

THE LEGALITY OF CRIMINALIZATION AND THE HISTORICAL EXCEPTION AT NÜRNBERG: A DOCTRINAL REASSESSMENT

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Abstract: This research reveals the general context of the principle of criminal legality in the architecture of the modern legal order, analyzed through the prism of its axiological foundation, which constitutes an essential guarantee of legal certainty and, implicitly, an instrument for preventing arbitrariness. The general issue focuses on the Nürnberg trials, approached from the perspective of a deeply philosophical derogation from the fundamental principle of criminal law **nullum crimen sine lege, nulla poena sine lege**. The paper addresses, from a theoretical and legal perspective, one of the most complex dilemmas of international criminal law - the relationship between criminal legality, as a fundamental guarantee of criminal law that protects the individual against arbitrariness, and the need to punish crimes against peace, humanity, and war in the absence of a pre-existing legal norm that clearly establishes the criminalization and punishment for such acts. The purpose of the research is to reevaluate the Nürnberg exception, which represented a turning point in light of subsequent developments in international criminal law. The results of the research directly highlight the fact that the Nürnberg exception did not actually undermine the principle of criminal legality but expanded its content, paving the way for the development of contemporary international criminal law and the strengthening of individual criminal responsibility for heinous international crimes. Therefore, the research highlights the role of the principle of criminal legality as an axiological foundation and guarantee of legal order, while also emphasizing the need for a nuanced understanding of it in contemporary international criminal law, where the balance between legality and moral equity remains a topical theoretical and practical issue.

Keywords: principle of legality, Nürnberg exception, international criminal law, criminal liability, criminal sanction, international crime, war crime, crime against humanity, etc.

1. INTRODUCTION

Above all, „*law is order, and good law is good order*” (Aristotle, 2007). The idea of the great philosopher Aristotle highlights the importance of law within the rule of law. So, the presence of sound laws, those that are clear, concise, predictable, and accessible, is the prerogative and guarantor of society, determining the normal functioning of a democratic state, a criminal investigation, and fair justice (Aristotle, 2007).

THE LEGALITY OF CRIMINALIZATION AND THE HISTORICAL EXCEPTION AT NÜRNBERG: A DOCTRINAL REASSESSMENT

Criminal legality is the guiding principle, indeed, a state could not exist without such a guarantee. Legality is an idea that has been embodied since ancient times, since the emergence of the state and the law, recognized since antiquity through the latin maxims „*nullum crimen sine lege, nulla poena sine lege*” (no crime without law, no punishment without law).

In this context, the principle of criminal legality becomes a fundamental pillar of the legal order, ensuring that no person can be criminally punished without a prior criminal offense expressly provided for by law (Charter of the International Military Tribunal). This principle, established since ancient times, has deep roots in Enlightenment philosophy and underpins the most important criminal codes of ancient times (Beccaria, 1764). In this paper, we will address the Nürnberg exception as a derogation from the principle of criminal legality, an exception enshrined in article 7 of the European Convention on Human Rights. Thus, article 7, (1) proclaims criminal legality as a fundamental right of the individual: „No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed. Nor may a heavier penalty be imposed than that which was applicable at the time the criminal offense was committed”. Paragraph 2 establishes an exception according to which: „This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations”.

The historical experience of World War II and the atrocities committed during that period led to a profound legal debate on the application of this principle to the most serious crimes against peace and humanity. The Nürnberg Tribunal was perceived by some authors as an exceptional departure from legality, as the trial took place in the absence of written charges expressly stated prior to the commission of the acts (Zolo, 2009).

At the same time, however, other scholars argued that the Tribunal had enshrined the existence of fundamental rules of natural and customary law, ensuring criminal liability for acts which, although not codified, were deeply contrary to the moral order of humanity. Nevertheless, some authors argue that there were written rules at that time regarding the rules of warfare, in particular the Hague Conventions and the Geneva Conventions, starting in 1899 (Jackson, 1947. Pg. 180).

This aspect is a sensitive one in the present work, as the Nürnberg Tribunal and many other legal scholars have named the trial the „Nürnberg exception” and nothing else, the reason being that the prosecution of those guilty of atrocities was considered a deviation from the principle of *nullum crimen sine lege, nulla poena sine lege*, since the conviction and execution of the defendants was not based on legal grounds, the perpetrators being charged under a „non-existent” law, „post facto” (Taylor, 1949. Pg. 679).

The most important question raised by this work is whether the Nürnberg trials represented a violation of the principle of legality or a triumph of justice created by the victorious powers of the war despite the crimes committed against humanity?

On the contrary, we must acknowledge that the legislator has always advocated leniency in the law, applying the most favorable criminal penalty to the perpetrator, as predefined by the rule of retroactivity of criminal law.

However, the Nürnberg Tribunal became proof of the application of a law contrary to the rule of retroactivity of criminal law, the application of a harsh punishment, thus seeking to eliminate those who oppressed peoples, destroyed families, undermined humanity and peace in the world at that time, on the grounds that they were acting on the orders of their superiors or executing the orders of their superiors. Although the accused claimed during the trials that they had acted on the orders and command of their superiors and did not admit guilt for their actions (with the exception of the defendant Bormann), an exception was applied, and ultimately each participant was held individually responsible for such appalling acts (Charter of the International Military Tribunal).

In line with the above, we believe that justice is not sufficient as a moral value alone, it must have real power to be enforced. In this way, weak justice that cannot punish injustice or protect fundamental values automatically becomes ineffective and decorative (Ferencz B, Public Speeches on International Law).

Indeed, this process opened up new horizons in the development of international criminal law, establishing clear rules regarding war crimes, and the Tribunal provided a respite for what was to come in the period following World War II, ultimately establishing the principles of criminal responsibility for the commission of international crimes.

The central question in this paper is whether the solution adopted in Nürnberg represents a genuine derogation from criminal legality or, on the contrary, a confirmation of the universal vocation of this principle in defending humanity against barbarism, as discussed below.

The methodology of this paper is based on an interdisciplinary approach, of a theoretical-legal, historical, and comparative nature, focused mainly on the doctrinal re-evaluation of the principle of legality of criminalization in the context of the exception established by the International Military Tribunal at Nürnberg. *The logical method* was mainly used to formulate arguments regarding the compatibility or incompatibility of the Nürnberg exception with the foundations of the rule of law, with a view to identifying the tensions between the need to punish crimes against humanity and strict compliance with the legality of criminalization; *the historical method* was used to reconstruct the historical and normative context of the emergence of the Nürnberg Tribunal and to explain the rationale for invoking an „exception” to the principle of legality; *the comparative method*, used to compare various doctrinal approaches to the principle of legality of criminalization, as reflected in international criminal law and human rights protection systems. The comparative analysis focused, in particular, on the relationship between the classical interpretation of the principle of *nullum crimen, nulla poena sine lege* and the way in which it was nuanced and extended in the jurisprudence of the Nürnberg Tribunal.

2. The evolution of the principle of criminal legality from Beccaria's Enlightenment foundations to its establishment in the jurisprudence of the Nürnberg Tribunal

Only laws can establish penalties for crimes, and this authority must belong solely to the legislature.

(C. Beccaria)

THE LEGALITY OF CRIMINALIZATION AND THE HISTORICAL EXCEPTION AT NÜRNBERG: A DOCTRINAL REASSESSMENT

The principle of criminal legality, succinctly expressed by the latin maxim *nullum crimen, nulla poena sine lege*, is the cornerstone of the rule of law, establishing that no person may be convicted for an act that was not classified as a crime by law at the time it was committed and that no punishment may be imposed outside the legal framework.

Its theoretical origins are inextricably linked to the Enlightenment thinking of Cesare Beccaria, who, in his work „Dei delitti e delle pene”- (1764) (Beccaria, 1764) formulated a strong criticism of criminal arbitrariness, advocating for the subordination of the state to the law and for the limitation of the power to punish through clear, predictable, and accessible rules. For Beccaria, only the law, as an expression of the general will, can establish crimes and punishments, and the judge must not interpret but strictly apply the law in order to prevent abuse and inequality (Beccaria, 1764. Capitol XXVII).

From the enlightened formulations of Cesare Beccaria, who saw legality as a rational bridge against the arbitrariness of power, to its reinterpretations in the context of international tribunals after World War II, this principle has undergone an evolution marked by the tension between formal and moral justice. The Nürnberg trials represented a turning point, in which the traditional legal order was confronted with atrocities that exceeded any existing positive norm, and the strict application of legality was called into question in the name of universal responsibility (Gallant, 2009, Pg. 46).

We propose to analyze this transformation of criminal law, particularly from the enlightenment principle born out of the desire to limit state abuses in terms of criminalization and sentencing, to the modern principle of individual responsibility for crimes against humanity at the international level. At the same time, we will highlight how criminal law has evolved from protecting the individual against the state to protecting humanity against individuals who threaten it.

In his seminal work „Dei delitti e delle pene” (On Crimes and Punishments), the enlightenment thinker Beccaria essentially argued that: „No one can be punished for an act that was not defined as a crime before it was committed” (Beccaria, 1764). With this assertion, the distinguished criminologist and criminal lawyer of the time exposed the cruelty of the laws, the inhumanity of the procedures, and the arbitrariness of the judges, considering that the severity of a crime should be determined according to the damage caused.

Beccaria mainly exposes himself against those who confuse the idea of justice with harshness and savagery, against the system, torture, and the death penalty. He vehemently criticized the abuses of the criminal justice system of the time and the lack of legal predictability. Beccaria advocated for precision in the law, the elimination of judicial arbitrariness and the supremacy of the law as an expression of collective reason, believing that only a clear law could protect individuals against the excesses of power. Beccaria mainly criticized the nobility, the clergy, and the privileges granted to them, enshrining social equality, especially since punishments must be „the same for the first and last citizen, for all” (Beccaria, 1764).

At the same time, C. Beccaria’s research is based on promoting social values and human rights, exposing himself against the inquisitorial system. The author also argues for proportionality between crime and punishment (Beccaria, 1764). In the author’s opinion, the severity of the crime must be determined by the dangerousness of the damage caused. Beccaria

is the author who pursued the idea of more favorable application of punishment, invoking the graduality of criminal responsibility (Beccaria, 1764).

In this context, Nürnberg became an exception to the promotion of the applicability of a more favorable punishment for the perpetrator, and we can say with certainty that it constituted a turning point for the principle of criminal legality, imposing individual responsibility for war crimes committed on the orders of a superior, even though international treaties and protocols of that period already provided that the execution of an order or instruction from a superior constituted a cause that expressly excluded the criminal nature of the act. In this way, the Nürnberg Military Tribunal overturned this provision and established specific penalties for the acts committed by each participant in the atrocities, with the penalty being proportional to the seriousness of the act committed, resulting in either life imprisonment or a fixed term of imprisonment (Verdict of the Ministry of Foreign Affairs).

In the 19th and 20th centuries, the principle of legality was expressly established in the criminal legislation of states, enshrined in the most important laws, including the Supreme Law of States, in this way becoming an essential guarantee against abuse of power and criminal arbitrariness, symbolizing the transition from discretionary power to the rule of law. However, the dramatic events of the 20th century put this unprecedented principle to the test. Totalitarian regimes, especially the nazi regime, demonstrated that formal legality can be used to legitimize crimes and repression and that the law, lacking a moral foundation, can become an instrument of pressure (Twist, 2012. Pg.62).

In this way, thanks to the Nürnberg trials, a transition was achieved from strictly positivist legality to legality with an ethical foundation, incorporating international customary norms and fundamental humanitarian principles.

However, the idea that the absence of a written criminalization cannot absolve responsibility when the act contravenes the fundamental values of humanity has become established. In fact, the Nürnberg principles were established, and on August 8, 1945, *the Charter of the Tribunal* (Charter of the International Military Tribunal) was adopted, whereby the victorious powers rallied together and established the rapid trial and punishment of the main war criminals, which led to the express legal regulation of the concepts of crimes against peace, war crimes, crimes against humanity, and conspiracy to commit these crimes.

At the same time, *Section II of the Charter and article 6* clearly and concisely stated that: „The following acts or any of them are crimes within the jurisdiction of the Tribunal and involve **individual responsibility**:

a) Crimes against peace: planning, preparing, initiating, or waging a war of aggression or a war in violation of international treaties, agreements, or assurances, or participating in a common plan or conspiracy to do any of the foregoing (Charter of the International Military Tribunal);

b) War crimes: violations of the laws or customs of war. These violations include killing, torturing, or deporting civilians in occupied territory into slavery or for other purposes; killing or torturing prisoners of war or persons at sea; killing hostages; pillaging public or private property; wantonly destroying cities or villages, devastation not justified by military necessity, and other crimes (Charter of the International Military Tribunal);

c) Crimes against humanity: murder, extermination, enslavement, deportation, and other acts of cruelty committed against a civilian population, before or during the war, or

THE LEGALITY OF CRIMINALIZATION AND THE HISTORICAL EXCEPTION AT NÜRNBERG: A DOCTRINAL REASSESSMENT

persecution on political, racial, or religious grounds, in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not these acts constituted a violation of the domestic law of the country where they were committed" (Charter of the International Military Tribunal).

In this sense, we conclude that the evolution from Beccaria to Nürnberg reflects the metamorphosis of legality from a formal principle of domestic rule of law into a universal standard, integrated into international criminal law. While Beccaria anchored legality in reason and natural law in order to limit state abuse (Beccaria, 1764) Nürnberg extended it to limit the abuse of political power at the global level. Legality in this way becomes not only an individual guarantee, but also an instrument for protecting the international legal order and human dignity, since we must give to each what is his (Charter of the International Military Tribunal).

3. Analysis of compliance with the principle of legality within the Nürnberg Tribunal: arguments for and against

Suum cuique tribuere - to give each person what is due to them, what is theirs.
(Ulpian)

The Nürnberg trials, held between November 1945 and October 1946, represent a turning point in the history of international criminal law. The trial of Nazi leaders for war crimes, crimes against peace, crimes against humanity, and conspiracy to commit these crimes generated much debate regarding the compatibility of the Tribunal's actions with the principle of criminal legality.

As mentioned earlier in this study, legality essentially implies that a person can only be punished for acts expressly provided for by criminal law prior to their commission.

However, at the Nürnberg trials, a concept of criminal responsibility was applied that went beyond the strict boundaries of positive law, invoking international norms and universal moral principles.

One of the main dilemmas raised by these trials concerns the retroactivity of criminalization. Many of the acts tried, in particular crimes against peace and crimes against humanity, were not, at the time they were committed, criminalized by the domestic law of the German state or by any international criminal code (Răducanu, Pg. 121-126).

However, if we approach the issue of retroactivity of the law as an argument in favor of violating the rule of criminal legality, we can conclude that it consists in the fact that, in some circumstances, certain criminal laws extend their scope to the past, to crimes committed before their entry into force. As a logical continuation, criminal law provides that a criminal law that increases the penalty or worsens the situation of the person guilty of committing a crime does not have retroactive effect, and the issue of retroactivity of the law was not taken into consideration in the Nürnberg criminal trials (Manea, 2017. Pg. 74-78).

So, criminal law applies to crimes committed while it is in force. Criminal law is effective between the moment it comes into force and the moment it ceases to be in force, while it is in force, criminal law is binding and must be obeyed by everyone (Manea, 2017. Pg. 74-78).

Clearly, criminal law does not apply to acts which, at the time they were committed, were not classified as crimes. In other words, criminal law which criminalises an act „ex novo” does not apply to acts committed before it came into force (Răducanu, Pg. 121-126).

Criminal law does not apply to acts committed under the old law if they are no longer provided for in the new law. Criminal law cannot establish crimes or punishments retroactively – „*nullum crimen sine lege prævia*” (Manea, 2017. Pg. 74-78).

Critics of the Tribunal argued that this approach would clearly violate the principle of legality and turn criminal justice into an arbitrary instrument, allowing judges to determine guilt based on a subjective assessment of the morality of the act committed, but we do not support this view.

In contrast, supporters of the Nürnberg Trials invoked the concept of „moral justice” and the general principles of law recognized by civilized nations. The central argument was that certain acts, such as the systematic extermination of civilian populations, forced deportations, or unprovoked military aggression, were profoundly contrary to the fundamental norms of humanity, even if they were not explicitly criminalized in positive law at the time they were committed (Pivniceru, 1999. Pg. 83-131). In this context, the Court ruled that, in an international setting, such acts could not go unpunished and that moral justice and general principles of law must prevail in cases of extreme gravity.

We can mention that this approach has generated a new dimension of the principle of legality: legality is no longer viewed strictly as an expression of positive norms, but as a standard that integrates universal ethical values.

In this regard, the verdict rendered following the trial did not constitute, in the view of its supporters, an arbitrary violation, but rather a necessary adaptation of criminal law to address acts that gravely threatened the order and dignity of humanity. The situation, moreover, represents a form of „justified retroactivity”, in which the limitation of the principle of legality is offset by the imperative of preventing impunity for exceptionally serious crimes (Verdict of the Ministry of Foreign Affairs).

Today, this tension between the principle of legality and moral justice remains relevant for criminal law. Indeed, the Nürnberg Trials paved the way for the development of international criminal law, including the *International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the International Criminal Court* (Coman, 2010).

In all these cases, the concept of international criminal liability entails a reconciliation between strict adherence to the law and the necessity to punish acts that violate fundamental human values, even when their positive incrimination had not been formally established beforehand.

Thus, the fundamental dilemma of international criminal law is illustrated: how moral and universal principles can justify, in exceptional circumstances, the retroactive application of criminal law. We may argue that the Nürnberg Trials did not disregard the principle of legality, but rather reinterpreted it, adapting it to the extraordinary magnitude of the crimes committed and to the need for effective international accountability (Jackson, 1947). This historical experience demonstrates that criminal law and moral justice, although seemingly in conflict, can be reconciled within a framework that protects both individual rights and the universal order and values of humanity.

THE LEGALITY OF CRIMINALIZATION AND THE HISTORICAL EXCEPTION AT NÜRNBERG: A DOCTRINAL REASSESSMENT

Therefore, the dilemma of retroactivity is not a limitation of legality, but a necessary reinterpretation in extreme circumstances, which made it possible to punish the most serious crimes in history.

So, we can call the Nürnberg Tribunal the cornerstone of international criminal law, playing an essential role in consolidating the principle of individual criminal responsibility at the international level.

Unlike authoritarian regimes, where crime could be justified by orders or obedience to the state, Nürnberg established that individuals are personally responsible for their actions, even if they were committed in the context of state policy. This doctrine represented a clear break with the classical legal tradition, in which collective responsibility or obedience to authority could exonerate the guilty.

Another innovative element was the definition and criminalization of crimes against peace and crimes against humanity, concepts that had not previously been so thoroughly addressed in international law as written criminal norms. In doing so, the Tribunal integrated both the principle of legality and the imperative of moral justice, creating a framework in which atrocities of exceptional gravity could not go unpunished, even if positive law did not expressly provide for sanctions at the time they were committed (*Verdict of the Ministry of Foreign Affairs*).

We conclude that, by criminalizing international crimes, affirming individual responsibility, and reconciling criminal law with moral justice, the Tribunal has created the theoretical and practical framework that allows the international community to apply universal legal norms in the face of atrocities of exceptional gravity. We can emphatically state that this was not only a legal process, but also a reaffirmation of the fundamental values of humanity that underpin any system of international criminal law (Jackson, 1947).

On the contrary, the above-mentioned processes have led to a series of broad changes in international criminal law. These include:

- The extension of the concept of criminal responsibility, whereby individuals are personally accountable for their actions, excluding any differentiation based on their function, position, or authority within state structures, even if the actions were committed on the orders of a superior, which does not absolve them of criminal responsibility (Mettraux, 2008);
- Incorporating crimes against humanity and crimes against peace into international law - the Tribunal created a framework for criminalizing acts that affect the entire international community, not just the state in which they were committed (Verdict of the Ministry of Foreign Affairs);
- Retroactivity of criminal law, morally justified, whereby the Court introduced the concept of exceptional retroactivity, in which the application of criminal law is permitted for acts that are clearly contrary to the fundamental principles of international law and morality (Verdict of the Ministry of Foreign Affairs). Later, the exception was expressly enshrined in Article 7, (2) of the ECHR, thus reflecting a balanced view between the requirements of the principle of criminal legality and the imperatives of universal justice, providing a solid legal basis for the prosecution of serious international crimes, in the spirit of the common values of humanity;

- Consolidating the principle of the universality of fundamental norms, whereby it was concluded that, even if national laws vary, certain norms, such as the prohibition of genocide or military aggression, are considered universal norms;
- Laying the foundations and conceptualizing future international tribunals, with Nürnberg setting the precedent for the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the International Criminal Court, which apply internationally recognized principles to punish serious international crimes (Pivniceru, 1999).
- Finally, although formally invoking a violation of the principle of criminal legality by failing to comply with the rule of retroactivity of the law, the Court based its application of the rules on moral and ethical grounds, redefining criminal legality as a tool for preventing impunity for extremely serious crimes. In this context, we conclude that justice must prevail even in exceptional circumstances, and that international law has a duty to protect the fundamental values of the international community against systemic violence and institutionalised terror (Jackson, 1947).

4. From accusations of „victors’ justice” to recognition of the universality of criminal responsibility

Justice must be strong, and strength must be just (Negru B, 2018. Pg. 232).

(Blaise Pascal)

We must admit that justice is not enough as a moral or ideal value, it must have real power to be enforced. So, weak justice that cannot punish injustice or protect fundamental values automatically becomes ineffective and decorative. Society must provide laws and institutions with the authority, means, and capacity for coercion to ensure that justice is upheld (Negru B, 2018. Pg. 232).

The Nürnberg trials raised fundamental questions about the impartiality of the application of international criminal law: the central issue being whether impartial justice was applied or whether it was an instrument of the Allies’ victory (Zolo, 2009)?

The Nürnberg trials sparked intense debate about the nature and impartiality of international justice. One of the frequently cited criticisms is that of „victors’ justice”- a theory according to which the tribunal was an instrument of the allied powers, used to punish only the defeated, without analyzing their own behavior (Zolo, 2009). So, it is argued that the absence of a universally applied legal framework would diminish the moral and legal legitimacy of the trial.

In other words, the concept of „victors’ justice” thus becomes relevant when only some of the actors involved in a conflict are subject to criminal prosecution. On the other hand, the principles of universal human rights affirm that certain norms and values, such as the prohibition of genocide, torture, and aggression, are part of the category of universal norms and must be respected regardless of the power or status of the actors (Cloșcă, 1992). However, the criminals were tried by the four powers- the United States, Great Britain, the Soviet Union, and France-on the grounds that the Germans were no longer capable of administering fair and equitable justice (Jackson, 1947).

**THE LEGALITY OF CRIMINALIZATION AND THE HISTORICAL EXCEPTION AT
NÜRNBERG: A DOCTRINAL REASSESSMENT**

The signatory powers created this Tribunal, defined the law it would apply prior to the start of the actual trial on August 8, 1945, and devised a procedure for the proper conduct of the trial. In doing so, they achieved together what any of them could have done individually, for there was no doubt that any country had the right to create special courts to apply the law in this way. As far as the organization of the trial was concerned, all the defendants had the right to demand was a fair trial based on facts and law (Verdict of the Ministry of Foreign Affairs).

At the same time, we cannot claim that the four victorious powers committed an abuse, since before adopting the sentence and establishing the punishments for each of the participants in the atrocities, the Charter of the International Military Tribunal was adopted, on August 8, 1945, which clearly and concisely specified the crimes falling under the individual criminal responsibility of war criminals, as well as the penalties for such acts, the Charter being adopted under the power of a special law. The jurisdiction of the Tribunal is defined exclusively by the Agreement and the Charter, and the crimes falling within the jurisdiction of the Tribunal and giving rise to individual criminal responsibility were expressly provided for in Article 6 (Charter of the International Military Tribunal).

The tribunal ultimately found that some of these defendants planned and waged wars of aggression against 12 states and are therefore guilty of these crimes. This eliminates the need to discuss in detail or even analyze in detail the extent to which these wars of aggression were also wars in violation of international treaties, agreements, and assurances. These treaties were presented in the annex to the Indictment (Verdict of the Ministry of Foreign Affairs).

According to the indictment, the defendants were accused of committing crimes against peace by planning, preparing, initiating, and waging wars of aggression in violation of international treaties, agreements, and guarantees. In addition, the defendants were accused of participating in the creation and execution of a common plan or conspiracy to commit all these crimes (Verdict of the Ministry of Foreign Affairs).

The Charter is not an arbitrary exercise of power by the victorious peoples, but, from the perspective of the Tribunal, as will be demonstrated, it is an expression of international law that already existed at the time of its creation and, in this sense, is itself a contribution to international law (Charter of the International Military Tribunal).

In defense of the defendants, it was insisted that the fundamental principle of both international and domestic law is that a crime can only be punished if there is a corresponding law: „*Nullum crimen sine lege, nulla poena sine lege*” (Verdict of the Ministry of Foreign Affairs). At the same time, as an argument for the violation of legality, it was argued that the principle of „*nullum crimen sine lege*” does not imply a limitation of sovereignty, but is only a general principle of justice (Verdict of the Ministry of Foreign Affairs).

It is clearly incorrect to claim that it is unjust to punish those who, contrary to treaties and guarantees, attack neighbouring states without warning. In such circumstances, the perpetrator must know that he is committing an unjust act, and not only would it not be unjust to punish him, but, on the contrary, it would be unjust to leave the evil he has committed unpunished. However, it is clear that, given the positions they held in the German government, the defendants, or at least some of them, must have known about the treaties signed by Germany prohibiting the use of war to resolve international disputes (Verdict of the Ministry of Foreign

Affairs). They must have known that they were acting contrary to international law when they deliberately pursued their plans of aggression and invasion. If we consider this issue exclusively in the light of the present case, it may be concluded that this principle is inapplicable in the present circumstances.

The following arguments could also be used to support those mentioned above:

- ✓ modern international justice is based on the recognition of universal norms that determine the existence of fundamental limits in war and the protection of the civilian population;
- ✓ the concept of crimes against humanity was established at Nürnberg, reinforcing the idea that certain actions are always illegal, regardless of the national context or the power of the state;
- ✓ the moral argument: if mass atrocities go unpunished, fundamental human rights are violated and the international order is endangered;
- ✓ international tribunals must reconcile two realities: the limitations imposed by international politics and the need to uphold universal norms;
- ✓ Nürnberg represented a compromise: retroactivity was justified by the exceptional gravity of the acts and by universally recognized fundamental principles;
- ✓ in essence, the Tribunal was the first major experiment in international criminal responsibility, combining legality, morality, and political power;
- ✓ this approach sparked discussions about impartiality, equality in the application of the law, and preventing accusations of „victors’ justice”.

Modern international justice continues to be marked by tension between political interests and respect for universal principles (Schabas,1997,Pg.27). This tension remains relevant in contemporary courts, where criminal responsibility is applied selectively depending on geopolitical circumstances, but always in relation to recognized universal norms.

On the other hand, however, modern jurisprudence and doctrine highlight that the Nürnberg trials transcended the logic of revenge and legitimized the idea of a universal system of values, applicable regardless of the political interests of the time, affirming the principle that certain acts are intrinsically prohibited in all circumstances, as they represent direct attacks on human dignity and the international order (Pivniceru,1999).

5. Conclusions and Recommendations

The analysis carried out in this paper has highlighted the profoundly ambivalent nature of the Nürnberg trials in relation to the principle of criminal legality, enshrined in the maxim *nullum crimen, nulla poena sine lege*. The International Military Tribunal represented both a break with positivist-legalistic dogma and a founding stage in contemporary international criminal law.

Inevitably, this moment generated tensions between the imperative to punish the atrocities committed and the need to respect fundamental legal guarantees, among which the legality of criminalization occupies a central place.

On the one hand, the Nürnberg trial can be perceived as a deviation from criminal law. At the time the crimes were committed, crimes against peace and crimes against humanity were not regulated by an international criminal code with binding legal force. The Charter of the

THE LEGALITY OF CRIMINALIZATION AND THE HISTORICAL EXCEPTION AT NÜRNBERG: A DOCTRINAL REASSESSMENT

Tribunal of August 8, 1945, expressly introduced these criminal offenses after the acts had been committed, which, formally, is equivalent to a retroactive application of criminal law, an aspect that contravenes the principle of *nullum crimen sine lege praevia*.

At the same time, the defense based on the execution of superior orders was rejected, even though this ground for exemption from liability was recognized in international and military law at the time. This „exception to legality” sought to respond to an unprecedented context, but it raises the question of whether universal criminal law can allow exceptions even in extreme circumstances. In this scenario, Nürnberg risks being perceived as a manifestation of the principle of victors’ justice, whereby the victors created rules *post factum* to punish the vanquished. Critics might argue that the lack of a permanent court, the composition of the tribunal, and the absence of prior general provisions diminished the appearance of impartiality and equality of arms.

On the other hand, a thorough analysis reveals serious grounds for concluding that the Nürnberg Tribunal did not constitute a genuine violation of legality, but rather a necessary and legitimate extension of its content, adapted to situations of extreme barbarity.

Although written law was insufficient, international customary rules and existing conventions (The Hague 1899/1907, Geneva) already prohibited atrocities against the civilian population, mass extermination, torture, deportations, or wars of aggression. The crimes tried at Nürnberg were inherently violations of universal moral and legal principles already recognized by the international community.

The tribunal ruled that individuals in positions of command „should have known” that their actions violated international treaties and international law of war, thereby ruling out the excuse of legal ignorance and reinforcing individual criminal responsibility, even within totalitarian political systems. In this vein, the reconceptualization of criminal legality at Nürnberg sought to protect the fundamental values of humanity, given that Nazi domestic law had turned the law into an instrument of oppression and extermination.

The result was the affirmation of a substantive legality based on customary norms, moral imperatives, and fundamental principles of civilization, as opposed to a strictly formal-positivist legality, which was susceptible to covering up crimes committed under the guise of state legality.

The Nürnberg trial in this way inaugurated a legal model in which the law cannot serve barbarism, enshrining the idea that the supreme norm is the protection of humanity and that legality cannot become a shield for impunity. The tribunal demonstrated that justice cannot remain a theoretical value, but must possess normative force and real coercive capacity.

The rationale behind what has been termed the „exceptional retroactivity” of the norms applied at Nürnberg lies not in arbitrary legal innovation, but in the moral and juridical necessity to sanction offences that are imprescriptible and that threaten the international community as a whole.

This perspective later informed the creation and functioning of international tribunals for the former Yugoslavia and Rwanda, as well as the modern architecture of the International Criminal Court and the doctrine of individual criminal liability for grave international crimes.

Ultimately, the Nürnberg proceedings revealed that the principle of legality cannot be understood in an inflexible manner or detached from the superior values underpinning the

international legal order. Even if certain aspects may appear to diverge from classical legality, the essence and objective of the tribunal aligned with the spirit of the law, the ideal of justice, and the imperative to safeguard humanity from egregious violations. Rather than a repudiation of legality, Nürnberg represented a recalibration of its meaning.

So, the Nürnberg experience cannot be reduced either to „victors’ justice” or to a flawless embodiment of traditional legality. It stands as a pivotal historical synthesis where formal legality was reinforced by moral legitimacy, allowing law to emerge as a universal shield against extreme abuses of power. In this sense, the so-called „Nürnberg exception” functioned not as a deviation, but as a foundational element in the development of international criminal law- demonstrating that when confronted with barbarity, the law must evolve, not remain silent, in order to defend human dignity.

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**THE LEGALITY OF CRIMINALIZATION AND THE HISTORICAL EXCEPTION AT
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