

# Establishing the Frontier of International Law: The Nuremberg Trial

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**ABSTRACT:** Conducted from 1945-1946, the Nuremberg Trials were the first instance of justice for the unique crime of genocide, and redefined international law and obligation, setting a precedent for holding individuals responsible in cases of human rights violations. The trial and conference transcripts and images of the time tell the story of nations attempting to navigate through the inherent clash between national sovereignty and international law, as well as creating an entirely new international code. Controversy, however, remains on the desired outcome of the trials as contention remains over the Allied powers' use of the Nuremberg Trials for propaganda and "show" trials. While the Nuremberg Trials were utilized to restore justice, their extensive use of film and photography suggests that another key interest was to immortalize WWII's crimes. Additionally, critics contest the Nuremberg Trials' validity due to their predetermined outcome. Furthermore, although the Nuremberg Trials marked a significant step in international justice, the subsequent genocides and human rights violations provoke questions of the trial's effectiveness. This paper argues that although the Nuremberg Trials were flawed, they altered history in their debut of international justice with creations of bodies such as the International Criminal Court; yet, it is only when nations can truly lay down self-centered interests for the greater good that justice can be impartially executed.

**KEYWORDS:** World War II, Nuremberg Trials, Nazism, Genocide, Jurisprudence, International Law, International Justice, Propaganda, Due Process, Holocaust, Germany, criminality, London Conference, precedent, Nazis, Joseph Stalin, Winston Churchill, Harry Truman, Occupation, Human Rights, Civil Rights, London Charter, Postwar Europe, Moscow Declaration, Victor's justice, Allied Powers

*"Fiat iustitia, et pereat mundus" — Let justice be done, though the world perish*

## **Introduction**

Following the heinous crimes of the Nazi Regime during World War II, twenty-two senior officers were apprehended and tried in 1945, charged with crimes against peace, crimes against humanity, and war crimes in the debut of an international criminal court system: the Nuremberg Trials. With no successful precedent for this scale of international justice, the victorious Allies of WWII (France, Great Britain, the Soviet Union, and the United States) gathered in Nuremberg, Germany for "one of the last acts of war and one of the first acts of peace," molding the frontier of international justice. The unprecedented crimes of the Holocaust required four nations with comprehensively distinct judicial systems to create a system of international justice to protect the world's future, and while the Nuremberg Trials were imperfect, they illustrated that in times of human rights violations, the world can unite and hold perpetrators responsible. The Nuremberg Trials questioned international aims of justice and responsibility, establishing a frontier of international law, morality, and justice in a post-WWII world (Shirer 1990, 1141-1143).

## **An Unprecedented Need for Justice**

The four Allied powers of WWII recognized that Germany's utter violation of human rights could not go unpunished. Thus, as the Allies gained momentum in the early 1940s, they gathered the big three—Stalin, Churchill, and Roosevelt—to coordinate, unify, and end the war. The Conference concluded with the signing of the Moscow Declaration, which was signed by each of the Allies in

addition to China. The Moscow Declaration had three sections regarding the plans and demands of surrender and annexation, but the fourth was a Declaration on Atrocities that addressed the “ruthless cruelties” occurring on Axis-power territory and declared a warning: all individuals committing atrocities “will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of...free governments.” Prior to WWII, it was often left to each state to determine punishments for their crimes as nations did not want to interfere with state sovereignty; therefore, the Declaration marked a radical departure from this tradition, symbolizing a shift towards individual accountability and foreign judgment. However, while the Moscow Declaration declared an international justice system signed upon by the Allies, it gave little insight into the mechanism of their vision, and when WWII officially ended in 1945, the Allies were tasked to create the unprecedented method of international justice they promised (Jewish Virtual Library 2023).

There was continued debate as to what each leader proposed as punishment for German officers, but both Stalin and Churchill spoke about extreme measures such as execution or imprisonment without trial. Both leaders were under immense pressure from their citizens to bring the Axis Powers to justice as their countries and citizens bore the full weight of German atrocities. Yet, while Germany’s atrocities were both unforgettable and unforgivable in the minds of Europeans, the United States, who suffered no damage on their own soil and believed in the necessity of bringing the war criminals to judicial justice. U.S. President Harry Truman firmly declared this in a letter noting the important “distinction between retributive justice and vengeance” (see Appendix A). Ultimately each nation saw the importance of international trials, recognizing that executions may only bring more instability into a world brutalized by the Third Reich’s violence. Moreover, each nation had their own personal values in the trial with the Soviet Union viewing them as excellent propaganda, Britain simply to appease America, and America enjoyed the moral authority trials provided. Despite the diverse motivations behind the trials, judicial representatives from all four governments gathered at the London Conference to reconcile their legal structures and devise procedures for international justice (Feigel 2016, 290-293).

### **Molding a Frontier In the London Conference**

From June 26 to August 2, 1945, views and aims clashed at the London Conference as representatives from the Allies worked to formulate an outline for the trials. Due to the radically different traditions and perceptions of judicial systems, the first day was spent discussing and comparing each nation’s similarities and differences. Immediately, discrepancies between the Soviet Union and the Anglo-American—specifically American beliefs—became apparent. Although the Soviets acknowledged the potential power of trial and international law, they mainly viewed courts as “one of the organs of government power, a weapon in the hands of the ruling class for the purpose of safeguarding its interests,” a stark contrast from Anglo-American paramount faith in law. Furthermore, Soviet representative Iona Nikitchenko stated that “We are dealing here with the chief war criminals who have already been convicted and whose conviction has been already announced.” For the Soviet Union, the guilt of the Nazis was certain, and their participation in the trials were mainly to conduct “show” trials that demonstrated their education and enlightenment. These views were a stark contrast to the West’s trust in due process, with Justice Jackson of the United States declaring, “There must also be provisions to assure that these trials will be fair, that defendants will have responsible notice and opportunity to defend.” The differences between each justice system illustrate the inherent complexity of the London Conference: knitting together four nations with fundamentally different goals and justice systems to create a fair and cooperative trial. The trials’ success relied on representatives realizing that they were not merely advocating for national sovereignty or their countries, but rather, the interests of the world (Mettraux 2008, 381-82).

There were multiple drafts of the London Charter, highlighting the different perspectives and debates that surrounded the creation and procedures of the Nuremberg Trials. The French and American drafts as well as the Soviet Union's proposals were all similar in their Axis Power-centric focus, with America's call to prosecute those who committed "atrocities and offenses...since 1 January 1933" and France's and the Soviet Union's call to prosecute "aggression...carried out by the European Axis Powers." These nations' focus on the Axis Powers reflects their strong nationalistic roots: if the London Charter is only applied to the Axis Powers, the document will not and cannot jeopardize their own nation's sovereignty because it will never be applicable to them. However, Britain directly opposed these drafts by calling for the universal application of the London Charter, expanding the reach of these laws to *all* nations at any time (Heller 2012, 135-138).

This aspect of universality was quickly adopted by the other nations with the exclusion of the Soviet Union. According to Justice Jackson, the Soviets pushed to declare "certain acts crimes only when committed by the Nazis." France and America, on the other hand, both had extremely vague definitions of the international law on which they would charge criminals, mainly referring to it simply as "the dictates of the public conscience." The U.S. argued that broad terms of international law would make them more universal; however, these broad terms would consequently lessen the Charter's reach on their own nation's sovereignty as the laws would become more subjective. Ultimately, the nations agreed to Britain's draft as it clarified the specific acts that international law will consider criminal violations, such as war crimes and conspiracy, while allowing the acts to remain relatively universal. The adoption of Britain's revisions during the London Conference resulted in the codification of international law, but the discussions and compromises made illustrate the intricacy and complexity of their novel task as judges had to decide what would come first: justice or their own state (Heller 2012, 136-137).

On August 8, 1945, after months of negotiations and discussions around one table in a cramped room, the London Agreement and Charter were signed (see Appendix B). The London Agreement illustrated the novel path of prosecution and punishment for major war criminals while marking the concrete creation of international justice. These documents were the creation solely of judges—not political actors—who spent months familiarizing themselves with alternate judicial systems to provide the world with an unparalleled model of international law. The London Charter explicitly and unambiguously defined international law and its violations: crimes against peace, crimes against humanity, and an array of war crimes. Additionally, this charter forever nullified the argument of "superior orders" or state-ordered actions that once freed soldiers from legal responsibility, reflecting the shifting anti-war attitude of society after WWII's atrocities. The London Charter not only showed that nations would unite for the greater purpose of justice, it held the entire world to an entirely new standard: these precedents were revolutionary, though the protocol was not perfect (Heller 2012, 134-138).

### **Discourse of the Nuremberg Trials**

The Nuremberg Trials prosecuted twenty-four of the highest military and political leaders of the Third Reich from November 1945 to October 1946. While the Nuremberg Trials were themselves precedential, so was their extensive use of film as leading evidence. In his opening speech, U.S. Chief Prosecutor Robert Jackson said, "We will show you their own films." Despite accounts by soldiers and victims from the camps, it was difficult for the general public to understand the full extent of the war's atrocities without visible evidence. Therefore, throughout the highly publicized Nuremberg Trials, those watching in the courtroom and worldwide were privy to thirty-seven reels of film and twelve reels of microfilm, mostly images captured by Allied forces as they advanced into Germany (see Appendix C). The films and images of the Nuremberg Trials illuminated the true horrors of the Holocaust, presenting to the world the severity of the crimes,

which continues to inform our contemporary image of the Holocaust (see Appendix D). These films documented the Axis Powers' atrocities with such refutable evidence that denial and martyrdom would be inconceivable (Feigel 2016, 154-155).

Although film was used to accentuate the trial's legitimacy, critics still spoke against the trial's validity. The leading accusation was of "conducting an unfair trial with a predetermined outcome." Often referred to as the idea of "victor's justice," critics indicated the Allies had already won the war and were holding a trial with the intention of punishing German officers. In support of this argument, people highlighted the *ex post facto* nature of the lead convictions: defendants were being punished for actions made illegal after they had committed the act, a blatant violation of traditional justice standards. During the creation of the London Charter, judges were aware that the notion of *ex post facto* may have been held upon them and subsequently, ensured that their laws remained under the scope of aggressive warfare, an established law. However, critics pressed on: If men are being charged in front of the tribunal with the view that they do not deserve to go free, what is the point of a trial? (Feigel 2016, 147-150).

Critics continued to challenge the validity of the trials with the use of the *tu quoque* (you, too) principle, essentially arguing *I should not be punished if you did it, too*. One example of the *tu quoque* can be seen through Karl Doenitz, commander of the German Navy and successor to Hitler during WWII. He was charged with crimes against peace for waging aggressive submarine warfare, but when rumors that the United States also used aggressive submarine warfare emerged, Doenitz argued *tu quoque* in defense. Although his argument was rejected by the tribunal, he mysteriously faced no punishments or sentencing for the specific act. The *tu quoque* argument highlights a logical fallacy and does not disprove or verify truth, but it illuminated the Allied Powers' own war crimes and challenges whether the intentions of the trial were punishment or justice (Rohan and Zyberi 2017, 513-514).

Surprisingly, criticism also arose from the largest victim group of the defendants in Nuremberg—the Jewish population. Despite initial support and optimism for the trials from Jewish journalists, writers, and survivors, "this optimism soon yielded to fundamental disappointment." Jewish expectations for the Nuremberg Trials were centered on the hope they would foreground the Jewish perspective of the Holocaust; however, when the Holocaust was merely another one of the countless crimes that the Nazis were prosecuted on, many Jews "believed the Allies had the political power to conduct the trials, but not the moral power." Furthermore, Jewish representation and participation throughout the trials were marginal. Although the key forms of evidence were through film, the trial also had multiple witnesses, but of the ninety-four witnesses on the stand, only three ended up being Jewish (thirty non-Jewish witnesses testified on crimes against Jews) (Jockusch 2012, 108-109).

The Nuremberg Trials in themselves marked a new frontier of international justice, but they were not without their faults. Critics claim it was a "show trial" with arguments against *ex post facto* law and *tu quoque*, and it did not bring peace to Jews, one of the main victims of WWII. However, although the trials were not flawless, they sent a clear message, declaring that the global community will condemn and intervene. Ultimately, the trials ended with nineteen convictions, twelve death sentences, and three acquittals, and while the legal foundation and validity for the trials may draw criticism, the final sentences rested on facts (Shirer 1990, 1142-1143).

### **International Justice Since Nuremberg**

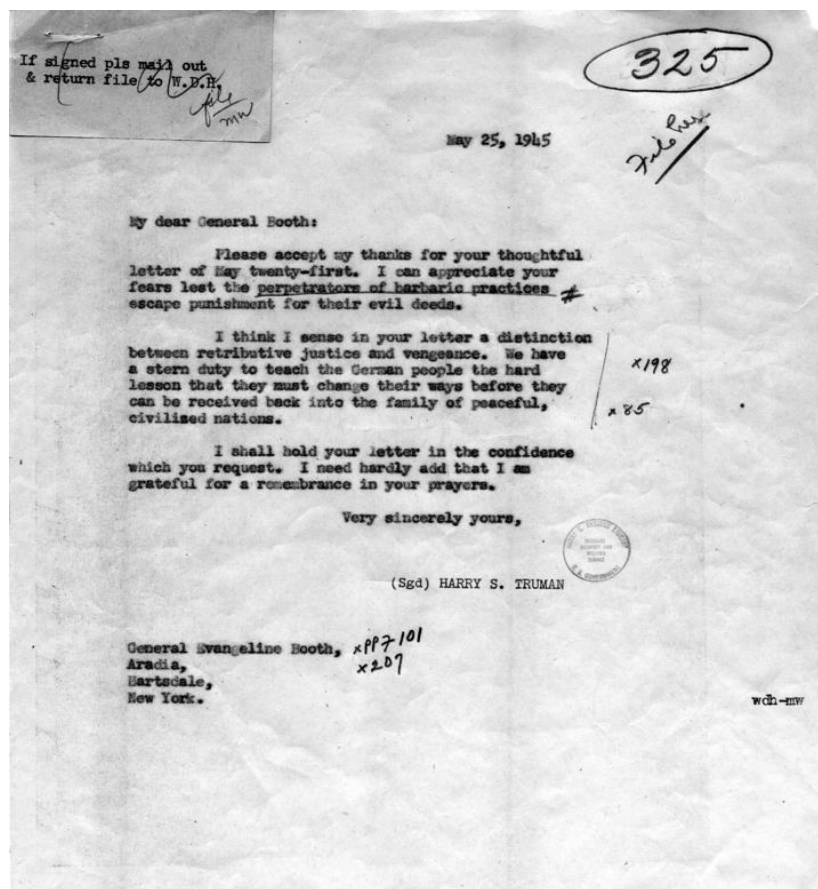
Three expectations were set by Nuremberg: state hesitancy at violating human rights, a permanent international court, and quicker prosecution of those responsible. However, after the trials' conclusion on October 1, 1946, these expectations were not fulfilled. In the same year of the trials' closing, the United Nations General Assembly unanimously affirmed the legal principles found in Nuremberg's charter during their first meetings, illustrating what the society thought was

an international change of attitude in war and all of human suffering. Yet, this illusion was broken with the genocides of Bosnia, Kosovo, Rwanda, and Darfur resulting in thousands dead and little change or justice from the United Nations and the international world. The codification of the Nuremberg principles and international law merely led states to discover different ways to justify and hide them with the rise of euphemisms such as ‘ethnic cleansing,’ and the use of “reverse jargon” to normalize and minimize humanitarian crime (Robert H Jackson Center. n.d.).

After countless years of atrocities and struggles in international justice, the International Criminal Court was established in 1998, differing from other international criminal tribunals because of its permanent standing—a drastic evolution of international law. The ICC holds jurisdiction over the Nuremberg Principles and acts mainly to complement national courts, only intervening when national courts are unable or unwilling to try cases. However, four major world powers, the United States, China, and Russia refuse to join the ICC because of the threat it poses to their national sovereignty, a fear observed from the very start of international justice with the London Charter (Schabas 2020, 23-35).

The international laws and justice established in the Nuremberg Trials were both a precedent and promise of the international world to unite in placing human rights at a higher standing. Nothing could make up for the devastation of WWII, but the Nuremberg Trials helped rebuild a post-war world and defined the unknown frontier of international law. Furthermore, a half-century later, international law continues to evolve with organizations such as the International Criminal Court to defend against humanitarian abuses. The Nuremberg Trials created the frontier of international law, and it will continue to alter and evolve until every nation places human rights and international justice above national sovereignty.

## APPENDIX A



Only weeks after the end of WWII in Europe, Truman was corresponding with others and attempting to discern how to establish international justice. This letter specifically comments on the difference between vengeance and retributive justice, highlighting the key aims of the preceding Nuremberg Trials. (Truman)

**APPENDIX B**

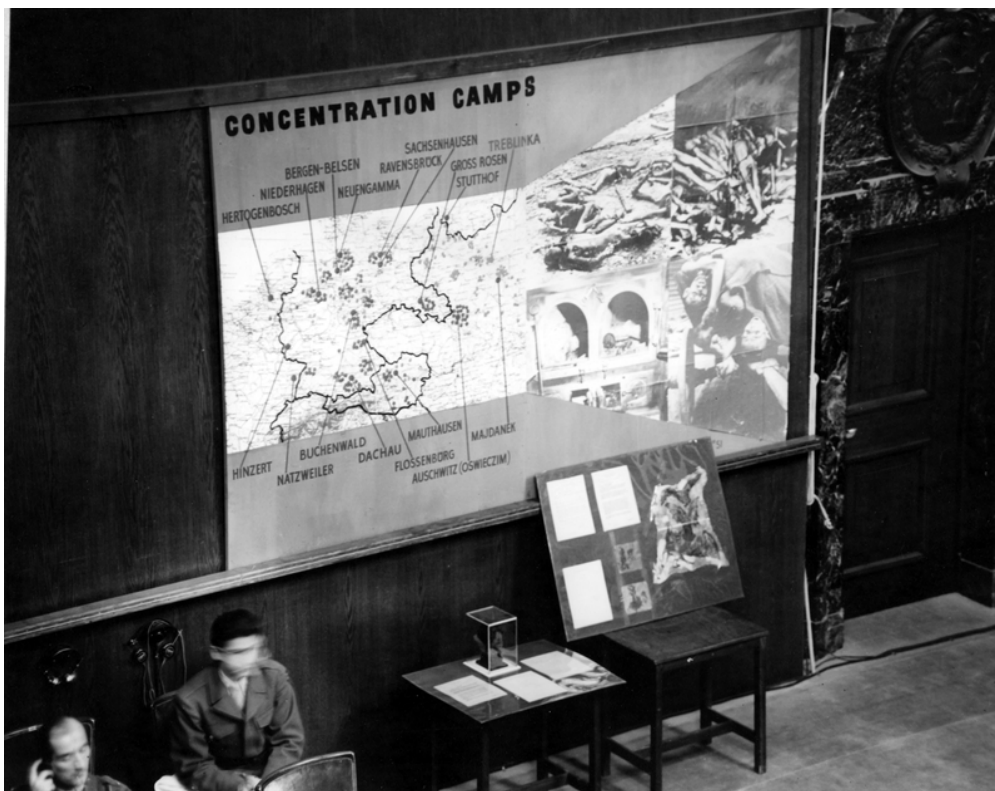
All the diplomats in the London Conference. This image of the London Conference shows how revolutionary the creation of the Nuremberg Trials was and provides insight on the true atmosphere and feeling of the room: full of different minds, peoples, cultures, and judicial systems.

**APPENDIX C**

This photograph illustrates the layout of the courtroom, specifically emphasizing every person's view to the screen where maps, film, and audio would play from. The Nuremberg Trials was the first trial to use film as leading evidence, and it displayed to the world the true visual horrors of the Holocaust. (United Nations)



## APPENDIX D



This image documents Germany's concentration camps in WWII, one of the many uses of film throughout the trials. The photographs and videos that were shown during the Nuremberg Trials exposed the majority of the world to the horrors of the time and aided in the contemporary vision of the Holocaust. (United Nations)

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