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Narrator: The rise of Nazi Germany and the Nuremberg Laws are a stark reminder of how marginalization and the denial of basic human rights led to Auschwitz and the murder of millions of innocent people. It is a reminder we fail to heed at our own peril.

Executive Producer: Eli Rubenstein, March of the Living

Producer: Naomi Wise, Garrison Creek Media

#### THE NUREMBERG TRIALS: A SUMMARY INTRODUCTION

*Professor John Q. Barrett, Board Member, Robert H. Jackson Center,  
Professor of Law, St. John's University\**

In the broad landscape of post-World War II Europe, there were thousands of trials of war criminals. Most were national trials, often military trials, focused on crimes perpetrated in particular locations.

The Nuremberg trials, a small set, were trials of Nazis who were regarded as arch-criminals, whose crimes were major and transcended any particular location.

There were thirteen Nuremberg trials. They occurred in the German city of *Nürnberg* (Nuremberg), which in the years following Nazi Germany's surrender was in the United States zone of military occupation.

One and only one Nuremberg trial was an international trial—conducted by the U.S., the U.S.S.R., the U.K. and France, it occurred in late 1945 and much of 1946.<sup>1</sup>

The international Nuremberg trial was followed, between late 1946 and spring 1949, by twelve subsequent trials in Nuremberg that the U.S. conducted by itself.<sup>2</sup>

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1. A leading, scholarly primer is MICHAEL R. MARRUS, *THE NUREMBERG WAR CRIMES TRIAL OF 1945-46: A DOCUMENTARY HISTORY* (Boston & New York: Bedford/St. Martin's, 1997). An excellent participant's account is TELFORD TAYLOR, *THE ANATOMY OF THE NUREMBERG TRIALS: A PERSONAL MEMOIR* (1993).

2. Two leading books on these Nuremberg "subsequent proceedings" are KEVIN JON HELLER, *THE NUREMBERG MILITARY TRIBUNALS AND THE ORIGINS OF INTERNATIONAL CRIMINAL LAW* (Oxford Univ. Press, 2011), and REASSESSING THE NUREMBERG MILITARY

I will, in this introduction, touch upon ten topics:

- first, the predicate behavior, which is the human practice of making war;
- second, international law's progress, before World War II, in addressing that behavior;
- third, Nazism as human and national regression;
- fourth, World War II;
- fifth, legal analysis and war condemnation during the World War II years;
- sixth, the Allies' military defeat of the Nazis;
- seventh, the Allies' international Nuremberg trial of 1945-1946;
- eighth, the twelve subsequent American trials in Nuremberg;
- ninth, the legal legacy of the Nuremberg trials; and
- tenth, the human rights legacy, including the Holocaust knowledge legacy, of the Nuremberg trials.

## 1. War

First, as a matter of background, is war. It is a reality of human behavior across millennia. And for much of history, war was viewed as a matter of power, a matter of sovereignty, and a matter of legality—war-makers existed and, if they were lucky in war, they lived on in a realm of impunity. This was the human reality up through and including the 19th century.

## 2. Nations Renounce War as a Sovereign Prerogative

The view that war was a matter of power, sovereignty, and impunity began to give way, late in the 19th century, to views of legalism and constraint. The Hague conventions began to define war crimes—rules of behavior for civilized nations to follow when they engaged in the war endeavor. After the Great War (1914–1918), a European continental calamity that later was renamed World War I, leaders contemplated prescribing war itself. They also considered holding perpetrators, even up to the level of national leaders, responsible for the evils of war. Nations began to make commitments,

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TRIBUNALS (Kim C. Priemel & Alexa Stiller, eds., New York & Oxford: Berghahn Books 2012).

An online, recent bibliography that lists and also describes in narrative, in fifteen concise pages, leading book-length publications (i.e., books and long articles) on all thirteen Nuremberg trials—both the International Military Tribunal (the IMT) and the subsequent U.S. Nuremberg Military Tribunals (the NMTs)—is Kevin Jon Heller & Catherine E. Gascoigne, *Nuremberg Trials*, in OXFORD BIBLIOGRAPHIES (2015), [www.oxfordbibliographies.com](http://www.oxfordbibliographies.com).

both in bilateral and in multinational treaties, forswearing those activities of such destructiveness. In 1928, for example, President Calvin Coolidge signed the Kellogg-Briand treaty on behalf of the U.S. It was one of dozens of nations, including Germany, that renounced war as an instrument of national policy.

### 3. Nazism

But Nazism soon ruled Germany. Dachau, the first of the German concentration camps, a place to confine enemies of the state, was created in 1933. The Nazis began to use Nuremberg, a city of beauty and history connecting back to the Holy Roman Empire, as the site of fervent, frenzied Nazi Party Rallies. In 1935, the Nuremberg Laws were announced, subjugating Jews and others whom the Nazis regarded, often based in mad eugenic theories, as inferiors and enemies.



Adolf Hitler, Hermann Goering (a future Nuremberg defendant) and others, saluting in front of the *Frauenkirche* in Nuremberg's main market square.

#### 4. World War II

By the end of the decade, the Nazis brought war again—and the number, World War II. We today cannot truly comprehend its enormity and horror. The war, the Nazi aggression and atrocities, became the framework for the Holocaust that was perpetrated in Poland and

throughout the European continent. German troops and tanks conquered Poland in September 1939. Captives became slaves and victims of planned extermination.

### 5. Legal Condemnation of Nazi Aggression

In this period, legal thinking began to analyze and condemn Nazi aggression as criminal. This thinking generally had begun, as noted, during World War I and its aftermath. But in the Allied nations, particularly as Nazi Germany went on the march in the later 1930s and continuing into 1940 and 1941, legal thinking about war as crime occurred at the highest levels.

In the United States, President Roosevelt in 1940 appointed Robert H. Jackson to serve as Attorney General. In that position, Jackson's primary work was legal issues connected to war preparation. He, working with brilliant colleagues, analyzed how the isolationist, ocean-protected United States, with neutrality laws keeping it from involvement in the European conflict, could provide military assistance to the U.K., which by late June 1940 stood alone against the Nazis. The new Prime Minister, Winston Churchill, implored Roosevelt to provide WW I-era destroyers. Jackson's August 1940 legal opinion authorized his client, President Roosevelt, to provide that assistance,<sup>3</sup> which played a role in securing the North Atlantic and British survival. That opinion, plus subsequent U.S. legal analyses of Lend-Lease legislation and prominent public speeches by Jackson and others, advanced the view that Nazi aggression violated international law.<sup>4</sup> Jackson's thinking in this regard was advanced by University of Cambridge legal theorist Hersch Lauterpacht, who later became a member of the British prosecution team at Nuremberg.

In November 1943, Allied nation foreign ministers met in Moscow. By this point, although brutal fighting stretched ahead, it had become clear that the Allies would prevail—they would win the war. Their thinking thus included what they would do with the vanquished. At a high level of generality, they committed, in the names of Churchill, Roosevelt and Stalin, that “the major criminals whose offences have no particular geographical location . . . will be punished by a joint decision of the Governments of the Allies.” At Yalta in February 1945, the final “Big Three” meeting, the leaders reiterated that their foreign ministers would continue to work together on how they would handle “major war

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3. 39 Op. Att'y Gen. 484 (1940).

4. See ROBERT H. JACKSON, *THAT MAN: AN INSIDER'S PORTRAIT OF FRANKLIN D. ROOSEVELT* 103 (2003) (John Q. Barrett, ed.).

criminals” following war victory and dismemberment and occupation of Germany.

#### 6. Allied Victory

That process of legal accountability and condemnation could not, of course, get ahead of the war reality. Nazism first had to be defeated militarily, and it was. On May 7, 1945, at Reims, Nazi Germany surrendered. Germany as a sovereign state ceased to exist and the Allies occupied its former territory. Then legal thinking and plans could begin to become operational.

#### 7. The International Military Tribunal (“IMT”)

By spring 1945, Robert H. Jackson, age fifty-three, had been a U.S. Supreme Court justice for almost four years. President Harry S. Truman, then two weeks in office, decided to deliver on the Roosevelt commitment, made with Churchill and Stalin, to hold the leading Nazi perpetrators legally accountable. President Truman recruited Justice Jackson, whom he knew and admired, and whom Truman, his advisers, and the country regarded as a leading U.S. legal talent and figure of public stature, to head the American process of delivering on the Allied commitment. Truman, by picking Jackson, hoped to, and in the end he did, influence the British, Soviets, and French to implement and staff this commitment comparably.



May 2, 1945: Justice Robert H. Jackson, at the Supreme Court of the United States.

In late April 1945, Jackson was led to believe that this assignment would be something of a turnkey endeavor—that the evidence was assembled, that the international trial plan was in place, that trials were ready to go, and that this would be the trial of Adolf Hitler and the core of his inner circle. Of course none of that materialized.

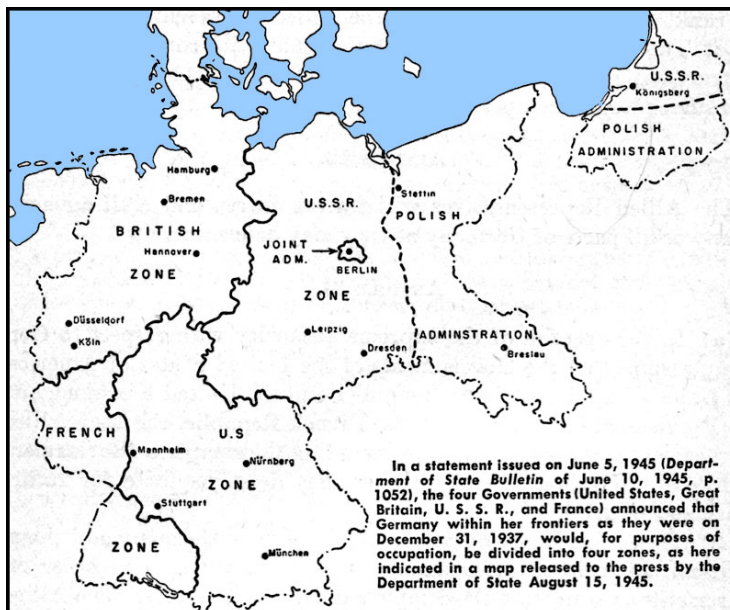
What was required first, and what occurred during summer 1945 in London, was difficult multinational negotiation. It occurred in Church House at Westminster Abbey. The four national delegation leaders met in conference, working to harmonize their disparate legal systems and their very different views of what it meant to be committed to trying their principal Nazi prisoners as war criminals.





July 1945: A London Conference session, at Church House, Westminster Abbey.

In this time period, there was no longer a sovereign Germany. It had surrendered unconditionally to the Allied nations, which jointly oversaw military occupation zones controlled by each of the four powers.



1945 Allied zones of occupation, following Nazi Germany's surrender  
 (www.ibiblio.org/hyperwar/Dip/AxisInDefeat/Defeat-3.html.)

The American zone, formerly southeastern Germany, included the city of *Nürnberg*. It had been bombed heavily by British and Americans forces during the war.<sup>5</sup> But outside Nuremberg's old city, on the *Fürtherstraße* (i.e., toward the neighboring city, *Fürth*), was a largely intact courthouse, the Palace of Justice, connected to a large prison. At U.S. Army urging, Justice Jackson plus his British and French counterparts agreed that it should be the trial site.

5. For a recent account of the March 30, 1944, U.K. bombing raid on Nuremberg, portraying air crew members' and their families' experiences during World War II and some survivors in old age, see JOHN NICHOL, *THE RED LINE: THE GRIPPING STORY OF THE RAF'S BLOODIEST RAID ON HITLER'S GERMANY* (London: Harper Collins, 2013).



1945: The Palace of Justice, Nuremberg.

The U.S.S.R. was the final nation to join the Allied trial plan. At the July 1945 “Big Three” conference in Potsdam, the leaders—now Stalin, Truman, and newly-elected U.K. Prime Minister Clement Attlee—again considered war criminals among many other topics. The leaders agreed that “[w]ar criminals and those who have participated in planning or carrying out Nazi enterprises involving or resulting in atrocities or war crimes shall be arrested and brought to judgment.”

The reaffirmation that the U.S.S.R. would remain in the project carried the London Conference to its successful conclusion. On August 8, 1945, Jackson and his Allied counterparts signed the London Agreement and Charter. The Agreement created the world’s first international criminal court, the International Military Tribunal (“IMT”)—so named because it was an institution of military occupation government in the land that had been Germany. The IMT had jurisdiction over four crimes: (1) conspiracy, common plan, and agreement; (2) the waging of aggression war, or breach of the peace; (3) war crimes, and (4) crimes against humanity. The London Agreement defined a system of due process. The defendants would receive written charges, defense counsel of choice, time to prepare for trial, discovery of prosecution evidence, and compulsory process to assemble defense witnesses. The IMT, an independent judiciary, would conduct a public trial. It would admit relevant evidence, broadly construed. It would hold the prosecutors to a burden of proof beyond a reasonable doubt.

The London Agreement also defined limits on the trial and on defendants’ rights. Defense arguments of *tu quoque*—“you too”; no

clean hands—were ruled out of bounds. Head of state immunity, a historical prerogative, was declared null and void. Following orders was declared inadmissible as a defense, although it could be relevant in mitigation of punishment.



August 8, 1945: Justice Jackson, for the U.S., signs the London Agreement.

Following the London Conference, prosecutors drafted a comprehensive indictment. On October 18, 1945, the IMT convened in Berlin to receive it. The Indictment charged twenty-four individuals and six Nazi organizations with various crimes. One defendant was Hans Frank, the former Gauleiter of Poland and the Nazi-occupied General Government. Frank had presided in Krakow, in the Wawel castle near Jagielloinian University; he was, as Justice Jackson stated the next month in his opening statement at Nuremberg, “a lawyer by profession I say with shame.” The Indictment contained the word “genocide,” coined by Polish lawyer Raphael Lemkin, a consultant and advisor to the Jackson staff, who fought hard for his word to be used.<sup>6</sup> In one particular, the Indictment charged that Nazis in September 1941 had killed “11,000 Polish officers who were prisoners of war . . . in the Katyn Forest near Smolensk.”

The international trial opened on November 20,

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6. See John Q. Barrett, Raphael Lemkin and ‘Genocide’ at Nuremberg, 1945-1946, in *THE GENOCIDE CONVENTION SIXTY YEARS AFTER ITS ADOPTION* (Christoph Safferling & Eckart Conze, eds.) (The Hague: T.M.C. Asser Press, 2010).

1945. Interestingly, what had been by then Jagiellonian University's motto for over six hundred years, *plus ratio quam vis*—"more reason than power," or "mind over power"—was echoed in the first paragraph of Robert Jackson's opening statement at Nuremberg. In that opening, perhaps the most eloquent, powerful courtroom address the world has ever heard, Jackson described the trial as "one of the most significant tributes that power ever has paid to reason." He was stating candidly that in that moment, Allied power was the power to finish brutally, to execute, to exterminate, whatever quantity of Nazis the Allies wished to dispatch. He was noting that the Allies were restraining themselves in the name of rule of law, with the procedures and commitments outlined in the London Agreement.

The international Nuremberg trial proceeded over the course of the next year with each nation presenting part of the case, then with defense cases, and then with cases against and defending the Nazi organizations. It was largely a documentary trial, including film evidence of concentration camps as they were liberated and film evidence of the Nazis in power. The trial also included powerful testimony from victims. Each defendant had a full chance to defend himself.

At the end of September 1946, the Nuremberg tribunal delivered its judgments. As to legality, international law prescribed the conduct charged—these were crimes against the international order. As to individuals, nineteen were convicted and three were acquitted. Twelve of the guilty were sentenced to death and seven were sentenced to terms of years. Three organizations were convicted and three were found to be noncriminal. The Katyn Forest particular was not mentioned—it formed no part of the Nuremberg judgment.

#### 8. The U.S. Nuremberg Military Tribunals ("NMTs")

The Cold War, deepening during 1946, insured that there was no second international trial. Instead, following the conclusion of the IMT in October 1946, the Americans, who still occupied Nuremberg, conducted twelve "subsequent proceedings" there between late 1946 and spring 1949. Brigadier General Telford Taylor, previously a senior member of Jackson's U.S. team before the IMT, served as chief prosecutor. He and his teams prosecuted 177 additional individuals. Each case concerned persons who had worked together in an important sector of the Third Reich. These cases thus came to be known by short names of either a leading defendant or the occupational sector: *The Medical Case*; *The Milch Case*; *The Justice Case* (later portrayed in the

film “Judgment at Nuremberg”); *The Pohl Case*; *The Flick Case*; *The I.G. Farben Case*; *The Hostage Case*; *The Reich Main Security Office (RuSHA) Case*; *The Einsatzgruppen Case*; *The Krupp Case*; *The Ministries Case*; and *The High Command Case*.



Circa 1946: General Telford Taylor at the podium, Palace of Justice, Nuremberg. After this relatively small number of persons was prosecuted (and not every defendant was convicted), the Nuremberg Trial process came to an end.

### 9. Legal Legacy

Nuremberg came about through law, yes, and through Allied will, commitment and power. The legal product, the principles enunciated and followed at Nuremberg, became, after a Cold War interregnum of fifty years, the modern fundamentals of international criminal justice and related national justice systems. The International Criminal Court in The Hague is a descendant of the Nuremberg trials. They are precedent. Their legal landscape gives new, positive meaning to the phrase “Nuremberg Laws.”

### 10. Human Rights Legacy

The Nuremberg trials, especially the international trial, were war trials. The principal crime that was prosecuted at Nuremberg was waging aggressive war. The other substantive crimes, both war crimes

and crimes against humanity, occurred, especially as the IMT adjudicated them, in the context of that war framework, and in the time period of Germany's military aggression (1939 and forward).

The Nuremberg trials also were, however, educational enterprises. During these proceedings, the trials created global public knowledge of enormous human rights crimes. The trials produced a vast documentary record that showed—proved—the enormity of the Holocaust.

The trials obtained testimony from Holocaust victims, witnesses, and perpetrators. Rudolf Hoess, for example, was an IMT trial witness. He had been the commandant of Auschwitz. He was called to testify for defendant Ernst Kaltenbrunner, to testify that he (Hoess) had never seen Kaltenbrunner at Auschwitz. On cross-examination, Hoess testified—with, sickly, what history now knows to be exaggeration—that he as Auschwitz commandant supervised the extermination of more than a million people, mostly Jews.



April 15, 1946: Rudolf Hoess testifying at Nuremberg.

The Nuremberg trial transcript and exhibits, published for accountability and for history's continuing study, record the world's dawning comprehension of Nazi concentration camps in the west and, in the east, the Nazis' extermination camp system.

The Nuremberg trials did not commence as a Holocaust project, but they produced, for that time and for us, Holocaust knowledge based

in the factual record.

That knowledge became the basis for human rights consciousness, codification, and enforcement that has followed, including the Geneva Conventions, the Genocide Convention, and the work of international criminal tribunals.

That knowledge became a basis for us to march forward together, as lawyers, as scholars, as teachers, as students, as fellow human beings.

That knowledge became the basis for, annually, in Poland, the March of the Living.

#### VIDEO REMARKS BY AMBASSADOR SAMANTHA POWER

*Remarks by Ambassador Samantha Power, U.S. Permanent Representative to the United Nations, on "Reflections on Nuremberg: Memory, Accountability, and the Consequences of Inaction" Via Video to the Nuremberg Symposium & International March of the Living, May 4, 2016*

Richard D. Heideman: Last year at the March of the Living, we were honored to welcome [the] US Ambassador to the United Nation Human Rights Council, Ambassador Keith Harper the first Native American of ambassadorial rank at the United Nations. And today we are especially honored to receive remarks from Ambassador Samantha Power, the US ambassador to the United Nations. For those of you who were able to join us last evening, we viewed the Watchers of the Sky to which I commend each of you and recommend you use it, learn it, and teach it. Ambassador Power presented, during that movie last evening, a compelling narrative, as did others such as Professor Ocampo who will also be with us today. By video Ambassador Samantha Power.

Ambassador Samantha Power: Let me begin by thanking the March of the Living and the Raoul Wallenberg Centre for Human Rights for giving me the honor of speaking with you today, and—more importantly—for organizing this really important conference and the deeply impactful ritual of the annual March of the Living. I wish I had been able to join you in person. I wish I could have marched by your side.

I would also like to extend my deepest gratitude to the survivors who are present. To simply have survived what you did—as we say around this time of year—would have been enough. Yet to retrace the horrors that you and your loved ones were forced to endure—and to share them with others, so that future generations will be inspired to prevent people from experiencing what you did—it is truly awe-