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THE “LESSONS OF NUREMBERG”: THEIR USE AND ABUSE IN THE CURRENT RUSSIA-UKRAINE WAR

Abstract: *The Russian aggression against Ukraine is heavily influenced by the memory of World War II (WWII), used by the Russian Federation as a consolidation tool to mobilise Russian society for the fight against a “neo-Nazi Ukraine”. Since 2014 Russia has adopted a set of legislative initiatives aiming to preserve a government-prescribed narrative about the exceptionally heroic role of the USSR in WWII and prohibiting any other interpretation under the threat of criminal and administrative sanctions. Both laws are using the decision of the International Military Tribunal (IMT) as a reference point to justify and legally substantiate such an interpretation, as the USSR was one of “victorious” nations which rendered justice against the Nazis in 1946. This article aims to show how the IMT rulings have been turned into an instrument of Russian propaganda and which lessons can be learned for the future of international tribunals, as well as examines the overall Ukrainian quest for Russian accountability.*

Keywords: Russia, memory laws, Nuremberg, IMT, victor’s justice

INTRODUCTION

On 24 February 2022 Russian President Vladimir Putin announced the start of the so-called “Special Military Operation” (SMO) against Ukraine, with the purported aims of “demilitarization” and “denazification”.¹ The latter term immediately sowed confusion as to what “denazification” could possibly mean in this context, especially bearing in mind that Ukraine is currently headed by a president of Jewish origin.²

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¹ Full text of Vladimir Putin’s speech announcing ‘special military operation’ in Ukraine, ThePrint, 24 February 2022, available at: <https://tinyurl.com/y47fymh9> (accessed 30 April 2023).

² G. Beckerman, *How Zelensky Gave the World a Jewish Hero*, The Atlantic, 27 February 2022, available at: <https://t.ly/UbVc> (accessed 30 April 2023).

Within the same speech Putin referred to the Ukrainian government as a “gang of drug addicts and neo-Nazis”,³ and since then the Russian media have repeatedly called for the “denazification” of the entire population of Ukraine.⁴ The infamous Timofey Segeytsev, in his article on “What Russia must do to Ukraine”, claims that a “winning state” as a “denazifier” ought to eliminate the “aggressive nationalist population” and introduce mandatory re-education for the civilians rejecting Russian values and aiming to preserve their “Nazi” (meaning Ukrainian) identity.⁵ Hence some researchers claim that “denazification” has nothing to do with Nazism as such. It is a “coded historical term, used to justify the war against the neighbouring country, evoking the memory of the USSR’s defence against Nazi Germany”.⁶ For modern Russia, Hitler and Nazi Germany are part of the “usable past” and represent an “almost universal symbol for an existential threat in the Russian collective memory”.⁷ According to this line of reasoning, Putin’s intention is to draw false parallels between Russia’s aggression against Ukraine and the Soviet fight against Nazi Germany.⁸

As noted by Belavusau, Russia is utilizing the narrative of the “Great Patriotic War of 1941–1945” as a purely self-exculpatory rhetoric, for two reasons. First, it aims at positioning the Soviet Union (USSR) as both the major victim and “winner” of the Second World War (WWII). And secondly, it cements “the denial of Russian culpability” by whitewashing the dark pages of Russian history, such as the Molotov-Ribbentrop Pact,⁹ the Russian involvement in the occupation of Poland, and the atrocities committed by the Soviet Army.¹⁰

To secure these narratives, Russia presents itself as a guardian of the “rightful” remembrance of the WWII, which is protected by Russian internal legislation.¹¹ This legislation includes provisions 1) securing a particular historical narrative (such as Constitutional amendments protecting “historical truth”); and 2) prohibiting expressions denying or questioning this narrative (such as provisions within the

³ Vladimir Putin’s speech, *supra* note 1.

⁴ US Department of State, *To Vilify Ukraine, The Kremlin Resorts to Antisemitism*, 11 July 2022, available at: <https://t.ly/ScLL> (accessed 30 April 2023).

⁵ M. Kravchenko, *What should Russia do with Ukraine?* [Translation of a propaganda article by a Russian publication], Medium, 4 April 2022, available at: <https://tinyurl.com/5msrtcs8> (accessed 30 April 2023).

⁶ D. Freid, *How Zelensky Gave the World a Jewish Hero*, Politico, 1 March 2022, available at: <https://t.ly/QMQf> (accessed 30 April 2023).

⁷ E. Gaufman, *World War II 2.0: Digital Memory of Fascism in Russia in the Aftermath of Euromaidan in Ukraine*, 10 *Journal of Regional Security* 17 (2015), p. 18.

⁸ US Department of State, *supra* note 4.

⁹ The 1939 Molotov-Ribbentrop agreement and the non-aggression pact concluded by the USSR and Nazi Germany on 23 August 1939 resulted in the partition of Poland in the aftermath of the German-Soviet invasion following the pact and unleashing WWII.

¹⁰ U. Belavusau, *Mnemonic Constitutionalism and Rule of Law in Hungary and Russia*, 1 *Interdisciplinary Journal of Populism* 16 (2020), pp. 24–25.

¹¹ A. Gliszczynska-Grabias, U. Belavusau, M. Mälksoo, *Memory Laws and Memory Wars in Poland, Russia and Ukraine*, 69(1) *Jahrbuch des öffentlichen Rechts der Gegenwart. Neue Folge* 95 (2021).

Criminal Code prohibiting denial of the Nuremberg Tribunal's decision). These provisions, according to the typology introduced by Gliszczyńska-Grabias, can be characterized as “memory laws”.¹² Mälksoo also notes that such memory laws contribute to “mnemonical security-seeking”, forming a states' stable sense of self and consequently “underpinning and enabling their political agency”.¹³

Generally, these legislative memory politics have shaped the ideological justification for the Russian aggression against Ukraine, framing it as a continuation of WWII.¹⁴ The Russian government is consistently posing itself as a victim of an “unprovoked aggression” in the past (referring to WWII) and simultaneously using the word “Nazi” to vilify its political opponents in the present. At the same time, modern Russia is posing as a victorious nation that liberated the world from the “evils of Nazism”, and as a defender of the world order.¹⁵ In the case of Ukraine, the Soviet myth¹⁶ is used to validate its invasion and to obscure its true nature as being an attack on Ukrainian identity under the guise of a mission against Nazism.¹⁷ The claim that Russia has to liberate Ukraine from a “Nazi occupation” serves as an “excuse to escalate violence to the level of 80 years ago, when every bit of strength was required to rid Ukraine of [real] Nazis”.¹⁸ The Russian war against Ukraine is also bringing a new dimension to the post-Soviet memory politics, employing a new temporality in which elements of the past and present are fused together.¹⁹

One particularly striking example of current Russian military propaganda is its references to the International Military Tribunal (IMT), or the Nuremberg Trials. Specifically, Russia – is claiming to guard “the legacy of the Nuremberg Trials” – calls for “Nuremberg 2.0” to try Ukrainian leaders and soldiers²⁰ in order to provide

¹² A. Gliszczyńska-Grabias, *Memory Laws or Memory Loss? Europe in Search of Its Historical Identity through the National and International Law*, XXXIV Polish Yearbook of International Law 161 (2015), p. 162.

¹³ M. Mälksoo, *Memory Must be Defended: Beyond the Politics of Mnemonical Security*, 6(3) Security Dialogue 221 (2015).

¹⁴ J. Fedor, S. Lewis, T. Zhurzhenko, *Introduction: War and Memory in Russia, Ukraine, and Belarus*, in: J. Fedor et al. (eds.), *War and Memory in Russia, Ukraine and Belarus*, Palgrave Macmillan, Cham: 2017, p. 5.

¹⁵ J. Freidman, I. Burke Friedman, *Russia's Invasion of Ukraine Is the Result of Its Own Failure to 'Denazify'*, Politico, 5 April 2022, available at: <https://t.ly/muni> (accessed 30 April 2023).

¹⁶ In the Russian discourse the term “Great Patriotic War” (1941-1945) is commonly used to refer to WWII. Even these language choices obscure the nature of Russian involvement in the war prior to 1941, particularly of the Molotov-Ribbentrop Pact and of the Soviet atrocities committed in Poland and the Baltics during that period of non-aggression between the 1939 pact and the 1941 Nazi invasion of the Soviet Union, see more N. Kopusov, *The Only Possible Ideology: Nationalizing History in Putin's Russia*, 24 Journal of Genocide Research 205 (2022), p. 209.

¹⁷ W. Talley, *Debunking 'denazification'*, Commission on Security and Cooperation in Europe, 21 April 2022, available at: <https://t.ly/MPhT> (accessed 30 April 2023).

¹⁸ G. Rossoliński-Liebe, B. Willem, *Putin's Abuse of History: Ukrainian "Nazis", "Genocide", and a Fake Threat Scenario*, 35 The Journal of Slavic Military Studies 1 (2022), p. 1.

¹⁹ Fedor et. al., *supra* note 14.

²⁰ A. Krasov, *На Українне проведем Нюрнберґ 2.0 [We'll hold Nuremberg 2.0 in Ukraine]*, Parliament Union of Russia and Belarus, 11 May 2022, available at: <https://cutt.ly/59OOQJw> (accessed 30 April 2023).

“a lesson for everyone who has forgotten the lessons of Nuremberg”.²¹ At the same time, the Ukrainian government is pledging to establish a special tribunal on aggression to prosecute the highest military command of Russia, which is currently not possible under the auspices of the International Criminal Court (ICC) due to jurisdictional difficulties.²²

Hirsch explains that the “lessons of Nuremberg” in the modern Russian interpretation are based on a patriotic-nationalistic history of WWII, where the Russians cannot organically be perpetrators or fascists as these labels are reserved for the “Nazis”. This narrative of WWII is protected by Russian memory laws, which are utilizing “the Nuremberg verdict”²³ to whitewash the ugly past. According to Nuzov, Russia has been at the “forefront of legal innovation with respect to the most nefarious types of memory laws, with at least seven laws that restrict historical debate around Soviet responsibility for international crimes”.²⁴

That narrative is now directly instrumentalized by the Russian legislation prohibiting any attempt to “deny” or “distort” the findings of the IMT or question the Soviet’s role as “the World’s liberator from Nazism”, under the threat of criminal and administrative sanctions. Moreover, the IMT and its rulings are actively used among the general Russian public – and especially children and youth – as an instrument to instil a specific narrative about the Soviet role in WWII. For example, to quote Russian Foreign minister Sergey Lavrov, “the heritage of the Nuremberg Tribunal is not limited to the sphere of law, but has a colossal political and educational value”.²⁵ Francine Hirsch notes that the memory of Nuremberg has also become “a part of Russia’s patriotic education”.²⁶ Hence, the IMT’s procedural deficiencies have allowed the USSR to disguise itself as a “victorious nation” judging the most heinous crimes of the 20th century. This narrative has turned into a powerful tool which simultaneously instils a certain pride and instrumentalizes the feeling of self-righteousness this role grants to Russia as the successor of the USSR.

Therefore, this article aims to answer the question: How has a ruling of the IMT become a foundation for memory laws which are now being used as instruments of

²¹ F. Hirsch, *Why Ukraine and Russia Both Look to the Nuremberg Trials*, The Time, 26 May 2022, available at: <https://cutt.ly/n9OOE7s> (accessed 30 April 2023).

²² *Україна підтримала ініціативу “Нюрнберг-2” щодо притягнення Росії та її лідерів до відповідальності* [Ukraine supported the “Nuremberg-2” initiative to bring Russia and its leaders to justice], Прумау, 6 May 2022, available at: <https://tinyurl.com/3y4exbu3> (accessed 30 April 2023).

²³ Hirsch, *supra* note 21.

²⁴ I. Nuzov, *Legislating Propaganda*, 20(4) Journal of International Criminal Justice 805 (2022), p. 807.

²⁵ *МІД нагадав Європі про Нюрнберзький трибунал* [The Foreign Ministry reminded Europe of the Nuremberg Tribunal], Pobeda.rf, 20 November 2020, available at: <https://cutt.ly/G9OOYII> (accessed 30 April 2023).

²⁶ A. Roth, *Kremlin Mulls Nuremberg-Style Trials Based on Second World War Tribunals*, The Guardian, 28 May 2022.

modern Russian propaganda? These laws not only restrict freedom of expression but directly affect teaching and the public perception of history. To analyse this question, it is proposed to clarify how the IMT ruling has influenced international jurisprudence and international legal consciousness; what deficiencies in the trial proceedings are now allowing Russia to use it as a legitimisation tool for the ongoing aggression against a sovereign nation; how it influences the debate in Russia; and the broader consequences of inserting history into law and the role of international tribunals in this process. In conclusion, it will discuss which “lessons of Nuremberg” are still haunting the modern international criminal law system and which pitfalls ought to be avoided in a modern quest for international justice.

1. THE SIGNIFICANCE OF THE IMT JUDGMENT WITHIN THE LEGAL PRACTICE

The IMT undoubtedly had a profound effect on the development of the international legal system, especially in relation to the prosecution of war crimes and the international criminal law regime. According to Hafetz, although states had punished war crimes for centuries, it was mostly the case of a victorious state punishing individuals from the vanquished state for war crimes committed against its soldiers. However, the IMT represented a drastic change from the established paradigm, being the first “international trial for crimes against the international legal order”.²⁷

In fact, the IMT is the first international trial that sentenced the high military command of a government and proclaimed that high state officials cannot hide behind the convenient shield of international immunity. On the contrary, the IMT judgment created an “international legal shield” to guard the whole of humanity, with the right of a humanitarian intervention to put a stop to crimes against humanity, thus invalidating the national sovereignty argument.²⁸ But with respect to the current case under discussion, the references to Nuremberg from both the Russians and Ukrainians spark a debate on how the legacy of arguably the most prominent international judicial proceedings in history to date are of relevance in the present times.

The Nuremberg trials have become a part of the history and the political scene of early post-war Europe, as its representations of the Nazi past and responsibility

²⁷ J. Hafetz, *Creating the Template: Nuremberg and the Post-World War II International Prosecutions, Punishing Atrocities through a Fair Trial: International Criminal Law from Nuremberg to the Age of Global Terrorism*, Cambridge University Press, Cambridge: 2018.

²⁸ The Influence of the Nuremberg Trial on International Criminal Law, Robert H Jackson Center, available at: <https://www.roberthjackson.org/speech-and-writing/the-influence-of-the-nuremberg-trial-on-international-criminal-law/> (accessed 30 April 2023).

for that past were incorporated into powerful narratives.²⁹ The IMT's historical significance was in some ways reflected from the very beginning of the trial.³⁰ In this regard, two opposing questions arise: Whether the IMT judgment has aged well – and if not, why not.

As history goes, the IMT consisted of prosecutorial and judicial teams from the allied powers: Great Britain, the USA, France, and the USSR – who reviewed the crimes committed by the Axis power states (Germany, Italy, and Japan). Francine Hirsch notes that a full history of the IMT shows that the USSR substantially helped create international legal norms and the Nuremberg model of justice, such as criminalizing “aggressive war”, substantiating the ex post facto application of the law, and providing the legal rationale for the charge of “crimes against peace”.³¹

At the same time however, the USSR's participation as one of the trial's founders created one of the controversies directly addressed in this article. While the Soviet prosecutors mostly posed themselves as “liberators” who freed the nations from the “menace of Nazism”,³² the role of the USSR in the Molotov-Ribbentrop pact and its partition of Poland in 1939 alongside Hitler strongly suggests that some of the Soviet military command could have (and probably should have) faced charges as defendants. Therefore, despite all the perhaps positive substantive contributions that the USSR brought into proceedings, the mere fact of its participation poses questions as to the trial's credibility.

Some believe that one of the IMT's purposes was an educational one, i.e. providing “a lesson in history” by exposing Nazi crimes and consequently shaming the German people.³³ In this regard, researchers point out that the IMT provided “indelible documentary proof of Nazi guilt”, allowing the media to deliver the “historical truth about atrocities” and ensure “the reverberating pedagogical value of the IMT”.³⁴ However, the “historical truth” of Nuremberg was carved out in a complex interplay of national priorities, available evidence, and interpretation, again in many

²⁹ D. Bloxham, *From the International Military Tribunal to the Subsequent Nuremberg Proceedings: The American Confrontation with Nazi Criminality Revisited*, 98 *History* 567 (2013), pp. 569-570.

³⁰ R. Jackson, *Opening Address for the United States*, available at: <http://fcit.usf.edu/holocaust/resource/document/docjac01.htm> (accessed 30 April 2023)

³¹ F. Hirsch, *The Soviets at Nuremberg: International Law, Propaganda, and the Making of the Postwar Order*, 113 *The American Historical Review* 701 (2008), p. 710.

³² Nuremberg Trial Proceedings, Vol. 7, The Avalon Project, available at: <https://avalon.law.yale.edu/imt/02-08-46.asp> (accessed 30 April 2023).

³³ C. Santry, *The Nuremberg Trial: A Beautiful Idea Murdered by Ugly Facts?*, *E-International Relations*, 19 August 2013, available at: <https://www.e-ir.info/2013/08/19/the-nuremberg-trial-a-beautiful-idea-murdered-by-ugly-facts/> (accessed 30 April 2023).

³⁴ I. Nuzov, *The Role of Political Elite in Transitional Justice in Russia: From False 'Nurembergs' to Failed Desovietization*, 20 *U.C. Davis Journal of International Law & Policy* 273 (2014), p. 289.

ways owing to Soviet participation.³⁵ Thus, the IMT can be characterized both as a “factual history lesson” and a “subjective morality lesson”.³⁶

Interestingly, the Russian news agency TASS claims that the Soviet journalists in Nuremberg warned the party elite that the defendants intended to explain the German aggression against the USSR as a “preventive war”. Hence, in their words, “the Anglo-Saxon prosecution” will definitely try to “publicly condemn the foreign policy of the Soviet Union”³⁷, possibly hinting at the afore-mentioned 1939 Molotov-Ribbentrop agreement. Notoriously, the Soviet prosecutors also tried to pin the Katyń mass execution of Polish officers in 1940 on Germany, a massacre which in fact had been orchestrated by the USSR itself.³⁸ Therefore, in some ways the proceedings did not produce the desired results for the USSR, as despite all its deficiencies it had not turned into a Soviet-dictated triumph of an ultimate “show trial”.³⁹ Albeit the truth behind the Katyń massacre had been sacrificed to serve the Soviet propaganda until the 1990s,⁴⁰ the allied powers did not allow the USSR to pin it on the Nazis. Still, in the USSR the IMT was presented as a symbol of the Soviet victory over German fascism and the emergence of the USSR as a world power.⁴¹

Other contra-IMT arguments are that 1) historical aspirations undermined the judicial procedure; and 2) the limits of the legal process did not enable the IMT to deal with the issue of collective trauma, especially in the cases of mass crimes.⁴²

To conclude, despite all the above-mentioned controversies, the most popular way in which intellectuals have perceived the IMT is not as a judicial process, but a “neatly delineated symbol” of a moral-didactic “lesson” that varies from party to party.⁴³ Telford Taylor accurately predicted that “the conclusion of the trials mark the beginning, not the end, of Nuremberg as a force in politics, law, and morals”.⁴⁴

³⁵ M. Koskeniemi, *Between Impunity and Show Trials*, 6 Max Planck Yearbook of United Nations Law 1 (2002), p. 21.

³⁶ Santry, *supra* note 33.

³⁷ *Процесс: История Международного Военного Трибунала в Нюрнберге глазами журналистов* [The process: history of the IMT as told by the journalists], (TASS), available at: <https://spec.tass.ru/nurnbergskiy-process/> (accessed 30 April 2023).

³⁸ ECtHR (GC), *Janowiec and Others v. Russia* (App. Nos. 55508/07 and 29520/09), 21 October 2013.

³⁹ W. Pomeranz, *Review on Francine Hirsch. Soviet Judgment at Nuremberg: A New History of the International Military Tribunal after World War II* (H-Diplo REVIEW ESSAY 500), available at: <https://networks.h-net.org/node/28443/discussions/11582172/h-diplo-review-essay-500-pomeranz-hirsch-soviet-judgment> (accessed 30 April 2023).

⁴⁰ J. Jackson, *Victors Write the Rules: Hypocrisies and Legacies of the Nuremberg Trials*, 8 Journal of Global Faultlines 265 (2021), p. 267.

⁴¹ Hirsch, *supra* note 31.

⁴² Santry, *supra* note 33.

⁴³ Bloxham, *supra* note 29, pp. 568-569.

⁴⁴ Ch.M. Laico, *Telford Taylor and the Precedent of the Nuremberg Trials*, Columbia University Libraries available at: <https://blogs.cul.columbia.edu/rbml/2018/01/26/telford-taylor-and-the-precedent-of-the-nuremberg-trials/> (accessed 30 April 2023).

It is hard to disagree with Taylor's statement, because in the contemporary discourse the differing interpretations of the Nuremberg proceedings, outcomes, and controversies form the basis for what is currently called "memory wars" within the European debate. And unfortunately, in some ways the forces of Nuremberg are playing on the wrong side of history, by providing much room for manipulation and placing restrictions on historical debate, such as in the Russian case, which is discussed further below.

Even though it is not intended here to diminish the role of the IMT in terms of establishing important legal principles and starting the path toward international criminal justice, its structural deficiencies allow different persons or states to view its significance today in different lights. In the post-war years the IMT was indeed a symbol of a world justice, even though if viewed through a more modern lens the trial proceedings resembled more of a ritual, purporting to demonstrate the victory "of good against evil". Viewed from today's perspective, the circumstances of WWII and its complex history provide little room for such a simplistic understanding, and when taken too literally can hardly avoid the label of "victor's justice" by providing a very one-dimensional and single truth dictated by the winner. The following part of this article will show how modern Russia, as the self-proclaimed successor of the USSR, is currently exploiting the IMT verdict to establish what it deems to be an "objective historical truth" – not subject to any kind of revisionism or even mere critique – and thus as an instrument to effectively whitewash its past.

2. THE RUSSIAN PERCEPTION OF THE NUREMBERG LEGACY

The modern Russian official interpretation of the war excludes the USSR from complicity in unleashing WWII, and the subsequent Soviet occupation of Eastern Europe is portrayed as "liberation", thus legitimizing modern Russia's neo-imperial ambitions.⁴⁵ The IMT reflected the political divisions of the times, with the Soviets treating its trials as "a repeat of their own show trials of the 1930s", and like the show trials the IMT verdicts are used in modern times as a shield against accusations of crimes under Stalin.⁴⁶

Nowadays, any kind of attempts to equate the Nazi and Soviet crimes committed during WWII meet with strong opposition and resentment in Russia. This debate arguably started with the 2008 Prague Declaration on European Conscience and Communism, which called for "recognition that many crimes committed in the name of Communism should be assessed as crimes against humanity [...], in the

⁴⁵ N. Kuposov, *The Only Possible Ideology: Nationalizing History in Putin's Russia*, 24 *Journal of Genocide Research* 205 (2022), p. 209.

⁴⁶ Roth, *supra* note 26.

same way, Nazi crimes [had been] assessed by the Nuremberg Tribunal”.⁴⁷ This declaration was very negatively received in Russia, as putting Stalinism and Nazism on the same level undermined the outcomes of the Great Patriotic War and contradicted the government-dictated media.⁴⁸

Further, the European Parliament resolution of 2019 has empathized that the “Molotov-Ribbentrop Pact and its secret protocols signed by the Nazi Germany and the USSR paved the way for the outbreak of the Second World War”. The resolution references the dual invasion into Poland by Hitler and Stalin; the USSR’s aggressive war against Finland; and the annexation of Romania, Lithuania, Latvia, and Estonia. The resolution also highlights that although the crimes of the Nazi regime were evaluated and punished by the IMT, there is still “an urgent need to raise awareness, carry out moral assessments and conduct legal inquiries into the crimes of Stalinism and other dictatorships”.⁴⁹

Of course, this interpretation was not welcomed in Russia. Putin has condemned the resolution as trying to “shift the blame for unleashing WWII from the Nazis to Communists”. The Russian Foreign Ministry has claimed that the resolution is nothing more than “historical revisionism”,⁵⁰ aimed not only at “denigrating modern Russia as the successor of the USSR”, but also revising “the universally recognized international legal results of World War II, including the decisions of the Nuremberg Tribunal”.⁵¹ In 2020 Putin’s address referred to the “lessons of the Nuremberg Tribunal” as upholding the “truth of historical memory” and as an instrument to “convincingly and reasonably oppose deliberate distortions and falsification of the events of WWII”.⁵²

The Nuremberg narrative – that indeed names only one perpetrator in WWII (in many ways due to its jurisdictional clause limited only to European Axis powers, and

⁴⁷ Prague Declaration on European Conscience and Communism, (03 June 2008), available at: <https://www.praguedeclaration.eu> (accessed 30 April 2023).

⁴⁸ Kopusov, *supra* note 45, p. 214.

⁴⁹ Resolution 2019/2819(RSP) of 19 September 2019 on Importance of European remembrance for the future of Europe [2019].

⁵⁰ *Ответ официального представителя МИД России М.В.Захаровой на вопрос агентства «РИА Новости» в связи с принятием Европарламентом резолюции «О важности сохранения исторической памяти для будущего Европы»* [Response of MFA Spokesperson Maria Zakharova to the RIA Novosti agency on the adoption of the European Parliament resolution “On the Importance of Preserving Historical Memory for the Future of Europe”], available at: <https://tinyurl.com/2p8vmuy2> (accessed 30 April 2023).

⁵¹ *МИД России продолжит защищать историю* [The Russian Foreign Ministry will continue to defend history], Pobeda.rf, 14 November 2022, available at: <https://pobedarf.ru/2022/11/14/mid-rossii-prodolzhit-zashhishhat-istoriyu/> (accessed 30 April 2023).

⁵² *Владимир Путин обратился к участникам Международного научно-практического форума «Уроки Нюрнберга»* [Vladimir Putin addressed the participants of the “Nuremberg Lessons” International Scientific and Practical Forum], Russian Bar Association, 20 November 2020, available at: <https://alrf.ru/news/vladimir-putin-obratilsya-k-uchastnikam-mezhdunarodnogo-nauchno-prakticheskogo-foruma-uroki-nyurnber/> (accessed 30 April 2023).

not on factual grounds) – is being actively disseminated within the Russian public. For example, the portal “Nazi policy of extermination. Atrocities. Retribution. Memory” aims “to protect historical memory, to recall the atrocities committed during the Great Patriotic War” and references today’s crimes “against the civilian population of Donbass and the former Ukrainian SSR”.⁵³ The Russian MPs are also actively exploiting the Nuremberg narrative, calling it “the main weapon in the fight against Nazism”,⁵⁴ demonstrating what “the real evil is” and calling for “protection from misinterpretation by some Eastern European states”.⁵⁵ A Russian academic noted that “the verdict of the ‘court of nations’ was aimed to serve as a formidable warning. The Nuremberg trials are an impartial chronicle to which journalists, lawyers, writers, and historians must turn in search of the truth” and equated the modern Ukrainian state with the Nazis.⁵⁶

Moreover, the “pedagogical” effect of the IMT rulings is most prominent in Russian schools, universities, and even recreational camps. Numerous reconstructions of the Nuremberg trials were held in the Artek Summer Camp for children, beginning in 2017. According to the press release, the event “is aimed at expanding the knowledge of Artek residents about the Great Patriotic War, the losses suffered by the Soviet people, and the decisive role of the USSR in the victory over Nazism”.⁵⁷ This event is curated by the Prosecutor General’s Office of the Russian Federation to “preserve the memory and pass on to the next generations” the Soviet prosecutor’s proof of the defendants’ guilt.⁵⁸ The same event was conducted in 2022 with a scientific conference, where the guests emphasized that “the younger generation around the world should keep the memory of this war in order to prevent similar tragedies in the future”.⁵⁹ At the same time, this reconstruction should also pass

⁵³ *Портал Возмездие защитит историческую память* [Portal Retribution will protect historical memory], Pobeda.rf, 19 October 2022, available at: <https://pobedarf.ru/2022/10/19/portal-vozmehdie-zashhitit-istoricheskuyu-pamyat/> (accessed 30 April 2023).

⁵⁴ *Историческая правда стала оружием* [Historical truth has become a weapon], Pobeda.rf, 19 April 2022, available at: <https://pobedarf.ru/2022/04/19/istoricheskaya-pravda-stala-oruzhiem/> (accessed 30 April 2023).

⁵⁵ V. Matvienko, *Суд народов. Аксиома Нюрнберга* [Court of Nations. Axiom of Nuremberg], 20 November 2020, available at: <http://council.gov.ru/services/discussions/blogs/121555/> (accessed 30 April 2023).

⁵⁶ Александр Звягинцев, *На Украине забыли уроки Нюрнбергского процесса* [Ukraine has forgotten Nuremberg lessons], Edinaya Rossiya, 30 March 2022, available at: <https://er.ru/activity/news/aleksandr-zvyagincev-na-ukraine-zabyli-uroki-nyurnbergskogo-processa> (accessed 30 April 2023).

⁵⁷ *В Артеке проведут реконструкцию Нюрнбергского процесса* [Reconstruction of the Nuremberg trials will be held in Artek], Radio Azzatyk, 26 November 2022, available at: <https://rus.azattyk.org/a/28877488.html> (accessed 30 April 2023).

⁵⁸ *«Юные правоведы» провели реконструкцию Нюрнбергского процесса в «Артеке»* [“Young jurists” conducted re-enactment of the Nuremberg trials in “Artek”], (Artek, 25 November 2022) available at: <https://artek.org/press-centr/news/yunye-pravovedy-proveli-rekonstrukciyu-nyurnbergskogo-processa-v-arteke/> (accessed 30 April 2023).

⁵⁹ *В «Артеке» состоялась реконструкция Нюрнбергского процесса* [Reconstruction of the Nuremberg trials took place in Artek], available at: <https://artek.org/press-centr/news/v-arteke-proshla-rekonstrukciya-nyurnbergskogo-processa/> (accessed 30 April 2023).

on “a sense of pride to be part of a great Russia”, but does not provide a broader perspective on the complex legacy of Nuremberg.⁶⁰

This “convenient” version of Nuremberg is also being promoted at Russian schools. For example, during a history lesson dedicated to the IMT the teacher emphasized that “the trial of the Nazis was instituted only at the insistence of Stalin”, to prevent the “British and the Americans” from falsifying history. In her words, the USSR required documentary proof as a weapon to preserve the “historical truth”.⁶¹ Most notoriously, one of the Crimean MPs has claimed that the attempts to criticize or revise the IMT judgment are aimed at weakening the spirit of the Russian people and diminishing their “moral rights as winners” and their “heroic history” in the subsequent fight.⁶² The Far Eastern Federal University held a special symposium for its students to commemorate the Nuremberg trials and the importance of such commemoration was deemed to be substantiated by, *inter alia*, the rise of the “banderovtsy”⁶³ in Ukraine.⁶⁴

Therefore, the memories of the “Great Patriotic War” are used to equate Ukrainian nationalism with German Nazism, thereby positing that Ukraine, like Germany before it, is the embodiment of absolute evil and an existential threat to Russia, which needs to be eliminated at all costs.⁶⁵ The narrative that the IMT adopted Russia’s position and treated it as a victor in a war of aggression against it is thus a narrative intended to legitimize Russia’s eternal struggle against Nazism everywhere, including in Ukraine,⁶⁶ and impose a particular understanding of the trial’s process and outcomes on Russian students. For example, on 17 April 2023

⁶⁰ Форум «Нюрнбергский процесс: история и современность» состоялся в «Артеке» [Forum “Nuremberg trials: history and modernity” was held in “Artek”], Russian Bar Association, 5 November 2017, available at: <https://alrf.ru/news/forum-nyurnbergskiy-protsess-istoriya-i-sovremennost-sostoyalsya-v-arteke/> (accessed 30 April 2023).

⁶¹ Нюрнбергский процесс: школьники сложили пазл исторического события [Nuremberg trials: schoolchildren put together a puzzle of a historical event], Ogni Agideli, 23 November 2022, available at: <https://ogni-agideli.ru/news/novosti/2022-11-23/nyurnbergskiy-protsess-shkolniki-slozhili-pazl-istoricheskogo-sobytiya-3042284> (accessed 30 April 2023).

⁶² Нюрнбергский процесс: история и современность [Nuremberg trials: history and modernity], Krymskie Izvestiya, 18 November 2022, available at: <https://new.crimiz.ru/rubriki/101-istoriya/19865-nyurnbergskij-protsess-istoriya-i-sovremennost> (accessed 30 April 2023).

⁶³ This refers to the Ukrainian insurgent army fighters in the 1940s headed by Stepan Bandera. Within the Russian discourse, the term “banderovtsy” is used as a label for Nazi collaborators. For more on this, see A. Walke, *Old and new fault lines in the wake of Russia’s assault on Ukraine*, Georgie W. Lewis University, 15 March 2022, available at: <https://history.wustl.edu/news/old-and-new-fault-lines-wake-russia’s-assault-ukraine> (accessed 30 April 2023).

⁶⁴ Семинар-симпозиум «Нюрнбергский трибунал: историческое значение и уроки для современности» [Seminar-symposium “The Nuremberg Tribunal: Historical Significance and Lessons for the Present”], Far East Federal University, 18 November 2022, available at: https://www.dvfu.ru/schools/school_of_education/news/seminar-simpozium-nyurnbergskiy-tribunal-202211/ (accessed 30 April 2023).

⁶⁵ Fedor et al., *supra* note 14, p. 15.

⁶⁶ Nuzov, *supra* note 24, p. 812.

a mandatory lesson on the "Nazi genocide against the Soviet people" was conducted at Russian schools, wherein a video with Alexander Zvyagintsev, the Honored Lawyer of the Russian Federation and legal historian, was shown to students of all ages. In this video address Zvyagintsev not only highlights the "decisive role of the USSR" in the conclusion of WWII but insists that Stalin was the mastermind behind the Nuremberg proceedings, in order to prevent falsifications of history in the future. He concludes with references to "contemporary Nazism" and the current war with Ukraine as a pretext to preserving "the lessons of Nuremberg".⁶⁷ Apart from missing any legal substantiation, Zvyagintsev's speech during this lesson is showing how Russia is blatantly manipulating facts of the IMT to justify the current war. Ukraine has never invaded Russia, and the right to preemptive self-defence is not recognized within international law doctrine. The whole analogy *in casu* is based on *two false premises*: 1) that Ukraine is a fascist/Nazi state (which is simply not true), and 2) that it poses an imminent threat to Russia's existence, just like Nazi Germany to the USSR.

The Russian perception of the IMT judgment is based on three pillars. First, its official position is that the judgment does not merely establish the individual guilt of the Nazi defendants, but in some way acts as a source of undeniable historical truth, subject to no revision. Secondly, the Russian government is effectively instrumentalizing its narrative, both in international and external policies. Internally, it is used as a propaganda tool to instil pride in the current generation for being ancestors of the "great liberators from fascism", and inspire them to take part in the struggle to defend this "historical truth". Externally, the official Russian position is aimed at aggressively defending against any attempt to revise the USSR's heroic role in WWII, and using the threat of "fascism's resurrection" in its neighbouring countries (in this case Ukraine) to justify military action under the guise of "denazification". It should be specifically noted that the occupation of Crimea and military operation against Donbas in 2014 have triggered the adoption of memory laws which reinforce this historical narrative by the threat of criminal and administrative sanctions. The adoption of such laws, based on the above-mentioned interpretation of the outcomes of the Nuremberg judgments is the third pillar of Russian memory politics, and is discussed in further detail below.

⁶⁷ *Разговоры о важном, День памяти о геноциде советского народа нацистами и их пособниками* [Conversations about the important, Day of Remembrance of the genocide of the Soviet people by the Nazis and their accomplices], available at: <https://razgovor.edsoo.ru/video/2486/> (accessed 30 April 2023).

3. THE ROLE OF THE NUREMBERG JUDGMENT IN RUSSIAN MEMORY LAWS

The Russian memory laws are, according to Belavusau, a perfect illustration of “mnemonic constitutionalism”, which places the authority and legitimacy of a state within the boundaries of a certain historical paradigm, which in turn defines current and future attitudes and behaviours of state actors. In this regard, the historical past becomes the foundation for a collective identity prescribed by either the national constitution itself, or by other legal provisions.⁶⁸ These legal provisions *in casu* include the Criminal Code, Constitution, and Code on Administrative offences – all of which are in many ways built on the memory of the Nuremberg trial accepted in Russia.

3.1. Amendments to the Criminal Code

Putin’s memory politics place a strong emphasis on securitization of the past as a matter of existential importance, which requires special protection and even defence as a matter of national security.⁶⁹ Thus, promoting and protecting the Soviet/Russian cult of war remains the main objective of the Russian government’s politics of memory, which function as a state ideology and enjoy full legal protection, including by means of criminal law.⁷⁰ Punitive measures and sanctions are proscribed to suppress any attempts at a different interpretation – and the usage of the IMT judgment plays a central role in these endeavours.

The 2014 Law “Against the Rehabilitation of Nazism” effectively criminalizes speech regarding Russian involvement in the events leading up to the war prior to 1941, particularly of the Molotov-Ribbentrop Pact, as well as of the Soviet atrocities committed in Poland and the Baltics during the period of mutual non-aggression between Russia and Germany from the time of the 1939 pact until the 1941 Nazi invasion of the Soviet Union.⁷¹ Specifically, Art. 354.1 of the Russian Criminal Code establishes the following:

The denial of the facts established by the verdict of the International Military Tribunal for the trial and punishment of the main war criminals of the European Axis countries, the approval of the crimes established by the said verdict, as well as the dissemination of knowingly false information about the activities of the USSR during the Second World War, about veterans of the

⁶⁸ Belavusau, *supra* note 10, p. 18.

⁶⁹ J. Fedor, *Historical Falsification as a Master Trope in the Official Discourse on History Education in Putin’s Russia*, 13 *Journal of Educational Media, Memory, and Society* 107 (2021), p. 110.

⁷⁰ Kaposov, *supra* note 37, p. 215.

⁷¹ Talley, *supra* note 17.

Great Patriotic War shall, when committed publicly, be punishable by a fine in the amount of up to three million rubles, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to three years, or by compulsory labour for a term of up to three years, with the deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years, or by deprivation of liberty for the same period with deprivation of the right to hold certain positions or engage in certain activities for up to three years.⁷²

Koposov notes that this Law is used almost only against those who accuse the USSR of cooperation in unleashing WWII.⁷³ To further exploit the Nuremberg narrative, the Deputy Speaker of the State Duma Irina Yarovaya declared that:

The verdict of the Nuremberg Tribunal has absolute truthfulness and reliability in assessing the facts and events and was initially declared as not subject to revision. Therefore, any attempts to distort and interpret it should be recognized as a crime... In 2014, on my initiative, they adopted a law on responsibility for the rehabilitation of Nazism. I will not hide the fact that I had to resist those who even then began to gradually introduce the ideas of collaborationism. In the example of such countries as Ukraine and the Baltic States, we see the consequences of the introduction of this ideology of justifying Nazism.

She later advocated for amendments to the law, providing even tougher measures to offer protection against possible attempts of Nazism rehabilitation.⁷⁴

Koposov cites the Russian members of the parliament arguing that the formulation of the Law is based on the international consensus on intolerance toward the justification of Nazi crimes “established by the Judgment of the Nuremberg Tribunal”.⁷⁵ However, he refutes this assumption, arguing that Nazi wrongdoings were

⁷² УК РФ Статья 354.1. Реабилитация нацизма [Criminal Code Article 354.1. Rehabilitation of Nazism] (Consultant Plus), available at: https://www.consultant.ru/document/cons_doc_LAW_10699/be763c1b6a1402144cabfe17a0e2d602d4bb7598/ (accessed 30 April 2023).

⁷³ Koposov, *supra* note 37, p. 214.

⁷⁴ *Интерпретацию итогов Нюрнберга предложили считать преступлением* [The interpretation of the results of Nuremberg was proposed to be considered a crime], Pobeda.rf, 21 October 2022, available at: <https://pobedarf.ru/2022/10/21/interpretacziyu-itogov-nyurnberga-predlozhili-schitat-prestupleniem/> (accessed 30 April 2023).

⁷⁵ N. Koposov, *Defending Stalinism by Means of Criminal Law: Russia, 1995–2014*, in: U. Belavusau, A. Gliszczynska-Grabias (eds.), *Law and Memory*, 1st ed, Cambridge University Press, Cambridge: 2017, pp. 307-308.

criminalized “as defined” by the IMT Charter, but not the judgment itself.⁷⁶ This difference is significant, because the 1946 Judgment – which was reached through a number of compromises and controversies – can hardly be viewed as a source of an absolute historical truth, if such a thing exists at all.⁷⁷ However, Russia even praised the law in its 2019 UPR submission, claiming that the outcomes of the Nuremberg Tribunals are not subject to any revision.⁷⁸ The usage of the IMT judgment as a pretext for a memory law is thus a very controversial, even dangerous, endeavour in the present case, as it not only leaves no room for possible historical debate but precludes the mere existence of different views and opinions on the matter.

The adoption and enactment of the above-mentioned laws and amendments have resulted in a number of criminal proceedings being instituted in Russia, and has had questionable implications on the freedom of expression and freedom of historical debate in Russia. The International Federation for Human Rights (FIDH) estimated, in its “Crimes against history report”, that in the period of 2015-2019 the enforcement of Art. 354.1 of the Criminal Code resulted in 25 convictions and only one acquittal. The convictions were mostly of those who spoke out about the USSR’s international crimes in the years 1939-1945; questioned the official narrative of the USSR in WWII; or invoked history in their critique of the current regime. The first person convicted under Art. 354.1 was a mechanic from a city of Perm, who had shared a link on social media to an online article naming the USSR as an active collaborator with Nazi Germany. In 2016, Russia’s Supreme Court ruled that those historical statements contained knowingly false information about the activities of the USSR during WWII, being contrary to the IMT judgment.⁷⁹ The Court qualified the actions of the defendant as posing a risk of the revival Nazi ideology and forming strong negative attitudes towards the role of the USSR in WWII.⁸⁰ However, as rightly noted by some commentators, with the USSR as one of the victors exerting considerable influence at Nuremberg, it was highly unlikely that Soviet collaboration with the Nazis and its invasions into Eastern Europe would get a mention in the Nuremberg judgment⁸¹ – and thus using this judgment as a marker of historical truth is a dubious move. Hence, the USSR’s control over the IMT judgment (albeit an indirect one) is effectively utilized to justify the conviction

⁷⁶ *Ibidem*.

⁷⁷ *Ibidem*.

⁷⁸ The eighth periodic report submitted by the Russian Federation, in accordance with Art. 40 of the Covenant, in 2019, CCPR/C/RUS/8.

⁷⁹ FIDH, *Russia: Crimes Against History*, June 2021, para. 16, available at: https://www.fidh.org/IMG/pdf/russie_pad-uk-web.pdf (accessed 30 April 2023).

⁸⁰ *The Case of Vladimir Luzgin*, Global Freedom of Expression, available at: <https://globalfreedomofexpression.columbia.edu/cases/case-vladimir-luzgin/> (accessed 30 April 2023).

⁸¹ H. Coynash, *Russia’s Supreme Court rules that the USSR did not invade Poland in 1939*, KHPG, 2 September 2016, available at: <https://khp.org/en/1472775460> (accessed 30 April 2023).

of those who merely disseminate materials that contradict government-prescribed narratives.⁸²

Such criminalization can even amount to censorship.⁸³ In commenting on Art. 354.1, it is hard to disagree that the imposition of criminal liability for historical deliberations leads to indirectly labelling anyone who questions the Soviet Union's positive role in the Second World War as a "Nazi" or "Nazi collaborator". Already in 2016, some commentators rightly predicted that the possible outcome of such a law will be an increased revisionism in Russia, which will restrict historical debates and confine them to the courts.⁸⁴

3.2. Constitutional amendments

Art. 67(1) of the Russian Constitution, another element of Russian "mnemonic constitutionalism", aims at protecting "historical truth" and securing respect for the "memory of the defenders of the Fatherland".⁸⁵ The amended Russian Constitution clearly reflects the new wave of memory wars in the CEE region, manufacturing new external enemies during this illusionary "defense of the Soviet past".⁸⁶

The notion of "historical truth" in Russia is, insofar as concerns WWII, directly linked to the Nuremberg judgment – which is presented as an undeniable proof of Russia's dictated narrative.⁸⁷ However, due to the controversies mentioned above, Lauri Mälksoo poignantly demonstrates that the "historical truth" defended in the Russian constitutional amendments has a "contested context and meaning".⁸⁸ The 2020 Constitutional amendments clearly cement the "historical truth" narrative relating to the events of WWII, and even though the amended article itself does not refer to the IMT judgment, it still is relevant *in casu* as being foundation for other Russian memory laws.

⁸² H. Coynash, *Comparing Stalin to Hitler could soon get you prosecuted in Russia, saying they both invaded Poland already has*, KHPG, 7 May 2021, available at: <https://khpg.org/en/1608809059> (accessed 30 April 2023).

⁸³ M. Domańska, *The Religion of Victory, the Cult of Superpower. The Myth of the Great Patriotic War in Contemporary Foreign Policy of the Russian Federation*, 3 Institute of National Remembrance Review 77 (2021–2022), p. 99.

⁸⁴ G. Bogush, I. Nuzov, *Russia's Supreme Court Rewrites History of the Second World War*, EJIL: Talk!, 28 October 2016, available at: <https://www.ejiltalk.org/russias-supreme-court-rewrites-history-of-the-second-world-war/> (accessed 30 April 2023).

⁸⁵ Gliszczyńska-Grabias et al., *supra* note 11, p. 15.

⁸⁶ *Ibidem*, p. 26.

⁸⁷ A.V. Seregin, *Слово ученых* [The Word of Scientists], available at: <https://histrf.ru/uploads/media/default/0001/26/d9e3aaa29073a6dca40b70eb29cf186eacac2395.pdf> (accessed 30 April 2023).

⁸⁸ *Ibidem*.

3.3. New amendments to the Code of Administrative Offences

Russia's 2022 invasion of Ukraine led to the adoption of other restrictive measures regarding the memory of IMT judgment. They include a prohibition against equating the goals, decisions and actions of the leadership of the USSR and Nazi Germany in WWII, as well as prohibiting any denial of "the decisive role of the Soviet people in the defeat of Nazi Germany and the humanitarian mission of the USSR in the liberation of the countries of Europe". These actions were in fact declared illegal in 2021, but without spelling out the punishment for their violation.⁸⁹ On 16 April 2022 Putin enacted new amendments to the Code of Administrative Offences, which prohibit the above-mentioned interpretations and directly refers to the IMT judgment as precluding any possible wrongdoings of the USSR as a "victorious nation".⁹⁰

These amendments are arguably a response to the 2019 European Parliament resolution, and their adoption was directly pushed by the 2022 invasion. Nuzov argues that following the "lawmaker's twisted logic", any attempt to challenge the victorious role of the USSR amounts to a lack of patriotism and discredits the so-called "Special Military Operation" (the reverse is also true, i.e. that discrediting the latter amounts to a slander of the Great Patriotic War).⁹¹

Russia's Investigative Committee has supported the law, stating that it "should become another effective and timely way of protecting historical memory and the conclusions of the International Military Tribunal at Nuremberg."⁹² Memory laws like these aid the perpetration of international crimes, as in the case of Russia's aggression against Ukraine,⁹³ as they build a militant identity and cast doubt on established historical facts.⁹⁴ The law can potentially have a chilling effect on any-

⁸⁹ J. Rofe, *В РФ введен штраф за сравнение СССР и нацистской Германии* [Russia introduced a fine for comparing the USSR and Nazi Germany], Deutsche Welle, 16 April 2022, available at: <https://www.dw.com/ru/putin-podpisal-zakon-o-shtrafah-za-sravnienie-sssr-s-nacistskoj-germaniej/a-61494911> (accessed 30 April 2023).

⁹⁰ Федеральный закон от 16.04.2022 № 103-ФЗ «О внесении изменений в Кодекс Российской Федерации об административных правонарушениях» [Federal Law No. 103-FZ as of 16 April 2022 "On Amendments to the Code of Administrative Offenses of the Russian Federation"], available at: <http://publication.pravo.gov.ru/Document/View/0001202204160015?index=3&rangeSize=1> (accessed 30 April 2023).

⁹¹ Nuzov, *supra* note 24, p. 815.

⁹² Investigative Committee of the Russian Federation, *СК поддержал проект о запрете отождествления действий СССР и Германии во Второй мировой* [The Investigative Committee supported the project on the prohibition of identification of the actions of the USSR and Germany in the Second World War], 6 May 2021, available at: <https://www.pnp.ru/politics/sk-podderzhal-proekt-o-zaprete-otozhdestvleniya-deystviy-sssr-i-germanii-vo-vtoroy-mirovoy.html> (accessed 30 April 2023).

⁹³ Nuzov, *supra* note 24, p. 807.

⁹⁴ *Ibidem*, p. 817.

body planning to research or write about the crimes committed by Stalin and the atrocities perpetrated by the NKVD⁹⁵ in Western Ukraine and the Baltic states.⁹⁶

Most interestingly, both amendments to the memory laws, which referred to the IMT judgment, were adopted in the upheaval brought about by Russia's own aggression against a sovereign state, under the pretext of the "eternal struggle against fascism" as an existential threat to the entire world order. This explicitly shows how Russia is trying to position itself as a successor to the USSR in this struggle and utilize this status as a shield to cover up the most heinous crimes, such as the Molotov-Ribbentrop pact or the Katyń massacre.

The Russian memory laws utilizing the IMT judgment not only raise the twin issues of freedom of speech or freedom of historical debate, but also pave the way for the commission of international crimes in the face of an "existential Nazi threat". Given Russia's strong emphasis on the spirit of "self-righteousness" – arising from the USSR having been among the judges and the prosecutors at the Nuremberg trial – questions arise concerning the role of international tribunals in history-making and the perils that victors' participation in such tribunals may bring. Therefore, the final part of this article will focus on the phenomena of "victor's justice" and how it is used in memory politics.

4. NUREMBERG JUDGMENT, RUSSIAN MEMORY LAWS AND THE LESSONS OF TODAY

The USSR arguably had a special take on the trial's historiographical agenda, as given the totalitarian record of Stalinism and the invasion of the Baltic States and Eastern Poland Moscow's delegates chose to focus on "fascism" as a common threat.⁹⁷ Even though it was posited at the time that the IMT judgment was a failure for the Soviet "propaganda state",⁹⁸ the reasoning of today's Russia clearly indicates that the Soviet propaganda has turned out to be quite successful in the long run.

Firstly, it can be argued that the blindness of international justice 75 years ago has partially contributed to the feeling of self-righteousness that Russia is using today to justify its military aggression. This is evident both in Russia's use of the language of the Nuremberg court – which emphasised the absolute "evils of Nazism" – as well as in Russia's justification today that it is necessary to use all means available to defeat fascism in the context of its aggression against Ukraine.

⁹⁵ The abbreviation stands for "People's Commissariat for Internal Affairs".

⁹⁶ Coynash, *supra* note 82.

⁹⁷ K.C. Priemel, *Historical Reasoning and Judicial Historiography in International Criminal Trials*, in: K. Heller et al. (eds.), *The Oxford Handbook of International Criminal Law*, Oxford University Press, Oxford: 2020.

⁹⁸ *Ibidem*, p. 703.

Secondly, the IMT example is used to expand the halo of perpetual impunity surrounding both the USSR (whose war crimes and crimes of aggression never received a due consideration), and today's Russia as its successor.

At the same time, Russia's use of the "language of Nuremberg" provides an opportunity to examine the very nuanced history of WWII and the USSR's complicity in the crimes it so fiercely condemned in 1946. The Russian memory laws passed in 2014 and 2022 – which directly refer to the "trial of the nations" as establishing ultimate historical truth, subject to no question or revision – clearly demonstrate how important it is that international tribunals avoid the pitfalls of "victor's justice". The IMT had not been able to avoid this, and thus its deficiencies are now playing an unfortunate part in the current war against Ukraine. As discussed previously, even though the "victor's justice" considerations do not delegitimize the outcomes of the IMT in terms of individual guilt, the Russian case clearly shows how important it is to take a nuanced approach to establishing history through international tribunals.

4.1. The role of international tribunals in memory narratives

The official Russian narrative of the Nuremberg trial is that its judgment prescribes undeniable "historical truth", as rendered by the "court of the nations". However, questions subsequently arise as to whether international tribunals are indeed designed and capable of prescribing "historical truth", and what perils hide behind such logic.

Moshe Hirsch notes that whereas international tribunals describe a historical event in their decision, the legal decision itself may constitute a "site of memory", and thus construct collective memories in a certain community.⁹⁹ Ford lists 'setting a historical record' as being among the functions of international tribunals, although he notes that in and of itself it is often of a quite low value. He argues that it can be useful, but only play some minor role, as a means to achieve some other goal, like fostering a reconciliation.¹⁰⁰ Moreover, international criminal tribunals are prone to the risk of focusing on their historical record-setting role, and thus neglecting their primary role, i.e. to determine individual responsibility in a particular case.¹⁰¹ The IMT also aimed to influence the historical record, as its founders intended to affect collective memory by assembling an archive useful to future historians, with the judgment serving "as a lesson in history for future generations".¹⁰²

⁹⁹ M. Hirsch, *The Role of International Tribunals in the Development of Historical Narratives*, 20(4) *Journal of the History of International Law / Revue d'histoire du Droit International* 391 (2019), p. 391.

¹⁰⁰ S. Ford, *A Hierarchy of the Goals of International Criminal Courts*, 27(1) *Minnesota Journal of International Law* 189 (2018), p. 200.

¹⁰¹ *Ibidem*.

¹⁰² A. Cassese, *International Criminal Law*, Oxford University Press, Oxford: 2013, p. 256.

As to the objective of “educating” people about “historical truths” through law, Koskenniemi refers to the realists’ conclusion that the law cannot be of use *in casu*, as “memory” is not be something that can be authoritatively fixed by a legal process.¹⁰³ He notes that even in Germany, the didactic effects of Nuremberg have been obscure due to the Allied policy in occupied Germany; attitudes towards de-Nazification; and the perception of the IMT judgment as “victor’s justice”.¹⁰⁴ As to the latter point, Koskenniemi emphasizes that in order to convey an unambiguous historical “truth”, the trial will inevitably disregard due process by having to silence the accused in order to avoid challenging the “convenient” version of truth presented by the prosecutor, and possibly downplaying the foundations of the tribunal. Such a scenario will ultimately lead to a show trial.¹⁰⁵ This reasoning can also be applied to the IMT and its almost ritualistic nature – that the general public was able to turn a blind eye to the USSR’s complicity in unleashing WWII in 1939 in order to serve the “convenient” version of the “truth”. That “truth” is now being referred to in the Russian memory laws and used as a pretext to justify the aggression against Ukraine – and Koskenniemi’s reservations about “show trials” are gaining a new relevance *in casu*.

The role of international tribunals in memory narratives is a complex and controversial one. On one hand, the key task for any kind of judicial proceedings is to determine individual guilt and issue a verdict in accordance with the established law and facts. On the other hand, in cases like the IMT it is practically impossible for the tribunal to divert itself from the issue of “arbitrating history” and totally isolate itself from the surrounding context of the trial. However, *in casu* the issue is not that of the IMT setting a historical narrative as such, but who dictated and controlled this narrative, and how – it was the victorious nations that issued justice. The USSR history of its involvement in WWII therefore plays a key role in any critique of the Nuremberg trials; in particular its desire to present itself as a victim despite some obvious flaws in such reasoning, and simultaneously use the trial to dictate a narrative that would usefully serve it as “victor”.

4.2. Victor’s justice and the *tu quoque* defence

One of the most prominent criticisms of Nuremberg was its exclusive focus on Nazi crimes, which prompted the accusations of “victor’s justice”. The term “victor’s justice” was first used by Richard Minear in relation to the Tokyo war crime trials,

¹⁰³ Koskenniemi, *supra* note 35, p. 34.

¹⁰⁴ *Ibidem*, p. 5.

¹⁰⁵ *Ibidem*, p. 35.

which had demonstrated “the blindness of Allied justice to the highly charged emotional climate of the early postwar years”.¹⁰⁶

Some dub the IMT as a “victors’ court” because it prosecuted the crimes of the Europe-Axis powers, but did not investigate whether any war crimes were committed by the Allied powers during the bombing of civilian targets in Europe, or by the Soviets during their ‘liberation’ of Eastern Europe.¹⁰⁷ This is relevant in the case of the USSR insisting that only Europe-Axis aggression was covered by the new legal instruments, because otherwise their participation would not be possible in the judicial and prosecutorial teams. However, the Western allies preferred to stay silent on the matter, mainly because it was in their interest to not include the massively destructive bombing campaigns of their own in the IMT agenda.¹⁰⁸

The USSR’s involvement in the IMT proceedings presented a “threat to the legitimacy of Nuremberg and to its legacy”.¹⁰⁹ Given the ambiguity of the above-mentioned facts regarding the Soviet Union’s and allied powers’ dirty laundry, the accused logically raised the defence of *tu quoque* (“you also”).¹¹⁰ The *tu quoque* defense challenged the right of the tribunals to prosecute specific crimes which the Allies had themselves committed.¹¹¹ The claims of the defence concerning the Molotov-Ribbentrop pact and the USSR itself waging an aggressive war against were both rejected during the “post-Nuremberg Trials” held by the USA authorities in their occupation zone in Germany after the IMT.¹¹² Heller claims that the defense was “quintessentially political” and tried to paint the IMT as “victor’s justice” by “revealing the (alleged) hypocrisy underlying the entire proceedings”.¹¹³

Although the *tu quoque* defence does at the first glance look like a political ploy aimed at delegitimizing the trial, given the nuanced participation of the USSR in the partition of Poland it is difficult to see how the investigation of “waging an aggressive war” can be seen as legitimate given the complete omission of the USSR’s role. The situation is aggravated by the fact that a factual accomplice is seated among the founders of the trial against the defeated former ally. Hence, even though from

¹⁰⁶ R.H. Minear, *Victors’ Justice: The Tokyo Trial*, Princeton University Press, Princeton: 1971, p. 229.

¹⁰⁷ V. Peskin, *Beyond Victor’s Justice? The Challenge of Prosecuting the Winners at the International Criminal Tribunals for the Former Yugoslavia and Rwanda*, 4 *Journal of Human Rights* 213 (2005), p. 214.

¹⁰⁸ R. Overy, *BBC - History – World Wars: Making Justice at Nuremberg, 1945-1946*, BBC, 17 February 2011, available at: https://www.bbc.co.uk/history/worldwars/wwtwo/war_crimes_trials_01.shtml (accessed 30 April 2023).

¹⁰⁹ B. Van Shaack, *Setting the Record Straight on the Soviets at Nuremberg*, War on the Rocks, 17 June 2020, available at: <http://warontherocks.com/2020/06/setting-the-record-straight-on-the-soviets-at-nuremberg/> (accessed 30 April 2023).

¹¹⁰ *Ibidem*.

¹¹¹ K.J. Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law*, Oxford University Press, Oxford: 2011, p. 297.

¹¹² *Ibidem*.

¹¹³ *Ibidem*.

a substantive legal viewpoint it does not fully delegitimize the factual findings of the trials, it clearly raises legitimate concerns regarding the procedural part.

4.2.1. Selectivity of the tribunal

Schabas notes that the “victors’ justice” complaint can be divided into three distinct issues, with the third issue being the selectivity of the Tribunal,¹¹⁴ which in the IMT case covered up crimes and other atrocities perpetrated by the victors and which remained unpunished, ranging from the Soviet war crimes to the dreadful bombings of cities in Germany and Japan.¹¹⁵ He later refers in to the Russian intervention in *Kononov v. Latvia*, whereby it was argued that only Nazis could commit war crimes – which makes some sense in light of the selectivity of the prosecution during the IMT. Thus, the IMT distorted the “normal level playing field of the law” by hinting that specific crimes were justified or unjustified depending on who committed them.¹¹⁶ But Schabas does not regard the impunity of war crimes committed by allies as rendering the Nuremberg trials “distorted”.¹¹⁷ In his understanding, some sacrifices can be made in order to bring justice, but the question remains: Will this kind of justice survive in the longer run?

Therefore, international tribunals such as Nuremberg are not the best forum to arbitrate history. The history written by the victors is of an ambiguous nature, falls short on various accounts, and even aims to silence the accused in order to protect the desired truth narrative. The “victor’s justice” argument might be insufficient to challenge the whole idea of and outcomes of the trial, especially in terms of the international criminal law developments, but it certainly shows the perils of history-making in courtrooms, with Russia being a notorious example of such a misuse thereof at the present time.

The issue of selectivity is of particular relevance to the current situation in Ukraine and its quest for holding the Russian higher command accountable for the crime of aggression – the task that was fulfilled by the IMT, albeit with the specificities mentioned above. However, is usage of an IMT in reference to the current Russia-Ukraine conflict indeed justified?

¹¹⁴ W. Schabas (ed.), *Unimaginable Atrocities: Justice, Politics, and Rights at the War Crimes Tribunals*, Oxford University Press, Oxford: 2012.

¹¹⁵ W. Schabas, *Victor’s Justice: Selecting “Situations” at the International Criminal Court*, 43 *John Marshall Law Review* 535 (2010).

¹¹⁶ Santry, *supra* note 33.

¹¹⁷ Schabas, *supra* note 115.

4.3. The lessons of Nuremberg for Russia's accountability

Although the Nuremberg judgment was delivered more than 75 years ago, the events surrounding it – described in the present article – demonstrate how important it is to consider the mistakes of the past when examining the issue of international justice.

In January 2023, the Council of Europe published a note on accountability for the crimes committed against Ukraine and mentioned the establishment of a tribunal to prosecute the crime of aggression, to be created following the precedents of other international criminal tribunals, including the IMT.¹¹⁸ On 5 April 2023 President Zelensky called for the creation of a special international criminal tribunal with powers to prosecute those responsible for waging an aggressive war.¹¹⁹ Zelensky's presidential office refers to the IMT as a model for prosecuting Russia's highest political and military leadership.¹²⁰

However, the idea of establishing a separate tribunal *in casu* has not been widely welcomed. Rather than a special tribunal, the ICC is considered to be the best forum to deliver justice on the matter. Moreover, as former ICC President Eboe-Osuji affirmed, the establishment of the ad hoc IMT was a necessity at the time of its creation, while in the present situation, such an approach, driven by “partial interests”, would be a “gigantic step backward”. According to him, there was at the time no alternative to the IMT's “victor's justice”, but today the ICC, established by a wide international consensus, could fill the black hole of the 1940s.¹²¹ However, the main drawback in this reasoning is that the ICC will not be able to prosecute Russia for a crime of aggression¹²² due to jurisdictional limitations, and thus the IMT legacy is put forward as the first successful endeavour in prosecuting this crime. However, the concerns already mentioned in relation to the IMT come up in this regard as well, mostly relating to the possible selectivity of such a prosecution.

4.3.1 The selective justice critique

As described above, the critique of selective justice in the context of the Nuremberg trials related to the victorious Allied powers establishing and prosecuting the defeated state, and thus being able to avoid responsibility for their own wrongdoings. This reasoning only partially applies *in casu*, as Ukraine is not an aggressor state,

¹¹⁸ Accountability for human rights violations as a result of the aggression of the Russian Federation against Ukraine: role of the international community, including the Council of Europe, 31 January 2023, available at: <https://rm.coe.int/accountability-for-human-rights-violations/1680aa086e> (accessed 30 April 2023).

¹¹⁹ A. Macias, *Zelenskyy calls for a Nuremberg-style tribunal to investigate and prosecute Russian war crimes*, CNBC, 5 April 2022, available at: <https://tinyurl.com/2myj4j97> (accessed 30 April 2023).

¹²⁰ S. Lynch, *Ukraine at UN: We need a Nuremberg-style war crimes trial*, Politico, 20 September 2022, available at: <https://www.politico.eu/article/ukraine-un-nuremberg-style-war-crime-trial/> (accessed 30 April 2023).

¹²¹ L. Moreno Ocampo, *A Pragmatic Legal Approach to End Russia's Aggression*, Just Security, 23 February 2023, available at: <https://tinyurl.com/53penupb> (accessed 30 April 2023).

¹²² Lynch, *supra* note 120.

and under its normal jurisdiction the ICC would be able to examine any allegations of possible Ukrainian wrongdoings in relation to the armed conflict with Russia. Nevertheless, the charge of IMT selectivity echoes in the Ukrainian case, and according to McDougal, it is two-pronged: First, the establishment of a singular justice mechanism *vis-à-vis* the Russian aggression against Ukraine would highlight the blindness towards the Middle Eastern problems, such as the situations in Syria and Yemen. Second, if such a tribunal is established and supported by those countries which could potentially be held responsible for past acts of aggression and disables the ICC's jurisdiction with respect to these crimes, its legitimacy will be questionable, similar to the reasoning regarding the Nuremberg trials.¹²³

According to the International Crisis Group analysis, the selective justice critique finds support among the Global South countries, who would hardly support the creation of a specific tribunal on the crime of aggression due to their complicated relationships with the Global North. That also relates to the USA's strong resistance to prosecuting the crime of aggression and its history on the use of force, including in the 2003 invasion of Iraq and its defence of Israel's annexation of the Golan Heights.¹²⁴ Thus, the establishment of a specific tribunal with a jurisdiction limited exclusively to Russian aggression would raise questions of its legitimacy.

Insofar as concerns the second argument related to the charge of selectivity, countries like France, Great Britain, and the USA, who contributed to the international criminalization of aggression, were totally satisfied with prosecution of this offence being a "legal grey area" – possibly due to their own wrongdoings.¹²⁵ According to Kevin Jon Heller, a special tribunal "created and run by the same states that invaded Iraq" and "neutering the crime of aggression at the ICC" would simply be illegitimate.¹²⁶

Hence, to combat these issues Heller proposes that the creation of a new tribunal be permanent and be endowed with the widest jurisdiction possible with respect to future acts of aggression, including those perpetrated by the Western states.¹²⁷ Ocampo proposes an even simpler solution, such as implementing a "structural

¹²³ C. McDougal, *The Imperative of Prosecuting Crimes of Aggression Committed against Ukraine*, Journal of Conflict and Security Law (2023), DOI: <https://doi.org/10.1093/jcsl/krad004>.

¹²⁴ *A New Court to Prosecute Russia's Illegal War?*, International Crisis Group, 29 March 2023, available at: <https://www.crisisgroup.org/global-ukraine/new-court-prosecute-russias-illegal-war> (accessed 30 April 2023).

¹²⁵ C. Kress, S. Hobe, A. Nußberger, *The Ukraine War and the Crime of Aggression: How to Fill the Gaps in the International Legal System*, Just Security, 23 January 2023, available at: <https://tinyurl.com/2krtzsj> (accessed 30 April 2023).

¹²⁶ K.J. Heller, *Creating a Special Tribunal for Aggression Against Ukraine Is a Bad Idea*, *Opinio Juris*, 7 March 2022, available at: <http://opiniojuris.org/2022/03/07/creating-a-special-tribunal-for-aggression-against-ukraine-is-a-bad-idea/> (accessed 30 April 2023).

¹²⁷ *Ibidem*.

fix” that would allow the ICC to eventually take up the issue.¹²⁸ McDougall has completely rejected the selectivity argument on both grounds. First, she notes that treating a particular criminal justice response towards Ukrainian victims as disregarding the plight of people in Syria or Yemen would be an oversimplification. Secondly, dismissing a special tribunal for Russia on selectivity grounds will only further impunity towards serious international crimes globally.¹²⁹ She also distinguishes this proposal from the IMT, illustrating the use of law “by powerful States against defeated enemies” and instead mentions 2010 Kampala, where both non-Western and Western governments “underscored the importance of the prohibition of the use of force and the importance of international justice”.¹³⁰

Hence, the lessons of Nuremberg with respect to the current Russia-Ukraine war clearly highlight the relevance of the *tu quoque* defence, which has shifted from the “defeated state against victor state” paradigm to encompass more global issues of international justice. The selectivity argument – with respect to prosecuting a particular state for a particular crime in a specific court rather than creating universal working mechanisms – in fact plays well with states’ innate desire to create legally grey areas in order to avoid prosecution for their own wrongdoings. Although these concerns do have legitimate grounds and must be treated with care, the situation of the Russia-Ukraine war is clearly different from the case of the USSR (being directly responsible for waging WWII alongside Nazi Germany) trying to create its own version of “historical truth” in the courtroom. The mere fact of creating a special tribunal for the Russian aggression against Ukraine would not be a classic example of a “victor versus loser”, but unless it will lead to a more global effort to combat aggression everywhere, it can be viewed as another example of a “show trial” in the eyes of the Global South. Hence, the legitimate goal in prosecuting Russian aggression should not only be holding Russia accountable as such but eventually creating a permanent and effective global mechanism to ensure peace and justice everywhere.

Moreover, Ukraine should also be cautious with its references to the IMT, both in the cases of Russian accountability in the nearest future, and in the longer run, so as not to give in to the temptation of using international courts as a means to pursue historical justice. As for Russian accountability, the idea that the IMT was established by one of the actual perpetrators of the crime sought to be punished, and was used as a show trial for Soviet propaganda purposes, creates “food for thought” vis-à-vis the Ukrainian quest for justice. As for the usage of courts to build the “truth” narrative, the IMT and its misuse by the Russian propaganda makers provide an

¹²⁸ L.M. Ocampo, *Ending Selective Justice for the International Crime of Aggression*, Just Security, 31 January 2023, available at: <https://tinyurl.com/3dt6zth2> (accessed 30 April 2023).

¹²⁹ McDougall, *supra* note 123.

¹³⁰ *Ibidem*.

exemplary case as to why the decisions of such tribunals should not form a part of national memory laws, and given Ukraine's own troublesome relations of putting history into law¹³¹ this pitfall should most certainly be avoided.

CONCLUSIONS

Currently the language of "Nazism" and "Fascism" is being actively utilized by Russia (as the USSR's successor), which is following the historiographical agenda conveniently laid down 75 years ago, which forms a perfect basis for restrictive memory laws which rely on arguably the most famous court decision in world history. The "language of Nuremberg" has been used by Russia to "justify the unjustifiable" during the aggression in Ukraine¹³² – and even if it is not the fault of the judgment per se, the circumstances related to the establishment and functioning of the trial have made the judgment more vulnerable to speculation and manipulation.

The 2022 Russian invasion into Ukraine has again brought the IMT trials back into the spotlight. As predicted by Telford Taylor, the IMT legacy is alive and ongoing, but he could hardly have predicted that it would resurface in the context of one of the "victorious nations" – assuming that Russia is the continuation of the USSR – utilizing the trials (and its role in them) as a justification for an attack against a sovereign nation.

Notwithstanding the many contributions that the Nuremberg proceedings have made to the development of international criminal law, the old wounds of Nuremberg are now bleeding again. Its ignorance of (or at least silence with respect to) the Molotov-Ribbentrop pact and the partition of Poland between the USSR and Germany; the attempts to ascribe the Katyń massacres to the Germans; and its overall avoidance of the topic of Soviet crimes against the civilian populations of "liberated" territories have turned into a bomb that has given the Russians (as the successor of the Soviet Union) the eternal feeling of self-righteousness vis-à-vis the Soviet (and now Russian) role in WWII. This self-righteousness is now being effectively implemented via Russian memory laws that protect the government-instilled narrative about the "Great victory". The Russian memory laws are utilized to protect the narrative of the "exceptionally heroic role" of the USSR in WWII, and to limit any possible debate thereon, let alone any dissent vis-à-vis the issue of Soviet wrongdoing. The IMT judgment – which on the one hand focused exclusively on

¹³¹ A. Cherviatsova, *On the Frontline of European Memory Wars: Memory Laws and Policy in Ukraine*, 5 *European Papers: A Journal on Law and Integration* 119 (2020), p. 136.

¹³² F. Hirsch, *How the Soviet Union Helped Establish the Crime of Aggressive War*, *Just Security*, 9 March 2022, available at: <https://www.justsecurity.org/80599/how-the-soviet-union-helped-establish-the-crime-of-aggressive-war/> (accessed 30 April 2023).

the wrongdoings of the Europe-Axis powers; and on the other hand was delivered under the auspices of the USSR as a “victorious nation” – is a perfect justification for Russia to instrumentalize the narrative of self-righteousness in its legislation.

It thus comes as no surprise that the first Russian legislation in relation to securing the WWII narrative was passed after its 2014 invasion into Ukraine and included a prohibition of the rehabilitation of Nazism – which was later additionally secured by the 2022 laws prohibiting equating Communism and Nazism. Both laws were substantiated by references to the IMT as the source of “historical truth” – as it conveniently omits the USSR’s complicity in unleashing WWII and the war crimes committed against the German POWs and civilians. And most importantly – it lays a perfect foundation to present the USSR as a victim, who turned victor at an “immeasurable sacrifice” in order to free the world from the absolute evil of Nazism. Hence, the Russian memory laws, adopted with reference to the IMT judgment, not only severely limit the freedom of expression and freedom of historical debate in Russia, owing to their single interpretation of history, but these laws also aim to mobilize the Russian general public – as the ancestors of the great-grandfathers who delivered and secured justice in Nuremberg – to actively protect this narrative. The criminal prosecutions initiated in Russia on the grounds of a purported “rehabilitation of Nazism” show the detrimental effect of memory laws based on a singular understanding of the past. But the memory of Nuremberg is also effectively instrumentalized in education, media, and internal/external politics – serving as a pretext to repeat this “great deed” and free the world from Nazism (in its current Ukrainian version) once again.

The Nuremberg trial was in many ways influenced by the victors’ narratives. Namely, the “victor’s justice” was demonstrated by the balance of powers in the international post-war arena, whereby only the losing side was prosecuted, while the crimes of the winning parties were left unpunished, concealed, and eventually forgotten by the majority of states, *excluding those who have suffered from the Soviet occupation*. The argument of victor’s justice *in casu* is not aimed at delegitimizing the material part of the trial as such (i.e. does not question the guilt of the Nazi defendants), but at demonstrating that in some cases which focus on the pursuit of justice – aimed at securing the narrative of the “victory of good over evil” – international tribunals can be turned into instruments of propaganda, not justice. This eventually leads to the “judicialization of history”, where the winning side is able to utilize a legal instrument to impose its own narrative on what kind of truth about past events society must recognize.

An international tribunal’s primary function should be examining the case at hand and determining individual guilt based on the established facts. As the IMT trials have shown, international tribunals are not appropriate forums to establish

a full and complete historical record, because in many ways such proceedings are heavily influenced by the ongoing tensions in the society; are highly politicized; and in some cases can even deepen existing contradictions. As noted at the beginning of this article, it is not just Russia which is referencing Nuremberg in lieu of the 2022 invasion: Ukraine also tends to use it as a symbol of international justice in its hope to bring the aggressors to trial. However, treating a judicial proceeding as a "symbol" is not an approach that leads to rendering justice as such, but rather aims to show that some particular kind of "justice" has been served.

In light of the recent developments with respect to the establishment of a special tribunal to try the Russian aggression, these concerns also relate to its establishment: its support and promotion by those states who themselves disabled the ICC from the possibility of prosecuting their own wrongdoings can legitimize – in the eyes of the Global South – an opposite reaction. In this way, the reasoning is similar to one described in relation to Nuremberg with respect to the *tu quoque* argument (for example, the USA's invasion of Iraq) and the selectivity of the tribunal, focusing on one particular instance of aggression (Russia against Ukraine), while being unable to scrutinize any other such similar situations. Therefore, even though the reasoning of McDougall provides a reasonable explanation as to why creating a special tribunal for this case is not such a bad idea, as described by Heller, a more sustainable solution should indeed be implemented in the future for an effective prosecution of a crime of aggression.

The lessons of Nuremberg demonstrate the importance of a nuanced and careful approach to adjudicating history; as well as for leaving it out of the courtroom as much as possible. Hence, the legacy of international tribunals should be taken with a pinch of salt, and most definitely should not be implemented into national memory laws as an example of an "objective historical truth". In this regard, Ukraine should be careful to not pursue international justice for the purposes of establishing an historical-record, but instead focus on not only holding Russia for accountable, but also on contributing to ending impunity on a larger scale.