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The Role of the Polish Supreme National Tribunal in the Development of Principles of International Criminal Law

Patrycja Grzebyk*

39.1. Introduction

Poland was essential in bringing German war criminals to justice since the beginning of the Second World War.[1] In fact it was the Polish and the Czechoslovakian governments in exile that initiated the organisation of the international conference at St James's Palace, London in January 1942, where the Inter-Allied Declaration condemning German atrocities in occupied territories and a proposal for the creation of a United Nations Commission for the Investigation of War Crimes were adopted.[2] General Władysław Sikorski, who presided over the conference, stressed that the war criminals would not escape judicial penalty, regardless of the positions they held.[3] Eventually, as agreed by the Allies, "the major war

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1 Franciszek Ryszka, *Norymberga: Prehistoria i ciąg dalszy* [Nuremberg: Prehistory and Aftermath], Spółdzielnia Wydawnicza Czytelnik, Warsaw, 1982, pp. 98 ff.

2 See "Resolution on German War Crimes Signed by Representatives of Nine Occupied Countries", Inter-Allied Review, 15 February 1942 (https://www.legal-tools.org/uploads/tx_ltpdb/Inter-Allied_Resolution_on_German_War_Crimes_1942.pdf), and also "Allied Declarations Condemning German Atrocities in Occupied Territories; Proposal For the Creation of A United nations Commission For the Investigation of War Crimes", 1942.

3 Tadeusz Cyprian and Jerzy Sawicki, *Procesy wielkich zbrodniarzy wojennych w Polsce (Najwyższy Trybunał Narodowy)* [Trials of Major War Criminals in Poland (Supreme

criminals of the European Axis" were to be tried by the International Military Tribunal ('IMT') at Nuremberg,[4] and the remaining war criminals were to be judged on the territory of those countries where they had committed their crimes.[5] Thus, the jurisdictions of both international and national courts hearing the cases of Nazi crimes were supposed to be complementary. The Polish authorities adopted an analogical model for judging Nazi war criminals before the Polish courts – namely, the main perpetrators were to be judged by the Polish Supreme National Tribunal (Najwyższy Trybunał Narodowy, the 'Tribunal'), established specifically for this purpose, while other war criminals were to stand trial before competent district courts.

The task of the Tribunal was, obviously, to administer justice by punishing the guilty and bringing satisfaction to the victims. However, the proceedings before the Tribunal also had other goals, at times of a purely political nature. One of the tasks of the Tribunal was to present documentary evidence supporting the most essential facts from the occupation period[6] in order to demonstrate to other countries the scale of the war crimes. The ascertaining of such facts by the Tribunal was also supposed to prevent German propaganda from falsifying any information, should Germany attempt to diminish the extent of the atrocities and its responsibility. Unfortunately, the Tribunal itself did not manage to avoid minor distortions, as it unnecessarily exaggerated the already grave crimes[7] or echoed Soviet propaganda slogans in praise of the great

National Tribunal)], Seria: Wiedza Powszechna. Z cyklu: Współczesne Prawo Procesowe, Issue 5, Spółdzielnia Wydawnicza-Oświatowa, Czytelnik, Łódź, 1949, p. 2.

4 Charter of the International Military Tribunal, 8 August 1945, Article 1 (https://www.legal-tools.org/uploads/tx_ltpdb/Charter_of_International_Military_Tribunal_1945_03.pdf).

5 See Declaration of the Four Nations on General Security, "Statement on Atrocities", 30 October 1943, according to which "war criminals who had committed crimes in occupied countries would be sent back to those countries and stand trial and be sentenced on the basis of those countries' laws" (https://www.legal-tools.org/uploads/tx_ltpdb/Statement_on_Atrocities_1943_02.pdf).

6 See, for example, Supreme National Tribunal of Poland ('NTN'), *Ludwig Fischer et al.*, Judgment, 3 March 1947, p. 19, published in Tadeusz Cyprian and Jerzy Sawicki, *Siedem wyroków Najwyższego Trybunału Narodowego* [Seven Judgments of the Supreme National Tribunal], Instytut Zachodni, Poznań, 1962, pp. 44 ff. ("Fischer Judgment"); NTN, *Albert Forster*, Judgment, 29 April 1948, p. 14, in *ibid.*, pp. 262 ff. ("Forster Judgment").

7 The Tribunal stated that 3 to 4 million people had been exterminated at the Auschwitz concentration camp. This number was negated by Höss. Nowadays, it is widely agreed that

friendship between Poland and the Soviet Union and the help the latter provided to Poland during the war.[8] Another task set before the Tribunal was to formulate the new principles of responsibility for international crimes, and hence to influence the shape of international criminal law.[9] Polish lawyers and authorities were perfectly aware that from the legal point of view the judgments passed by the Polish courts would have the same significance as the verdicts of the international courts, and thus could be invoked by other tribunals trying Nazi criminals.[10] The trials were also expected to prove that the crimes had been committed by ordinary German citizens who, having been fed National Socialist propaganda, had turned into monsters. This was supposed to draw attention to the fact that this ideology should be eradicated from the public sphere altogether.[11] The courts were also to demonstrate that the German invasion of Poland was not a coincidence but an outcome of growing German hostility, which, in turn, had been a consequence of the too lenient approach shown by the Western countries towards Germany after the First World War. This would mean convincing the Allied countries that after the Second World War Germany should be treated more severely in order to prevent any rebirth of the German imperialist policy.[12] Furthermore, the trials before the Tribunal were supposed to demonstrate the immense role that the industrial corporations, such as IG

the total number of victims was about 1.1 million. See, NTN, *Arthur Liebehenschel et al*., Judgment, 22 December 1947, p. 79, in *ibid.*, pp. 137 ff. ("Auschwitz Judgment"); NTN, *Rudolf Hoess*, Judgment, 2 April 1947, pp. 27 ff., 58, in *ibid.*, pp. 92 ff ("Hoess Judgment"). See also NTN, Trial of Obersturmbannführer Rudolf Franz Ferdinand Hoess, case no. 38, 11–29 March 1947 (https://www.legal-tools.org/en/go-to-database/record/9e87ed/).

8 See, NTN, *Josef Bühler*, Judgment, 10 July 1948, pp. 11, 19–20, in Cyprian and Sawicki, 1962, pp. 324 ff., *supra* note 6 ("Bühler Judgment"); see also NTN, Trial of Dr. Joseph Buhler, case no. 85, 17 June–10 July 1948 (http://www.legal-tools.org/en/go-to-database/record/7721bd/).

9 See, for example, Fischer Judgment, *supra* note 6.

10 Alfons Klafkowski, *Obozy koncentracyjne hitlerowskie jako zagadnienie prawa międzynarodowego* [Hitlerite Concentration Camps as a Problem of International Law], Państwowe Wydawnictwo Naukowe, Warsaw, 1968, p. 15.

11 See Hoess Judgment, *passim*, *supra* note 7; NTN, *Amon Goeth*, Judgment, 5 September 1946, in Cyprian and Sawicki, 1962, pp. 23 ff., *supra* note 6 ("Goeth Judgment"); see also NTN, Trial of Hauptsturmführer Amon Leopold Goeth, case no. 37, 27–31 August and 2–5 September 1946 (http://www.legal-tools.org/en/go-to-database/record/7ac212/).

12 Cyprian and Sawicki, 1949*,* pp. 13, 29, see s*upra* note 3. See also Bühler Judgment, pp. 5, 9, *supra* note 8.

Farbenindustrie, Union-Werke, Friedrich Krupp AG and Siemens, had played in German politics, and thus to convince the Western countries that it was necessary to bring the industrialists to justice as well.[13] The Tribunal's efforts to condemn German crimes, it was hoped, would strengthen Poland's position during the peace talks and, as a result, translate into successes while negotiating such issues as disarmament or the borders of post-war Poland.[14] The court proceedings were also to expose the ineffective operation of the pre-war Polish authorities and to discredit the Polish government in exile as a government of, in fact, a fascist nature.[15]

The Polish authorities planned to make the most of the foreign media attention and the presence of officials representing the countries which not long before had been their allies in pursuing those efforts, and therefore provided simultaneous interpretation of the trials in several languages (Polish, German, English, French and Russian).[16] The selection of the lawsuits was very deliberate as well, as each of the seven cases tried before the Tribunal was to send a clear signal and stand as a symbol of a particular type of crime. The choice of the places for holding the proceedings and executing the verdicts was not random either.[17]

The Tribunal did not get to try all major war criminals since some of them were not extradited to Poland, and as for others, the Polish authorities decided to try them later, before district courts. The Tribunal's judgments did not attract as much publicity as had been expected. The main publications on the Tribunal's activity were written by Poles: Tadeusz Cyprian and Jerzy Sawicki, who were both prosecutors at the

[13] See for example, Auschwitz Judgment, pp. 74 ff., *supra* note 7; Hoess Judgment, pp. 17 ff., *supra* note 7. See also Cyprian and Sawicki, 1949 pp. 10–13, 31, s*upra* note 3.

[14] See, for example, statements concerning importance of Pomerania for Poland in Forster Judgment, p. 3, *supra* note 6.

[15] Cyprian and Sawicki, 1949, p. 23, see *supra* note 3. See also Forster Judgment, pp. 37–39, *supra* note 6.

[16] It is worth mentioning that the trials of Fischer *et al*. and of Höss were attended by General Telford Taylor, a principal prosecutor at the Nuremberg war crimes trials.

[17] Trials took place in Poznań (Greiser), Cracow (Göth, Bühler, Auschwitz), Warsaw (Fischer, Höss) and Danzig (Forster). In principle, they were held where the persons concerned had committed their major crimes. In the case of Höss, though he was tried in Warsaw, his execution was carried out in the former concentration camp of Auschwitz. Greiser, on the other hand, was publicly hanged in Poznań, precisely where the Nazis had usually carried out their executions. It was the last public execution in Poland.

Tribunal, as well as Polish representatives at the Nuremberg Trial (*sic*),[18] and by Janusz Gumkowski and Tadeusz Kułakowski.[19] In terms of publications in English, only four out of seven trials held before the Tribunal were discussed in the series *Law Reports of Trials of War Criminals*, selected and prepared by the United Nations War Crimes Commission ('UNWCC').[20] Moreover, the works by Mark A. Drumbl[21] and Alexander V. Prusin[22] are also worthy of attention. Therefore, it seems justified to recount the achievements of the Tribunal and, above all, to demonstrate how the Tribunal contributed to the development of the principles of responsibility for international crimes. The first part of this chapter presents briefly the main facts connected with the establishment and work of the Tribunal. The second part then discusses the impact of the Tribunal's sentences on the principles of international criminal law and on the shaping of the definitions of specific crimes.

39.2. Establishment of the Supreme National Tribunal

The Supreme National Tribunal was established by the Decree of 22 January 1946,[23] which was changed by the Decree of 17 October 1946.[24]

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18 Cyprian and Sawicki, 1949, see *supra* note 3; Cyprian and Sawicki, 1962, see *supra* note 6; Jerzy Sawicki, *Przed polskim prokuratorem: Dokumenty i komentarze* [Before Polish Prosecutor: Documents and Commentaries], Iskry, Warsaw, 1968.

19 Janusz Gumkowski and Tadeusz Kułakowski, *Zbrodniarze hitlerowscy przed Najwyższym Trybunałem Narodowym*, Wydawnictwo Prawnicze, Warsaw, 1961.

20 The United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*, vol. VII ("Law Reports, vol. VII"), His Majesty's Stationery Office, London, 1948, for "Trial of Hauptstrumfuhrer Amon Leopold Goeth" and "Trial of Oberstrumbannfuhrer Rudolf Franz Ferdinand Hoess"; The United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*, vol. XIII ("Law Reports, vol. XIII"), His Majesty's Stationery Office, London 1949, for "Trial of Gauleiter Artur Greiser"; The United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*, vol. XIV ("Law Reports, vol. XIV"), His Majesty's Stationery Office, London, 1949 for "Trial of Dr. Joseph Buhler".

21 See Mark A. Drumbl, "'Germans are the Lords and Poles are the Servants': The Trial of Arthur Greiser in Poland, 1946", in Kevin J. Heller and Gerry Simpson (eds.), *The Hidden Histories of War Crimes Trials*, Oxford University Press, Oxford, 2013.

22 Alexander V. Prusin, "Poland's Nuremberg: The Seven Court Cases of the Supreme National Tribunal, 1946–1948", in *Holocaust and Genocide Studies*, 2010, vol. 24, no. 1, pp. 1–25.

23 *Journal of Law of the Republic of Poland*, 1946, no. 5, item 45.

24 *Journal of Law of the Republic of Poland*, 1946, no. 59, item 325. Unified version of the decree, see *Journal of Law of the Republic of Poland*, 1946, no. 59, item 327. More on

The Tribunal's jurisdiction covered cases regarding crimes of persons who, under the Moscow Declaration of the three Allied powers – the United States, the Soviet Union and Britain – on the responsibility of the Nazis for the atrocities they committed, were to be surrendered to the prosecuting authorities of the Republic of Poland, and cases regarding crimes covered by the Decree of 22 January 1946 concerning the responsibility for the defeat of Poland in September 1939, and for the fascistisation of public life.[25] Although in the end the Tribunal did not take up any of the cases concerning the fascistisation of public life, since the potentially accused remained abroad, and also for the fear that the Tribunal's importance would be diminished,[26] it did not avoid condemning the Polish pre-war authorities.[27] The Tribunal's *ratione materiae* jurisdiction was based on the Decree of the Polish Committee of National Liberation (Polski Komitet Wyzwolenia Narodowego) of 31 August 1944, concerning the punishment of fascist-Hitlerite criminals guilty of murder and ill-treatment of the civilian population and of prisoners of war ('POWs'), and the punishment of traitors to the Polish nation[28] where crimes were defined in very general way (for example, actions against the Polish state, civilians or POWs) in order to cover all possible Nazi and their collaborators' crimes. It must be noted that the same practice was applied in the case of the IMT Charter (Article VI). In

Polish laws, see Law Reports, vol. VII, Annex, see *supra* note 20. Originally the Tribunal's jurisdiction covered crimes committed on the territory of the Polish state during occupation. The October amendments extended the Tribunal's jurisdiction to crimes committed by person rendered to Poland for trial regardless of the place of commission of the crime and regardless of the exact time of commission (hence, not only during the occupation period). However, this amendment deprived the Tribunal of the right to try cases falling within the competence of special criminal courts and passed to the Tribunal by the public prosecutor general, as well as of the competence of a special court as regards cases for exclusion of hostile individuals from the Polish society.

25 *Journal of Law of the Republic of Poland*, 1946, no 5, item 46. See also Jerzy Sawicki and Bogusław Walawski, *Zbiór przepisów specjalnych przeciwko zbrodniarzom hitlerowskim i zdrajcom narodu z komentarzem* [Collection of Special Regulations on Hitlerite Criminals and Traitors of the Nation with Commentaries], Spółdzielnia Wydawnicza Spółdzielnia Wydawnicza Czytelnik, Kraków, 1945.

26 Cyprian and Sawicki, 1962, p. xiv, see *supra* note 6.

27 See, for example, Forster Judgment, pp. 37–38, *supra* note 6.

28 *Journal of Law of the Republic of Poland*, 1944, no. 7, item 29.

October 1946 a Decree was amended to include a crime of participation in a criminal organisation.[29]

Considering the circumstances of the time, the judges' panel was rather unusual. It was composed of both professional judges (three) – appointed by the Presidium of the National Council (Krajowa Rada Narodowa) from among persons with appropriate qualifications proposed by the Minister of Justice – and of lay judges (four), also appointed by the Presidium of the National Council from among the Members of Parliament.[30] The purpose of this composition of the panel was supposed to guarantee that "the justice factor will be combined with the social factor representing the highest qualifications".[31] Whether this was the best solution remains open to doubt. The panel included active politicians and thus there was no true separation of powers, which should be characteristic of a democratic state. This is even more blatant considering that the lay judges were able to outvote the professional ones. The prosecutors had to hold a judge's qualification[32] and they performed their tasks through the Central Commission for Investigation of German Crimes in Poland (Główna Komisja ds. Badania Zbrodni Niemieckich w Polsce). Should the need arise, such judges, lay judges or prosecutors could be dismissed by the President of the National Council.

As for the defence attorneys, theoretically this function could be performed by any Pole but eventually these included the members of the Polish legal community described by the Tribunal's prosecutors as "respectable" or "outstanding".[33] It should, however, be stated that the defence attorneys carried out their functions reluctantly. The defence attorneys for Arthur Greiser even asked to be exempt from this duty as they themselves were his victims.[34] Their request was rejected.

The Tribunal's sentences were final, with no right to appeal, which should be seen as a significant deviation from the basic procedural

[29] See more in Leszek, *Zbrodnie wojenne w świetle prawa polskiego* [War Crimes in the Light of Polish Law], Państwowe Wydawnictwo Naukowe, Warsaw 1963, p. 139.

[30] Articles 3 and 4 of the amended Decree.

[31] Cyprian and Sawicki, 1949, p. 3, see s*upra* note 3.

[32] Articles 2 and 3 of the amended Decree.

[33] Cyprian and Sawicki, 1949, pp. 3, 9, see s*upra* note 3. It is worth mentioning that not only the defence attorneys but also the judges and prosecutors had high qualifications. See more in Prusin, 2010, pp. 4–5, *supra* note 22.

[34] Gumkowski and Kułakowski, 1961, pp. 4–5, see *supra* note 19.

safeguards (even those convicted in the Nuremberg Trial were formally entitled to appeal against the judgment). The sentenced could only ask the National Council for pardon. There was also the possibility of reopening the proceedings envisaged. Although the Tribunal was entitled to try the accused *in absentia*, it did not resolve to make use of such a solution (though this was considered in the case of Erich von dem Bach-Zelewski and Heinrich Reinefarth).[35]

The Tribunal was not a permanently operating institution (only its chief justice, who was also the chief justice of the Supreme Court, was permanently employed). In formal terms, the Tribunal was at the same level as the Supreme Court, and as for its nature, it should be classified as a special court.[36]

There were seven trials in total held before the Tribunal, with 49 persons sentenced as a result (see Annex 39.6. below). Each of the trials focused on a specific type of criminal activity of the Nazis. The first verdict[37] was passed against Arthur Greiser on 9 July 1946. This trial concerned mainly Greiser's activity as the Reich Governor and *Gauleiter* of the National Socialist German Workers' Party ('NSDAP') of Wartheland (Warthegau).[38] The trial was supposed to shed light on the

[35] Cyprian and Sawicki, 1962, p. XVI, see *supra* note 6. See also Jerzy Kirchmayer, "Zbrodnie hitlerowskie dokonane podczas Powstania Warszawskiego" [Hitlerite Crimes Committed during the Warsaw Uprising], in *Ekspertyzy i orzeczenia przed Najwyższym Trybunałem Narodowym. Część I, Agresja III Rzeszy Niemieckiej na Polskę i okupacja hitlerowska w Polsce w świetle prawa międzynarodowego* [Experts' Reports and Judgments of the Supreme National Tribunal. Part I. Aggression of the Third Reich against Poland and Hitlerite Occupation of Poland in the light of International Law], Ministerstwo Sprawiedliwości [Ministry of Justice], Główna Komisja Badania Zbrodni Hitlerowskich w Polsce [Central Commission for Investigation of German Crimes in Poland], Warsaw 1979, pp. 159 ff.

[36] Grzegorz Jakubowski, *Sądownictwo powszechne w Polsce w latach 1944–1950* [Common Courts in Poland 1944–1950], Instytut Pamięci Narodowej, Warsaw, 2002, pp. 35–37. After the war, the practice of establishing special courts was criticised in Poland as their functions could be performed just as well by the district courts.

[37] The very first trial of German war criminals in Poland was held before a special court in Lublin between 27 November and 2 December 1944 (that is even before the Second World War ended), against several members of the staff of the concentration camp in Majdanek near Lublin.

[38] NTN, *Artur Greiser*, Judgment, 9 July 1946, pp. 27 ff., 58, in Cyprian and Sawicki, 1962, pp. 1 ff. ("Greiser Judgment"), see *supra* note 6 (https://www.legal-tools.org/uploads/tx_ltpdb/Greiser_PolandSupremeNationalTribunal_Judgment_report__07-07-1946__E__04.pdf). On Greiser, see Drumbl, 2013, *supra* note 21; Catherine Epstein,

scale of persecutions which had befallen the population of the Greater Poland (Wielkopolska) region, and on the manner in which the Reich had subdued the occupied territories.[39] The next judgment was pronounced on 5 September 1946 against Amon Leopold Göth (Goeth), commandant of the camp in Płaszów.[40] By these proceedings the Tribunal wanted to demonstrate how the Nazi authorities had treated the Jewish population in the General Governorate (*Generalgouvernement*) and the civilian population in the so-called forced labour camps. It is worth emphasising that even though the trials of both Greiser and Göth commenced after the start of the Nuremberg Trial, the verdicts were passed before the final judgment of the IMT. In the next trial Ludwig Fischer (Governor of the Warsaw district), Ludwig Leist (section chief in the Office of the Chief of the Warsaw district, plenipotentiary of the Governor for the city of Warsaw), Josef Meisinger (chief of security police and security service of the Warsaw district) and Max Daume (section chief in the Headquarters of the *Ordnungspolizei*) were tried. The judgment was pronounced on 3 March 1947.[41] This trial aimed at depicting the rule of the occupying forces in Warsaw and the Warsaw district, as well as showing the extent of persecutions the Polish and the Jewish population had suffered. It was underlined that Warsaw had been heavily damaged and in total 790,000 Warsaw inhabitants had been murdered (out of 1,250,000). The trial of Rudolf Höss (Hoess) was held in Warsaw and concerned the organisation of concentration camps, including the death camp in Auschwitz, and the medical experiments conducted there. The judgment was passed on 2 April 1947.[42] The staff of the Auschwitz camp (40 persons, including the successor to Höss as camp commandant, Arthur Liebehenschel) were tried during a separate trial, the so-called "Auschwitz trial". Here, the verdict was passed on 22 December 1947, sentencing 23 persons to the death penalty and 16 to imprisonment, while one person was acquitted.[43] Two of those sentenced to death were later granted a pardon (Johann

Model Nazi: Arthur Greiser and the Occupation of Western Poland, Oxford University Press, Oxford, 2010; Czesław Łuczak, *Arthur Greiser,* PSO Publisher, Poznań, 1997.

39 Greiser did not ask for pardon, well aware that it would not have been granted. See Cyprian and Sawicki, 1949, p. 7, s*upra* note 3.

40 Goeth Judgment, see *supra* note 11.

41 Fischer Judgment, see *supra* note 6.

42 Hoess Judgment, see *supra* note 7.

43 *Ibid*.

Kremer and Arthur Breitwieser) and their penalty was changed to several years' imprisonment. The trial focused on the organisation of the Auschwitz camp and the Tribunal attempted to prove that Auschwitz-Birkenau had been not just another concentration camp but a genuine "death factory" where entire nations had been planned to perish.[44] During the subsequent trial, Albert Forster was tried for his actions aimed at detaching Danzig from Poland and his rule on the territory of the Danzig-West Pomerania province.[45] This verdict was given on 29 April 1948.[46] The last trial held before the Tribunal concerned Josef Bühler, deputy to Hans Frank, and it revealed the criminal activity of the authorities administering the occupied territories of the so-called General Governorate. This trial was also designed to prove that the extermination plans had not been envisaged to be executed solely in Poland. The verdict

[44] Cyprian and Sawicki, 1949, p. 8, see *supra* note 3. See also, *Ekspertyzy i Orzeczenia przed Najwyższym Trybunałem Narodowym. Część VI, Zbrodnie hitlerowskie w obozie koncentracyjnym Oświęcim-Brzezinka* [Experts' Reports and Judgments of the Supreme National Tribunal. Part VI. Hitlerite Crimes in Concentration Camp Auschwitz-Birkenau], Ministerstwo Sprawiedliwości, Główna Komisja Badania Zbrodni Hitlerowskich w Polsce, Warsaw, 1981, pp. 7 ff.

[45] See also Stanisław Kaszyński, "Polityka Forster'a jako 'Gauleitera na terenie Wolnego Miasta Gdańska oraz jako' Reichsstatthaltera Gau Danzig-Westpreussen" [Policy of Forster as Gauleiter in Free City of Danzig] and "Polityka Alberta Forster'a w świetle artykułów prasowych w periodycznej prasie niemieckiej w Bydgoszczy i Gdańsku" [Policy of Albert Forster in the Light of Press Articles in German Periodicals in Bydgoszcz and Danzig], in *Ekspertyzy i orzeczenia przed Najwyższym Trybunałem Narodowym. Część II. Status prawny narodu polskiego w okresie II wojny światowej* [Experts Reports and Judgments of the Supreme National Tribunal. Part II. Legal Status of Polish Nation during Second World War], Ministerstwo Sprawiedliwości [Ministry of Justice], Główna Komisja Badania Zbrodni Hitlerowskich w Polsce [Central Commission for Investigation of German Crimes in Poland], Warsaw, 1979, pp. 73–100; Marcin Spikowski, "O eksterminacji, terrorze i rozstrzeliwaniach zakładników polskich przez reżim hitlerowski na terenie Pomorza, ze szczególnym uwzględnieniem tzw. krwawej niedzieli w Bydgoszczy" [On Extermination, Terror, Gunning of Polish Hostages by the Hitlerite Regime in Pomerania with Particular Focus on so-called Bloody Sunday in Bydgoszcz] and Emil Ogłoza, "Polityka niemiecka na Pomorzu w latach 1939–1945" [German Policy in Pomerania 1939-1945], in *Ekspertyzy i orzeczenia przed Najwyższym Trybunałem Narodowym. Część V. Zbrodnie hitlerowskie na Pomorzu, w Wielkopolsce i na Ziemi Zamojskiej. Różne problemy* [Experts' Reports and Judgments of the Supreme National Tribunal. Part V. Hitlerite Crimes in Pomerania, Greater Poland and Zamojszczyzna. Different Problems], Ministerstwo Sprawiedliwości [Ministry of Justice], Główna Komisja Badania Zbrodni Hitlerowskich w Polsce [Central Commission for Investigation of German Crimes in Poland], Warsaw, 1980, pp. 51 ff.

[46] See *supra* note 6. More on Forster, see Marian Podgóreczny, *Albert Forster gauleiter i oskarżony* [Albert Forster Gauleiter and Accused], Wydawnictwo Morskie, Gdańsk 1977.

was pronounced on 5 August 1948 and was the last one delivered by the Tribunal.[47] It was also planned to organise trials for the destruction of Warsaw and demolition of the Warsaw ghetto. However, the potential accused (von dem Bach-Zelewski, Erich von Manstein, Heinz Guderian, Reinefarth and Erich Koch) were not extradited to Poland.[48] The end of 1948 saw an entirely different political climate than the one in 1945. The Cold War had already started and the Allies were not that keen to hand over war criminals to a country behind the Iron Curtain, especially if such criminals were of military background.[49] Poland managed to have several other prominent war criminals sentenced, including Jürgen Stroop, one of the persons in charge of the bloody suppression of the Warsaw ghetto uprising, Richard Hildebrandt, responsible for war crimes and crimes against humanity in the Pomerania (Pomorze) region, and Jakob Sporrenberg, charged with murdering 40,000 Jews in Lublin.[50] These criminals, however, were tried before the regional courts. The Tribunal ceased to rule after 1948, although the legal provisions under which it had operated were not repealed.[51]

39.3. Tribunal and Principles of Criminal Responsibility for International Crimes

39.3.1. An Order Is Not an Excuse

Many of the accused, including Höss, underlined the fact that they had merely carried out orders and felt obliged to obey them.[52] However, the Tribunal indicated, referring also to the German Criminal Code, that one should refuse to carry out a criminal order, and when such command is obeyed, the responsibility lies with both the one who issued it and the one

47 Forster Judgment, see *supra* note 8.

48 Erich von dem Bach-Zelewski did, however, depose before the Tribunal in the trial of Fischer *et al*.; Cyprian and Sawicki, 1962, p. xi, see *supra* note 6; Sawicki, 1968, pp. 244 ff., see *supra* note 18.

49 See also Kubicki, 1963, p. 54 ff., *supra* note 29.

50 Cyprian and Sawicki, 1949, p. 5, see s*upra* note 3.

51 Jakubowski, 2002, p. 50, see *supra* note 36.

52 Hoess Judgment, p. 58, see *supra* note 7; Goeth Judgment, p. 27, see *supra* note 11. See also Cyprian and Sawicki, 1949, p. 10, see s*upra* note 3; Sawicki, 1968, p. 278, see *supra* note 18; Prusin, 2010, p. 13, see *supra* note 22.

who carried it out.[53] The Tribunal assumed that in the case of a superior–subordinate relationship the notion of blind obedience (*Kadavergehorsam*) did not apply, but rather only obedience to legitimate orders.[54] In the judgment issued against Fischer, the Tribunal stressed that if a person entered a group built on absolute obedience, thereby accepting the worldview adopted within such group, such a person thus accepted responsibility for carrying out the group's orders.[55] Hence, the Tribunal presumed that an order did not absolve anyone of responsibility and, what is more, in the cases it heard a command could not be treated as a mitigating circumstance, especially with regards to high-ranking officials or persons holding important social functions, since it had to be assumed they had been fully aware of the criminal nature of such orders.[56] Moreover, the Tribunal pointed to the fact that the accused had carried out the orders in an eager manner or shown initiative, which it viewed as an aggravating circumstance.[57]

39.3.2. Not Only for Direct Commission

The Tribunal stressed also that responsibility covered not only direct perpetration but also moral aiding and abetting[58] as well as incitement.[59] Yet the most interesting deliberations of the Tribunal seem to concern the issue of responsibility of the superiors and members of a criminal group.

The trials held before the Tribunal were aimed not only at punishing the direct perpetrators of the crimes (as in the case of Göth or those accused in the Auschwitz trial) but were primarily supposed to attribute the liability for the crimes committed within the Tribunal's jurisdiction to the German dignitaries of the highest rank; hence the

53 Greiser Judgment, p. 19, see *supra* note 38; Bühler Judgment, pp. 75, 91, see *supra* note 8. See also, Sawicki, 1968, p. 270, *supra* note 18.

54 Greiser Judgment, p. 11, see *supra* note 38.

55 Fischer Judgment, p. 22, see *supra* note 6. See also Polish Supreme Court Judgment (Criminal Chamber), 25 June 1949, K. 923/49, Orzecznictwo Sądu Najwyższego [Supreme Court Judgments] 1949/1, item 1, LexPolonica nr 306050.

56 Auschwitz Judgment, p. 202, see *supra* note 7; Bühler Judgment, pp. 75, 78, see *supra* note 8.

57 Hoess Judgment, p. 62, see *supra* note 7; Fischer Judgment, p. 35, see *supra* note 6.

58 Bühler Judgment, pp. 83–85, see *supra* note 8.

59 Fischer Judgment, p. 14, see *supra* note 6; Greiser Judgment, pp. 7–8, 12, see *supra* note 38; Auschwitz Judgment, p. 173, see *supra* note 7.

presence of Forster, Fischer, Greiser and Bühler among the convicted. Some of the accused (as with Greiser or Höss) maintained that they had not committed any crimes themselves and could not be blamed for any excesses perpetrated by persons formally reporting to them, in particular as there had been so many of them.[60] However, the Tribunal responded to this line of argumentation by specifying that in order to attribute a crime the proof of *dolus eventualis* sufficed, that is indicating that the perpetrator, though he had not intended to commit the crime, had foreseen the possibility of committing it and, hence, had accepted that it would happen.[61] At the same time, the Tribunal argued that a superior was responsible for the acts he might have prevented from happening if he had been aware that they would occur,[62] and also for those acts which had come to his attention afterwards and he had approved of them.[63] The Tribunal also stressed that it was unacceptable to claim that the accused had lived in a bubble and had no knowledge about what had been happening in the territories they had administered.[64] Moreover, the Tribunal underlined that in the case of high-ranking officials of the Nazi administration, such as Fischer or Greiser, their responsibility was even graver as they had been the ones issuing orders and organising actions. In response to the argument put forward by Greiser, who demanded he should not have been held responsible for the crimes committed by the forces not directly subordinate to him, the Tribunal stressed that Greiser was liable for all the consequences of his orders as he could be viewed as an "intellectual" instigator.[65] The Tribunal also claimed that a person being a member of a criminal group, where absolute obedience and discipline had been required, had already by becoming a member assumed responsibility for carrying out the orders given by that group. Moreover, in the case of such persons it was the moment of joining the group, rather than the moment of accepting the order, that was crucial.[66]

60 Hoess Judgment, p. 58, see *supra* note 6.

61 Fischer Judgment, pp. 38, 42, see *supra* note 6; Auschwitz Judgment, p. 177, see *supra* note 7.

62 Auschwitz Judgment, p. 98, see *supra* note 7; Bühler Judgment, p. 44, see *supra* note 8.

63 Fischer Judgment, p. 37, see *supra* note 6.

64 Greiser Judgment, p. 9, see *supra* note 38.

65 *Ibid*., pp. 11–12.

66 Fischer Judgment, p. 22, see *supra* note 6.

Another characteristic was that the Tribunal proved that responsibility for the crimes lay also with "regular" officials who had had an impact on the shape of legal provisions entitling the Nazis to persecute specific groups, as for instance in the case of Bühler. The Tribunal stressed that by such actions the accused had delineated the path of conduct for others, had had his share in building the criminal system and had ensured the efficient operation of the criminal machine's components.[67] Hence, it was of no importance that the respective legal acts had been officially signed by someone else; it is those who had drawn them up[68] that were guilty. According to the Tribunal, if Bühler had prepared certain legal standards and established the death penalty for transgressing them, then it was Bühler who had to be held responsible for the murders performed based on such provisions.[69] The Tribunal assumed also that responsibility had to be attributed to those who had only conveyed the orders, as for instance in the case of Daume.[70]

The Tribunal did not draw a clear line between participation in a criminal conspiracy (a form of involvement in a crime)[71] and membership in a criminal team/group (a separate crime category). Therefore, the arguments concerning this area are incoherent and vague, as it is not entirely evident to which of the two categories the Tribunal wanted to refer in the given part of its statement of grounds.

The Tribunal concentrated its reasoning also on the criminal responsibility in the case of sheer participation in a criminal conspiracy aimed against the achievements of general human culture and

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67 Bühler Judgment, p. 33, see *supra* note 8. See also Władysław Wolter, "Sprawa odpowiedzialności karnej Josefa Bühler'a, byłego sekretarza stanu tzw. Rządu Generalnej Gubernii" [Case of Criminal Responsibility of Josef Bühler, Former Secretary of State so-called Government of the General Governorate], in *Ekspertyzy i orzeczenia przed Najwyższym Trybunałem Narodowy* [Experts' Reports and Judgments of the Supreme National Tribunal], 1979, pp. 163 ff., see *supra* note 45.

68 *Ibid*., pp. 59–61, 71.

69 *Ibid*., p. 79.

70 Fischer Judgment, p. 65, see *supra* note 6.

71 Leszek Kubicki claims that the Tribunal did not have to use a concept of conspiracy as it could apply the same form of participation like in Article 240 of the Polish Criminal Code of 1932 (*Journal of Law of the Republic of Poland*, 1932, no. 60, item 571) which referred to participation in a fight. Kubicki, 1963, p. 101, see *supra* note 29. In my opinion, the Tribunal could also base its analysis on Article 166 of the Polish Criminal Code of 1932 which directly referred to taking part in an association aimed at criminal activity.

civilisation,[72] regardless of whether an individual crime had been proved.[73] The Tribunal pointed out that the aim was not to depart from the basic notion of ascribing personal responsibility to a person within the limits of his or her fault, nor to assume the idea of liability for someone else's fault, but merely to recognise that modern crimes involved more or less numerous groups of perpetrators and communities of various nature and degree of direct complicity.[74] Moreover, the judgment in Fischer's case stressed that by joining a criminal group with a statutory obligation of co-operation, help, obedience and, at the executive level, initiative, the person thus assumed responsibility for everything the group did, and this translated into personal responsibility.[75] The Tribunal analysed whether a given person had joined the organisation voluntarily or had been forced to do so, as well as looked into the functions held by such person.[76] If such a person had carried out executive functions then, according to the Tribunal, they were indisputably responsible for the criminal actions of the group, regardless of who had actually performed them.[77] The Tribunal decided that both the General Governorate and the Nazi camps set up in the territories of Poland had been criminal groups – having asserted that it could attribute the liability for participating in the crimes against humanity, or war crimes, also to persons who had "merely" performed selections, taken away valuable food products, poured the Zyklon B or transported others to the crematoriums.[78] The Tribunal underlined that the twentieth century was a century of collective human activity in every field of community life, and thus the fact that the crime had been committed by a group not only did not diminish the responsibility for it but even augmented it, as these types of crimes were much more dangerous than offences committed by individuals.[79] The Tribunal stressed that the crimes perpetrated within its jurisdiction had been performed by carefully

72 Greiser Judgment, p. 1a, see *supra* note 38; Goeth Judgment, p. 28, see *supra* note 11.

73 Hoess Judgment, p. 61, see *supra* note 7. See also Cyprian and Sawicki, 1949, p. 11, s*upra* note 3.

74 Greiser Judgment, p. 12, see *supra* note 38. See also Cyprian and Sawicki, 1949, p. 19, s*upra* note 3.

75 Greiser Judgment, p. 18, see *supra* note 38; Fischer Judgment, pp. 21–22, see *supra* note 6.

76 Bühler Judgment, pp. 93–94, see *supra* note 8.

77 Greiser Judgment, p. 18, see *supra* note 38; Bühler Judgment, pp. 55–56, see *supra* note 8.

78 Auschwitz Judgment, *passim*, parts concerning, for example, Koch, Götz, Medefind, Möckel, Mandl, Kraus, Kremer, Büntrock, see *supra* note 7.

79 Fischer Judgment, pp. 22–23, see *supra* note 6.

selected teams of persons capable of accomplishing the planned objectives.[80] In order to unquestionably determine the responsibility for participation in a criminal organisation, the Tribunal proved that its members had been aware of the nature of the organisation's actions and had been able to influence such actions.[81] The conclusion that a certain person had had sufficient knowledge was at times derived from the position held by them, as in the case of Liebehenschel.[82]

39.4. The Tribunal and the Definitions of International Crimes

39.4.1. Crimes Against Peace

Each trial before the Tribunal involved the issue of the accused's responsibility for participation in a criminal group, given that the defendants were the heads of the NSDAP – a party which had strived to achieve its goals of establishing a national socialist regime, incorporating foreign territories into Germany and gaining power over the world by waging wars of aggression.[83] The issue of individual responsibility for crimes against peace was examined more extensively during the trials of Greiser, Forster, Bühler and Fischer. In the case of Fischer, who was found guilty of the crime against peace, the judgment was based solely on the fact that he had been a member of a group of political leaders, and members of this group must have had a particularly strong grasp of the methods and objectives of the party, and had been expected to demonstrate initiative and leadership skills. Consequently, the Tribunal decided that at this level Fischer had consciously and purposefully participated in the planning, organisation and commission of the crime against peace by the criminal organisation, the NSDAP.[84] In Fischer's

80 *Ibid*., p. 28.

81 *Ibid*., pp. 29–34, 53; Hoess Judgment, p. 5, see *supra* note 7; Forster Judgment, p. 15, see *supra* note 6.

82 Auschwitz Judgment, pp. 96, 98, see *supra* note 7.

83 Greiser Judgment, p. 2, see *supra* note 38; Goeth Judgment, p. 2, see *supra* note 11; Fischer Judgment, p. 2, see *supra* note 6; Hoess Judgment, p. 2, see *supra* note 7; Auschwitz Judgment, p. 13, see *supra* note 7; Forster Judgment, p. 2, see *supra* note 6; Bühler Judgment, p. 2, see *supra* note 8.

84 Fischer Judgment, pp. 21–22, 34–35, see *supra* note 6. The remaining defendants were acquitted, since they had not held positions of power. See more in Patrycja Grzebyk, *Criminal Responsibility for the Crime of Aggression*, Routledge, New York, 2013, pp. 187 ff.

case, therefore, the responsibility for the crime against peace was closely tied to his membership of the NSDAP. The charges against Bühler, accused of the crimes against peace, were of a specific nature. In his case, participation in crimes against peace was connected with his exercise of the occupation power which, according to the Tribunal, was illegitimate (as it was a result of illegal use of force) and thus the occupying forces had had no right to fight the Resistance movement in the General Governorate. Consequently, it followed that this had been a permanent crime as it concerned the entire period when Poland had been lawlessly occupied.[85] According to the Tribunal, as an illegal occupying power, the Nazis had only obligations and no rights in the light of law.[86] Therefore, it may be stated that the Tribunal concluded – which was later confirmed also in numerous documents defining aggression[87] – that the occupation and annexation as a result of lawless aggression had been a separate act of aggression (the so-called *twofold aggression*, *continuous aggression* and *permanent aggression*).[88] Interestingly, although the Tribunal rejected the *debellatio* doctrine, at the same time, as if just in case, it proved that this

[85] Bühler Judgment, pp. 58–61, 63, see *supra* note 8; Compare also with Fischer Judgment, pp. 67–68, see *supra* note 6; Greiser Judgment, p. 6 (where the Tribunal cited the principle "*quod ab initio turpe est non potest tractu temporis convalescere*"), see *supra* note 38. These statements are at variance with the principle which says that application of *jus in bello* (law of war) should not be affected by *jus ad bellum* (law on the use of force). However, this error in the reasoning of the Tribunal was then repeated in the sentences of the Polish Supreme Court, see Polish Supreme Court Judgment (Civil Chamber), 19 March 1949, C. 935/48 (Orzecznictwo Sądu Najwyższego [Supreme Court's Judgments] 1949/I, item 1; LexPolonica no 367450); Polish Supreme Court Judgment (Civil Chamber), 13 April 1948, Wa. C. 18/48 (Orzecznictwo Sądu Najwyższego [Supreme Court's Judgments] 1949/II, item 20, LexPolonica no. 413311); Supreme Court Judgment (Civil Chamber), 20 April 1950, Po. C. 452/49, LexPolonica nr 323581 (Orzecznictwo Sądu Najwyższego [Supreme Court's Judgments] 1950/II, item 48). See also Kubicki, 1963, pp. 83–84, see *supra* note 29.

[86] See also Kubicki, 1963, p. 85, *supra* note 29. See also (Lord) Wright, "Hitlerowska okupacja w Polsce w świetle prawa narodów" [Hitlerite Occupation of Poland in Light of the Law of Nations], in *Państwo i Prawo* [State and Law], 1948, vol. 1, no. 3, pp. 87 ff.

[87] See Article 1 (c) (ii) of the African Union Non-Aggression and Common Defence Pact of 2005; Article 3 (a) and (b) of the General Assembly Resolution no. 3314 (1974); Article 8 bis (2) (a) of the International Criminal Court Statute of 1998.

[88] Grzebyk, 2013, pp. 61, 70, see *supra* note 84. See also Ahmed M. Rifaat, *International Aggression. A Study of the Legal Concept: Its Development and Definition in International Law*, Almqvist & Wiksell International, Stockholm 1979, p. 270; Avra Constantinou, *The Right of Self-defence under Customary International Law and Article 51 of the UN Charter*, Bruylant, Brussels, 2000, pp. 68 ff.

had not taken place, arguing that there had been Polish underground structures, the authorities had operated in exile and Poles had been immensely involved in the war efforts.[89] Furthermore, during the trial of Forster the Tribunal felt obliged to attest that the occupied territories of the Free City of Danzig had prospered better under Polish rule than under German rule.[90]

When pronouncing the verdict against Greiser, who was the first person ever to be found guilty of crimes against peace (*sic*), the Tribunal felt the need to specify the nature of the Polish-German war of 1939. The verdict did not include, however, any thorough analysis of the notion of aggression or crime against peace.[91] The Tribunal stated only that the war of 1939 had constituted a criminal armed invasion (aggression), launched in breach of international agreements (Article 104 of the Treaty of Versailles and of the Polish-Danzig Agreement concluded in Paris on 9 November 1920).[92] The sole fact of incorporating Danzig into the Reich was described by the Tribunal as an act of perfidy.[93] In the verdicts against Fischer or Forster, the Tribunal did not analyse the definition of crime against peace to any further extent, assuming that since aggression had been deemed a crime by the IMT, any further deliberations on this topic were unnecessary, and thus planning, preparing, initiating and waging a war of aggression constituted crimes against peace.[94] The trial

89 Bühler Judgment, p. 26, see *supra* note 8.

90 Forster Judgment, p. 4, see *supra* note 6.

91 However, the issue of legality of German invasion was largely discussed by court's expert, Ludwik Ehrlich; see Ludwik Ehrlich, "Agresja III Rzeszy Niemieckiej na Polskę – pogwałcenie norm prawa międzynarodowego" [Aggression of the Third Reich against Poland – Violation of International Law Norms], Ludwik Ehrlich, "Zagadnienie wojny we współczesnym prawie międzynarodowym" [Concept of War in Contemporary International Law], in *Ekspertyzy i orzeczenia przed Najwyższym Trybunałem Narodowym. Część I Agresja III Rzeszy Niemieckiej na Polskę i okupacja hitlerowska w Polsce w świetle prawa międzynarodowego* [Experts' Reports and Judgments of the Supreme National Tribunal. Part I. Aggression of the Third Reich against Poland and Hitlerite Occupation of Poland in the light of International Law], Ministerstwo Sprawiedliwości [Ministry of Justice], Główna Komisja Badania Zbrodni Hitlerowskich w Polsce [Central Commission for Investigation of German Crimes in Poland], Warsaw, 197, pp. 11 ff.

92 Greiser Judgment, pp. 2–3, see *supra* note 38.

93 *Ibid*., p. 3.

94 Fischer Judgment, p. 21, see *supra* note 6. Compare also Forster Judgment, p. 13, see *supra* note 6. Compare also with definitions of crime against peace in Article 6 of the IMT Charter, see *supra* note 4.

of Forster fully demonstrated that the Tribunal had difficulties with separating Forster's responsibility for crimes against peace from the responsibility of the countries for their mutual relations. The Tribunal even admitted that the case of Forster went far beyond the issue of guilt or innocence of the accused but concerned in fact the Nazis' long-term and systematic preparations designed for the final separation of Danzig from Poland.[95] The Tribunal analysed Polish–German relations throughout 10 centuries, bringing up such facts as the invitation of the Teutonic Knights to the Polish lands in 1226 or the massacre of the Danzig population in 1308.[96] Although true, these facts bore no significance in terms of the individual responsibility of Forster.

In the case of Greiser, his participation in crimes against peace was that in his capacity of the president of the Senate of the Free City of Danzig as well as the deputy to the *Gauleiter*, he had prepared, led and then – together with Forster and other NSDAP members – waged in the area of the Free City of Danzig the aggression against Poland, as prescribed by the party line. The prosecution argued that the above made Greiser guilty not only of the preparation of an aggressive war against Poland but also of launching its initial stage, i.e. the violation of the statute of the Free City of Danzig and of the internationally granted rights that Poland held in that area. It pointed out that the Senate Resolution of 23 August 1939, creating the position of the mayor of the Free City of Danzig and appointing Forster as the mayor, was signed by Greiser. Both the indictment and the judgment indicated that it was Forster who was primarily responsible for the separation of Danzig from Poland and the conversion of Danzig into a German base for the aggression against Poland. Greiser's fault mostly consisted in remaining in close touch with Forster; this was essentially the reason why he was convicted of the crime against peace, without a further elaboration of the issue.

In the case of Forster, the Tribunal indicated three stages of his engagement in crimes against peace. The first stage included the time from his arrival in Danzig in 1930 to the Nazi surge to power in Germany in 1933. In this period, Forster prepared the Danzig branch of the NSDAP

[95] Forster Judgment, p. 1b, see *supra* note 6.

[96] *Ibid*., pp. 1b–4. The references to the Teutonic Order were not entirely groundless given some passages in Hitler's *Mein Kampf* and Forster's speeches, where they had both claimed that the National Socialists were the Teutonic Knights of the twentieth century. See *ibid.*, p. 24; Auschwitz Judgment, p. 56, see *supra* note 7.

for a takeover of power; began the preparation for the violation of treaties and international agreements; tried to eliminate opposition; prepared the party for the expected tasks ahead; organised militias such as the *Schutzstaffel* ('SS'); and dismantled the legal regulations in force. The second stage lasted from 1933 to 1 September 1939. Forster's actions in that period aimed at the incorporation of Danzig into the Reich. He worked to undermine the Danzig Senate and pushed for a new election (which the NSDAP won using terror and forgery). From that time on, the international obligations began to be violated openly, and the policy of *Gleichshaltung*, i.e. forcible institutional co-ordination of the Free City with the Reich, was put into effect. Danzig was being incrementally incorporated into the Reich. Forster was responsible for military exercises of the Nazi units stationed in Danzig, as evidenced by the exercises organised for the Nazi Youth, the invitation of military instructors and officers from the Reich, weapon supply mobilisation, facilitation of military services in Germany and the visits of warships (the heavy cruiser *Admiral Scheer* in 1935, the light cruiser *Leipzig* in 1936, and finally the battleship *Schlezwig-Holstein*, which on 1 September 1939 at 4.45 a.m. fired the first shots towards the shore, at targets in Westerplatte and Gdynia). The Decree of 23 August 1939 created a legal framework for the status quo. Danzig was incorporated into the Reich, and Forster's appointment as the mayor of the Free City of Danzig was, in the Tribunal's opinion, a bold international provocation, aiming to push Poland into military actions. Once this plan failed, a different incident was used to justify the attack against Poland. In the third stage, i.e. from the moment when Danzig was incorporated into the Reich, in violation on the Treaty of Versailles and international agreements, until the liberation of the city in April 1945, Forster's part in the crime against peace consisted in his appointment as the head of the civil administration in the Reich's territory after decrees were issued proclaiming the return of Danzig to the Reich. The Tribunal pointed out that Forster had been fully aware of the status of Danzig and that his activities had been in contradiction with international agreements. The Tribunal underlined he was one of the most zealous followers of National Socialism and he was highly valued in the NSDAP. The Tribunal was of the opinion that Forster might even be considered one of the creators of the Nazi policy, as evidenced by his authorisation by Hitler to negotiate with the British representatives.

The cases of Greiser and Forster obviously differ in some respects. For Forster, the Tribunal argued that he had been not merely an ordinary executor but also a co-author of the plan to wrest control over Danzig and attack Poland, while Greiser had only executed the plans agreed by others. Hence, in the light of the modern standards, Greiser would probably not be convicted of the crime against peace since he could not be classified as "a person in a position effectively to exercise control over or to direct the political or military action of a State".[97]

39.4.2. Crimes Against Humanity and Genocide

It should be stressed that, unfortunately, the statements of grounds included in the Tribunal's verdicts are not clear enough to state whether a respective section concerns crimes against humanity or war crimes. Hence the Tribunal's condemnation of the specific acts may be interpreted as pertaining to both types of crime.

The Tribunal did not dedicate much space to the analysis of the notion of crimes against humanity. The Tribunal referred to the definition adopted in the IMT Charter, stating that crimes against humanity covered any persecution of a political, national, racist or religious nature, perpetrated in connection with the crimes against peace or war crimes, even if such crimes against humanity had taken place before the war.[98] The Tribunal focused specifically on the new category of crime – the crime of genocide, seen as a particular kind of crime against humanity. The Tribunal repeatedly used the phrase "genocide"[99] in its verdicts as well as analysed its scale and all manifestations. Already during the first trial before the Tribunal, against Greiser, it was underlined that the significance of the new crime against humanity and the national and international conscience in the form of genocide[100] had to be examined. On the other hand, the verdict against Göth, whose trial may be considered the first trial ever entirely devoted to responsibility for

97 See Article 8(1), Rome Statute of the International Criminal Court, International Criminal Court, The Hague, 1998

98 Fischer Judgment, p. 21, see *supra* note 6.

99 Greiser Judgment, p. 16, see *supra* note 38; Bühler Judgment, p. 8, see *supra* note 8; Forster Judgment, pp. 10, 27, 60, see *supra* note 6.

100 Greiser Judgment, p. 5c, see *supra* note 38.

genocide,[101] stated straightforwardly that the extermination policy aimed against the Jewish and the Polish nations bore characteristics of genocide, including its biological and cultural dimensions (cultural extermination of the nations).[102] The verdict against Höss underlined that the largest genocide in the history of humankind had taken place in Birkenau.[103]

The Tribunal's verdicts are of high importance since they had been passed even before the Convention on the Prevention and Punishment of the Crime of Genocide of 10 December 1948 ('Genocide Convention')[104] was adopted, and some of them even before the verdict in Nuremberg was pronounced. What is characteristic of the Tribunal's verdicts is the fact that the Tribunal defined genocide in a way similar to how Raphael Lemkin (Rafał Lemkin) described it in his *Axis Rule in Occupied Europe*[105] – that is as a series of acts directed at a specific group in order to annihilate it not only biologically[106] but also culturally.[107] The Tribunal meticulously analysed not only the attacks on the life and health of the given group but also the oppressive acts manifested in such actions as changing the names of the streets, restricting civil rights, and so on. Interestingly, the term "genocide" appears mainly in the context of cultural extermination, thus suggesting that the weeding out of the given group's culture is decisive in determining genocidal intentions.[108] According to the Tribunal, then, genocide meant both biological and spiritual, cultural destruction.[109]

In its verdicts, the Tribunal underlined also that in the case of genocide, selection of the group singled out for extermination had been based on the national, racist or religious criteria.[110] Moreover, certain

[101] Klafkowski, 1968, p. 17, see *supra* note 10.

[102] Goeth Judgment, p. 5, see *supra* note 10.

[103] Hoess Judgment, p. 22, see *supra* note 7; Auschwitz Judgment, p. 70, see *supra* note 7.

[104] Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, *entered into force* Jan. 12, 1951 (https://www.legal-tools.org/uploads/tx_ltpdb/CONVEN1_5_01.PDF).

[105] Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, The Lawbook Exchange, New Jersey, 2005, pp. 79 ff.

[106] Bühler Judgment, pp. 29, 34, see *supra* note 8. See also Cyprian and Sawicki, 1949, p. 28, s*upra* note 3.

[107] Goeth Judgment, pp. 2, 5, see *supra* note 11; Forster Judgment, p. 59, see *supra* note 6.

[108] Greiser Judgment, pp. 1a, 7–8, see *supra* note 38; Bühler Judgment, p. 90, see *supra* note 8; Fischer Judgment, p. 39, see *supra* note 6.

[109] Greiser Judgment, p. 7, see *supra* note 38.

[110] Hoess Judgment, pp. 25, 27, see *supra* note 8.

specific actions were pointed out, which, though not smoothly, eventually fought their way into the definition of genocide adopted in 1948. The Tribunal more than once brought up the German practice of taking children away to the Reich,[111] which would correspond to the act of "forcibly transferring children of the group to another group" included in the Genocide Convention.[112] The Tribunal described also the policy of imposing starvation-level food rations,[113] which might be compared to the section on "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part".[114] And, indeed, the majority of the Auschwitz staff were convicted precisely for their actions aimed at making it impossible to survive. The Tribunal also recounted medical experiments which were to lead to artificial infertility and thus facilitate biological annihilation of entire nations,[115] or the policy of restricting food rations for pregnant women and infants, which may be referred to the following phrase from the Genocide Convention: "imposing measures intended to prevent births within the group".[116]

39.4.3. War Crimes

The Tribunal confirmed the findings of the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties concerning the specific acts committed during the war – war crimes.[117] The Tribunal stressed that the term war crimes encompassed such acts as murders, harassing civilians, inflicting bodily injuries, restricting liberty, plundering public or private property, and demolition of cities and settlements which were not a result of any military necessity.[118] The

[111] Forster Judgment, pp. 8, 40, 54, see *supra* note 6.

[112] See Article 2(e) Genocide Convention of 1948.

[113] Fischer Judgment, p. 27, see *supra* note 6; Goeth Judgment, pp. 10–11, see *supra* note 11; see also Auschwitz Judgment, *passim*, *supra* note 7 (especially parts concerning Liebehenschel); Bühler Judgment, pp. 48–49, *supra* note 8.

[114] Article 2(c) Genocide Convention of 1948.

[115] Hoess Judgment, p. 53, see *supra* note 7; Greiser Judgment, pp. 15–16, see *supra* note 38. See also Law Reports, vol. VII, pp. 13 ff.

[116] Article 2(d) Genocide Convention of 1948.

[117] Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, Report Presented to the Preliminary Peace Conference, 29 March 1919, in *American Journal of International Law*, 1920, vol. 14, pp. 114–15.

[118] See for example, Fischer Judgment, pp. 4, 21, *supra* note 6; Goeth Judgment, p. 8, *supra* note 11; Hoess Judgment, p. 45, *supra* note 7.

Tribunal also emphasised that illegal deportations of persons to be used as forced labour could be treated as a form of slavery.[119] Some of the Tribunal's findings were quite innovative, such as the one stating that in the case of persons detained in the concentration camps, the tortures also included psychological harassment, for instance forcing the inmates to sing merry songs.[120] As for physical tortures, various descriptions can be found in the statement of grounds for the judgment against Göth or the files of the Auschwitz trial.[121] The Tribunal decided that desecration of corpses also constituted a crime.[122] Moreover, it also underlined the illegal nature of medical experiments carried out without consent from the patients, even if these had been conducted for the benefit of the whole of humankind.[123] The Tribunal also devoted much attention to the issue of the destruction of cultural achievements.[124]

39.4.4. Participation in a Criminal Organisation/Group

The IMT decided that the top bodies of the NSDAP, Gestapo, Sicherheitsdienst and SS had been criminal organisations, but it was the Tribunal that was first to convict the accused for participation in this type of organisation.[125] However, the sentences were issued, in line with the guidelines from the IMT, only against those who had held executive functions in such groups.[126] Mostly, they were not very severe (several years of imprisonment).

The Tribunal concluded that it was not limited by the list of criminal organisations prepared by the IMT and had the right to extend it, save for those organisations which the IMT had clearly defined as non-criminal.[127] The Tribunal decided to add to this list the General Governorate and the top bodies of the German administration in the

[119] Fischer Judgment, pp. 21, 26, see *supra* note 6.

[120] Auschwitz Judgment, p. 85, see *supra* note 7.

[121] See, for example, Goeth Judgment, pp. 10, 17, 19, *supra* note 11.

[122] Hoess Judgment, p. 55, see *supra* note 7.

[123] Auschwitz Judgment, p. 81, see *supra* note 7.

[124] Forster Judgment, pp. 7–9, 41, 45, see *supra* note 6; Bühler Judgment, pp. 3, 5, see *supra* note 8; Fischer Judgment, p. 26, see *supra* note 6; Greiser Judgment, p. 14, see *supra* note 38.

[125] See, for example, Fischer Judgment, pp. 10 (Fischer), 13 (Meisinger), see *supra* note 6.

[126] *Ibid*., pp. 46 (Leist), 59 (Meisinger), 60 (Daume).

[127] Auschwitz Judgment, p. 188, see *supra* note 7.

General Governorate, from the level of the *Kreis*- or *Stadthauptmann* (rural or urban districts), that is the rank of deputy heads, heads of sections and departments in the governors' and *starosta*s' offices, namely the political factor.[128]

The Tribunal also stated that the bodies responsible for organising the concentration camps had constituted a criminal group as well. It underlined that the IMT had not labelled the administrative authorities of the camps as a criminal organisation only because such authorities were not covered in the indictment. However, as stressed by the Tribunal, the IMT had concluded that such camps had been a means for systematic perpetration of crimes against humanity.[129] The Tribunal also stated that it could not rule on the nature of all camps created by the Germans but only on those set up in the territory of Poland.[130] According to the Tribunal, the bodies responsible for organising the German concentration camps were a criminal group within the meaning of the Nuremberg verdict, since the aim of the camps had been to illegally imprison, deprive of health, property and life specific individuals and groups of populations, on the grounds of their race (Jews, Romanies), nationality (Poles, Czechs), religion (Jews) or political beliefs (socialists, communists, persons opposing the Nazi ideology). The bodies responsible for organising the German concentration camps had been, then, an organisation designed to commit the crimes against humanity (penalised also under the criminal codes of all civilised nations), as well as war crimes in relation to the Soviet prisoners of war.[131] The Tribunal stated that the bodies responsible for organising the concentration camps, being a criminal group, had included German authorities, administration and staff of the camp, excluding the prisoners forced to hold certain administrative functions.[132]

[128] Fischer Judgment, pp. 20, 28, see *supra* note 6. Other Polish courts qualified also the Ukrainian Insurgent Army, Ukrainian SS and Selbstschutz as criminal organisations, thus membership in them was considered as crime. Kubicki, 1963, pp. 149 ff., see *supra* note 29.

[129] Auschwitz Judgment, pp. 189–90, see *supra* note 7.

[130] *Ibid*., p. 194; Klafkowski, 1968, pp. 26–27, see *supra* note 10.

[131] Auschwitz Judgment, p. 191, see *supra* note 7.

[132] *Ibid*., pp. 193–95.

39.5. Conclusions

The former Tribunal prosecutors underlined that the Tribunal constituted a crowning achievement of the Polish judicature.[133] Unquestionably, the efforts expended by Poland to judge Nazi criminals should be recognised, particularly considering that most members of the judiciary had been murdered, whether by the Nazis or by the communists. Despite this, excellent lawyers were engaged to take part in the proceedings (some of them were later persecuted by the communist authorities), if not as Tribunal members then at least as the experts during the trials.

The Tribunal's function was never to be limited solely to pronouncing the defendants guilty and stating their penalties. The Tribunal was supposed to be another instrument in the hands of the Polish authorities of the time. Therefore, the sentences included some misrepresentations or overtly vivid statements,[134] which today may surprise and be used to discredit the Tribunal's work. The sentences lacked a detailed and exhaustive legal analysis of notions derived from international criminal law. However, this field of international legal doctrine was at that time only in the making. The language used by the Tribunal was often imprecise, or even not quite legal, but the same can be said of other tribunals trying war criminals shortly after the Second World War, the IMT included.

Theoretically, the role of the Tribunal in the process of shaping international criminal law could have been immense since it was first to raise and face this issue of genocide. It condemned both the biological and the cultural dimensions of this crime. Even before the Genocide Convention was adopted in 1948, the Tribunal recognised as such the crime of taking away children from one group to another, restricting reproduction or imposing conditions in which it had been impossible to survive. It confirmed criminal liability for many war crimes, adding to those already defined before the Second World War the desecration of corpses, mental torture or medical experiments. The Tribunal drew many interesting conclusions regarding the principles of responsibility, thus laying the foundations for such popular modern theories as joint criminal enterprise or superior responsibility. Despite all these achievements, both

[133] Cyprian and Sawicki, 1962, p. xi, see *supra* note 6.

[134] Greiser Judgment, p. 6, see *supra* note 38; Fischer Judgment, p. 49, see *supra* note 6.

Polish and international courts rarely invoke the Tribunal's sentences.[135] In the case of some of the trials, this could be partly due to the lack of materials in English. However, it is difficult to explain why the cases concerning crimes against peace, especially the cases of Greiser or Bühler discussed in the *Law Reports*, have not been brought up in the discussions on the definition of the crime of aggression in the Statute of the International Criminal Court.

Could we state that the functioning of the Tribunal and its sentences were retroactive? Of course, although to a lesser extent than in the case of the IMT, since the vast majority of the crimes were classified by the Tribunal as based on domestic law and the Polish pre-war Criminal Code of 1932 that even provided for criminal liability for aggressive war.[136] The only problem lay in finding an appropriate legal basis for punishing for participation in legal organisations, but in this case the Tribunal simply referred to the IMT Charter and its judgment.[137] The Tribunal stressed that the legal basis for criminal responsibility for the crimes perpetrated by the Nazis could be sought in "the basic, rudimentary moral regulations and rules of coexistence established by the nations throughout the centuries, binding for all and superior to any laws contravening them implemented by individual countries, and which must not ever be violated".[138] According to the Tribunal, it was not important whether such rules were described as the natural law or, in line with the more modern

[135] See, for example, International Criminal Tribunal for the former Yugoslavia ('ICTY') judgments in which there are references to Greiser's case: *Prosecutor v. Momčilo Krajišnik*, IT-00-39, Trial Chamber, Judgment, 27 September 2006, note 1645 (https://www.legal-tools.org/doc/62a710/); *Prosecutor v. Mladen Naletilić and Vinko Martinović*, IT-98-34, Appeals Chamber, Separate and Partly Dissenting Opinion of Judge Schomburg, 3 May 2006, para. 12 (https://www.legal-tools.org/doc/94b2f8/); *Prosecutor v. Milomir Stakić*, IT-97-24, Appeals Chamber, Judgment, 22 March 2006, par. 29 (https://www.legal-tools.org/doc/09f75f/); *Prosecutor v. Radislav Krstić*, IT-98-33, Trial Chamber, Judgment, 2 August 2001, note 1132 ("Krstić Judgment") (https://www.legal-tools.org/doc/440d3a/); *Prosecutor v. Drago Josipović et al*., IT-95-16, Trial Chamber, Judgment, 14 January 2000, par. 600 also note 904 (https://www.legal-tools.org/doc/5c6a53/); *Prosecutor v. Tihomir Blaškić*, IT-95-14, Trial Chamber, Judgment, 3 March 2000, par. 223 (https://www.legal-tools.org/doc/e1ae55/); to Göth's case in Krstić Judgment, notes 1132, 1282; and to Höss's case in Krstić Judgment, note 1282.

[136] Article 113, *Journal of Law of the Republic of Poland*, 1932, no. 60, item 571.

[137] Law Reports, vol. VII, pp. 5–6, see supra note 20.

[138] Fischer Judgment, p. 19, see *supra* note 6.

terminology, as "the general principles of law" referred to in Article 38 of the Statute of the International Court of Justice.[139]

[139] *Ibid*.

39.6. Annex: Trials Before the Polish Supreme National Tribunal, 1946–1948

Name(s) of Accused	Dates of Trial ▪ Verdict	Place	Professional judges ▪ Lay judges	Prosecutors	Advocates	Charges	Penalty
Artur Greiser	21 Jun–7 Jul 1946 ▪ 9 Jul 1946	Poznań	Kazimierz Bzowski Emil Stanislaw Rappaport Witold Kutzner ▪ Zygmunt Piękniewski Czeslaw Grajek Jerzy Nowacki Longin Szymański	Stefan Kurowski Jerzy Sawicki Mieczysław Siewierski	Stanisław Hejmowski Jan Kręglewski	Membership of NDSAP (whose aim was to introduce national socialism and to incorporate foreign territories to Germany). Commencing war activities and occupation in violation of international law; deprivation of Poland and Polish citizens' rights towards Danzig. Murdering civilians and POWs; harassment, persecutions, inflicting bodily injuries; destruction of Polish culture (including Polish schools, press etc.); pillaging of Polish cultural and public property; Germanisation of nation; deprivation of private property; destruction of cultural heritage; jeering and degrading Polish population; persecution of Jews (e.g. murdering, gathering in closed areas and then sending them to gas chambers); deprivation of liberty; forced	Death penalty; deprivation of public, civil and honorary rights; confiscation of property.

						deportations; sending children and youths to Germany; deprivation of religious rights; excessive exploitation of human work.	
Amon Leopold Göth (Goeth)	27 Aug–5 Sep 1946 ▪ 5 Sep 1946	Cracow (Kraków)	Alfred Eimer Mieczysław Dobromęski Józef Zembaty ▪ Albin Jura Marian Lityński Pelagia Lewińska Franciszek Żymła	Mieczysław Siewierski Tadeusz Cyprian	Bruno Pokorny Tadeusz Jakubowski	Taking part in criminal conspiracy (NSDAP). Deprivation of liberty; harassment; extermination of individuals and whole groups of people; killing, mutilating, torturing and pillaging.	Death penalty; deprivation of public, civil and honorary rights; confiscation of property.
Ludwig Fischer, Ludwig Leist, Josef Meisinger, Max Daume	17 Dec 1946–24 Feb 1947 ▪ 3 Mar 1947	Warsaw (Warszawa)	Mieczysław Güntner Maurycy Grudziński Stanisław Rybczyński Józef Zembaty ▪ Jan Nepomucen Miller Jerzy Jodłowski Eugeniusz Kembrowski	Mieczysław Siewierski Jerzy Sawicki	Antoni Chmurski Artur Wagner Jerzy Śliwowski Zdzisław Węgliński	Taking part in criminal organisation (NSDAP). Individual and group murders of civilians; deprivation of liberty; harassment; persecutions; inflicting bodily injuries; destruction of Polish culture; pillaging of cultural property; pillaging and destruction of public property; deprivation Polish citizens of private property.	Death penalty (Fischer, Meisinger, Daume); 8 years' imprisonment (Leist).

Rudolf Höss (Hoess)	11 Mar–29 Mar 1947 ▪ 2 Apr 1947	Warsaw (Warszawa)	Alfred Eimer Witold Kutzner Józef Zembaty ▪ Michał Gwiazdowicz Wincenty Kępczyński Aleksander Olchowicz Franciszek Żmijewski	Tadeusz Cyprian Mieczysław Siewierski	Franciszek Umbreit Tadeusz Ostaszewski	Taking part in criminal organisation (NSDAP). As a commander of Auschwitz camp: deprivation of life (civilians, POWs); physical harassment (creation of special conditions of living, tortures, camp penalties) and moral harassment; directing mass pillage.	Death penalty; deprivation of public, civil and honorary rights; confiscation of property.
Artur Liebehenschel, Max Grabner, Hans Aumeier, Karl Möckel, Maria Mandl, Franz Kraus, Johann Kremer, Hans Münch, Erich Muhsfeldt, Hermann Kirschner, Hans Koch, Karl Seufert,	24 Nov–16 Dec 1947 ▪ 22 Dec1947	Cracow (Kraków)	Alfred Eimer Witold Kutzner Józef Zembaty ▪ Albin Jura Edward Dobruś Aleksander Olchowicz Roman Pawełczyk	Stefan Kurowski Tadeusz Cyprian Mieczysław Szewczyk Edward Pęchalski Jan Brandys	Stanisław Druszkowski Kazimierz Ostrowski Stanisław Rymar Czesław Kruh Mieczysław Kossek Stefan Minasowicz Antoni Czerny Bertold Rappaport Szczęsna Wolska-Wolasowa	Membership of NSDAP and SS. Membership of authorities of the camp (creation of living conditions resulting in death or health injuries; abusing prisoners; starvation; forcing to excessive work; inhuman camp penalties; medical experiments; killing prisoners (by torturing, shooting, hanging, strangling, gassing); moral harassment; degrading; mass murdering; work exploitation; mass pillaging; and cutting women's hair.	Death penalty (Liebehenschel, Grabner, Aumeier, Möckel, Mandl, Kraus, Kremer, Muhsfeldt, Kirschner, Josten, Gehring, Müller, Plagg, Lätsche, Buntrock, Bogusch, Götze, Szczurek, Brandl, Kollmer,

Heinrich Josten, Wilhelm Gehring, Kurt Muller, Ludwik Plagg, Edward Lorenz, Otto Lätsche, Fritz Buntrock, August Bogusch, Paul Götze, Paul Szczurek, Richard Schröder, Teresa Brandl, Alice Orlowski, Luiza Danz, Hildegarda Lächert, Hans Hoffmann, Anton Lechner, Józef Kollmer, Detleff Nebbe,							Ludwig, Schumacher, Breitwieser). Life imprisonment (Koch, Seufert, Danz, Lechner, Nebbe, Medefind). 15 years' imprisonment (Lorenz, Orlowski, Lächert, Bülow, Romeikat, Weber, Hoffmann). 10 years' imprisonment (Schröder). 5 years' imprisonment (Dinges). 3 years' imprisonment (Jeschke). Not guilty (Münch).

Herbert Ludwig, Aleksander Bülow, Artur Breitwieser, Hans Schumacher, Adolf Medefind, Franz Romeikat, Erich Dinges, Johannes Weber, Karl Jeschke							
Albert Forster	5 Apr–27 Apr 1948 ▪ 29 Apr 1948	Danzig (Gdańsk)	Stanisław Rybczyński Józef Zembaty Henryk Cieśluk ▪ Stanisław Stasiak Stanisław Stefański Henryk Wójcicki Janusz Wierusz-Kowalski	Stefan Kurowski Tadeusz Cyprian Mieczysław Siewierski	Tadeusz Kuligowski Bolesław Wiącek	Participation in NSDAP which aimed at incorporation of foreign territories (controlling of Senate, taking position of chief of the state, deprivation of Polish state and Poles their rights in the Free City of Danzig, violation of international agreements, preparation of aggressive war activities). As a chief of civil administration and then Danzig-West Pomerania chief: group murders of civilians; starting	Death penalty; deprivation of public, civil and honorary rights; confiscation of property.

						propaganda against Poles; persecution and abusing Poles (deprivation of liberty, mass deportation, forced sending of Polish children to Reich; forcing Poles to sign German national list, restricting civil rights, giving privileges to Germans, destruction of Polish culture, pillaging of public and private property).	
Josef Bühler	17 Jun–5 Jul 1948 ▪ 10 Jul 1948	Cracow (Kraków)	Alfred Eimer Józef Zembaty Henryk Cieśluk ▪ Stanisława Garncarczykowa Władysław Jagiełło Stanisław Stefański	Tadeusz Cyprian Jerzy Sawicki	Bertold Rappaport Stefan Kosiński	Murdering of civilians and POWs. Abusing, persecution and inflicting bodily injuries; destruction of Polish culture; pillaging of cultural property; Germanisation of country and population; pillaging public property; economic exploitation of country and population; systematic deprivation of private property of Polish citizens; individual and mass deprivation of life (executions, concentration camps); jeering at Polish nation; abusing Polish nation on the territory of General Governorate (bodily injuries, sending into concentration camps and prisons, forced deportations,	Death penalty; deprivation of public, civil and honorary rights; confiscation of property.

						sending to slavery work, kidnapping Polish children and sending them to Reich for the purpose of Germanisation Persecution and extermination of Poles and Jews (insulting, deprivation of all rights, murdering, gathering in ghettos, concentration camps, work camps); pillaging and demolishing public and private property (also cultural; economic exploitation); degradation of Poles and giving privileges to Germans; keeping population under terror; making it slaves aiming at its biological extermination; exploitation of human work; destruction of culture and religion of Poles; cleansing native population from the territory of occupied Poland and settling there Germans.	

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Historical Origins of International Criminal Law: Volume 2

Morten Bergsmo, CHEAH Wui Ling and YI Ping (editors)

The historical origins of international criminal law go beyond the key trials of Nuremberg and Tokyo but remain a topic that has not received comprehensive and systematic treatment. This anthology aims to address this lacuna by examining trials, proceedings, legal instruments and publications that may be said to be the building blocks of contemporary international criminal law. It aspires to generate new knowledge, broaden the common hinterland to international criminal law, and further develop this relatively young discipline of international law.

The anthology and research project also seek to question our fundamental assumptions of international criminal law by going beyond the geographical, cultural, and temporal limits set by the traditional narratives of its history, and by questioning the roots of its substance, process, and institutions. Ultimately, the editors hope to raise awareness and generate further discussion about the historical and intellectual origins of international criminal law and its social function.

The contributions to the three volumes of this study bring together experts with different professional and disciplinary expertise, from diverse continents and legal traditions. Volume 2 comprises contributions by prominent international lawyers and researchers including Professor LING Yan, Professor Neil Boister, Professor Nina H.B. Jørgensen, Professor Ditlev Tamm and Professor Mark Drumbl.

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