remember that the protocol by which we judge these defendants currently is the record by which history will judge us tomorrow. To hand over the poisoned cup to the defendants, one should bring it to one's mouth as well". And although the Nuremberg Trials, according to Ph. Kirsch (2007), declared many other important principles of procedural and substantive law, exactly these two main ideas, the inevitability of punishment and fair trial, were the basis of the Nuremberg Trials. These two principles later became the basis for justifying the legality of the Nuremberg Trials.

Ph. Kirsch (2007), assessing the legality of the IMT, also pays attention to the problem of the absence of a special military tribunal at the time of the Nazis' criminal acts. The scientist writes: "If the content of the Nuremberg Trials is the thesis that committed international crimes are subject to criminal punishment, then it would be logical for a court (or several courts) to exist to punish these crimes". At the same time, the scientist notes that the courts, during the administration of justice (consideration of criminal cases) for such international crimes, should strictly adhere to the justice standards and due trial. The Nuremberg Trials, according to Ph. Kirsch, were not at all intended to be simply a historical event. Those who took part in it saw in it, firstly, the beginning of a new responsibility era. For example, shortly after the IMT, in conclusion, J. Parker, one of the assistant judges of the IMT, said: "It is not too much to hope that what we have done has laid the foundation for the development of a permanent code for considering with prosecutions for international crimes and inflicting punishments for them". Ideally, Ph. Kirsch writes, the commission of any crimes should be dealt with by national courts. As a rule, it happens this way. However, in exceptional circumstances, when the worst atrocities were committed, national courts were either unwilling or unable to act. This may be due to that state employees direct or involved in the commission of such crimes, as it was in Nazi Germany. Or, as in other situations, the conflict

can lead to the collapse of state institutions, including the judicial one. In such situations, the development of an international court for the punishment of the most serious crimes is fully justified (Khanov and Boretsky, 2012).

Thus, D. Luban (2008) notes that in Nuremberg, four major states held a trial, but none of the traditional principles of transnational criminal jurisdiction, except for universality, can explain why Great Britain (for example) could try Germans for the persecution of Jews in Germany or the killing of gypsies in Poland. D. Luban provides an interesting justification of this problematic aspect. The scientist writes that allied lawyers stated that Germany's unconditional surrender and the collapse of the Nazi regime made them the new government of German, but under existing treaty law at the time, the occupying state should support the laws of the occupied country: a restriction that apparently reflects classical representations of the sanctity of state sovereignty (Gusarov and Popov, 2020). It is notable that, according to D. Luban, the behavior criminalization that was legal under Nazi law during the Nuremberg Trials violated this principle of treaty law based on sovereignty.

Application of the "ex post facto" law. At the time of the IMT development, the question of qualifying the terrible criminal acts of the Nazis arose before the international community. And this is interesting that at the time the Nazis committed their certainly criminal acts, in fact, they were subject only to Articles 4-7 of the Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (1907) and Articles 2-4, 6 of the Geneva Convention relative to the Treatment of Prisoners of War (1929), that is, if we were strict formalists, the Nazis could be prosecuted only for so-called "war crimes".

D. Luban (2008) writes that taking into account the awfully outrageous, immoral actions of the Nazis, the CIMT's criminalization of such actions "ex post facto" is justified, provides legitimacy to trial at the Nuremberg Trials and justifies the formal violation of the principle of legality. According to R.H. Jackson (1945), the determination of the legal framework for the trial at Nuremberg is simple: the preservation of humanity is more important than legality, because the brutality of the war required a quick and severe response.

The correlation of separate crime groups, which were covered by the IMT jurisdiction, among themselves. Article 6 of the Charter of the International Military Tribunal (1945) defines the crimes within the tribunal jurisdiction and includes war crimes and crimes against humanity. These two groups of crimes also form the "core" of crimes that are considered by the International Criminal Court. The understanding of war crimes that are broadly defined by the Charter as "violations of the laws and customs of war", in general, has not been criticized. At the same time, the understanding of crimes against humanity was criticized based on the

grounds that the understanding of such crimes enshrined in the Charter was formed according to the “residual” principle and in such a way as to expand the jurisdiction of the Ministry of Internal Affairs and cover those crimes that did not fall under the first two categories established in Article 6 of the Charter.

The definition of these two groups of crimes, according to the American researcher E. Hunter (2014), was not perfect, because the content of the actions of one of these groups was covered by another one, and the delimitation of one group of such crimes from another one was not clear. According to the author, there is no special problem here, because it is quite simple to delaminating these groups from each other according to the general rules for delaminating crimes, by a special victim (prisoner of war). Nevertheless, taking into account that this raises the advisability problem of separating such crimes into a separate group only based on a special victim, this issue requires further study.

During the Nuremberg Trials, when interpreting (understanding) the definition of crimes against peace and crimes against humanity, special focus was made on the organized, group nature of their commission. This feature of these groups of crimes is emphasized even today. Notably, D. Luban (2008) tries to delaminate genocide between war crimes and crimes against humanity. The scientist indeed takes the provisions of the Rome Statute of the International Criminal Court (1998) as the basis for understanding of war crimes in such a comparison, but in the aspect of this study, the author considers it necessary to reflect the perspective of D. Luban (2008). Therefore, the author writes that according to the Rome Statute of the International Criminal Court (1998), war crimes should be widespread or be the result of a plan or policy; as well as crimes against humanity require a “large-scale or systematic attack on a civilian population”, where “attack on a civilian population” is defined as an attack that is the result of a state or organization policy (Shulzhenko and Romashkin, 2021).

The understanding of the core crimes under the Charter of the International Military Tribunal (1945) as “jus cogens” norms. E. Hunter (2014) notes that in the scientific literature devoted to the legal aspects of the Nuremberg Trials, there is an approach according to which the core crimes provided by the CIMT can be considered as “jus cogens” norms, that is, those that develop regulatory norms of international law. This concept was described in the Vienna Convention on the Law of Treaties (1969). Article 53 of this Convention enshrines the provision that an international treaty is invalid if it contradicts the “imperative norm of international law”. An imperative norm is defined by the Convention as a norm that is “recognized and accepted by the international state community as a whole”. The core crimes under the Charter of the International Military Tribunal (1945) are considered to fall under this category. One of the main achievements of the

Nuremberg Trials is that scientists began to distinguish between “core” international crimes (such as those considered during the Nuremberg Trials and now under the jurisdiction of the International Criminal Court) and other international crimes (such as piracy and slavery). These “core” crimes are separated from the general understanding of the elements of crime, and such crimes are given a special status.

Some other problematic aspects of the legal framework of IMT administration of justice. As above, the author outlined the most common scientific discussions in legal doctrine regarding the legal framework of the IMT administration of justice. At the same time, there is a need to pay attention to the less studied aspects of this issue. Thus, I.I. Dereyko and M.V. Koval (2010) pay attention to such a feature of the Nuremberg Trials as the fact that this trial recognized as criminal not only the individual guilt of the defendants, but also the nature of a number of organizations, the very affiliation of which became the basis for prosecuting for criminal responsibility (thus, the defendants belong to the governing bodies of the National Socialist German Workers’ Party, Gestapo, security service (SD), security formations (SS), storm division (SA)).

The first thing that can be criticized in this thesis is the fact that when determining the legality of international law, it is considered generally accepted the fact that only specific individuals are its subjects, and international law exists to guarantee human rights. It is ironic that Professor D. Fraser (2005) noted that “the Nuremberg Trials, both in the arguments of the prosecution and in the administration of justice by the International Military Tribunal itself, were aimed not at establishing the illegality of the Nazis’ activities, but at establishing the legality of international law”. And the second thing is that serious questions of complicity are raised here, because leaders, organizers, instigators and accomplices who participated in the development or implementation of a joint plan or conspiracy to commit crimes that were subject to the IMT jurisdiction, were considered responsible for all acts committed by any persons during the implementation of such plan (Barabash et al., 2020). The defendants’ official positions as heads of state or high-ranking officials did not exempt them from responsibility and did not mitigate the punishment. Also, the fact that a defendant acted in accordance with the head’s order was not assessed as a basis for exemption from criminal liability, although in some cases the IMT considered it as a mitigating circumstance. In fact, during the Nuremberg Trials, the National Socialist German Workers’ Party, the Gestapo, SD, SS and SA were recognized as criminal organizations. Different legal systems were used at the Nuremberg Trials, as representatives of countries with different legal traditions participated. The main legal systems that were used were the continental (continental European) and Anglo-Saxon (in particular, American) systems. Each of these systems had its own peculiarities and approaches to justice. This influenced

the fairness and universality of the judicial process, as it was necessary to find a common language and ensure the consistency of decisions. Judges, prosecutors, and defense lawyers from different legal systems had different understandings of procedural rules, standards of proof, and other aspects of the law (Ibrayeva et al., 2018). However, due to close cooperation and constant consultations between the participants of the process, a certain unity and compromise were achieved. An important factor that ensured fairness and universality was the recognition of general rules of international law and principles of justice, which were adopted as the basis for the proceedings. Thus, although different legal systems were used at the Nuremberg trials, a certain degree of fairness and universality was ensured through collective efforts and an understanding of the importance of justice.

Wh.R. Harris (2016) and F. Hirsch (2021) writes that the feature of the Nuremberg Trials is that, according to the theory of the American prosecution, the defendants were charged with participation, joint plan or conspiracy to commit all these crimes. At the time of the crimes that were considered by the IMT, there was the prevailing theory that Adolf Hitler and his associates sought to gain control of the German state, establish a dictatorship and place the German people in power over the nations of Europe by force of arms. Such a theory can be considered as a joint plan, and therefore all those who joined Hitler are those who supported criminal purposes, and therefore should be responsible for the committed crimes, at least within the legal understanding of the conspiracy concept.

The author of this study would like to pay attention to the issues raised by the Ukrainian researchers I.H. Zavorotko (2020) and P. Nowak-Korcz (2022). It concerns sexual and gender-based violence committed by the Nazis during World War II. Thus, the scientist taking into account the fact that, as the author noted earlier, the crime of “genocide” of CIMT was not provided, but was, so to say, a “component” of crimes against humanity, still considers sexual and gender-based violence committed by the Nazis during World War II, exactly as genocide. However, the legal qualification of such criminal acts requires further studies. The calling of the Nuremberg Trials can be considered debatable. Thus, in one of the sources, the author found an interesting opinion, however, that “the court in Nuremberg was actually called not so much to punish the guilty as to protect from persecution those Germans who are found innocent” (From the Archive..., 2018). It is quite difficult to accept such a thesis unequivocally. Ukraine's Western allies are motivated by several factors to condemn Russia's crimes. First, it is based on the principles of international law, including the prohibition of the use of force and respect for the sovereignty and territorial integrity of states (Cherniavskiy et al., 2022). Russia's aggression against Ukraine violates these principles, and Western allies uphold international law by condemning these crimes. Second, the

humanitarian side of the conflict is an important motive. Russian aggression has led to human suffering, forced displacement, and human rights violations. The Western allies feel a moral obligation to protect people from violence and help restore peace and stability in the region. Punishing aggressors is a complex issue that requires political and legal decisions. Punishment of the perpetrators can take place through international mechanisms, such as the International Criminal Court or special international tribunals. However, the implementation of this process may depend on the political will of the participating countries and international cooperation. In general, Ukraine's Western allies are motivated to condemn Russian crimes based on the principles of international law and humanitarian values (Boyd-Barrett, 2023). However, punishing aggressors can be a complex process that requires joint efforts and international coordination.

The Nuremberg Trials had a significant impact on the development of international law and international criminal justice. Some of the potential impacts that can be applied to modern international criminal tribunals include holding individuals accountable for war crimes and crimes against humanity, protecting human rights, establishing precedents and standards in international law, and raising awareness of the consequences of crimes. The Nuremberg Trials laid the foundation for bringing individuals to justice for serious crimes before international courts, emphasized the importance of protecting human rights, and created precedents and standards for the further development of international criminal justice. It also contributed to a deeper understanding of the consequences of war crimes and crimes against humanity.

Conclusions

The author reviewed the materials and highlighted important moral and legal issues raised during the Nuremberg Trials. Their work provides a comprehensive and logical analysis of the political and security decisions made during the trials from a legal perspective. Such issues as the political nature of the IMT development, the issue of compliance with certain principles of judicial proceedings by it, the application of the "ex post facto" law, the correlation of separate groups of crimes over which the IMT jurisdiction extended to each other, the understanding of the core crimes provided by the CIMT as norms of "jus cogens", some other problematic aspects of the administration of justice IMT's legal basis develop a system of debatable issues of assessment of the legal and regulatory framework of the IMT administration of justice and the making of political and security decisions during the Nuremberg Trials. The author suggests that the "ex post facto" problem has two aspects: substantive, as the IMT prosecuted Nazis for three categories of crimes even though only one was recognized under international criminal law at the

time, and procedural, as the IMT was established after the crimes were committed. The author argues that the existence of the IMT had an impact on both national and international levels of justice, serving as a reference point for the development of smaller Nuremberg tribunals and as a prototype for the International Criminal Court. Despite some legal problems being addressed, there are still many unresolved issues regarding the legal and regulatory frameworks of the IMT's judicial proceedings, including the correlation between war crimes and crimes against humanity, the grounds for incriminating members of specific organizations, the consideration of complicity in relevant crimes, and the legal standards for qualifying sexual and gender-based violence committed by the Nazis during World War II.

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