

THE NUREMBERG AND TOKYO TRIALS: 50 YEARS LATER

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A half-century perspective permits us to determine with considerable amplitude the historical significance of the events which rang down the curtain on the Second World War. The significance of some of them has faded: that of others, on the contrary, emerges enhanced. The latter include the proceedings of the international military tribunals in Nuremberg and Tokyo.

During the period of the "cold war", the significance of these proceedings was slighted. The victorious powers who dispensed justice themselves committed crimes of the kind contemplated by the charters of the military tribunals. Remember the aggression by the United States in Vietnam and its interventions in the countries of Latin America, the invasion by the Soviet Union of Afghanistan and its interventions in Hungary and Czechoslovakia, the British and French attack on Egypt. All of this could not but impede the effectuation of the Nuremberg principles in policy and law, although in words they continued to be paid lip service. The end of the "cold war" and the need to build a new world order capable of guaranteeing the survival of mankind led to where the paramount importance of the Nuremberg principles became particularly obvious.

The intellectual and normative foundations of the new world order were laid as a result of the victory of the forces of peace in the Second World War and are incarnated in a number of international acts. Chief among them are the Charter of the United Nations and the charters of the international military tribunals. The main task of the new economic order was perceived as ridding future generations of the scourges of war. The UN Charter consolidated the principle of non-use of force or threat of force and bound the member states to take effective collective measures to prevent and eliminate threats to the peace and suppress acts of aggression. A mechanism for carrying out these tasks and principles was also established, of which the UN Security Council was called upon to be the key element.

The major significance of the charters of the tribunals lies in that they introduced an element into the mechanism of safeguarding peace that was new in principle and absolutely indispensable, namely, the individual crimi-

nal responsibility of heads of states under international law for acts of aggression. The innovation is of a truly revolutionary nature. Throughout the centuries, the peoples suffered from war, and the leaders who visited these afflictions on them ensured themselves immunity. The knight's code mandated respect for them. They were likewise protected by international law, as witness state immunity, the doctrine of "act of state".

The leading minds of mankind have long maintained that without individual responsibility of the leaders, peace between states could not be guaranteed. However, the law was created not by the peoples, not by thinkers, but by those who stood at the head of states. That is why there is no reason to be surprised that only after two world wars in which tens of millions of people perished was the criminal responsibility of leaders of states for the gravest international crimes solidified in international law toward the middle of the 20th century.

Clearly, the consolidation of the indicated proposition in law only marked the first step toward the goal. It is one thing to judge a defeated enemy under the special conditions that operated after a world war, and quite another to create the very unlikely possibility that one might oneself end up in the dock. Many facts attest to the ineffectiveness of the aforementioned proposition. Suffice it to recall that even such odious figures as Idi Amin, Pol Pot or Saddam Hussein were never brought before an international court. Politics prevented implementation of the law. The higher the political significance of a case, the greater the role played by politics in the denouement.

All this must be taken into account, but there is no reason to underestimate the reverse either. The idea of criminal responsibility of state leaders finds expression in the legal consciousness of peoples and finds concrete expression in positive international law. It has been endorsed and developed in the UN General Assembly resolution of 11 December 1946 confirming the principles of international law recognized by the Charter of the Nuremberg International Military Tribunal and the verdict of the Court, as well as in a number of other resolutions. The 1948 Convention on the prevention and punishment of the crime of genocide and the 1973 Convention on the suppression and punishment of the crime of apartheid foresaw the possibility of establishing an international criminal court (Articles 5 and 6, respectively).

The question of establishment of an international criminal court was discussed by the UN International Law Commission. The results of its work were discussed in the 6th Committee of the General Assembly. Finally, on 22 February 1993 the Security Council adopted resolution 808 calling for the establishment of an international criminal court to try cases of violation of international humanitarian law in Yugoslavia.