**Evolution of International Criminal Court under Nuremberg Trials**

**Topic iv- Criminal Tribunals**

**BY**

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Violence in any form is a pathological force, which obstructs or destroys life sustaining and life enhancing processes. The history of human civilization is replete with the instances of violence against fellow humans. The present age described as the age of science and technology, globalization and liberalization has equally brought in its wake new forms of commission of grave and heinous crimes at the international level. It poses a challenge to the reinforcement of the rules of international law for making the globe a better, happy and peaceful place to live in.[[1]](#footnote-1) From the comparative study of the history of the world regarding criminal activities that have occurred in the past centuries, it may be deduced that international criminal activities are growing at a very fast pace. This is posing an alarming threat to the peace and security of the world due to unprecedented increase in international criminal activities.[[2]](#footnote-2) During the course of twentieth century, it has been estimated that conflicts of a non-international character, internal conflicts and tyrannical regime victimization had resulted in over one seventy million deaths. Apart from the problem of war, various new technologies have been invented and employed for destruction. New methods have been evolved to create fear and terror in the minds of people. All these offences are against human rights, humanitarian law and thus against international law also. Therefore, it may be inferred that the security of international community and whole world is at stake and steps have to be taken to curb this menace. In the light of the arguments put above, the obvious question is how to curb crimes against human rights and humanitarian law and broadly against the international law. The logical answer is “by punishing the offenders one can curb these crimes”. This curbing of international crimes by punishing the offenders was done by setting up tribunals to punish the perpetrators of the crime During and immediately after Second World War the decision was made that the atrocities committed during that war would not go unpunished. In 1942 the Allied Powers[[3]](#footnote-3) signed an agreement at the Palace of St. James establishing the United Nations War Crimes Commission (UNWCC). The Declaration of St. James was the first step leading to establishment of two independent tribunals, namely the International Military Tribunal of Nuremberg and the International Military Tribunal for Far East. Both the Tribunals were established in response to the overwhelming horrors of the Nazi genocide in Europe and the Japanese crimes perpetrated during the wartime occupation of many South Asian Countries.

**Meaning of Tribunal**

Any conflict between two or more States not only involves the military apparatus of that State but also the political leadership of the State. It is the military leadership which has the legitimate ability to command the military. For a State to go into a state of war involves concerted political and military efforts. The question about how to make a person liable for aggression can only be answered when the elements of aggression are determined. It is important to note here that the road to actualization of international criminal tribunal for the liability of aggression was long and twisted one. For doing this tribunals were established. An important question which arises here is how we define a tribunal. The meaning of term “Tribunal” is a seat or court of justice or the bench on which a judge or other presiding officer sits in court or a committee or board appointed to adjudicate in a particular matter or it also means something that has the power to determine or judge. The basic purpose of establishing of these tribunals was to establish “a system of accountability and the maintenance of international peace and security”.[[4]](#footnote-4) The purpose of the tribunal is “to put an end to [international atrocities] and to take effective measures to bring to justice the persons who are responsible for them.[[5]](#footnote-5) The basic reason for the establishment as rightly put forth was “[t]he pursuit of justice and accountability fulfills fundamental human needs and expresses key values necessary for the prevention and deterrence of future conflicts.”[[6]](#footnote-6)

**BACKGROUND, IMPORTANCE AND MEANING OF NUREMBERG**

Earlier the world which existed was in which nation States[[7]](#footnote-7) ruled supreme. It was a world filled with armed conflicts between sovereign nations which brought about death and destruction. It was a world in which international law, such as it was, imposed no effective restraints on nation- States and their leaders in starting and carrying out aggressive wars. Individuals in the pre- Nuremberg world had no obligations to conduct themselves in such a way as not to injure the citizens of other nations. The enormous human rights violations and the acts of aggression that took place in the Second World War made a profound change in the international criminal legal regime. International community was cajoled to come up with some concrete agenda on international criminal law as a result of which International Military Tribunals at Nuremberg and Tokyo were established. For the first time in the history of human civilization, individual criminal responsibility was recognized at the international level for the crimes committed.[[8]](#footnote-8) These International criminal tribunals, along with their constitutive instruments, evoked a number of justifications for why they punish perpetrators of extraordinary international crimes which included aggression. These justifications include retribution, deterrence, and, on a subaltern level, rehabilitation, reintegration, reconciliation and incapacitation.[[9]](#footnote-9) The emerging system of international criminal law, with its foundations in the Nuremberg and Tokyo Tribunals judgment, confirmed the fact that steps have to be taken to bring acts of aggression under the list of crimes under international law. As the main component of aggression was the use of force so the States and the individuals should be prohibited to the use of force which would be contrary to jus contra bellum. International criminal law stands out amongst other branches of international law because of the creation of the International Military Tribunals (IMT). An IMT is typically created by the same treaty that put into force a given set of laws. Historically, these tribunals were ad hoc in nature and were created to adjudicate a specific situation and were limited either in territory or time. For example, the Nuremberg IMT was created by the London Charter of the International Military Tribunal. It was created in the wake of Second World War with the specific purpose of trying crimes against stemming from that war. The city of Nuremberg (also known as Nurnberg) in the German state of Bavaria was selected as the location for the trials because its Palace of Justice was relatively undamaged by the war and included a large prison area. Additionally, Nuremberg had been the site of annual Nazi propaganda rallies; holding the postwar trials there marked the symbolic end of Hitler’s government, the Third Reich.[[10]](#footnote-10) Modern international criminal law originates from the period following the Second World War, with the creation of International Military Tribunal to prosecute and punish the major war criminals.

**The Nuremberg Tribunal**

Since civilization began some 5,000 years ago, the Law of Force had been the order of the day. We should never forget that the Law of Force is barbaric, fleeting, and creates tremendous uncertainty on the part of the populous. It means that highly cultured, peace- loving people could be and have been destroyed by foreign and domestic predators that recognize no limits to their behavior. Albert Speer, a prime defendant at Nuremberg, recognized the dilemma created by acceptance of the Laws of Force. In his closing statement at Nuremberg he graphically expressed his concern over a future in which some nations devoted their efforts to producing greater weapons of destruction while others focused on cultural growth and peace-loving pursuits. He hoped that Nuremberg would ensure that the growth of international law has kept pace with increases in the technology of destruction.[[11]](#footnote-11) Nuremberg was designed to change the anarchic context in which the Nations and people of the world related to each other. Nuremberg was the fountainhead from which initiatives for the protection of human rights emanated. The European Convention on Human Rights[[12]](#footnote-12), the Genocide Convention[[13]](#footnote-13), the Universal Declaration of Human Rights[[14]](#footnote-14), and other similar initiatives were all outgrowths of Nuremberg. Nuremberg was the first post- mortem analysis of a totalitarian State. It gave the world an appreciation of the levers of power in a dictatorship and of the defenses which have to be in place to prevent dictatorships and their destructive effects. Nuremberg is not just a city in Germany. It is a symbol, a symbol of renaissance, rebirth, and revival of Natural Law from dormancy. The Nuremberg Trials make us know the power of Natural Law and the power of Justice.[[15]](#footnote-15) It marked a beginning or a new era in which principles were laid down where individuals and nation States would be guided by a set of enforceable rules in their behavior towards one another. In a real sense it marked the coming of international law as a force to be reckoned with on our planet for maintaining peace.

**Factual Background of Nuremberg Trial**

Shortly after Adolf Hitler came to power as chancellor of Germany in 1933, he and his Nazi government began implementing policies designed to persecute German- Jewish people and other perceived enemies of the Nazi state. Over the next decade, these policies grew increasingly repressive and violent and resulted, by the end of Second World War (1939- 1945), in the systematic, state-sponsored murder of some 6 million European Jews (along with an estimated 4 million to 6 million non- Jews). The wrongs that need to condemned and punished under the Nuremberg Trials have been so calculated, so malignant, and so devastating, that civilization could not tolerate their being ignored, because it could not survive their being repeated. This tribunal, while it was novel and experimental, was not the product of abstract speculations nor was created to vindicate legalistic theories. This inquest represented the practical effort of four of the mightiest of nations, with the support of seventeen more, to utilize International Law to meet the greatest menace of our times aggressive war. The common sense of mankind demanded that law shall not stop with the punishment of petty crimes by little people. It must also reach men who possess themselves of great power and make deliberate and concerted use of it to set in motion evils which leave no home in the world untouched.[[16]](#footnote-16) The IMT responsible for trying the major war criminals was the product of long political and judicial debates. Agreement for the establishment of the Tribunal was reached in London on 8 August 1945 just two days after the atomic bomb was dropped on Hiroshima and two days before the bombing of Nagasaki. The IMT was established at a conference following the conclusion of the war in Europe, pursuant to an agreement between the four Allied powers that were United States, the Soviet Union, United Kingdom and France. After the preliminary sessions in Berlin on 18 October 1945, the trial moved to Palace of Justice, Nuremberg where the sessions started. The trial of the Nazi criminals started on 20 November 1945 and lasted till 1 October 1946 in the Palace of Justice at Nuremberg and found nineteen defendants guilty of crimes against humanity, war crimes and crimes against peace. The trails were a massive undertaking. There were four judges and four prosecutors, each with a team of his own, all of them drawn from the victorious powers that were the United States, Great Britain, and the Soviet Union along with France. The Court met in 403 sessions, heard a total of 166 witnesses, and worked through literally thousands of written affidavits and hundreds and thousands of documents. For the first time in the history of humankind, a war of aggression was considered not as a generic breach of international law involving the liability of the State qua State, but as an authentic international crime for which individuals too were held responsible or liable. The Nuremberg Tribunal considered it necessary to begin by reviewing the factual background of the aggressive war; it traced the rise of the Nazi Party under Hitler’s leadership to a position of supreme power, which paved the way for the alleged commission of all the crimes.[[17]](#footnote-17) The Nuremberg Tribunal noted that the Nazis sought to obtain power for the purpose of imposing a totalitarian regime that would enable them to pursue their aggressive policies. The Tribunal considered the origin and aims of the Nazi Party as well as its seizure and consolidation of the power. The Tribunal further noted that the Nazis sought to obtain power for the purpose of imposing a totalitarian regime that would enable them to pursue their aggressive policies. They consolidated their power by reducing the power of local and regional governments; securing control of the civil service; controlling the judiciary; persecuting and murdering their opponents including Jews, making Nazi Party the only legal political party and making it a crime to maintain or form any other political party; abolishing independent trade unions; and youth organizations; limiting the influence of churches; and increasing Nazi’s power over the German population by controlling education and the media[[18]](#footnote-18). Shortly after Adolf Hitler came to power as Chancellor of Germany in 1933, he and his Nazi government began implementing policies designed to persecute German- Jewish people and other perceived enemies of the Nazi State. Over the next decade, these policies grew increasingly repressive and violent and resulted, by the end of Second World War, in the systematic, State sponsored murder of some 6 million European Jews (along with an estimated 4 million to 6 million non- Jews). Nazi Germany or the Third Reich was the period in the history of Germany from 1933 to 1945, when it was a dictatorship under the control of Adolf Hitler and the Nazi Party (NSDAP). Under Hitler’s rule, Germany was transformed into a fascist totalitarian State which controlled nearly all aspects of life. Nazi Germany ceased to exist after the Allied Forces defeated Germany in May 1945, ending Second World War in Europe. Crimes during the Holocaust included physical crimes. Physical crimes included criminal assault on innocent and helpless victims and further the victims were beaten, drowned, whipped, shot, ran over, strangled, gassed, and hung. These crimes included sexual crimes or crimes that were directed at women’s genitalia. Another popular way the Nazis murdered people was to have them euthanized. The Nazi crimes also included genocide. In addition to the physical crimes there were property crimes and crimes against classes of people that were also committed during this time. Nazis took away all of a Jew’s possessions and their incomes to make it harder for the Jewish people to live elsewhere before the strike of the Holocaust. The victims of the Holocaust were described by the Nazis by saying the victims were “criminals who endangered public safety”.[[19]](#footnote-19)In Ukraine, an estimated 400,000 Jewish people were killed in Nazi concentration camps during the Holocaust. On average per day about 1,864 Jewish people died. Most of the people that were murdered during the Holocaust never had proper burials. Ukraine has over 750 mass graves where groups of five or more Jewish people were marched into mass pits and shot in the back. 5,000 Jews marched from Ukraine into these pits. To save bullets children would be thrown into pits of fire and be burned alive.

**Establishment of Nuremberg Tribunal**

The process to establish an international criminal tribunal for the trial of Nazi criminals started during the Second World War itself. It was during this time that the States started looking into the perspective of making aggression an international crime. The Nuremberg Trials established the modern Laws of War and laid the foundation for the ad hoc international tribunals established in the past fifteen years, as well as the permanent International Criminal Court (ICC). The establishment of tribunals to try offenders was indeed a revolutionary concept for maintenance of international peace and security. It was established by the United Kingdom of Great Britain, North Ireland, the United States of America, France and the Soviet Union by an agreement signed at London on 8 August 1945.31 The Charter of the Tribunal laid down that In pursuance of the Agreement signed on the 8th day of August, 1945, by the Government 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, there shall be established an International Military Tribunal ... for the just and prompt trial and punishment of the major war criminals of the European Axis... Control Council Law No. 1032 was passed to establish the legal basis for prosecution of crimes against peace. The significance of Nuremberg was multilateral recognition of international human rights extending beyond the borders of individual countries.[[20]](#footnote-20) The Charter of the Tribunal recognizes three kinds of crime under Article 6, charges on all of these were put in the indictment: i) Crimes against Peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing; ii) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity; iii) Crimes against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan. If we try to make an analysis of the Nuremberg trials it can be deduced that the trials rested on two fundamental principles which was namely, i) Individuals can and should be held accountable for the most serious international crimes. The judgment of the Nuremberg Tribunal famously declared, “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.” ii) Ensuring accountability is important in itself, but it is also important because allowing impunity for widespread or systematic atrocities can have serious consequences for international peace. Some other principles attached to the Nuremberg Trial which were valid then, and they remain so today are as follows: i) That the initiation and waging of aggressive war is a crime as is a conspiracy to wage aggressive war; ii) That the violation of the laws and customs of war is a crime; iii) That the inhumane acts committed upon civilians in execution of, or in connection with, aggressive war constitutes a crime; iv) That individuals may be held liable for crimes committed by them as heads of state; v) That individuals may be held liable for crimes committed by them pursuant to superior orders; vi) That an individual charged with a crime under international law is entitled to a fair trial.

**AGGRESSION AND NUREMBERG**

It is very important to note here that because of the acts of aggression increasing it became all the more evident to give a definition to this terminology. To add to this as William Schabas observed: [It] is certainly striking to observe that the uncertainty about the role of aggression within the overall system of international criminal law is not only characteristic of the debate that immediately preceded Nuremberg, but it is also manifested in the approach to the issue in the decades that were to follow the landmark trial. The failure of the United Nations War Crimes Commission to even take a position on whether or not aggressive war should be a crime seems remarkably like the hesitations at the Rome Conference [on the International Criminal Court], more than half a century later.[[21]](#footnote-21) The inclusion of the crime of aggression in both the Nuremberg and the Tokyo Trials was one of the most important and remarkable development in the field of international criminal law. There is lot of extraordinary and intellectual inputs made in the form of legislative history of the crime of aggressive war. But the inclusion of aggression in the legal framework for the trial of aggression was started by drafting the Kellogg- Briand Pact, 1928. This instrument can be taken to be the beginning of the making of crime of aggression on which all the other instruments have relied upon including the Nuremberg Charter. To begin with Robert H. Jackson explained the legal basis for the inclusion of the crime of aggression within the jurisdiction of IMT as follows: International law … is an outgrowth of treaties or agreements between nations and of accepted customs. But every custom has its origin in some single act … Unless we are prepared to abandon every principle of growth for International Law, we cannot deny that our own day has its right to institute customs and to conclude agreements that will themselves become sources of a new and strengthened International Law.[[22]](#footnote-22) This analysis was done by Robert H. Jackson keeping into consideration the pacts entered into after the First World War. If the analysis of the Charter of IMT is done the provisions on the crime of aggression were the result of much debate and disagreement between Britain, the US, France and the Soviet Union. These States had to agree on a compromise text in the end. The differences were more than just political, or strategic, they were also dogmatic. While the US regarded aggressive war to be criminal per se, France wanted the Charter provisions on aggression to be linked to violations of treaties and other international instruments (to avoid problems of retroactive application of criminal law). Incidentally, references to violations of treaties would also relieve the drafters of having to define aggression. Further there arose two views against the liability of aggression one of Soviet Union which came out strongly in the support of making the Nazi’s liable for the acts of aggression they had committed and recommended a “Show Trial” and the other view which was held by Americans which contended that there should be a formal trial. Because of the compromises necessitated by the different dogmatic positions taken by the four Allied States, the final provisions on the crime of aggression in the IMT Charter was in the words of Ian Brownlie[[23]](#footnote-23)- a “clumsy formula”. Indeed, this formula was the result of different, but valid, concerns about the content of a crime that was at that stage all but established under international law. The French concerns about retroactivity proved to be relevant because the application of the law on aggression by the IMT was one of the main criticisms against the judgment at Nuremberg. Specifically speaking Principle 6(a) of the Nuremberg Tribunal deals with the concept of aggression and it states that: The crimes hereinafter set out are punishable as crimes under international law: Article 6(a) Crimes against peace: i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances; ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i). So, therefore under Article 6(a) “Crime against Peace” was placed under the jurisdiction alongside “War Crimes” and “Crimes against Humanity”. They consisted of actions such as planning, preparation, initiation, or waging of a war of aggression, or a war in violation of international treaties, agreements, or assurances or participation in a common plan or conspiracy for the accomplishment of any of the foregoing as mentioned above. In one of the best-known passages of the trial’s summing up, war is declared to be “essentially an evil thing” whose consequences are not confined to the belligerent States alone but affects the whole world. To initiate a war of aggression is not only an international crime; it is the supreme international crime, differing from other war crimes only in that it contains within itself accumulated evil of the whole. The Tribunal made a general statement to the effect that its Charter was “the expression of international law existing at the time of its creation”. It, in particular, refuted the argument of the defense that aggressive war was not an international crime. For this refutation the Tribunal relied primarily on the General Treaty for the Renunciation of war of 27 August 1928 (Kellogg- Briand Pact) which in 1939 was in force between sixty- three States. Article 2 of the Convention stated that the aggressor in an international conflict shall, subject to the agreements in force between the parties to the dispute, be considered to be State which is the first to commit any of the following actions: i. Declaration of war upon another State; ii. Invasion by its armed forces, with or without a declaration of war, of the territory of another State; iii. Attack by its land, naval or air forces, with or without a declaration of war, on the territory, vessels or aircraft of another State; iv. Naval blockade of the coasts or ports of another State; v. Provision of support to armed bands formed in its territory which has invaded the territory of another State, or refusal, notwithstanding the request of the invaded State, to take, in its own territory, all the measures in its power to deprive those bands of all assistance or protection.

**Analysis of the Charter vis-à-vis Aggression**

An analysis of the Charter of the Nuremberg Tribunal portrays that it did not contain any definition of “war of aggression”, nor was there any such definition or the analysis of this concept made in the judgment of the Tribunal. It was only by reviewing the historical events before and during the war that the Tribunal found that certain of the defendants planned and waged aggressive wars against twelve Nations and therefore guilty of a series of crimes. The Tribunal considered that the terms “planning” and “preparation” of a war of aggression included all the stages in the bringing about a war of aggression from the planning to the actual initiation of the war. In view of that, the Tribunal did not make any clear distinction between planning and preparation. But the judgment essentially stated that “planning and preparation are essential to the making of war”. To add to the above-mentioned thought Justice Jackson’s focus at Nuremberg was on the aggressive war count whereby individuals were charged with planning, preparing, and carrying out wars of aggression. In this respect, less progress has been made in implementing the inheritance of Nuremberg.

**INDICTMENT OF NUREMBERG TRIBUNAL**

The best-known of the Nuremberg trials was the Trial of Major War Criminals, held from 20 November 1945, to 1 October 1946. The format of the trial was a mix of legal traditions: There were prosecutors and defense attorneys according to British and American law, but the decisions and sentences were imposed by a tribunal (panel of judges) rather than a single judge and a jury. The chief American prosecutor was Robert H. Jackson (1892-1954), an associate justice of the U.S. Supreme Court. Each of the four Allied powers supplied two judges- a main judge and an alternate. Twenty-four individuals were indicted. One of the indicted men was deemed medically unfit to stand trial, while a second man killed himself before the trial began. Hitler and two of his top associates had each committed suicide in the spring of 1945 before they could be brought to trial. The defendants were allowed to choose their own lawyers, and the most common defense strategy was that the crimes defined in the London Charter were examples of ex post facto law; that is, they were laws that criminalized actions committed before the laws were drafted. Another defense was that the trial was a form of victor’s justice- the Allies were applying a harsh standard to crimes committed by Germans and leniency to crimes committed by their own soldiers. Although the legal justifications for the trials and their procedural innovations were controversial at the time, the Nuremberg trials are now regarded as a milestone toward the establishment of a permanent international court, and an important precedent for dealing with later instances of genocide and other crimes against humanity.[[24]](#footnote-24) The indictment at the IMT was on two counts which related to aggression: i. Count One: The common plan or conspiracy embraced the commission of crimes against peace, in that the defendants planned, prepared, initiated and waged wars of aggression, which were also wars in violation of international treaties, agreements or assurances. ii. Count Two: All the defendants with divers other persons, during a period of years preceding 8 May 1945, participated in the planning, preparation, initiation and waging of aggression, which were also wars in violation of international treaties, agreements and assurances.” This count thus indicated what were called “Crimes against Peace”, and obviously had to include acts of aggression like the German invasion of Poland on 1 September 1939, even though act of war was clearly carried out as part of a joint conspiracy with the Soviet Union, which went unmentioned. Nazi regime must have known that Germany’s aggressive foreign policy was in violation of treaties like Kellogg Briand Pact, which outlawed the use of force. The Tribunal furthermore used the analogy of criminal liability for war crimes to support its opinion that, read together with the particular history of the Kellogg- Briand Pact and other international instruments and draft instruments actually providing for the criminalization of aggression, there could be retrospective criminal liability of aggression.

**The Judgment of IMT**

If we historically try to analyze then the Second World War in particular was „the greatest man-made catastrophe of all time‟. Incredibly, this war caused an approximate 1.3 percent of the world’s population to perish on the battlefield. So, therefore the observation made by the Nuremberg Tribunal concerning the charges relating to the Crime against Peace and war was correct and it goes as follows: The charges in the indictment of the guilty that the defendants planned and waged aggressive wars are charges of utmost gravity. War is essentially an evil thing. Its consequences are not confined to the belligerent States alone but affect the whole world. To initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime differing only form other war crimes in that it contains within itself the accumulated evil of the whole. In the end, the International Tribunal found all but three of the defendants guilty. Twelve were sentenced to death, one in absentia, and the rest were given prison sentences ranging from 10 years to life behind bars. Ten of the condemned were executed by hanging on October 16, 1946.

**THE NUREMBERG LEGACY IN INTERNATIONAL AND MUNICIPAL LAW**

The decision to hold war crimes trials was taken contemporaneously with the San Francisco Conference establishing the United Nations. The principles of Nuremberg are thus deeply intertwined “with the organization of the United Nations as the twin foundations of an international society ordered by law.” We see this in Article 2(4) of the UN Charter prohibiting the use of force against the territorial integrity and political independence of Member States, and in the limited exceptions to that prohibition enshrined in Article 51 (on self-defense) and the powers of the Security Council under Chapter VII. Likewise, the Charter incorporates provisions – albeit limited ones – on the importance of human rights. Indeed, modern human rights law – like modern international criminal law – rests upon the Nuremberg foundation. The corollary of the notion that individuals have duties under international law is that they also acquire rights thereunder. The Nuremberg Principles were prepared by the International Law Commission and presented to the General Assembly after the war, and at least some of the “law” enshrined in the Charter and judgment found its way into new international instruments on apartheid, genocide, the laws of war, and torture, although aggression and crimes against humanity were never the subject of specialized conventions. Understood broadly, the “Nuremberg principles” eschew collective responsibility in favor of individual criminal responsibility; provide that no human being (even a head of state or other responsible government official) is above the law with respect to the most serious crimes of concern to humanity as a whole: war crimes, crimes against humanity, and the crime of aggressive war; and that reliance upon internal law is no defense to crime for which an individual may have responsibility under international law. Thus, at the international level, the Nuremberg principles became an essential part of the new world order. But their implementation soon ran aground on the shoals of state politics. The Permanent Members of the Security Council were often divided, which meant that the International Law Commission’s work preparing a draft code of crimes and a statute for an international criminal court were largely unsuccessful. The Nuremberg principles were also often honored in the breach. The United States invaded Vietnam; The Soviet Union invaded Afghanistan. Neither state appeared to understand – or perhaps to care – that the Nuremberg principles applied to these wars. It was only in the 1990s, as war broke out in the former Yugoslavia and the Rwandan genocide sickened and shocked the world that the international community, freed from cold war politics, reached for the Nuremberg precedent, and established, for the first time since 1945, international criminal tribunals. The Yugoslavia and Rwanda Tribunals had similar, but not identical jurisdictions to their forebearer, although neither Tribunal included crimes against peace in its Statute. Although both Tribunals suffered the same human difficulties experienced at Nuremberg, both were ultimately able to establish themselves as credible and successful international institutions, trying scores of defendants and creating important precedents which have added depth to our conceptual and practical understanding of international criminal justice and the substantive law of war crimes, crimes against humanity and genocide as well as international criminal procedure. Building upon this foundation, in 1998 a Statute for a permanent International Criminal Court was adopted after years of difficult negotiations. The International Criminal Court now has around 123 States Parties, and the substantive law of the Court is widely cited by national and international courts and tribunals, even including, interestingly, the courts of non-state parties, like the United States. Returning to the question of Nuremberg’s impact on national jurisdictions, prior to the establishment of the International Criminal Court in 1998, the Nuremberg principles were, to paraphrase the great French jurist Claude Lombois, like a “volcano” – dormant, but not extinct. And indeed, after the post-war trials – of which there were thousands all over the world – in France, Germany, Holland, Hungary, Poland, and the Soviet Union – Nuremberg and its teachings seemed to be forgotten as nations recovered from the pain and suffering of the war. That changed in 1961 when Israel abducted Adolf Eichmann from Argentina, and charged him with crimes under Israeli law, including crimes against humanity. His trial was widely covered by the press, and many credit the Eichmann trial with forcing Germany to confront its Nazi past as it did in the Frankfurt Auschwitz trials, held from 1963-1965. In Latin America, many prosecutions and truth commissions have been undertaken in Argentina, Brazil, Chile, Mexico, Peru, and Uruguay, relating to crimes committed not during World War II but by former officials of those countries, especially during the “Dirty War” in the 1970s. The Pinochet case is perhaps the most famous example arising out of the Latin American experience and involved not only the exercise of universal jurisdiction over the crime of torture in European states in which the cases were brought, but ultimately prosecutions in the Chilean courts themselves. More recently Guatemala’s attorney general brought a case against President Rios Montt for genocide against the Mayan people. The Nuremberg principles have also found their way into international human rights law. Both the European and Inter-American Courts of Human Rights (and the Inter-American Commission) have developed a broad jurisprudence on many international crimes, both in terms of elements, modalities, and potential amnesties for such crimes. In Africa, the Hissène Habré trial which followed Belgium vs. Senegal, and the International Court of Justice’s decision that Senegal had an obligation to either try or extradite Habré under the Torture Convention has set an important precedent. Likewise, the establishment of the Special Court for Sierra Leone as a mixed jurisdiction has “domesticated” the Nuremberg principles, as has been the widespread ratification of the ICC Statute on the continent and, to a lesser extent, incorporation of ICC crimes into national legislation. In Asia, although ICC ratification rates are relatively low, a new volume by Kirsten Sellars, entitled Trials for International Crimes in Asia, observes that although Asian states may be more likely to view international trials with skepticism, they have often conducted national trials.

**CHALLENGES TO THE NUREMBERG LEGACY**

So, with all this ferment of activity at both the national and international levels, is the Nuremberg legacy under threat today? I have two sets of concerns in this regard. The first is the “unfinished” business of Nuremberg itself; the second is challenges to the legacy by states.

1. **The Unfinished Work of Nuremberg**

In spite of the considerable achievements listed above, which are just a sample of the Nuremberg Charter’s influence upon our modern world, there is work remaining to be done. The first task is to truly universalize the legacy and the message of Nuremberg, so it is no longer an “American” nor a “Western” show. This means, continuing to press for universal ratification of the Rome Statute of the International Criminal Court. In terms of the substantive law of the Charter, the laws of war are widely codified, but there remain gaps, and there is a continuing need for vigilance. Many states are developing restrictive definitions of proportionality to justify attacks that kill large numbers of civilians or target civilian objects, broadening the notion of “combatants” to expand the range of permitted lethal targeting and developing dangerous new weapons systems. Nuclear weapons, in particular, remain a constant threat not only to our safety but to humanity’s survival. The rules relating to non-international armed conflict are less well developed than the rules on international armed conflict, and the so-called “global war on terror” has undermined the consistent meaning and application of international humanitarian law.

B) **The Noncompliance of States**

The issue of compromise of sovereignty and skepticism that international conventions might be misused by powerful states in intervening over domestic matters is what makes them not comply with the provisions of the conventions.

**CONCLUSION**

The record of compliance with the Nuremberg principles is mixed. At the same time, the Nuremberg legacy itself is extraordinary, and its importance is hard to overstate. The same is true for the International Criminal Court. Jackson himself argued that he was not asking the Tribunal to make the commission of war impossible; but to put international law and its precepts squarely on the side of peace. International criminal trials are not the only way to ensure accountability for the commission of international crimes – they are not the only game in town. There are many ways to enforce international humanitarian law and the Nuremberg principles. These include human rights courts, national courts, truth commissions, the International Criminal Court, the International Court of Justice, fact finding commissions of inquiry, UN human rights bodies, national civil law suits, and ad hoc and mixed model international criminal tribunals. To enhance the effectiveness of the Nuremberg principles, we need to broaden our thinking, get creative, and draw from the rich talent present all over the globe to improve the international criminal justice system. The Nuremberg trials can never be forgotten and, fifty years later, the establishment of the International Criminal Court, were nothing short of miracles, neither of which was expected or foreseen by many knowledgeable observers at the time. The impact that the trials had have over the growth of International Criminal Law is immense.

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. [↑](#footnote-ref-1)
2. M. Cherif Bassiouni, International Criminal Law, Transnational Publishers, New York, 2000, at p. 3 [↑](#footnote-ref-2)
3. Second World War (1939- 1945) Axis powers (Germany, Italy, Japan, Hungary, Romania, Bulgaria) versus Allies (U.S., Britain, France, USSR, Australia, Belgium, Brazil, Canada, China, Denmark, Greece, Netherlands, New Zealand, Norway, Poland, South Africa, Yugoslavia). [↑](#footnote-ref-3)
4. 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 [↑](#footnote-ref-4)
5. 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 [↑](#footnote-ref-5)
6. 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 [↑](#footnote-ref-6)
7. 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 [↑](#footnote-ref-7)
8. Anupam Jha, Vol. III, (2008), pp. 178- 193, at p. 178 [↑](#footnote-ref-8)
9. 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. [↑](#footnote-ref-9)
10. http://www.history.com/topics/world-war-ii/nuremberg-trials retrieved on 2 April 2015 [↑](#footnote-ref-10)
11. Henry T. King, “Without Nuremberg- What?”, Washington University Global Studies Law Review, Vol. 6, 2007, pp. 653- 661, at p. 654. [↑](#footnote-ref-11)
12. 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]. [↑](#footnote-ref-12)
13. The Convention on the Prevention and Punishment of the Crimes against Genocide, 1948 [↑](#footnote-ref-13)
14. Universal Declaration of Human Rights, Art. 21, GA. Res. 217 (III), UN Doc. A/810 (1984). [↑](#footnote-ref-14)
15. Zhang Wanhong, “From Nuremberg to Tokyo: Some Reflections on the Tokyo Trial”, Cardozo Law Review, Vol. 27, 2005- 2006, pp. 1673- 1682, at p. 1673 [↑](#footnote-ref-15)
16. Excerpted from Robert H. Jackson‟s opening statement to the International Military tribunal at Nuremberg on 21/ November/ 1945. Also available at Mitchell Bard, The Nuremberg Trial, Greenhaven Press, San Diego, California, 2002, at p. 69. For further reference see https://fcit.usf.edu/holocaust/resource/document/DocJac01.htm retrieved on 12/April/2015 [↑](#footnote-ref-16)
17. Nuremberg Judgment, pp. 174-182 [↑](#footnote-ref-17)
18. The German Labour Party, which was formed on 5 January 1919, later changed its name to the National Sozialstische Deutsche Arbeiter Partei – NSDAP or Nazi Party. [↑](#footnote-ref-18)
19. http://www.dailymail.co.uk/news/article-2204160/Darkest-atrocities-Nazislaidbare-secretly-recordedconversations-German-prisoners-war.html retrieved on 10/May/2016. [↑](#footnote-ref-19)
20. Henry King Jr., “Nuremberg and Sovereignty”, Case Western Reserve Journal of International Law, Vol. 28, 1996, pp. 135- 140, p.135 [↑](#footnote-ref-20)
21. Mauro Politi, Giuseppe Nesi, The International Criminal Court and the Crime of Aggression, Ashgate Publication House, England, 2005, at p. 31. [↑](#footnote-ref-21)
22. http://www.derechos.org/peace/dia/doc/dia33.html retrieved on 17 Nov 2013. [↑](#footnote-ref-22)
23. He was a British practicing barrister, specializing in international law. [↑](#footnote-ref-23)
24. http://www.history.com/topics/world-war-ii/nuremberg-trials retrieved on 30 April 2015. [↑](#footnote-ref-24)