

# Why the nuremberg trials did not set a good precedent essay



“ All human beings, whatever their cultural or historical background, suffer when they are intimidated, imprisoned or tortured... We must, therefore, insist on a global consensus, not only on the need to respect human rights worldwide, but also on the definition of these rights... for it is the inherent nature of all human beings to yearn for freedom, equality and dignity, and they have an equal right to achieve that”. ~ The Dali Llama

Early twentieth century events including the Armenian genocide during World War I and the Holocaust during World War II provided a historical basis and plenty of positive evidence for those who, like the Dali Llama, argued the need for an internationally identifiable definition of human rights. The systematic extermination of over 200, 000 Armenians at the hands of the Young Turks during World War I and over 6 million Jews by the Nazis during World War II undoubtedly catalyzed an international coalition for addressing crimes against humanity.

Yet, in order to define crimes against humanity, the international community faced both cultural barriers and the universally accepted rights to state sovereignty. Even still, the need to set a strong international precedent for condemning crimes against humanity that was undertaken during the Nuremberg trials after World War II was not successfully carried out. The shortcomings of the Nuremberg trials, in terms of defending against crimes against humanity, failed to separate the atrocities of the Holocaust from the acts of war perpetrated by the Nazis.

In doing so, the trials inadvertently downplayed the historical and cultural significance of the Holocaust. Those who deserved justice the most and

those who were guilty of injustices within the realm of crimes against humanity were not always held accountable. Thus, questions regarding the Nuremberg trial's failure to set a precedent for condemning future crimes against humanity, the positive and negative affects of defining accountability during a time of war, what the meaning of justice was and what it meant to grant rights to people arose.

Why the Nuremberg War Crimes Trials of 1945-46 did not set a strong precedent for condemning future " crimes against humanity". The Nuremberg Trials created an international precedent in which nations, as well as the individual ranking members within those nations, could be held responsible for the atrocities of war. It embarked on a second attempt at international political policy aimed at diverting countries from catalyzing or taking part in wars and instead directing them towards peaceful ends.

An ideal once unsuccessfully attempted by the League of Nations before World War II, it was to be resumed again after the Nuremberg Trials by the United Nations. Yet, as the Nuremberg Trials presented a strong precedent for holding accountable those responsible for igniting war, it did not necessarily set an equal precedent for condemning future crimes against humanity. While drafting the International Military Tribunal, defining the boundaries of crimes against humanity became rather difficult.

During the end of the war, it stood for " grave maltreatment or atrocities committed against persons who were unprotected by law because of their nationality". This definition covered all of the nations which the Third Reich had conquered and waged war against, yet it did not include members of its

own nation. Therefore, there were many anti-Nazi groups within Germany that were not included within this definition simply because they were Germans under German law; a loophole that included the German Jews, social Democrats, Communists, and liberals.

Also, keep in mind that Germany at the time had annexed Austria and Czechoslovakia, and they too were subject to this loophole. So likewise, the Austrian and Czech Jews had the same problem that the German Jews had. In order to address this situation, the commission redefined such crimes as “ crimes committed against any person without regard to nationality, stateless persons included, because of race, nationality, religious or political belief, irrespective of where they have been committed,” which was eventually adopted into the Nuremberg charter.

Although “ crimes against humanity” were included within the Nuremberg charter and the indictment during the London conference in 1945, their emphasis was underplayed in the final draft of the charter. According to Marrus, “ in keeping with his primary focus on Nazi aggression in the drafting of the charter, and uneasy about claiming jurisdiction over the internal affairs of another country, [Robert] Jackson demanded that crimes against humanity be understood as part of the ‘ common plan or enterprise of making an unjust or illegal war in which we became involved”.

In other words, Jackson wanted crimes against humanity to be a subsidiary issue of the tribunal. He felt that the war crimes charge should be the central focus of the tribunal since the primary reason for the Trials was an attempt to make certain that no war of such significance or consequence would arise

again. Thus, focusing the tribunal primarily on the overall aspect of Nazi aggression, rather than specifically targeting acts of crimes against humanity, as the most important issue of the Tribunal.

Also, he felt that meddling within the internal affairs of another country would mean crossing a boundary that would bring various implications. For example, meddling within the internal affairs of another country is generally considered intrusive, offensive, and can be taken as seriously as a physical attack upon that country's homeland, thus deeming the tribunal as a hypocritical process of prosecution.

Due to Jackson's bidding, the definition of crimes against humanity was written within Article 6 of the charter and read: " Crimes against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian populations, before or during the war, or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated".

In other words, the crimes against humanity charge could be included in indictment if it was connected with any crime within the jurisdiction of the Tribunal. Hartley Shawcross explains this by stating that, " You have to be satisfied not only that what was done was a crime against humanity but also that it was not purely a domestic matter but that directly or indirectly it was associated with crimes against other nationals, in that, for instance, it was

undertaken in order to strengthen the Nazi Party in carrying out its policy of domination by aggression”.

In other words, the Holocaust as a crime against humanity, although not a war crime itself, was indictable because it was considered by Nazi's to be an integral part of the plan to strengthen the Nazi political policy through aggression. Although addressing crimes against humanity and war crimes as one issue, the prosecution did a disservice to the cause of the indictments. Indictments brought upon by charges of crimes against humanity were lost within the war crimes indictments.

They were seen as subsidiary issues that only arose because they were linked to war crimes charges and thus practically considered war crimes charges themselves. The situation did not allow for the ideology of charges of crimes against humanity to command its own definition upon the world stage because it was overshadowed by the intent of the prosecution to divert the future possibility of war. Furthermore, the varying emphasis on crimes against humanity within the separate allied prosecutions only made the issue more confusing.

Also, by focusing primarily on war crimes and not significantly singling out crimes against humanity, the tribunal failed to address the possibility of such crimes being committed within a country that was not seeking to wage war on anyone outside of its boundaries. It did not address a country's internal conflicts with its own people, therefore allowing crimes against humanity within a nation's boundaries, upon its own people to go unaddressed.

Therefore, by focusing primarily on war crimes in an effort to divert future war, the Nuremberg War Crimes Trials did not create as strong of a precedent as was necessary for condemning future crimes against humanity.

The Effect of Ordinary Individuals Acting as the Perpetrators of Crimes Against Humanity Considering, as Marrus has illustrated, that the Nuremberg trials focused primarily on war crimes, including within it charges against military and state officials who personally played a role in carrying out or ordering crimes against humanity, questions regarding the role of ordinary individuals as perpetrators arose.

Though it is easy to make the argument that the general German population had at least some knowledge of the atrocities being carried out in the death camps of Nazi Germany, it is much harder to convict them of taking part in crimes against humanity simply because they did little to nothing to stop such atrocities from happening. Yet, James Waller argues that extraordinary evil deeds, primarily those perpetrated during genocides and the like, are in many cases actually perpetrated by ordinary individuals.

The difficulty of defining justice, in terms of seeking justice for victims of crimes against humanity, becomes more difficult when the crime is loosely linked to the state, and/or includes the interaction of civilians within its physical enactment. In other words, the question is what makes these events crimes against humanity rather than simply war crimes, and who is punishable for such crimes? Manus Midlarsky, author of *The Killing Trap*, devotes much of his work to explaining how the Holocaust, just like any other genocide, was the result of a series of events.

He explains that the importance of loss and the presence of state insecurity led to the state of Germany deciding upon the Final Solution as a possible answer to their decades of economic and political instability. Midlarsky links the continuous losses of the German state both prior to and as a result of WWI to the advent of the Nazi party and various events prior to WWII and the Holocaust such as the re-occupation of the Rhineland, and other areas as well as the invasion of Poland and the eventual slavery and extermination of the Jewish people.

For instance, he sites the continuous refugees that immigrated into Germany during the interwar period due to the many pogroms in lands lost to Poland after WWI and also in White Russia. While juxtaposing this event with the extreme national political and economic losses resulting from WWI, the German people became more and more exasperated at the losses they were forced to endure. The German people began to see the immigrant Jews begin to do well within German society and they feared the Communist influence of Russia (in which many Jewish Russians had played prominent roles).

Thus, anti-Semitism began to grow within the German borders and the minds of the Nazi insurgents. Likewise, Midlarsky points out that “ Sentiments concerning Jewish responsibility [prior to and during WWII] for the outcome of WWI were rife throughout the Nazi hierarchy”. In one such case, citizens of nations that came under German control during WWII, such as Vichy France, were more than happy to alleviate themselves of the Jewish peoples within their territory.



According to Midlarsky, “ compare Vichy policy toward its Jews with those of other defeated countries – Hungary in 1919 and Romania in the loss of one-third of its territory to Hungary and Russia in 1940”. Furthermore, it’s a well known fact that many of the Nazi death camps were stationed outside the prewar German borders, and that they were not kept secret from non-Jewish citizens in nearby towns.

Midlarsky points out conclusively that, “ If the potential compensation for losses and the risk minimization opportunity coincide, then there can be powerful incentives to engage in the compensation for losses and a simultaneous risk diminution”. In other words, Midlarsky provides a possible defense for the German people’s compliance with the Nazi ideology, including the acts of atrocities committed by the Nazis, during World War II. Yet, his defense is only legitimized for those who did not play an active role in physically carrying out or developing the ideology behind the atrocities perpetrated by the Nazis.

Though Midlarsky’s theory provides a possible defense for the complacency of many German citizens during WWII in regards to the Holocaust, it does not provide a suitable explanation for those non-military and non-governmental personal who partook in perpetrating atrocities. The active participation of individual citizens in perpetrating crimes against humanity presents a much greater problem. The Rwandan genocide included events that easily illustrate James Waller’s, author of the book *Becoming Evil: How Ordinary People Commit Genocide and Mass Killing*, argument that extraordinary evil deeds are actually perpetrated by ordinary individuals.

For example, Midlarsky points out that in Rwanda, “ within a single prefecture, in one village where socioeconomic disparities between local elites and the peasantry were emphasized by elite behavior, the killings were often committed by locals who were well acquainted with their victims”. In this case, genocidal action in its most blatant form, that of murder, was carried out by common villagers rather than official military armaments.

### Redefining the Charge of Crimes against Humanity

Waller’s illustration of the ordinary person as the perpetrator of genocidal atrocities and the realization of such situations in genocidal events such as Rwanda provided the international world with the need for new parameters for the crimes against humanity charge separate from the war crimes charge used in the Nuremberg trials. The Nuremberg trials attempted to avoid charging both civilians and low level military with crimes against humanity by making the charge a subsidiary of the war crimes charge and applying it to those who ordered the atrocities.

Thus, the failure of the Nuremberg trials to set a strong precedent for condemning future crimes against humanity left a gaping loophole for further such crimes to be committed. Yet, as was seen in the past, and as the Nuremberg trials tried to avoid, when confronted with the process of redefining the parameters of a charge of crimes against humanity the international community faced similar hurdles that each and every international agreement has faced in the past including not only creating a specific definition of the charge, the process of implementing the charge, and the applicability of such a charge.

In terms of creating a definition of what the charge of crimes against humanity covered creates various problems. First and foremost, a single, straight-forward and narrow definition is out of the question. By narrowing the definition, it would be less easily applied to various events. For instance, by narrowing such crimes to only military led atrocities, as the Nuremberg trials did, atrocities that are carried out by ordinary individuals, such as in Rwanda and as was first reported to be happening in Kosovo, might not be covered under such a definition.

Yet, if the definition were too vague then the charge might be misused. For instance, if crimes against humanity charges were levied against all military personnel where an extraordinary evil deed was carried out then those military personnel at the bottom of the military hierarchy that were simply carrying out orders might be charged with such crimes. Not to mention, the charge might be levied unfairly against world leaders including the United States presidents. Thus, the dilemma of who is responsible for such atrocities arose. So, the definition cannot be limited, must be in depth, and must not be too vague.

Not to mention, it must also take into consideration the customs of various cultures and religions, which might prove to be a rather daunting issue. Implementing the findings of an international war tribunal presents further problems. For instance, what world organization would undertake the pursuit and trial of persons accused of crimes against humanity? Is it possible for a world organization to undertake such an issue or will it be left to individual states to pursue, and if so will individual states be able to pursue such

charges without creating international incidents that might lead to further wars?

Not to mention, bringing certain military officials to trial might prove to be detrimental to a country's infrastructural stability as well as its national security. According to James M. McCormick, author of the book *American Foreign Policy and Process*, the Carter administration ran into similar problems when it began developing a policy for improving human rights internationally. The applicability of such charges presents a large problem as well. For instance, the Nuremberg trials presented the problem that faces any international judiciary tribunal, the aspect of state sovereignty and how it is affected by such an event.

The Nuremberg trials barely avoided Germany's right to state sovereignty by 1) holding the trials within the German borders, 2) attributing the trials as a part of the unconditional surrender agreed upon by Germany at the end of the war, and 3) placing the charge of crimes against humanity under the greater charge of crimes of war, and thus placing the responsibility for such atrocities on the shoulders of those at the top of the military and government who developed and order the implementation of crimes against humanity. In the case of the genocide in Rwanda, avoiding state sovereignty is utterly impossible.

*The Price of Peace: An Examination of the Necessity of Justice in Building Peace* In a letter from a Birmingham Jail in 1963, Martin Luther King Jr. wrote, " Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny.

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Whatever affects one directly, affects all indirectly. " In other words, Martin Luther King Jr. meant that allowing injustices to exist in this world, indirectly affects everyone. On an international scale, it has been argued that justice is not necessary to build lasting peace.

Yet, although this may be true on the international spectrum, at the internal level it is much harder to agree with. The following essay looks specifically at both the tribunals held regarding war crimes in Rwanda and Yugoslavia. In Yugoslavia, there were documented events that illustrated beyond a doubt that war crimes of heinous proportions took place. Elizabeth Neuffer's book, *The Key to My Neighbor's House*, explains these events, as well as the results of the international tribunal erected to right these injustices. Her story includes the process of the tribunals.

More importantly though, it illustrates how, in Yugoslavia, reaching a peace agreement was made more important than bringing offenders of war crimes and crimes against humanity to justice. Neuffer explains, " American negotiators feared that including terms for the surrender or arrest of war criminals would derail the peace talks. The Clinton Administration's chief priority was for the Bosnian war to end. " In other words, in Yugoslavia, justice was not the main priority. It seems to me, after reading Neuffer's book, the leaders of the various Yugoslav communities welcomed this idea.

It allowed the leaders that had been indicted by the tribunal as war crime offenders to shed accountability for their actions. Furthermore, the United States did not seek reprisal for those who were adversely affected by the crimes against their humanity within the confines of the Dayton Agreement.

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When the Dayton Agreement was signed on November 21st, it undoubtedly sent a message to the international community that peace was the ultimate goal, and that it could be derived at any cost. The Yugoslav conflict and the Dayton agreement left many asking how can peace be maintained where justice is not served.

In Rwanda, justice was taken to the other extremity. Instead of ignoring justice, in order to gain peace, it was believed by the native peoples that peace was not a viable outcome without responding to injustice in full force. The Arusha Tribunals were packed full of events that would lead directly to a mistrial here in the United States. Indicted offenders were held for months without being charged. The process with which the initial tribunal went about trying indicted war crimes offenders was extremely confusing. In Rwanda, justice had different terms than here in America.

According to Rwandan justice minister Jean de Dieu Mucyo, " in Rwanda, a man who is a criminal cannot be released without being punished. In Rwanda, the meaning is in the fact-not the form, not the procedures. " But it was the appellate court judges that disagreed with the process of the initial tribunal. In fact, they found the initial tribunal's prosecution system to be so poorly structured that it felt Barayagwiza should be retried under a better system. Neuffer explains how many survivors of the Rwandan civil war feel that justice must be done in order for them to move on.

It seems to me that while peace can be made without righting injustices, I do not feel that peace predicated upon such terms will last. Survivors of the holocaust, I'm sure, can sympathize with survivors of both the Yugoslavian

and Rwandan civil wars. These people bore witnesses to crimes against humanity. They bore witness to the slaughter of hundreds, even thousands of innocent men, women, and children. The scars formed by witnessing heinous crimes like these are unlikely to heal through a promise of peace.

Though these scars may be hidden for awhile, history has illustrated that they will eventual resurface as a part of that countries history and heritage. Francis Bacon once said, " If we do not maintain Justice, Justice will not maintain us. " I would have to agree with Bacon, justice must be maintained in order to maintain peace. In Conclusion Although the Nuremberg trials failed to set a strong precedent for condemning future crimes against humanity, the international system has attempted to curtail the extent of the most recent instances of crimes against humanity.

For instance, the United States stepped into the situation in Kosovo when reports of genocidal events were coming out of the area. Unfortunately, in retrospect the United States government had trouble finding any evidence of mass murders. Though they did find one or two mass grave sights, the numbers found were miniscule in comparison to either the Armenian genocide or the Holocaust. It can be argued that efforts to curtail crimes against humanity, such as the NATO presence in Kosovo, align with the problems that arose when trying to define an internationally accepted and applicable charge.

First, NATO's presence in Kosovo broke international law. It was not sanctioned by the United Nations, nor had it come at the request of the government of Kosovo. Furthermore, it did not properly follow the original

NATO agreement. NATO was originally created to be utilized as a reactionary mechanism, meaning that NATO forces would only react if one of its member states was attacked. In the case of Kosovo, outside forces had not attacked. The situation could have been categorized as a civil war. So, NATO's presence, in actuality, violated Kosovo's state sovereignty.

In NATO's defense, it did recognize the cultural and religious implications of the reports coming out of Kosovo of extreme amounts of raping and other forms of cultural and religious degradation. Whether or not one agrees with NATO's presence in Kosovo, it must be understood that, although the action was carried out in order to curtail international acts or crimes against humanity, it did violate international law. It also violated state sovereignty. Furthermore, NATO relied heavily on unreliable information in order to try to justify its actions.