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The Nuremberg Military Tribunals and the origins of International Criminal Law

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Propositions

for

"The Nuremberg Military Tribunals and the Origins of International Criminal Law"

Kevin Jon Heller

1. Although the United States would have been willing to support a second quadripartite International Military Tribunal trial, the consensus among American war-crimes officials, including Justice Robert Jackson, was that zonal trials were preferable.

2. The Office, Chief of Counsel for War Crimes, originally envisioned an ambitious trial program comprised of 36 trials involving a minimum of 266 defendants. The fact that it was ultimately able to conduct only 12 trials involving 185 defendants reflected exogenous financial, temporal, and political pressures, not a dispassionate analysis of the optimal trial program.

3. Although the Nuremberg Military Tribunals viewed themselves as international tribunals, they are better understood as inter-allied special tribunals created by the Allied Control Council pursuant to its sovereign legislative authority in Germany.

4. Law No. 10's criminalization of invasions and the elimination of the nexus requirement for crimes against humanity, which went beyond the London Charter, violated the principle of non-retroactivity. Two defendants were convicted for participating in the invasions of Austria and Czechoslovakia; those convictions were thus unsound.

5. The Nuremberg Military Tribunal judges went to great lengths to guarantee defendants a fair trial, even disregarding specific provisions in Law No. 10 and Ordinance No. 7 when necessary.

6. The tribunals provided the first comprehensive analysis of the mental and physical elements of three of international criminal law's core crimes: crimes against peace, war crimes, and crimes against humanity.

7. The tribunals adopted a conception of enterprise liability that, by distinguishing between planners and executors, was considerably more fair than the modern concept of joint criminal enterprise.

8. In contrast to both the International Military Tribunal and modern international criminal tribunals, the Nuremberg Military Tribunals developed a comprehensive jurisprudence concerning defenses to criminal conduct, particularly with regard to superior orders, duress, mistake of law, and military necessity.

9. The fact that the last Nuremberg Military Tribunal defendant was released from prison in 1958, long before the expiration of their original sentences, can only be explained as a political response to rising Cold War pressures.

10. Empirical analysis indicates that the jurisprudence of the tribunals has had a significant impact on the development of international criminal law, although modern international tribunals and national courts have often misunderstood the judgments or cited minority positions as if they represented the position of the Nuremberg Military Tribunals as a whole.