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Post-Second World War Trials in Central and Eastern Europe

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41.1. Introduction

In the aftermath of the Second World War, a wave of trials against persons accused of having committed war crimes, crimes against humanity and other serious crimes under international or national law in the course of the war swept through Europe and the Far East. In addition to the two International Military Tribunals established in Nuremberg and Tokyo, a range of national courts participated in this unprecedented legal enterprise which laid the foundations of modern international criminal law. While some instances of national practice – for example, trials under Control Council Law No. 10 – are relatively well known, others have so far escaped close scrutiny. Seeking to fill in one of these blank spots, this chapter focuses on trials of Second World War criminals that were held in Central and Eastern Europe. More specifically, it discusses the situation in three countries of the region – Czechoslovakia, Yugoslavia and the Soviet Union. This chapter does not aim at putting forward a detailed account of all post-war trials held in these countries, although the presentation of basic facts is necessary to set the scene. The main purpose is to identify certain trends that these trials demonstrated and to assess the compatibility of their course and outcomes with the then emerging principles of international criminal law.

41.2. Post-Second World War Trials in Czechoslovakia, Yugoslavia and the Soviet Union

The geographical scope of this chapter − Czechoslovakia, Yugoslavia and the Soviet Union − is not accidental. The choice was made on the basis of many similarities but also certain differences these countries reveal, which make their comparison interesting. The similarities relate first to the legal tradition – all the three countries belonged to the civil law

tradition,[1] characterised by an emphasis upon written sources of law and by a limited role assigned to case law. Another shared feature is the position of the three countries during the Second World War – they all belonged to the anti-Nazi camp, and they were all attacked and occupied by Nazi Germany. All of them had strong Resistance movements formed in the occupied territory. That also means that after the war, Czechoslovakia, Yugoslavia and the Soviet Union were all part of the victorious Allied bloc. However, they paid a high price for this victory, having suffered heavy casualties[2] and had their economies seriously damaged during the war. Finally, the three countries were all multiethnic in nature, with the predominance of a Slavonic element and the co-existence of various minorities.[3] To complete the picture, it should be recalled that none of the three countries survived the fall of communism: all dissolved after 1990 into several independent states.

Despite these similarities, the three countries also exhibit certain differences. The obvious one relates to their political system: while the Soviet Union had been a totalitarian country since the October Revolution of 1917, Yugoslavia and, especially, Czechoslovakia knew a period of democracy between the First and Second World Wars which continued − albeit for a short period and with certain modifications − in the aftermath of the Second World War when most of the trials took place. The differences in the political systems also had an effect on the legal and

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1 Patrick H. Glenn, *Legal Traditions of the World*, 3rd ed., Oxford University Press, Oxford, 2007, pp. 125–70.

2 The Soviet Union lost 20 million people, Yugoslavia 1 million and Czechoslovakia 350,000, mostly civilians. The countries ranked first, seventh and thirteenth respectively among countries with the highest number of victims.

3 During the Second World War, several of these minorities joined the Nazi camp, often in an attempt to liberate themselves from the dominant nation's influence. This, however, was not only the case with non-Slavonic minorities, as in all the three cases, Slavonic nations (Slovaks in Czechoslovakia, Croats in Yugoslavia and Ukrainians in the Soviet Union) also originally allied with Nazi Germany.

judicial systems of the three countries which, though all belonged to the civil law tradition, were not identical. The domestic legal order of the Soviet Union was already shaped by the communist ideology, which saw law primarily as an instrument in the hands of the working class (or, rather, of the Communist Party of the Soviet Union) aimed at serving the needs of the communist society.[4] By contrast, the domestic legal orders of Czechoslovakia and, to a lesser extent, Yugoslavia in place after 1945 still adhered to the main principles of the continental legal culture, with its emphasis on the protection of individual rights and the standards of fair trial. The situation changed in the second half of the 1940s, when Yugoslavia and later Czechoslovakia passed into the socialist camp, embracing the communist ideology as well. By then, however, most of the Second World War trials had already been completed.

Trials of persons responsible for crimes committed during the Second World War started in all the three countries shortly after, or even prior to, the end of the war. The wave of prosecutions reached its peak in 1945 to 1948. In this period, Czechoslovakia, Yugoslavia and the Soviet Union all actively supported and participated in the activities of the International Military Tribunal ('IMT') in Nuremberg and, in case of the Soviet Union, also in the International Military Tribunal for the Far East ('IMTFE'). All three also voted in favour of the United Nations General Assembly Resolution 95 (I)[5] affirming the principles of international law recognised by the IMT Charter. Since many of the war criminals went into hiding after the end of the Second World War and were only gradually, and often accidentally, discovered in the following decades, the trials continued, occasionally and at irregular intervals, throughout the period of the Cold War. After the end of the Cold War and the subsequent dissolution of the three multiethnic states (the Soviet Union and Yugoslavia in 1991, Czechoslovakia in 1993), the prosecution of Nazi and pro-Nazi criminals was, albeit only in some of the newly established or restored post-communist countries, complemented by the prosecution of war criminals from the victorious camp. Although these later stages are beyond the scope of this chapter, they will be occasionally invoked so as to complete the picture of the post-Second World War trials.

4 See John Quigley, "Socialist Law and the Civil Law Tradition", in *American Journal of Comparative Law*, 1989, vol. 37, no. 4, pp. 781–808.

5 Affirmation of the Principles of International Law Recognized by the Charter of the Nurnberg Tribunal, 11 December 1946, UN Doc. A/RES/95(I).

41.2.1. Post-Second World War Trials in Czechoslovakia

Czechoslovakia was among the first victims of the expansive plans of Nazi Germany. In the autumn of 1938, as a consequence of the Munich Agreement,[6] Czechoslovakia lost its border regions largely inhabited by an ethnic German minority. In March 1939 the Slovak part of Czechoslovakia declared itself to be an independent pro-fascist Slovak State (Slovenský štát), while the Czech part was occupied by Nazi Germany and transformed into the Protectorate of Bohemia and Moravia (Protektorát Čechy a Morava, the 'Protectorate').[7] The occupation lasted until May 1945 and cost the lives of 350,000 Czechoslovak citizens (25,000 soldiers, 340,000 civilians including 280,000 people of Jewish origin murdered in the Holocaust).[8] In January 1942 the leaders of the Provisional Government of Czechoslovakia residing in London signed the St. James's Agreement in which the representatives of several governments in exile set the punishment, through organised war crimes trials, of acts perpetrated by German occupiers against civilian populations in Europe as one of their main aims. The drafts of acts that were intended to serve as the legal basis for such punishment were prepared by the Provisional Government in 1943 to 1945 and adopted, in the form of decrees of the President of the Republic,[9] after the liberation of Czechoslovakia in May 1945.

The process of criminal punishment of persons responsible for atrocities committed during the Second World War, and for other misdeeds related to the occupation, was so unprecedented in the history of

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6 See Quincy Wright, "The Munich Settlement and International Law", in *American Journal of International Law*, 1939, no. 33, pp. 12–32.

7 Certain parts of Czechoslovakia were occupied by Hungary (southern Slovakia) and by Poland (Silesia).

8 See Grzegorz Frumkin, *Population Changes in Europe Since 1939: A Study of Population Changes in Europe during World War II as shown by the Balance Sheets of Twenty-four European Countries*, A.M. Kelly, New York, 1951, pp. 48–49.

9 The decrees of the president of the Republic were an exceptional type of legal act introduced in 1940 when the Czechoslovak parliament could not reconvene. The decrees had the same legal force as laws (decrees) or as constitutional laws (constitutional decrees). To remain in force after the Second World War, they needed to be confirmed by the newly established Parliament. This happened en bloc, for all the decrees, in 1946; Ústavní zákon č. 57/1946 Sb., kterým se schvalují a prohlašují za zákon dekrety presidenta, 28. března 1946 [Constitutional Law No. 57/1946 Coll. Confirming and Promulgating into Law the Decrees of the President, 28 March 1946].

Czechoslovakia that it earned a special title of "retribution" (*retribuce*), which is only used in the Czech language in this context. The retribution relied on three main legal acts. The first act, Decree No. 16/1945 Coll. of 19 June 1945 on the Punishment of Nazi Criminals, Traitors and their Accomplices, and on Extraordinary People's Tribunals (the 'Great Retribution Decree')[10] introduced three categories of war-related crimes – crimes against the state, crimes against people and informing – and established extraordinary people's tribunals to prosecute persons suspected of having committed these crimes. The second act, Decree No. 17/1945 Coll. of 19 June 1945 on the National Court (the 'National Court Decree'),[11] created a special court – the National Court (*Národní soud*) – tasked to prosecute leading pro-Nazi collaborators. The third act, Decree No. 138/1945 Coll. of 27 October 1945 on the Punishment of Certain Offences against National Honour (the 'Small Retribution Decree')[12] conferred upon the municipalities (national committees) the power to prosecute Czechoslovak citizens for non-criminal offences against national honour.[13]

Originally, the three decrees were supposed to apply throughout the whole territory of Czechoslovakia but, in the end, they only applied in the Czech part. The Slovak part adopted its own retributive legislation in the form of the Regulation of the Slovak National Council No. 33/1945 Coll. ('Regulation No. 33').[14] The Regulation differed from the Czech decrees in two respects. First, while the Czech decrees largely took over criminal offences enshrined in the pre-war Criminal Code and the 1923 Law on the

[10] Dekret č. 16/1945 Sb. o potrestání nacistických zločinců, zrádců a jejich pomahačů a o mimořádných lidových soudech, 19. června 1945 [Decree No. 16/1945 Coll. on the Punishment of Nazi Criminals, Traitors and their Accomplices, and on Extraordinary People's Tribunals, 19 June 1945].

[11] Dekret č. 17/1945 Sb. o Národním soudu, 19. června 1945 [Decree No. 17/1945 Coll. on the National Court, 19 June 1945].

[12] Dekret č. 138/1945 Sb. o trestání některých provinění proti národní cti, 27. října 1945 [Decree No. 138/1945 Coll. on the Punishment of Certain Offences against National Honour, 27 October 1945].

[13] See also Jan Kuklík, *Mýty a realita tzv. Benešových dekretů* [*Myths and Reality of so-called Beneš Decrees*] Linde, Prague, 2002.

[14] Nařízení Slovenské národní rady č. 33/1945 Sb. SNR, o potrestání fašistických zločinců, okupantů, zrádců a kolaborantů a o zřízení lidového soudnictví, 15. května 1945. [Regulation of the Slovak National Council No. 33/1945 Coll. on the Punishment of Fascist Criminals, Traitors and Collaborators and on Establishing the People's Judiciary, 15 May 1945].

Protection of the Republic,[15] Regulation No. 33 introduced several new offences not previously known in the legal order. Second, although both the Czech decrees and Regulation No. 33 established extraordinary people's tribunals, the organisation of these tribunals was not identical. In the Czech part, the tribunals only existed at the regional level and had to include members with a degree in law. In the Slovak part, the tribunals were created at several levels, including locally, and the presence of lawyers was not required.

The procedure before the extraordinary people's tribunals and the overall account of their activities in the two parts of Czechoslovakia were, however, largely similar. The tribunals were extraordinary organs established to ensure that "the severe justice called for by unprecedented crimes committed against Czechoslovakia by the Nazis and their perfidious collaborators" (Preamble of the Great Retribution Decree) be served. They were expected to deal with large numbers of people, mostly citizens of Czechoslovakia, who had betrayed their country and worked for, or collaborated with, Nazi Germany (and, in Slovakia, also fascist Hungary). The "leading traitors" were prosecuted by the special National Court, which had its seat in Prague (Czech part) and in Bratislava (Slovakia). Whereas people's tribunals sentenced 30,142 people, the National Court only looked into 36 cases involving 80 persons, out of whom 65 were found guilty. The jurisdiction of the people's tribunals and the National Court encompassed crimes against the state, such as betrayal and participation in the National Socialist German Workers' Party ('NSDAP') and the *Schutzstaffel* ('SS'), and crimes against individuals, such as murder, public violence, hostage taking and slavery. These offences could be used to prosecute individuals having committed crimes under international law, i.e. crimes again humanity and war crimes. The category of crimes under international law itself was not known to the Czechoslovak legal order at the time and was not used during the retribution trials.

Crimes in the jurisdiction of people's tribunals and the National Court were punishable by sentences ranging from the loss of civil honour and the forfeiture of property up to the deprivation of liberty and the death penalty. Capital punishment was imposed in 760 cases by the tribunals

[15] Zákon č. 50/1923 Sb, na ochranu republiky, 19. března 1923 [Law No. 50/1023 Coll. on the Protection of the Republic, 23 March 1923].

and in 18 cases by the National Court. Under Section 31 of the Great Retribution Decree and Section 15 of the National Court Decree, no appeal was allowed against the decisions of the tribunals or the National Court. Convicted persons could plead for a presidential pardon but the plea did not have a suspensory effect. This was particularly problematic in the case of the death penalty since under Section 31 of the Great Retribution Decree and Section 16 of the National Court Decree this penalty had to be executed within two hours after the proclamation of the sentence. At the request of the convicted person, this period could be extended by one hour. Originally, the executions – carried out by means of hanging – took place in public. This gave rise to criticism both in Czechoslovakia and abroad, as the audience often included children and adolescents. In reaction to one particularly scandalous execution, that of the former Nazi vice-mayor of Prague Josef Pfitzner, the government issued a regulation in September 1945 limiting access to executions to those with special permits, and barring access to persons under 18 years of age.[16]

The most important trials were those of the Secretary of State of the Protectorate of Bohemia and Moravia Karl Hermann Frank, members of the Protectorate Government, and the leaders of the fascist Slovak State. Frank was a Czech German who actively worked for the destruction of Czechoslovakia and later became one of the leading figures of the Protectorate. He was responsible for the terror after the assassination of the Reich Protector Reinhard Heydrich. The terror cost the lives of many civilians, including the destruction of whole villages (for example, Lidice and Ležáky). In 1945 Frank surrendered to the US Army but was passed over to Czechoslovakia. He was tried by the people's tribunal in Prague, sentenced to death and publicly executed on 22 May 1946. Frank was the highest German official tried in Czechoslovakia.[17] The Reich Protector for Bohemia and Moravia, Konstantin von Neurath, who preceded Heydrich, was prosecuted by the IMT in Nuremberg and sentenced to 15

[16] Benjamin Frommer, *National Cleansing: Retribution against Nazi Collaborators in Postwar Czechoslovakia*, Cambridge University Press, Cambridge, 2005 [in Czech: *Národní očista. Retribuce v poválečném Československu,* Academia, Prague, 2010].

[17] See Jakub Vozdek, "Proces s K.H. Frankem před mimořádným lidovým soudem" [Trial of K.H. Frank before the Extraordinary People´s Tribunal], Diploma Thesis, Faculty of Law, Charles University, Prague, 2012.

years' imprisonment for crimes against peace, crimes against humanity and war crimes committed, among others, in and against Czechoslovakia.

The trial of the members of the Protectorate Government, and especially the Protectorate President Emil Hácha, was more delicately handled.[18] Unlike Frank, Hácha was popular among the people, who saw this old man not as a criminal but as someone who had sacrificed himself to spare the nation from a bigger evil. There were also interventions in support of Hácha from abroad, including a memorandum sent by the former US ambassador to Czechoslovakia George F. Kennan.[19] When Hácha died in detention in June 1945, the dilemmas involved in the prosecution of the Protectorate Government became less acute. The trial of the five remaining members of the Government (Richard Bienert, Adolf Hrubý, Josef Kalfus, Jindřich Kamenický and Jaroslav Krejčí) started in April 1946, before the National Court, and ended in July 1946. One of the accused (Kalfus) was released due to his participation in the Resistance movement. The others received prison sentences (Hrubý, life imprisonment; Krejčí, 25 years; Kamenický, 10 years; Bienert, 3 years). Despite the effort of the Communist Party of Czechoslovakia (Komunistická strana Československa, CPC) to have the sentences revised (and made tougher), the decision remained in force.

Even more controversial was the trial of the former President of the Slovak State, Jozef Tiso.[20] The trial gave rise to bad blood between Czechs and Slovaks, which sometimes makes itself felt even today. Tiso was a Slovak Catholic priest who was already actively involved in politics during the first Czechoslovak Republic (1918–1938). In March 1939 he was one of those initiating the proclamation of an independent Slovak State of which he became the first (and only) President. In 1945 he was arrested by the US Army and later passed over to Czechoslovakia. He was tried by the National Court in Bratislava and sentenced to death for high treason and crimes directed against persons (especially participation in Holocaust). He was publicly hanged on 18 April 1947.

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18 See Tomáš Pasák, *JUDr. Emil Hácha: 1938–1945*, Horizont, Prague, 1997.

19 See Frommer, 2005, pp. 267–314, *supra* note 16.

20 Bradley Abrams, "The Politics of Retribution: The Trial of Josef Tiso in the Czechoslovak Environment", in István Deák, Jan T. Gross and Tony Judt (eds.), *The Politics of Retribution in Europe: World War II and its Aftermath*, Princeton University Press, Princeton, NJ, 2000, pp. 252–90.

Retributions were not the only means of dealing with crimes committed during the Second World War. Another legally and morally highly problematic means consisted of acts of summary justice (or summary injustice). It is estimated that during the first months after the liberation of Czechoslovakia, thousands of people, especially from the German minority, were killed. Although this practice took place spontaneously, the Czechoslovak authorities did not do much to stop it. Moreover, in May 1946 the President issued Decree No. 115/1946 Coll. on the Legality of Acts Related to the Fight for Regaining Freedom of the Czechs and Slovaks,[21] in which he declared as lawful "all acts done between 30 September 1938 and 28 October 1945 and aimed at contributing to the fight for regaining freedom of the Czechs and Slovaks or at just revenge for acts of the occupiers and their collaborators" (Section 1). This Decree pardoned not only many of the acts of summary (in)justice carried out after the Second World War[22] but also virtually all acts of resistance against Nazi Germany, regardless of their legality under national or international law. This obviously had an impact on the retribution trials, which were limited to crimes committed against (and not by) Czechoslovakia.

Another way of dealing with the legacy of the Second World War was the organised transfer from Czechoslovakia of the German and, to a lesser extent, Hungarian minorities. The Allied countries in Potsdam agreed on the transfer. At the domestic level, it was facilitated by Constitutional Decree No. 33/1945 on the Regulation of Citizenship of Persons of German and Hungarian Nationality[23] and Constitutional Decree No. 137/1945 on the Internment of Unreliable Persons in

[21] Zákon č. 115/1946 Sb. o právnosti jednání souvisících s bojem o znovunabytí svobody Čechů a Slováků, 8. května 1946 [Decree No. 115/1946 Coll. on the Legality of Acts Related to the Fight for Regaining Freedom of the Czechs and Slovaks, 8 May 1946].

[22] The Decree did not prevent the prosecution in all cases of summary (in)justice. The sentences imposed upon persons convicted in such cases were however often reduced after the communist takeover of 1948. This happened, for instance, in case of Colonel Karol Pazúr, who had ordered the summary execution of 265 Slovak Germans in June 1945. Pazúr was sentenced by the Supreme Military Court to 25 years' imprisonment but after 1948 his sentence was reduced to 10 years and, in the end, he was released even before serving his term.

[23] Ústavní dekret presidenta republiky č. 33/1945 Sb. o úpravě československého státního občanství osob národnosti německé a maďarské, 2. srpna 1945 [Constitutional Decree No. 33/1945 on the Regulation of Citizenship of Persons of German and Hungarian Nationality, 2 August 1945].

Revolutionary Times.[24] The transfer that concerned more than three million people was based on the principle of the collective betrayal of Czechoslovakia. This betrayal also served as an argument in favour of retribution trials against non-reliable citizens of Czechoslovakia. At the same time, the transfer became a *de facto* alternative to the trials, especially in the case of low-level Nazi agents who would face prison sentences. Out of the fear that once released from prison, persons of German and Hungarian origin would stay in Czechoslovakia, the Czechoslovak authorities often preferred to have such persons, even when suspected of crimes, transferred to Germany or Hungary rather than prosecuted in Czechoslovakia.

The retribution trials formally ended on 4 May 1947. Whereas the trials usually resulted in harsh sentences in the first months after the Second World War, with the passing of time, the people's tribunals and the National Court became more moderate. Trials that had not been completed by 4 May 1947 were passed over to ordinary courts which also took a rather moderate stance. The decrease in the retribution zeal gave rise to criticism by the CPC, which sought to have some of the trials reopened and revised. After the CPC came to power in February 1948, it had two new legal acts enacted in the Parliament. The first act brought the Great Retribution Decree and the Slovak Regulation No. 33 into effect again.[25] The second act made it possible for regional national committees to review the decisions relating to offences against the national honour reached by virtue of the Small Retribution Decree.[26] Despite these efforts, no new wave of retribution trials started after 1948 and the two acts of 1948 were only rarely applied. Most people imprisoned in retribution trials were released by 1956.

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[24] Ústavní dekret presidenta republiky č. 137/1945 Sb. o zajištění osob, které byly považovány za státně nespolehlivé, v době revoluční, 27. října 1945 [Constitutional Decree No. 137/1945 on the Internment of Unreliable Persons in Revolutionary Times, 27 October 1945].

[25] Zákon č. 33/1948 Sb., jímž se obnovuje účinnost retribučního dekretu a nařízení o lidovém soudnictví a mění některá jejich ustanovení, 25. března 1948 [Law No. 33/1948 Coll. which Reactivates the Retribution Decree and the Regulation on People's Judiciary, 25 March 1948].

[26] Zákon č. 34/1948 Sb., o revisi trestního řízení v některých případech provinění proti národní cti, 25. března 1948 [Law No. 34/1948 Coll. on the Revision of Criminal Procedures in Case of Certain Offences against National Honour, 25 March 1948].

In the following decades Czechoslovakia sought to apprehend war criminals who had fled the country at the end of the Second World War. In the mid-1960s the government established a special Czechoslovak Governmental Commission which was tasked to work in the area. The Commission filed about 90 requests for extradition, mostly addressed to the Federal Republic of Germany, but virtually all were rejected. The Commission was abolished in 1990 after the fall of communism. The search for war criminals has nonetheless continued and, in the post-Cold War atmosphere, has finally provided some results. One example is that of Anton Malloth, who served as a guard in the concentration camp of Terezín situated in the territory of Czechoslovakia. After the war he fled to Austria which refused to extradite him, as did Italy, where he lived from 1948 to 1988, and the Federal Republic of Germany, his home since 1988. In 1948 he was sentenced *in absentia* to death for crimes committed against persons, mostly Jews, in Terezín. In 2000, after repeated requests from the Czech Republic, Malloth was arrested in Germany and sentenced to life imprisonment. He was released from prison for health reasons in 2002 and died shortly afterwards.

41.2.2. Post-Second World War Trials in Yugoslavia

Yugoslavia was another European country that suffered a lot during the Second World War. The country, established as the Kingdom of Serbs, Croats and Slovenes in 1918 and renamed the Kingdom of Yugoslavia in 1929, was invaded by Nazi Germany, fascist Italy and fascist Hungary in April 1941. After a rapid defeat, the country was divided into several parts. Most were annexed by neighbouring countries (Albania, Bulgaria, Germany, Hungary and Italy). The territory of Serbia was directly occupied by Germany and placed under military administration. Croatia declared a pro-fascist Independent State of Croatia (Nezavisna Država Hrvatska), also encompassing Bosnia and Herzegovina. This state was ruled by the fascist Ustashe (Ustaše) movement, led by Ante Pavelić. All these regimes adopted drastic measures against Jews and against other nations, especially the Serbs. Soon after the occupation, a strong Resistance movement was formed in Yugoslavia, which included both communist pro-Yugoslav partisans and royalist pro-Serbian Chetniks (Četnici). In 1945 the movement, by then dominated by the communists led by Josep Broz Tito, managed, with the help of the Allies, to expel the

occupiers from Yugoslavia. In 1946 a communist government led by Tito came to power in the country.

Yugoslavia suffered enormous casualties during the Second World War, losing more than one million of its inhabitants (about 7 per cent of the population), mostly civilians;[27] material damage was assessed at US$47 billion.[28] There was also a lot of hatred and unsettled accounts among the various nations. The measures adopted in Yugoslavia after the war to deal with war criminals and pro-Nazi collaborators took thus a more radical turn than those resorted to in Czechoslovakia. The plan to punish war criminals and collaborators was announced during the second meeting of the Anti-Fascist Council for the National Liberation of Yugoslavia (Antifašističko Vijeće Narodnog Oslobođenja Jugoslavije) on 30 November 1943, when a special body, the State Commission for the Punishment of the Crimes of the Occupiers and their Assistants was established within the provisional government, the National Committee on the Liberation of Yugoslavia (Nacionalni komitet oslobođenja Jugoslavije). Similar commissions were established in the republics. The acts issued by these commissions spoke explicitly about war crimes. The term, however, was used in a general meaning, encompassing not only the category later enshrined in the IMT Charter, but also various other misdeeds committed during the war and the occupation (collaboration with the enemy, participation in fascist organisations and so on).

The first trials of war criminals started shortly after the liberation and the restoration of the unity of the country in 1944. Unlike Czechoslovakia, Yugoslavia did not use the pre-war criminal codes,[29] but adopted a new Act on Criminal Offences Against People and the State ('Criminal Offences Act') on 15 August 1945, which was amended on 16 July 1946 and 4 December 1947.[30] The Act broke with the pre-war

[27] Jozo Tomasevich, *War and Revolution in Yugoslavia, 1941–1945: Occupation and Collaboration*, Stanford University Press, Stanford, 2001, chap. 17, "Alleged and True Population Losses".

[28] Matjaž Klemenčič, "The Rise and Fall of Yugoslavia: from King Aleksandar to Marshall Tito, 1918–1980", in Ann K. Isaacs (ed.), *Empires and Nation States in European Perspective,* Edizione Plus, Pisa, 2002, p. 227.

[29] The "Law of 3 February 1945 on the nullity of legal acts issued during the time of the occupation" declared the nullity of acts issued during the Second World War and also the invalidity of acts applicable in Yugoslavia prior to 6 April 1941.

[30] Zakon o krivičnim delima protiv naroda i države od 15 Augusta 1945 godine [Law on Criminal Offences Against People and the State, 15 August 1945].

regulation in that it introduced new crimes, including those of the collaboration with the enemy and of the fight against the Resistance movement. It also recognised the category of war crimes which encompassed "the commission, organisation or participation, in times of war or enemy occupation, of/in murder, torture, forced removal of population, forced prostitution, measure of terror and other acts" (Article 3[3]). This definition is more precise than the one used in Yugoslavia during the Second World War and, although it does not fully overlap with the definition of the IMT Charter, it is rather progressive (for instance when including sexual crimes). The sentences ranged from the deprivation of civil and political rights and the forfeiture of property up to imprisonment and the death penalty.

Again in contradistinction to Czechoslovakia, no people's tribunals were established in Yugoslavia. Crimes under the Criminal Offences Act were prosecuted by ordinary criminal courts and by military courts. The latter had, by virtue of the Regulation on Military Courts ('Military Courts Regulation') adopted in May 1944,[31] the jurisdiction over crimes committed by military personnel as well as crimes directed against the national liberation struggle of Yugoslavia. Somewhat surprisingly, the Military Courts Regulation, though adopted during the Second World War, was in several ways more moderate than the Great Retribution Decree issued in Czechoslovakia after the war. For instance, while the military courts were entitled to impose the death penalty, the sentence was to be reviewed by a higher instance (Article 30). However, the executions – carried out by means of shooting or, in case of the most serious crimes, hanging – also took place in public. The Military Courts Regulation made it possible for Tito to pardon persons sentenced by military courts or to lower their sentences.[32]

Most trials took place in 1944 to 1946. They served both to settle the account for the atrocities committed during the war and to bolster the power of the Communist Party of Yugoslavia (Komunistička partija Jugoslavije) led by Tito. With the passing of time, the latter element rose

[31] Uredba o vojnim sudovima, Vrhovni štab NOV i POJ, maj 1944 [Regulation on Military Courts, May 1944].

[32] See also Josip Jurčević, "Osnovne značajke presuda jugoslavenskih komunističkih vojnih sudova u _Hrvatskoj 1944. i 1945. godine" [Main Features of the Decisions of Yugoslav Communist Military Courts in Croatia in 1944 and 1945], in *Društvena istraživanja*, 2012, vol. 21, pp. 1007–26.

to prominence, which is what made the US President Harry S. Truman conclude in 1948 that Tito had allegedly "murdered more than 400,000 of the opposition in Yugoslavia before he got himself firmly established there as a dictator".[33] The most prominent defendants in the trials were leaders of pro-fascist regimes in the Yugoslav republics, members of the Serbian non-communist Resistance movement and representatives of the Catholic Church. Their trials were closely related to each other. For example, the leaders of the Catholic Church in Slovenia and Croatia played an important role during the Second World War supporting pro-fascist or occupational regimes and they were therefore prosecuted both as collaborators with the enemy and as ideological competitors of the Communist Party of Yugoslavia.

The first major trial in Yugoslavia was that of Draža Mihailović, the leader of the non-communist Chetnik Resistance movement. Mihailović was arrested in March 1946 and his trial, before the Military Council of the Supreme Court, opened on 10 June and lasted until 15 July. He was tried together with several other leaders of the Chetnik movement, members of the Yugoslav government in exile and pro-Nazi collaborators.[34] Mihailović was accused of war crimes and other crimes committed during the Second World War against Allied forces, communist partisans and civilians, as well as of collaboration with the occupier.[35] Found guilty of most of the 47 counts, he was sentenced to death and executed on 17 July 1946. The trial stirred harsh criticism among historians and lawyers. For instance, Walter Roberts called the trial "anything but a model justice", claiming that it was clear that "Mihailović was not guilty of all, or even many, of the charges brought

[33] Cited in Lorraine M. Lees, *Keeping Tito Afloat: The United States, Yugoslavia, and the Cold War*, Pennsylvania State University Press, University Park, PA, 1997, pp. 46–47.

[34] See Tea Sindbæk, "The Fall and Rise of a National Hero: Interpretations of Draža Mihailović and the Chetniks in Yugoslavia and Serbia since 1945", in *Journal of Contemporary European Studies*, 2009, vol. 17, no. 1, pp. 47–45; and Jozo Tomasevich, *The Chetniks: War and Revolution in Yugoslavia, 1941–1945*, Stanford University Press, Stanford, CA, 1975.

[35] David Martin, *Patriot or Traitor: The Case of General Mihailović: Proceedings and Report of the Commission of Inquiry of the Committee for a Fair Trial for Draja Mihailović*, Hoover Archival Documentaries, Hoover Institution Publication, vol. 191, Stanford University, Stanford, 1978.

against him".[36] In 2006 a proceeding for the rehabilitation of Mihailović was put in motion under the Law on Rehabilitation adopted in Serbia of 15 May 2006. The request is under consideration by the High Court of Belgrade which has not yet reached a decision.[37] Several other persons sentenced in the same trial as Mihailović have already been rehabilitated.[38]

The Mihailović trial was followed by a series of trials against leaders of pro-fascist regimes in the Yugoslav republics and representatives of the Catholic Church. The first of these trials, the so-called Rupnik trial, concerned the Slovene General, Leon (Lav) Rupnik, who had occupied high positions within the pro-Nazi collaborationist structures in Slovenia (President of the Provincial Government of the province of Ljubljana, Chief Inspector of the Slovenian Home Guard). At the end of the war, Rupnik fled to Austria, where he was arrested by the British Army and later returned to Yugoslavia. He was put on trial before the Military Court of Ljubljana, together with other Slovenian collaborators and the German leader of the SS in Slovenia, Erwin Friedrich Karl Rösener. They were all accused of war crimes and other crimes, while the Slovenians were also accused of high treason and collaboration with the enemy. The trial ended on 30 August 1946, when Rupnik, Rösener and several others were sentenced to death. They were executed by firing squad on 6 September 1946. Rösener was placed posthumously in the indictment of the International Military Tribunal for war crimes committed against Slovenian civilians.

In addition to politicians, the Rupnik trial also involved representatives of the Slovene Catholic Church, including the Bishop of Ljubljana, Gregorij Rožman. Rožman was a fervent anti-communist, who preferred co-operation with the Italian and German occupiers to that with the communist Resistance movement. In 1945 he fled to Austria together

[36] William Roberts, *Tito, Mihailović, and the Allies, 1941–1945*, Rutgers University Press, New Brunswick, 1973, p. 307.

[37] "High Court in Belgrade postpones decision on rehabilitation of Draza Mihailovic", *InSerbia Network Foundation, 23 December 2013.*

[38] "Rehabilitacija Slobodana Jovanovića" [Rehabilitation of Slobodan Jovanović], *Vreme*, 1 November 2007. Jovanović was a member of the Yugoslav government in exile. He was tried *in absentia* in the Mihailović trial and sentenced to 20 years' imprisonment, the forfeiture of property and the deprivation of civil and political rights. He died in 1958 in exile in Britain and was rehabilitated in 2007.

with Rupnik but, unlike Rupnik, due to the pressure from the Vatican, he was not surrendered to the Yugoslav authorities. He moved to the US, where he died in 1959. Yugoslavia tried him *in abstentia* and sentenced him to 18 years in prison for high treason and collaboration with the enemy. After Slovenia became independent in 1991 the Catholic Church initiated proceedings for the rehabilitation of Rožman. At the request of the Public Prosecutor, a historical account which was later on published as a book was prepared by two historians, Tamara Griesser Pečar and France M. Dolinar.[39] The historical account revealed various procedural shortcomings which made the Supreme Court of Slovenia annul the 1946 conviction in 2007. The case was sent to the court of the first instance, which suspended the prosecution in 2009.[40]

Similar trials took place in Croatia, against the leaders and members of the pro-Nazi Ustashe movement and those supporting them, again including representatives of the Catholic Church. The main leader of the Ustashe movement, Pavelić, escaped after the war to South America and later to Spain, where he died in 1959.[41] Due to the unavailability of the leader, the trials in Croatia were somewhat less spectacular than those in Slovenia and focused mainly on lower-profile Ustashe members. One of these trials related to the infamous Prebilovci massacre, in which 650 inhabitants of the Serbian village of Prebilovci in Bosnia and Herzegovina were massacred. Of 550 known participants in the massacre, only 14 were brought to justice, of whom six were sentenced to death.

Such trials attracted less attention than politically more sensitive cases, for instance that of the Archbishop of Zagreb Alojzije Stepinać. Stepinać supported the Ustashe regime in Croatia during the war. He was briefly arrested at the end of the war, then released and arrested again in September 1946, when he was charged with collaboration with the occupation forces, support of the Ustashe movement and high treason. His trial, in which he stood alongside several former officials of the Ustashe government, started on 30 September and ended on 11 October 1946. Stepinać was found guilty and sentenced to 16 years in prison. The trial

[39] See France M. Dolinar and Tamara Griesser Pečar, *Rožmanov proces* [Rožman's Trial], Družina, Ljubljana, 1996.

[40] See also Gregor J. Kranj, *To Walk with the Devil: Slovene Collaboration and Axis Occupation, 1941–1945*, University of Toronto Press, Toronto, 2013.

[41] The Yugoslav intelligence service sought to kill him in Argentina but failed and Pavelić, although injured in the accident, finally died of natural causes.

was condemned by the Vatican and several Western states. Stepinać served five years in prison and was released in 1951 by Tito. After the dissolution of Yugoslavia, the parliament of the newly independent Croatia adopted a declaration in 1992 condemning the trial.[42] The judgment has however never been formally annulled.

As in Czechoslovakia, criminal trials were not the only means adopted by Yugoslavia to deal with crimes committed during the Second World War. They were again preceded and accompanied by acts of summary (in)justice. Some of the acts were isolated cases of individual revenge, while others had an organised character. Probably the best-known incident of the latter type was the so-called Bleiburg tragedy, in which thousands of mostly Croatian nationalists were murdered after the end of the war, when returning from Austria to Yugoslavia. Acts of summary (in)justice were partly aimed at settling accounts linked to the war's legacy and partly at preparing the ground for communist rule in the country. Thus, people belonging to organisations potentially inimical to the communists, such as members of other political currents or representatives of the Church, became the preferred targets of purges. Moreover, the end of the war was again followed by transfers of populations, for instance of the Danube Swabians (Germans) to Germany and Austria.

In spite of the attempts of Yugoslavia to deal with war criminals in the aftermath of the Second World War, some of the criminals escaped the country and settled in Western Europe, the US or South America. Yugoslavia sought extradition of these persons, but partly for political reasons and partly due to concerns that the persons would be denied a fair trial, the requests were usually denied. One successful story was that of the Ustashe leader Andrija Artuković, who served as the Minister of Interior, Minister of Justice and Religion and State Secretary in the pro-fascist Independent State of Croatia. After the war, he fled to Austria and was detained by British forces. Yugoslavia requested his surrender but the request was not granted. Artuković was released and later moved to the US. In July 1945 the State Commission for the Punishment of the Crimes of the Occupiers and their Assistants proclaimed him a war criminal. In 1951 Yugoslavia requested his extradition from the US but the request

[42] See Šimun Šito Ćorić, *Cardinal Alojzije Stepinać: Basic Facts about His Person and Work*, Croatian Information Centre, Zagreb, n.d.

was again rejected. After a change in US policy towards Second World War criminals, Yugoslavia renewed the request in the 1980s and, this time, it was successful. Artuković was arrested in 1984 and extradited to Yugoslavia in 1986. He was tried and sentenced to death but, due to his poor health, the sentence was not executed and Artuković died of natural causes in 1988.

The break-up of Yugoslavia marked an important historical and legal turning point. On the one hand, attempts to capture war criminals have not been totally abandoned. On the other hand, in the new states created in the territory of the former Yugoslavia (Croatia, Slovenia, Serbia and so on), there has been a move towards revisiting the course of verdicts declared in post-Second World War trials as well as rehabilitating those found guilty in these trials. The move came at a moment when, after 40 years of communist rule, it was finally possible to freely discuss the irregularities of post-war "justice" and the political nature of some of the trials. At the same time, this move reflects changes in the views that newly established states may hold regarding the acts done during the Second World War. One state (Serbia) adopted a formal legal act on rehabilitation, while others have used usual judicial proceedings (Slovenia) or political means (Croatia) to reach the same goal. Since the horrors of the Second World War were brought back into the public memory during the civil war in Yugoslavia in the 1990s, the prosecution of war criminals from that former period remains both more topical and more sensitive than in other regions in Europe.

41.2.3. Post-Second World War Trials in the Soviet Union

The Soviet Union suffered enormous harm during the Second World War. Although it was drawn into the war relatively late, in June 1941, it lost between 18 and 23 million people, about 14 per cent of its population. The western part of the country, in which most industry had been concentrated before the war, was devastated. Although this was partly compensated by territories gained in 1945, the country took a long time to get over the damage. The Soviet Union originally sought to avoid participating in the war, and for this purpose signed the Molotov-Ribbentrop Pact with Germany in 1939 and took part in the occupation of Poland and the Baltic states. But two years later, in June 1941, the Soviet Union itself was invaded by Nazi Germany. Large parts of its territory, including some of those recently annexed, were occupied and local pro-

Nazi regimes were established (for example in the Baltic countries, Ukraine and Bessarabia). These areas were later liberated by the Red Army and reintegrated, often against the will of their population, into the Soviet Union.

Information on crimes committed in the territory of the Soviet Union started to be published in 1941.[43] Trials of persons accused of war crimes, collaborators and other groups of people (for example, Soviet prisoners of war [POWs] considered as traitors after their return to the Soviet Union) began during the war and continued well into the late 1940s. Unlike in Czechoslovakia and Yugoslavia, the trials in the Soviet Union focused both on crimes committed in Europe and in the Far East. The legal basis encompassed pre-war regulations and extraordinary legal acts, adopted to deal with the Second World War cases. The main example is the Decree of the Presidium of the USSR Supreme Soviet on Measures of Punishment for German-Fascist Villains Guilty of Killing and Torturing the Soviet Civilian Population and Captive Prisoners of War, for Spies, Traitors to the Motherland from among Soviet Citizens and their Accomplices ('Punishment Decree'),[44] adopted on 19 April 1943.

The 1943 Punishment Decree solely dealt with the situation in Europe, focusing on crimes committed by "the German, Italian, Romanian, Hungarian and Finish Fascist outcasts, Hitlerian agents as well as spies and traitors of the homeland from among the Soviet citizens against the Soviet population and Red Army prisoners" (Preamble). Those falling into one of the categories who had directly taken part in murders

[43] See the note of the Ministry of Foreign Affairs of the Soviet Union, 27 April 1942: О чудовищных злодеяниях, зверствах и насилиях немецко-фашистских захватчиков в оккупированных советских районах и об ответственности германского правительства и командования за эти преступления. [On Hideous Crimes, Atrocities and Violence Committed by German-Fascist Aggressors in Occupied Soviet Regions and on the Responsibility of the German Government and Commanders for these Crimes].

[44] Указ от 19 апреля 1943 г. О мерах наказания для немецко-фашистских злодеев, виновных в убийствах и истязаниях советского гражданского населения и пленных красноармейцев, для шпионов, изменников родины из числа советских граждан и для их пособников [Decree of 19 April 1943 on Measures of Punishment for German-Fascist Villains Guilty of Killing and Torturing the Soviet Civilian Population and Captive Prisoners of War, for Spies, Traitors to the Motherland from among Soviet Citizens and their Accomplices]. For the English translation, see Antonio Cassese (ed.), *Oxford Companion to International Criminal Justice,* Oxford University Press, Oxford, 2009, p. 886.

or violent acts against Soviet citizens and prisoners were to be sentenced to death by hanging. Those having helped them were to be sentenced to forced labour in internment camps (*katorga*) for 15 to 20 years. The jurisdiction over the crimes was conferred upon military field courts (военно-полевые суды) established within Army divisions. Each court had three members, who were all officers, and a military prosecutor. The presence of a defence counsel was not foreseen, but in practice defence representatives were sometimes allowed to take part in the trial. The decisions of military field courts were to be confirmed by the commander of the division and executed immediately. Executions by hanging were to take place in public and the bodies were to remain exhibited for several days "for everyone to know, how anyone, who commits violence against civilian population and who betrays his/her homeland, is to be punished and what punishment such a person will get" (Article 4).

By virtue of the Ordinance No. 283 of 19 April 1943, issued by Stalin, with a note "without publishing in the press", the Punishment Decree was passed over to the Red Army with the order of establishing military field courts before 10 May 1943. On 4 September 1943 the obligation to establish military courts was extended to the cavalry and tank units. On 25 November 1943 the Supreme Court of the Soviet Union specified conditions of the application of the Punishment Decree. It stressed the difference between traitors and accomplices and introduced exceptions for certain categories of people (medical staff, teachers and so on.). By virtue of the Decrees of the Supreme Soviet issued on 8 September 1943 and 24 May 1944, the jurisdiction over the crimes foreseen by the Punishment Decree was passed over to ordinary courts, first solely in cases when the military field courts were not able to handle the case, and later generally. At the same time, the death penalty by hanging was replaced by shooting, although the change was not always respected in practice. On 5 December 1944 the jurisdiction over members of nationalist pro-fascist groups in Ukraine, Belarus and the Baltic states was entrusted to the Military Chamber of the Supreme Court of the Soviet Union. The Decree of 26 May 1947 abolished the death penalty in the Soviet Union[45] and reduced the maximum penalty for any crime to 25 years of forced labour.

[45] Указ Президиума Верховного Совета СССР от 26 мая 1947 года Об отмене смертной казни [Decree of the Supreme Council of the USSR of 26 May 1947 on the Abolition of the Death Penalty].

According to the available sources, the total number of persons tried under the Punishment Decree amounted to 81,780 individuals, including 25,209 foreigners.[46] Formally, only citizens of the Soviet Union, Germany, Italy, Romania, Hungary and Finland were subject to the Punishment Decree. Yet, in reality, citizens of other states (for example, Austria, Belgium, Denmark, Japan and Poland) and persons deprived of nationality (the Cossack chieftains, *Kozak ataman*) were tried under the Punishment Decree as well. Although the Punishment Decree was only adopted on 19 April 1943 and had no provisions on retroactivity, it was applied invariable to events prior to and after that date. This practice was confirmed by the decisions of the commander of the military courts of 18 May 1943, which declared that crimes listed in the Punishment Decree were subject to the jurisdiction of military field courts regardless of the date of their commission. Since the trials resulted in thousands of people sentenced to forced labour, 11 new labour camps had to be established to accommodate them. The camps were subject to a strict regime, involving absolute isolation, a 10-hour working day, and no right to correspondence in the first year. Most of those sentenced to forced labour were released in the amnesty declared in September 1955.[47] The amnesty did not extend to those having committed murder and torture of Soviet citizens. Foreign citizens were virtually all repatriated to their home countries on the basis of international agreements by 1955.[48]

[46] Aleksandr E. Epifanov, Ответственность за военные преступления, совершенные на территории СССР в период Великой Отечественной войны 1941–1956 [Responsibility for War Crimes Committed in the territory of the USSR During the Great Patriotic War 1941–1956], VA MVD Russia, Volgograd, 2005.

[47] Указ Президиума Верховного Совета СССР от 17 сентября 1955 года Об амнистии советских граждан, сотрудничавших с оккупантами в период Великой Отечественной войны 1941–1945 гг [Decree of the Presidium of the Supreme Council of the USSR of 17 September 1955 on the Amnesty of Soviet Citizens Collaborating with the Ocupiers in the Period of the Great Patriotic War, 1941–1945].

[48] Указ Президиума Верховного Совета СССР от 28 сентября 1955 года О досрочном освобождении германских граждан, осуждённых судебными органами СССР за совершенные ими преступления против народов Советского Союза в период войны [Decree of the Presidium of the Supreme Council of the USSR of 28 September 1955 on the Early Release of German Citizens, Sentenced by Judicial Organs of the Soviet Union for having Committed Crimes against the Nations of the Soviet Union during the War].

The Punishment Decree gave rise to many trials held in various parts of the Soviet Union.[49] As with Yugoslavia, they served the double function of settling accounts from the Second World War and liquidating political opponents of the communist regime. The first, the Krasnodar trial, took place on 14–17 July 1943 and solely concerned a group of Soviet collaborators with the occupiers. Out of 11 defendants, mostly accused of having voluntary engaged in the services of the German police or army, eight were sentenced to death and three to 20 years of forced labour. The first trial involving Nazi criminals was held on 15–18 December 1943 in Kharkov. The defendants were three German officers and one Soviet collaborator. All were accused of crimes against Soviet civilians and POWs, sentenced to death and hanged on 19 December 1943. These trials took place during the war. Numerous other trials followed after the end of the war. For instance, in the Smolensk trial, held on 15–19 December 1945, 10 Germans were accused of various crimes against Soviet civilians, including murder and rape. They were sentenced to either death by hanging or long terms of forced labour. Some days later, on 25–29 December 1945, a similar trial took place in Bryansk, where four Germans were sentenced to either death by hanging or forced labour. Such trials were held in many other places mostly located in the Western part of the Soviet Union.

Similarly as in Czechoslovakia and Yugoslavia, certain high-profile trials took place in the Soviet Union. One of them was that of the former Cossack leader Grigory Semyonov, who had taken part in the fight against the Bolsheviks in the Russian civil war in 1918–1921 and later on supported the Japanese effort to conquer the Soviet Union in the Second World War. Semyonov was arrested in China in September 1945 and tried, together with other persons (including Generals L.F. Vlasyevski and A.P. Baksheev, the leader of the All-Russian Fascist Party in Manchuria Konstantin Rodzaevski, and Prince Nikolay A. Ukhtomski) in Moscow by the Military Collegium of the Supreme Court of the Soviet Union. On 30 August 1946 Semyonov was sentenced to death by hanging and executed on the same day. Other defendants were sentenced to death by shooting (Rodzaevski, Vlasyevski, Baksheev) or to forced labour (Ukhtomski, sentenced to 20 years, he died in a camp in 1953). In the following years,

[49] Dmitry Nikolaevitch Minaev, Суды над военными преступниками в СССР [Trials with War Criminals in the Soviet Union], *Журнал "Самиздат"* [Journal "Samizdat"], 17 August 2013.

family members of some of the defendants were accused of high treason and sentenced as well, mostly to forced labour.

Other high-profile cases were those of the leaders of collaborationist armies, especially the Russian Liberation Army (Русская Освободительная Армия, 'RLA') and the so-called Krasnovtsi (Красновцы). The RLA was a pro-Nazi unit fighting under German command and composed predominantly of Russian émigrés. At the end of the Second World War, its members and leaders, including General Andrey Andreyevich Vlasov, sought to flee to the West but were mostly either captured by the Red Army or surrendered by the Allies to the Soviet Union. Vlasov and several other leaders were tried in Moscow in July 1946, sentenced to death and hanged on 1 August 1946.[50] The Krasnovtsi were a unit composed primarily of Cossacks who had fled from Russia at the end of the civil war in the 1920s. They fought alongside the Nazis and were either captured or surrendered to the Soviet Union after 1945. Their main leaders, Pyotr Krasnov, Andrei Shkuro and Timofey Domanov, together with the German general assigned to the Cossacks, Helmuth von Pannwitz, were sentenced to death and hanged on 17 January 1947.

Whereas the major trials were over by 1947 in Czechoslovakia and Yugoslavia, in the Soviet Union these trials went on into the 1950s. The most interesting of these later trials is the Khabarovsk trial of 12 Japanese officers accused of the preparation and use of biological weapons. The trial took place from 25 to 30 December 1949 in Khabarovsk, in the Far East and it focused on the activities of the Japanese Units 731 and 100. These units had worked to develop new biological weapons, experimenting on arrested Russian and Chinese civilians and POWs. In at least three instances, biological weapons were used in the territory of China (1940–1942). Although the Punishment Decree did not formally apply to Japanese citizens, it served as the legal basis of the trial. All the defendants were found guilty and sentenced to two to 25 years of imprisonment (the death penalty was abolished at the time). The Khabarovsk trial is unique, as it was the only post-war trial dealing with the production and use of weapons of mass destruction. After the trial, the

[50] See Wilfried Strik-Strikfeldt, *Against Stalin and Hitler: Memoir of the Russian Liberation Movement 1941–1945*, Macmillan, London, 1970; and Kirill M. Alexandrov, *Армия генерала Власова 1944–45* [Army of General Vlasov 1944–45], Exmo, Moscow, 2006.

Soviet Union sent a note to Britain, the US and China suggesting the establishment of a new international tribunal which would prosecute Japanese war criminals, including Emperor Hirohito, who were responsible for the biological weapons programme. The note remained without answer.[51]

Identical to those trials in other countries, the trials in the Soviet Union were preceded and accompanied by acts of summary (in)justice and transfers of the population. These in fact started already during the war and even prior to it. In 1940, about 250,000 Poles were moved from the occupied Polish territories to the northern and eastern parts of the Soviet Union. In 1940–1941, they were followed by about 8,000 foreigners (mostly from the Baltic countries and Scandinavia) and some 100,000 "nationalists" (mostly from the Baltic states, Ukraine and Belarus). During the war, in 1941–1945, a forced transfer was imposed upon German, Finnish and Romanian minorities and many "unreliable" nationalities living within the territory of the Soviet Union. These minorities were relocated to Siberia and Central Asia. After the war, the transfer mainly concerned the German population of Eastern Prussia, which was annexed by the Soviet Union (Kaliningrad region). There is no exact data as to how many people died as a result of the acts of summary (in)justice, yet spontaneous revenge was frequent in the Soviet Union.

After the end of the Cold War, the Soviet Union collapsed and dissolved into 15 independent states. This had an impact upon the assessment of post-Second World War trials. First, there have been initiatives aimed at rehabilitating those condemned and executed or sent to the labour camps. In 1991 laws on the rehabilitation of victims of political repression were adopted in several republic of the former Soviet Union, including the Russian Federation.[52] Under these laws, thousands of requests for rehabilitation have been submitted. Although the laws do not focus specifically on post-war trials, but deal with any instance of political

[51] Vladimir Baryshev, "Хабаровский судебный процесс над японскими военными преступниками (к 60-летию события)" [Khabarovsk Trial with the Japanese War Criminals (on the Occasion of the 60th Anniversary of the Event)], in *Журнал международного права и международных отношений* [*Journal of International Law and International Relations*], 2009, no. 3, pp. 3–9.

[52] See Закон О реабилитации жертв политических репрессий, No. 1761–1, 18 октября 1991 [Law No. 1761–1 on the Rehabilitation of Victims of Political Repressions, 18 October 1991]; See also Law On Rehabilitation of Victims of Political Repressions in Ukraine, N 962-XII, 17 April 1991.

repression, they may apply to cases of politically motivated condemnations and to trials which seriously violated the standards of a fair trial. The practice relating to rehabilitation laws[53] differs among the countries of the former Soviet Union. Some of them (the Baltic states, Ukraine) apply the laws liberally, others (the Russian Federation) are more cautious. For instance, the requests for the rehabilitation of Vlasov, Semyonov or Ukhtomski have all been rejected. Even in Russia, however, dozens of thousands of people have been granted rehabilitation since 1991, including some of those tried in the course of or after the Second World War.

At the same time, the dissolution of the Soviet Union opened up the question of the prosecution of crimes committed by the Soviet Union itself. This question remained a taboo throughout the period of the Cold War. The fall of communism and the break-up of the Soviet Union brought it to the forefront, as part of the process of dealing with the communist past. Probably the best-known case is that of Vassily Makarovich Kononov, a Soviet partisan who led a counter-operation against the Latvian village Mazie Bati resulting in the murder of nine villagers and the destruction of the village in 1944. In 1998 Kononov was charged with war crimes in Latvia. In 1999 he was found guilty and sentenced to six years in prison. In 2000 the conviction was overturned by the Supreme Court of Latvia and he was set free. In 2001 he was charged again and, three years later, found guilty of war crimes and sentenced to 20 months in jail which he had served by then. In 2004 Kononov filed a complaint to the European Court of Human Rights ('ECtHR'), claiming violation of Article 7 of the European Convention on Human Rights (prohibition of retroactivity). In 2010 the Grand Chamber of the ECtHR ruled, by 14 votes to three, that no violation of the European Convention had taken place, because war crimes had already been prohibited by international law during the Second World War.[54]

[53] On rehabilitation under international law in general, see Clara Sandoval Villalba, *Rehabilitation As A Form of Reparation Under International Law*, Redress, London, 2009.

[54] See *Kononov v. Latvia*, Application No. 36376/04, European Court of Human Rights, 17 May 2010.

41.3. Post-Second World War Trials in Czechoslovakia, Yugoslavia and the Soviet Union and International Criminal Law

The previous section sketched the history of post-Second World War trials in Czechoslovakia, Yugoslavia and the Soviet Union. This overview revealed certain common features that the trials in all the three countries shared. At the same time, it is clear that there were important differences in the approaches taken. These common and distinct features of the post-war trials are identified in the first part of this section. The second part focuses on the relationship between the post-war trials in Central and Eastern Europe and developments in the area of international criminal law and, especially, on the main differences between the national trials and the trials taking place before the IMT in Nuremberg and the IMTFE in Tokyo.

41.3.1. Shared and Distinctive Features

Czechoslovakia, Yugoslavia and the Soviet Union all resorted, after the end of the Second World War and exceptionally during the war, to criminal trials of persons who had committed crimes during the war period. Such trials, moreover, did not end in the 1940s and went on for many decades. In fact, they have continued until now and will only end due to "natural causes": the death of the last Second World War criminal. All three countries suffered heavy human and material losses during the war and witnessed horrendous crimes. Some of those crimes were committed by foreign occupiers, mostly Nazi Germans (but also Italians in Yugoslavia and Japanese in the Soviet Union). Others were committed by inhabitants of the occupied countries, especially by members of pro-fascist nations or minorities (for instance Germans and Slovaks in Czechoslovakia). The post-war trials in all the three countries primarily focused on this latter group, because its participation in the crimes, and also its mere support of the enemy occupiers, was seen as unpardonable (high) treason.

The war criminals trials in Czechoslovakia, Yugoslavia and the Soviet Union therefore had a disproportionate impact upon members of certain national groups. This impact was further strengthened by other measures adopted against war criminals and collaborators (and also people belonging to the same national groups as most criminals and collaborators), such as acts of summary (in)justice and forced population

transfers. Whereas the trials sought to take into account individual guilt, other measures were mostly based on the principle of collective guilt and collective punishment. The application of this principle gave rise to feelings of grievance in the targeted communities, which have often survived into the post-Cold War period and have manifested themselves in the attempts to revisit and reassess these post-Second World War measures (rehabilitations, discussions about the transfers of populations and so on). Another group specifically targeted in the post-Second World War criminal trials were political opponents of the communist parties, such as Chetniks in Yugoslavia or Cossacks in the Soviet Union. While in Czechoslovakia the surviving democratic culture and the legal traditions of the pre-war period prevented to a large extent the instrumentalisation of retribution trials, in Yugoslavia and the Soviet Union the trials became an opportunity for the communists to either strengthen their rule and liquidate old enemies (in the Soviet Union, émigrés and participants in the civil war) or to secure power and do away with political or ideological competitors (in Yugoslavia, non-communist Chetnik partisans and the Catholic Church).

The post-war trials in Central and Eastern Europe focused almost exclusively on crimes committed by the defeated countries (Germany, Japan and Italy) and their sympathisers. This can partly be explained by the fact that the majority of defendants were charged with treason and collaboration with the enemy, which obviously could only be committed by the opponents of the victorious states. Yet the attempt to distinguish between the two sides also manifested itself with respect to crimes committed against civilians and POWs. Whereas crimes attributable to Nazi or pro-Nazi forces were prosecuted (and rightly so), those attributable to the Allies were usually passed over in silence. This, again, can partly be accounted for by the unprecedented nature (and geographical scope) of Nazi crimes, yet this certainly was not the only factor. Crimes committed by the Allies and their supporters were often trivialised or justified as legitimate and understandable. This is visible in the case of Czechoslovakia with its 1946 law granting *ex post* amnesty to acts committed with the aim of liberating the country from the Nazi occupation. Yugoslavia and the Soviet Union did not adopt such a law, but in practice the same attitude was adopted with respect to crimes committed by the Resistance movement or the national army.

Such a selective approach was not reserved only to Czechoslovakia, Yugoslavia and the Soviet Union. It was adopted by virtually all countries involved in the Second World War as well as, in fact, by the IMT and IMTFE. The situation was, however, somewhat specific in Czechoslovakia, Yugoslavia and the Soviet Union, because during the communist period, i.e. for almost half a century after 1945, it was not possible to start an open public discussion about the appropriateness of the selective approach. The taboo nature of this topic, together with the grievances surviving among their constitutive nations, are among the factors accounting for the post-Cold War initiatives aimed at reassessing the recent history. While this, again, is not specific to Central and Eastern European countries, the events of the Second World War have a particular relevance, and also sensitivity, in this region, also due to the inter-national (rather than international in the classical meaning of this term) elements involved in them.

The post-war trials in Czechoslovakia, Yugoslavia and the Soviet Union were regulated by domestic legislation. Yugoslavia adopted a wholly new legal act (Criminal Offences Act), whereas Czechoslovakia and the Soviet Union resorted to a combination of pre-war legislation (Criminal Codes, Criminal Procedural Codes) and special laws (the Great Retribution Decree in Czechoslovakia, the Punishment Decree in the Soviet Union). These differences were largely downplayed in practice, as in all the three states the new legislation played a crucial role in the criminal trials. The special regulations primarily drew on the criminal law traditions of the countries, while introducing certain new crimes and new penalties.

The crimes were often defined in vague terms (that is especially the case under the Soviet Punishment Decree), which would make them hardly compatible with the principle of legality as known today. They encompassed various forms of treason and collaboration with the enemy, on which special emphasis was placed, as well as crimes committed against civilian populations and POWs. Only the Yugoslavian law referred specifically to the category of "war crimes". Issued prior to the adoption of the IMT Charter, the law had its own definition of war crimes. This definition differs in some ways from that of the IMT Charter yet, at the same time, it was in many respects progressive (for example, by explicitly recognising rape and other forms of sexual violence as war

crimes).[55] The decrees adopted in Czechoslovakia and the Soviet Union did not recognise war crimes but used offences drawn from domestic legislation (such as murder or hostage taking). Some crimes were only included in the national legal orders at the end of or after the Second World War that is posterior to the commission of acts qualified by them. This could be seen as problematic from the perspective of the principle of legality (*nullum crimen sine lege*) but no extensive discussion of this principle took place in the three countries.

Sentences imposed upon those guilty of war crimes or treason/ collaboration with the enemy were quite harsh. The main sentence was the death penalty, which was imposed in thousands of cases, mostly with regard to high-level collaborators and persons guilty of very serious crimes (murders of civilians or of POWs). The use of the death penalty was frequent, especially in the immediate aftermath of the war when guarantees of fair trial were at the lowest level. Death penalties were executed publicly, although there were attempts, most notably in Czechoslovakia, to exclude certain groups of people (children) from attending executions. Czechoslovakia also witnessed the progressive move to avoid the death penalty in cases of defendants not directly responsible for violent crimes, such as the members of the Protectorate Government. The legislation in the three countries also recognised other penalties, for instance forced labour in camps in the Soviet Union, the forfeiture of property and the loss of civil and political rights. Some of these penalties were not part of the national legal orders prior to the enactment of the new legislation (i.e. they were absent from the legal orders at the moment of the commission of the crimes) which could again be seen as colliding with the principle of legality (*nulla poena sine lege*).

In all the three countries, special (extraordinary) courts were established to deal, partly or fully, with the Second World War-related trials. Czechoslovakia used people's tribunals composed of members of the general public. There was a difference between the Czech part of the country, in which presence of professional lawyers in retribution trials was required, and Slovakia, where people's tribunals were constituted by laypersons. Yugoslavia and the Soviet Union established military courts/ tribunals, sometimes operating directly in the field, which were composed

[55] Cf. Theodor Meron, "Rape as a Crime Under International Humanitarian Law", in *American Journal of International Law*, 1993, vol. 87, no. 3, pp. 424–28.

of military commanders and, occasionally, military lawyers.[56] The right to defence was in some instances *de jure* accorded but *de facto* denied (Czechoslovakia in the early period) and in other instances exactly the opposite (the Soviet Union). Defendants did not enjoy many procedural rights and even the right to appeal was often absent. That, together with the number of trials resulting in the death penalty and the prompt execution of such penalty, most probably led to judicial errors which were only occasionally revisited later. In addition to ensuring justice, trials were aimed at demonstrating disdain towards war criminals, traitors and collaborators and at giving satisfaction not only to direct victims but also to the general public. This was reflected in the spectacular nature of some especially high-profile trials and in the public execution of the defendants.

As already noted, the post-war trials that took place in the Czechoslovakia, Yugoslavia and the Soviet Union were not radically different from trials organised in other countries, especially those belonging to the Allied camp (for example, China, France, Greece and Poland).[57] All these countries resorted to retribution trials, often using new rules and newly established tribunals; all combined these trials with extra-judicial means of dealing with the past, more or less sanctioned by the official authorities; and all used exemplary sanctions. Moreover, all saw the trials not only as an exercise of law enforcement but also as a political act aimed at breaking from the past and sending a clear signal that certain crimes (crimes against civilians and POWs) and certain behaviour (treason, collaboration with the occupier) were outrageous and inacceptable.[58]

Despite these features shared with other countries in the Allied camp, post-war legal developments in Czechoslovakia, Yugoslavia and the Soviet Union also exhibited certain particularities. Most of them were linked to the political regime or political forces asserting themselves in

[56] In Yugoslavia, military courts only had jurisdiction over military persons and persons responsible for crimes directed against the national liberation struggle of Yugoslavia. In all other instances, regular criminal courts, already established prior to the Second World War, were competent.

[57] See chapters on Hungary, Poland, Belgium, the Netherlands, France and Greece, in Deák, Gross and Judt 2000, *supra* note 20.

[58] Luc Huyse, *Transitional Justice after War and Dictatorship Learning from European Experiences (1945–2010)*, Final Report, Centre for Historical Research and Documentation on War and Contemporary Society, Brussels, January 2013.

Central and Eastern Europe, dominated by national communist parties. This context helps explain why in the three countries, and especially in the Soviet Union and Yugoslavia, more than in other states, the post-war trials served the double purpose of dealing with the past, on the one hand, and getting rid of political or ideological opposition, on the other. Another important factor to consider is the multinational character of the three countries, in which settling accounts with the Second World War legacy was often tantamount to taking revenge against certain "disloyal" national or ethnic groups, an element which did not necessarily exist in other countries.

41.3.2. International Criminal Law

The post-war trials in Central and Eastern Europe took place at the same time when the foundations of modern international criminal law were being laid out. The legislation which provided the basis of the national trials was adopted in the period from 1943 to 1945. The Statute of the IMT at Nuremberg[59] was adopted shortly afterwards on 8 August 1945 and the Statute of the IMTFE at Tokyo on 19 January 1946.[60] Whereas the Nuremberg Charter was annexed to an international treaty between the Allied countries (France, Britain, the US and the Soviet Union),[61] the Tokyo Charter was a unilateral decree issued by the Supreme Commander for the Allied Powers in the Pacific, General Douglas McArthur. The plan to establish IMTs had already been conceived, and made known, during the war. On 7 October 1942 the Allies announced the intention to establish a United Nations War Crimes Commission ('UNWCC') tasked to investigate war crimes. The UNWCC was finally established on 20 October 1943, and 10 days later the three Allied powers (Britain, the US and the Soviet Union) issued a joint statement declaring that German war criminals should be judged and punished in the countries in which they committed their crimes, but "the major criminals, whose offences have no

[59] See Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal, London, 8 August 1945.

[60] See International Military Tribunal for the Far East Charter, Tokyo, 19 January 1946.

[61] See George A. Finch, "The Nuremberg Trial and International Law", in *American Journal of International Law*, 1947, vol. 41, no. 1, pp. 20–37; and Quincy Wright, "The Law of the Nuremberg Trial", in *American Journal of International Law*, 1947, vol. 41, no. 1, pp. 38–72.

particular geographical localization" would be punished "by the joint decision of the Governments of the Allies".[62]

The statement was important for the post-war "division of labour" between the two international courts, tasked to try the major war criminals from Germany and Japan, and national courts, expected to deal with all other war criminals, including the major war criminals from their own nations. No strict formal hierarchy was established between the international tribunals and their national counterparts, though it was largely accepted that the international tribunals should enjoy priority in dealing with high-level defendants. In practice, however, national courts sometimes worked so quickly that a person could be sentenced and executed at the domestic level even before the international tribunals had time to indict him or her. This happened, for instance, with the German leader of the SS in Slovenia, Rösener, who was sentenced to death and executed in Yugoslavia prior to the issuance of the official indictment by the IMT.

The two international tribunals differed from their national counterparts in Czechoslovakia, Yugoslavia and the Soviet Union in several aspects. The first aspect relates to the range of crimes in the jurisdiction of the tribunals/courts (jurisdiction *ratione materiae*). The two international tribunals had jurisdiction over three crimes under international law – crimes against peace, war crimes and crimes against humanity. Domestic courts, by contrast, primarily had jurisdiction over the crimes of (high) treason and collaboration with the enemy and over various ordinary crimes (murder, hostage taking, rape and so on). The category of crimes under international law as such was not known at the domestic level. Yugoslavia, as we saw above, was the only state to recognise the category of war crimes. This category was however defined somewhat differently than in the Nuremberg and Tokyo Charters. Under Article 6(b) of the IMT Charter, war crimes were

> violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing

[62] Cited in Howard Ball, *Genocide: A Reference Handbook*, ABC-CLIO, Santa Barbara, 2011, p. 139.

> of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

The IMTFE Charter simply stated that war crimes were "violations of the laws or customs of war" (Article 5[b]). The Yugoslavian 1945 Criminal Offences Act had a complex definition of war crimes which encompassed various acts committed in time of war or enemy occupation. Such acts were

> murders, condemnation to or execution of the death penalty, apprehension, torture, forced deportation in concentration camps, […] forced denationalization, forced mobilization, forced prostitution, rape, forced conversion to another faith; measures aimed at terrorising or at destroying public or private property; serving as an officer of the terrorist apparatus or police formation or of […] a concentration camp; inhuman treatment of Yugoslav detainees or war prisoners, or any other war crimes (Article 3 Paragraph 3).

The three definitions largely overlap. Furthermore, they are all open-ended, leaving space for "other war crimes". Yet, the Yugoslavian definition is more detailed and it includes certain acts that are missing from the international definition and were only recognised as war crimes in the 1990s. This included, for instance, rape and forced prostitution. At the same time, the Yugoslavian definition includes certain acts which would not necessarily be qualified as war crimes at the international level, such as forced conversion to another faith, or which are defined in vague terms, such as serving as an officer of a terrorist apparatus or police formation. There are no indications suggesting that the Yugoslavian definition of war crimes would have had an impact upon the IMT Charter or Nuremberg case law. Similarly, the IMT Charter and case law did not have any profound impact upon the criminal law of Czechoslovakia, Yugoslavia and the Soviet Union in the immediate aftermath of the Second World War. If these countries had incorporated into their domestic legal orders crimes under international law, most prominently genocide and war crimes, they did so only at the end of the 1940s and in the early 1950s, largely to implement international treaties adopted after the Second World War (the Genocide Convention of 1948 and the four Geneva Conventions of 1949).

The second difference, albeit a less radical one, between the domestic and international trials relates to the sentencing policy. The two international tribunals were entitled to impose upon defendants, by virtue of their Statutes, "death or such other punishment as shall be determined by [them] to be just" (Article 27 of the IMT Charter, Article 16 of the IMTFE Charter). In practice, the two tribunals imposed either the death penalty (12 defendants in Nuremberg, seven in Tokyo) or imprisonment ranging from two years up to life imprisonment (seven defendants in Nuremberg and 17 in Tokyo).[63] At the domestic level in the three countries of Central and Eastern Europe, the death penalty was used as well but it was, proportionally speaking, applied in a lesser number of cases. This can easily be explained by the fact that while the two international tribunals focused on the major war criminals, the domestic courts dealt with thousands of defendants charged with crimes of lesser gravity. The penalty of imprisonment was frequently used at the domestic level as well, although the condemned, more often than those prosecuted in Nuremberg and Tokyo, did not always serve their penalty in total but were either granted amnesty or repatriated to their country of origin, usually before the mid-1950s.[64]

Moreover, Czechoslovakia, Yugoslavia and the Soviet Union all used other penalties in addition to death and imprisonment. In the Soviet Union, forced labour in internment camps was introduced as a new penalty in 1943 (though *de facto* it had been used in the Soviet Union prior to the Second World War). Czechoslovakia and Yugoslavia resorted to various penalties relating to individual honour and property, such as the forfeiture of property and the deprivation of civil and political rights. The defendants sentenced to death by the international tribunals were executed by hanging in the premises of the tribunals (the gymnasium of the court building in Nuremberg and Sugamo Prison in Tokyo). The executions did not take place in public. In Japan, afraid of the reaction of the Japanese public, MacArthur prohibited photography and filming during executions. This differed from the practice in the three countries of Central and Eastern Europe, where executions took place in public and were used both as public shows and as a tool to deter political enemies. The international

63 Some defendants were also acquitted or died during the trial from natural causes or suicide.

64 The sentence was commuted for some of those condemned to imprisonment in Nuremberg or Tokyo.

and national courts and tribunals faced the same doubts as to whether the principle of legality (*nullum crimen sine lege, nulla poena sine lege*) was respected. Yet, while the question was openly discussed at the international level, it remained largely unaddressed in the three countries.

The third difference between the national and international levels is that of the judicial bodies. The tribunals in Nuremberg and Tokyo were the first judicial bodies ever created at the international level. The international element was *prima facie* more obvious in the IMT because the IMT was established by an international treaty and its judges were recruited from nationals of four Allied states (France, Britain, the US and the Soviet Union). The IMTFE was established by a unilateral act of the US administration, but its composition was also international, with judges representing 11 countries of Europe, Asia and North America. Although called "military", the two tribunals were in fact of a mixed nature, as both military and civilian components were present. Thus, for instance, selected judges were partly military lawyers and partly civilian lawyers. At the national level, various models were used: people's courts with or without the obligatory participation of professional lawyers (Czechoslovakia), special military and regular courts (Yugoslavia) and military courts (the Soviet Union). What the international and national trials had in common was the conviction that crimes committed during the Second World War were so outrageous and exceptional that new judicial bodies, and also judicial bodies of new types, had to be established to deal with the perpetrators of such crimes.

The final and probably the most radical difference pertains to the judicial guarantees granted (or denied) to the defendants. At the international level, both the Nuremberg and the Tokyo Charters contained a list of such guarantees, encompassing, among others, the right of the accused to give explanations relevant to the charges made against him, the right to translation/interpretation, the right to defence or the right to present evidence during the trial (Article 16 of the IMT Charter, Article 9 of the IMTFE Charter). Whereas these provisions would certainly not be considered adequate today,[65] they were far better than those available at the national level in the three countries of Central and Eastern Europe. At

[65] It suffices to compare the guarantees of the fair trial provided for in the Nuremberg and Tokyo Charters with those granted by the Rome Statute of the International Criminal Court to see how important the evolution in this area has been over the past 60 years.

the same time, it would be unjust to claim that the national trials were merely kangaroo courts and that no guarantees of fair trial applied. Once the first zeal for revenge was over, the trials started taking on a more regular course, with increasing emphasis placed upon the respect of fundamental guarantees of fair trial. This evolution was especially evident in Czechoslovakia, where the post-war trials were never instrumentalised to such a degree as in Yugoslavia and the Soviet Union.

41.4. Conclusion

The post-Second World War trials that took place in Czechoslovakia, Yugoslavia and the Soviet Union have so far largely escaped scholarly scrutiny. This can be explained by the lack of sources and the difficulties in dealing with them,[66] the political sensitivity of the topic in the countries of Central and Eastern Europe and the limited contribution of the post-war national trials to the development of international criminal law. In the recent years, however, all these factors have gradually started to lose their weight. With the opening of the archives and the publication of previously inaccessible documents, it has become easier to study the post-war trials in Czechoslovakia, Yugoslavia and the Soviet Union, and to make a comparison between them. Moreover, there is now a renewed interest in a topic that for several decades remained largely undiscussed.

In all the three countries or, more exactly, in the 24 successor states created after the dissolution of Czechoslovakia, Yugoslavia and the Soviet Union, the post-war trials are still a sensitive issue. Yet, for this very reason, studying the trials might be very useful: in addition to casting light on the historical events of the 1940s, it may also help the countries in the region to overcome the heavy burden of the past. Due to the taboos surrounding post-Second World War events during the Cold War period, people in Central and Eastern Europe have not yet been given an opportunity to learn the truth about the past and to get over this past. Their collective memories adhere either to the official narrative that they were told during the communist period or to the counter-narrative propounded by political forces seeking to link up with those prosecuted in the post-war trials. In both cases, the accounts tend to be oversimplified, portraying the trials (and wartime events) in black and white terms. Such

[66] Most sources are available only in the national languages, some materials have not been published at all and the archives remained closed.

accounts contribute to fostering the feeling of historical grievances and animosity among nations in the region, which could have very dangerous consequences, as the civil war in Yugoslavia in the 1990s clearly demonstrated.

Finally, it is true that the trials in Central and Eastern Europe took place more in parallel than in co-operation with the trials at the international level, before the IMT in Nuremberg and the IMTFE in Tokyo. It is also true that the influence of these domestic trials over the developments of international criminal law was, probably fortunately, quite limited. Despite that, it is still interesting to study the post-Second World War legal developments in Czechoslovakia, Yugoslavia and the Soviet Union (and other countries as well). This allows us to see in which context, and against what national legal background, the foundations of modern international criminal law were laid out. The context may also serve as a benchmark against which the successes and failures of international criminal law of the post-war period and of today can be measured. It shows us quite realistically where we come from and how far, in less than a century, we have (or have not) actually got.

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Historical Origins of International Criminal Law: Volume 2

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

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

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

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

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