THE NUREMBERG TRIAL IN THE DECADE: HISTORY, LEGAL CONSEQUENCES AND CURRENT CHALLENGES

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MARYNA ILIKA
PhD, Assistant of the Department of International Law
Yuriy Fedkovych Chernivtsi National University, Ukraine
m.ilika@chnu.edu.ua
ORCID 0000-0001-6556-5350

Abstract. The Nuremberg Trial of the Major War Criminals 1945–1946 was the International Military Tribunal in Nuremberg (Germany, November 20, 1945 – October 1, 1946) which considered the criminal actions of the leadership and individual organizations of the Third Reich in unleashing and conduct of the Second World War. The idea of creating an international tribunal originated in the USSR, it was stated in the governmental declaration "On the responsibility of Hitler's invaders and their accomplices for the crimes they committed in the occupied countries of Europe" of October 14, 1942.

After lengthy negotiations and meetings, the tribunal was formed from the representatives of four states: from the USSR – I. Nikitchenko (deputy chairman of the USSR Supreme Court), from the United States – F. Biddle (former US Attorney General), from Great Britain – D. Lawrence (chief judge of the United Kingdom Court of Appeals), from France – A. Donnedieu de Vabres (Professor of Law). The prosecution was formed on the same basis: from the USSR – the Attorney General of the USSR R. Rudenko, from the USA – the Attorney General of the USA R. Jackson, from Great Britain – the Minister of Justice of Great Britain H. Shawcross, from France – Professor of Law F. de Menthon. The defense was represented by 27 lawyers with 54 assistants. 403 public hearings were held, about 5.330 documents were considered (2.630 were provided by the prosecution, 2.700 by the defense) [10]. The defendants were charged with four counts: conspiracy to commit crimes against peace, unleashing the war of aggression, crimes against humanity, and war crimes. The trial lasted almost a year. The testimony of 280 witnesses was heard. Protocols and evidence amounted to 40 volumes.

It was the Nuremberg Tribunal that had consequences for the formation of the international legal mechanism of criminal prosecution for the commission of crimes, the social danger of war crimes was first formed and defined, the composition of most war crimes was developed, and the determining features of criminally punishable behavior were established.

Key words: International Military Tribunal, Nuremberg Trial, principles of the Statute of the Nuremberg Tribunal, International Criminal Court.

НЮРНБЕРЗЬКИЙ ПРОЦЕС ВПРОДОВЖ ДЕСЯТИЛІТТЯ: ІСТОРІЯ, ПРАВОВІ НАСЛІДКИ ТА СУЧАСНІ ВИКЛИКИ

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МАРИНА ІЛІКА
доктор філософії, асистент кафедри Міжнародного права
Чернівецького національного університету імені Юрія Федьковича, Україна
m.ilika@chnu.edu.ua
ORCID 0000-0001-6556-5350

Анотація. У дослідженні акцентовано увагу на Нюрнберзькому процесі над головними військовими злочинцями 1945–1946 рр. – Міжнародному воєнному трибуналі у Нюрнберзі (Німеччина, 20 листопада 1945 р. – 1 жовтня 1946 р.), який розглядав злочинні дії керівництва та окремих організацій Третього Рейху щодо розв'язування та ведення Другої світової війни. Констатовано, що ідея створення міжнародного трибуналу виникла у СРСР, про це говорилося в урядовій декларації «Про відповідальність гітлерівських загарбників та їх пособників за злочини, вчинені ними в окупованих країнах Європи» від 14 жовтня 1942 р. Після тривалих переговорів і нарад було сформовано трибунал з представників чотирьох держав: від СРСР – І. Нікітченко (заступник Голови Верховного Суду СРСР), від США – Ф. Біддл (колишній генпрокурор США), Великої Британії – Д. Лоуренс (головний суддя Апеляційного

суду Сполученого Королівства), від Франції – А. Доннедьє де Вабр (професор права). На цій же основі було сформовано обвинувачення: від СРСР – Генеральний прокурор СРСР Р. Руденко, від США – Генеральний прокурор США Р. Джексон, від Великої Британії – Міністр юстиції Великобританії Х. Шоукросс, від Франції – професор права Ф. де Ментон. Захист представляли 27 адвокатів із 54 помічниками. Проведено 403 громадських слухання, розглянуто близько 5330 документів (2630 надано стороною обвинувачення, 2700 – захистом). Підсудним висунули звинувачення за чотирма пунктами: змова з метою вчинення злочинів проти миру, розв'язування загарбницької війни, злочини проти людяності та військові злочини.

Акцентовано увагу на наслідках Нюрнберзького трибуналу для формування міжнародно-правового механізму притягнення до кримінальної відповідальності за скоєння злочинів. Зауважено, що вперше була сформована та визначена суспільна небезпечність воєнних злочинів, розроблено склади більшості воєнних злочинів та встановлені детермінуючі ознаки кримінально караної поведінки.

Ключові слова: Міжнародний воєнний трибунал, Нюрнберзький процес, принципи Статуту Нюрнберзького трибуналу, Міжнародний кримінальний суд.

The International Military Tribunal for German War Crimes was the first international criminal tribunal in modern history. For this reason, the drafters of the Statute and the Rules of procedure and evidence could not draw on the experience of a previous international criminal court or tribunal to develop these legal documents. As a result, they reconsidered in their legal system or culture the answers to questions such as who would be sued, what charges should be filed, and what procedures should be followed. The course of the Tribunal has been widely studied in the science of international law [3, p. 99–108].

During the Nuremberg Trials the focus was on the aggressive war unleashed by the Nazis and their violation of the laws and customs of war. The Nazi genocide was covered by the trial as a war crime or a crime against humanity, especially "destruction» or «persecution" [5]. At the end of the process, the efforts towards the development of international criminal law increased. In resolution 96 (1) of December 11, 1946, the UN General Assembly for the first time defined the crime of genocide and declared it to be a crime under international law.

The purpose of the article is to analyze the practice of the International Military Tribunal. Among the latest works devoted to this issue, we can name the works of O. Senatorova, O. Nigreeva, O. Yukhimiuk, A. Ivanova. Among the foreign researchers of this problem, we should mention H. Akvaviva, K. Wright, M.Sh. Bassiuni and F.O. Raimondo. J. Martinez, A. Danner and others.

It is worth noting that the Nuremberg Tribunal was the first international criminal court in history, which persuasively and convincingly proved the guilt of the defendants in committing serious international crimes and convicted major German war criminals. At the Nuremberg Trials, the judges concluded that all the crimes committed between September 1, 1939 and May 8, 1945 were cognizable not only in Germany but in all occupied countries. All defendants entered into an agreement with each other, developed a detailed plan for conducting criminal operations and systematically implemented it. As a result, a huge number of war crimes and crimes against humanity were committed. The plan drawn up by the criminals became the cause of "total war", which involved methods of warfare and military occupation, contrary to the customs and laws of war. Crimes were committed on the battlefields in clashes with enemy armies and against prisoners of war, in the occupied territories, against the civilian population. Consequently, war and other crimes develop into crimes against humanity if they are committed by pre-arranged orders and therefore have a state-organized nature, as well as pursue the goal of mass extermination of people.

After the Second World War, individuals were held criminally responsible for international crimes. Criminal prosecution of guilty persons was carried out by the Nuremberg Tribunal, which became the most famous judicial body in the entire history of mankind [14, c. 15]. The so-called Nuremberg principles found their further development in the principles and norms of international criminal and international humanitarian law and, accordingly, became fundamental in the creation in the 90-s of the 20th century international ad hoc criminal tribunals. The purpose of the International Military Tribunal was to prosecute and punish the main war criminals [12, c. 280], it established for the first time at the international level the rights of the accused and the guarantees of their provision in the modern sense. Among such rights is the right to protection.

It is worth noting that the problems of international criminal responsibility require a thorough theoretical understanding, as they are insufficiently developed in the legal literature. The well-known Latin expression *nullum crimen sine lege – nulla poena sine lege* (there is no crime unless it is specified in the law) has its

own specifics in relation to the application of norms of international criminal law. It should be noted that international law is a priority in the case of consideration of a crime against the peace and security of humanity (in particular, war crimes) [4, c. 271]. Thus, it can be argued that the principles applied and developed by the Nuremberg Tribunal have been repeatedly confirmed as part of international law.

At that time, there were grounds for disputes over the legality of the establishment of the IMT. The most common criticism is that it was "the trial of the winners over the losers". This argument can be called reasonable, because, firstly, only Germans were accused in the trial, secondly, the judges were only representatives of the victorious states and, thirdly, as it became known today, during the Nuremberg Trials, there was an agreement between the representatives of the founding states not to touch on a number of issues on which these countries could become the subject of accusations, and to stop their statements at the trial. In particular, questions: a) the Soviet-German non-aggression pact of 1939; b) the behavior of Britain during the war with the Boers; c) the British bombing of Dresden; d) Katyn and others.

It is established that the practice of the International Military Tribunal (Nuremberg Tribunal) revealed the important role of general principles of international law in the context of international criminal justice. The Nuremberg Tribunal emphasized not only the punishment for the crimes committed, but also the need to establish legal precedents based on generally accepted principles of law to prevent future violations.

Among those general principles of law that the Nuremberg Tribunal applied in its practice, F.O. Raimondo, after analyzing the practice of the International Military Tribunal, gives examples of the application of three general principles of law: *"there is no crime and punishment without law"* (lat. Nullum Crimen Nulla Poena Sine Lege), *"there is no criminal responsibility without moral choice"* (eng. There is no Criminal Responsibility without Moral Choice) and the principle of *"personal guilt"* (eng. Personal Culpability) [7, p. 77–79].

It is worth agreeing with many scholars that the statutes of post-war tribunals were not legally flawless. There is reason to speak of a violation of the principle of *nullum crimen, nulla točka, sine lege*, because the only type of crime of the Nuremberg Tribunal Statute, which had a treaty basis and existed in international law until 1939, were war crimes. At the same time, the prohibition of aggression and crimes against humanity existed at the level of customary norms of international law, which were determined *ex post facto* – through retroactive jurisdiction. The analysis conducted by scientists shows that the admissibility of bringing to international criminal responsibility for the aggression of individuals has been sharply criticized, which was unprecedented in international law of that time [12].

The principles of the Statute of the Nuremberg Tribunal were applied not only in Nuremberg but also in the trial of war criminals in Tokyo [5], and were then tested and approved in the following numerous trials in the occupied territories. Today, "the Nuremberg Principles" are recognized as customary law and form the "core" of substantive international criminal law [1, c. 10]. It can be stated that the Statute and Verdict of the Nuremberg Tribunal gave international law new principles of international law that did not exist before their adoption – the principles of international criminal law and international criminal procedure and laid the foundation for the structure and mechanism of international criminal justice.

During the occupation, the defendants used methods of torturing residents that cannot be justified. The accused terrorized civilians: they killed and tortured them, threw them in prison without trial or investigation, and treated them severely. Various methods were used for terror: executions, hanging, gas poisoning, forced starvation, overcrowding, overwork, lack of sanitary and medical care, and torture in various ways. They even practiced torturing with hot iron and pulling out nails. The most terrible were the experiments on living people, who were mocked with various surgeries, etc.

This whole story reminds us of a full-scale war, not a special operation in Ukraine, which was launched on February 24, 2022 at 4.00 am. Therefore, in our opinion, we should talk today about the International Criminal Court, so to speak, the "child" of the Nuremberg tribunal, which has jurisdiction over some of these crimes (war crimes, crimes against humanity and crimes against peace) committed in Ukraine.

So far, the Prosecutor of the International Criminal Court Karim Khan has decided to open a formal investigation into the situation in Ukraine. The continuation of the war and the shelling of the civilian population give reason to believe that crimes are being committed in Ukraine that fall under the jurisdiction of the ICC. The court investigates and, if necessary, judges those accused of the most serious crimes: genocide, war crimes, crimes against humanity. The use of military force by Russian President Vladimir Putin is a crime

of aggression, the outbreak of illegal war, and everything that has developed into the concept of "crimes against peace" during the Nuremberg Trials.

On March 7, 2022, the UN International Court of Justice opened a case on Ukraine's lawsuit against Russia and heard Ukraine's arguments. The International Court of Justice in The Hague has scheduled a second hearing on March 8 to give Russia an opportunity to present its evidence. But Russia denies that it is waging a war of aggression against Ukraine on its territory and calls it a "special operation" aimed at "demilitarization and denazification". However, it can be stated that Russia is committing crimes against peace and humanity of our state.

It should be emphasized that we, Ukrainians, as a separate nation, have the right to live independently, every city has the right to security, everyone has the right to freedom and happiness, people should not be the instrument of the regime of a dictator, people have the right to life, which is enshrined in many international acts, namely the Universal Declaration of Human Rights, the International Pact on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms.

International politicians such as former British Prime Ministers Gordon Brown and Sir John Major insist on a new international tribunal to investigate Vladimir Putin's actions in Ukraine. Also, other scholars, lawyers and politicians, about 140 people – signed a petition to establish a judicial body based on the Nuremberg Trials of Nazi war criminals after World War II.

The International Criminal Court (ICC) is already investigating against Russian President Vladimir Putin on suspicion of war crimes against Ukraine. Accordingly, the military tribunal will act as an addition to the ongoing investigations by the International Criminal Court.

The creation of the ICC was a consequence of the maturity of the international community and its better understanding of global problems. As M. Buromensky successfully notes: "The understanding in the states of the full depth of global problems with the social and political perversions of the regimes is regarded by the world community as a sign of the civilization of the states and their readiness to take responsibility for the future of humanity" [2, c. 5].

On the other hand, the Court is often criticized due to the imperfection of its practice and, apparently, bias towards the accused representatives of African countries. However, such criticism is typical of international justice bodies in the early stages of their activity. For example, as noted by I. Yavorska, there was similar criticism of another body of international justice – the Court of the European Union: "In the first years of the existence of the Court of Justice of the European Union, there were often critical comments regarding the lack of court rulings and practices that ensure the protection of rights and human freedoms" [15, c. 102].

The Rome Statute provides that the ICC applies the Statute itself, the Elements of Crimes and the Rules of Procedure and Evidence; international treaties, norms and principles of international law, including generally recognized principles of the law of armed conflicts; and only if this is not possible, the Court applies the general principles of law taken by it from the national legislation of the legal systems of the world, provided "that these principles are not incompatible with this Statute and with international law and internationally recognized norms and standards" [8].

As we can see, in this case it may seem that the general principles of law are only a tertiary source of the ICC's decision-making activity, subject to application only if those sources that stand in the hierarchy of the Rome Statute above will not be able to fully provide adequate guidelines for issues that are the subject of its consideration.

One of the most common myths about the ICC's activities is that it will replace Ukraine's national courts in cases considering the most serious international crimes under its jurisdiction. Such a statement seems legally insignificant. The analysis of the incorporation documents of the International Criminal Court, as well as legal doctrine, allows us to state that the ICC operates on the principle of complementarity. The basic nature of this principle is that the ICC does not replace national courts, but considers cases of the most serious international crimes where the state is "unable" to investigate such crimes or knowingly "evades" it. In our view, the International Criminal Court is called upon to put an end to the system of "one-time" war crimes tribunals, including special tribunals established to investigate the events in the former Yugoslavia and the genocide in Rwanda.

But today, the ICC's capabilities are limited, as it cannot investigate Russia's aggression without UN Security Council sanctions, which Moscow can put a veto upon. Therefore, we hope that the aggressor country will be expelled from the UN Security Council, a permanent body responsible for maintaining peace and security in the world. It should be reminded that Russia declared itself the successor to the USSR and thus took

the place of a permanent member of the UN Security Council. In this case, the state has the right of veto, which can be applied to any resolution.

Thus, the Nuremberg Trials are called the "Court of History". The great significance of this process lies in the fact that for the first time in human history criminals who committed horrible crimes against peace, laws and customs of war, against humanity, were convicted, this tribunal put an end to the defeat of fascism. In all previous wars, the population exclusively had to pay for the crimes of their politicians. Now, specific individuals have been brought to justice: the political and military leadership, the authors of the ideology, not just their executors. The verdict of the Nuremberg tribunal has gone down in history, which we can rely on today. We are confident that the trial of the President of the Russian Federation and his political leadership, as well as the oligarchs of the aggressor country, will fully punish all those involved in this terrible war in our country and on our Ukrainian land.

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