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<u>The Nuremberg Trials: Robert H. Jackson and American National Autonomy</u>

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The London Charter was signed August 8, 1945 and stood as a landmark of international law. In the wake of Nazi Germany's rise to power and subsequent crimes, the allied victors decided that the leaders who had been responsible for the war needed to be examined under a calm and reasoned judicial proceeding in order to determine their guilt. The London Charter created the International Military Tribunal (IMT) for the punishment of Nazi crimes, and also created the parameters of law upon which the IMT would base its judgments. The allied victors: the United Kingdom, the United States, the Union of Soviet Socialist Republics, and the provisional government of France, decided to create laws that would punish Nazi Germany in a way that would be considered just by posterity. Although they eventually agreed upon a single text for the final charter, the drafting process itself showed the conflicted position that many of the allied nations found themselves in as they sought to define Nazi crimes in a way that could theoretically adhere to the allied victors if they were charged under similar circumstances. Robert Jackson, the American delegate, sought to make a charter that would maintain domestic jurisdiction for the United States in the postwar period, while the other delegates, especially those from France, were more concerned with a draft that would secure a more universally accountable and civilized method of warfare between nations.

Robert H. Jackson was a key figure in formulating the United States' position throughout the process of the Nuremberg trials. He was appointed by President Truman to lead the U.S. delegation during the drafting of the charter in London, and also served as the lead prosecuting attorney during the Nuremberg trials. Jacksons' primary concern throughout the entire drafting of the charter was to maintain a well-defined line between justified and unjustified international intervention into domestic concerns. Above all else he wanted a document that could be applied to the United States, but that would not invite international jurisdiction. The crimes of the Nazis

were qualified and codified to the extent that the American delegation considered international jurisdiction applicable in the case of Nazi Germany alone, not in general practice for an international body to correct wrongs within an individual nation. After the charter was drafted, Jackson continued to maintain that international jurisdiction was limited throughout the trials, as evidenced by the indictments of the prosecution, his opening statement, and the final judgment. The drafting of the London Charter and subsequent trial showed that even though the United States had been pulled into another intervention in Europe, it still sought freedom from European intervention into American concerns even in its postwar agreements.

The continental powers, especially France, were more interested in declaring the Nazis criminal for the sake of their actions in order to satisfy a massive call for justice by its stricken peoples. The precedent of domestic interference in international law was of little concern compared to the greater purpose of declaring the Nazi regime, and the actions that it sanctioned, as criminal. For many delegates, the International Military Tribunal was a way to impute guilt upon Germany for the war, and also to lead the way for universal reforms and greater international cohesion among nations in Europe. The approach was a reiteration of the policy evoked at the Treaty of Versailles, except that reparations were no longer sought from Germany. Instead France hoped to create a set of legal principles that would help lead the way for a more international cooperation among nations, which would include an agreed upon body of laws that would adhere to all nations.

The legal criticism of the Nuremberg trials was almost immediate, and came from legal scholars across the globe.[1] The main criticisms of the trial were the fact that it was ex post facto

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1 . The Nuremberg trials provide material for both historical analysis as well as legal analysis. The amount of legal scholarship that was written in the wake of the Nuremberg trials was immediate and vast. For a critical and thorough analysis of the Nuremberg trials from a British perspective, see Hans Kelsen, “Will the Judgment in the Nuremberg Trial Constitute a Precedent in International Law?” *The International Law Quarterly, Vol. 1, No. 2*

justice; that the court was set up by the victors and only the vanquished were scrutinized; that the lawmakers, judges, and prosecutors were the same people with absolutely no accountability. The Soviet Union's discrepancies were the most obvious, but legal critics pointed out the United States the United Kingdom and others as nations who merely judged others for crimes that they themselves had committed.

The historiography of the Nuremberg trials was, and remains, largely documentary in nature, and tends to be focused upon the unifying and pedagogical impacts of the Nuremberg trials. This early scholarship focused upon the different defendants and the verdicts that they received at the hands of the IMT. The main topics discussed were the legitimacy of the court, the political undertones of the trial, and the pedagogical role that the trials served in the de-Nazification process. Most historical works focused on how the trials successfully condemned Nazism in front of the German nation and the world without having to directly punish the German people. Generally the authors accepted flaws that had occurred in the trial, but also praised its lasting impact upon Germany as a way that reconciled the world in a reasonable and fair trial.[2]

(Summer, 1947), pp. 153-171. http://www.jstor.org/stable/762970. For American legal criticisms that were published shortly after the trials, see Hans Leonhardt, "The Nuremberg Trial: A Legal Analysis" *The Review of Politics* , Vol. 11, No. 4 (Oct., 1949), pp. 449-476. http://www.jstor.org/stable/1405160. See also, George A. Finch, "The Nuremberg Trial and International Law" *The American Journal of International Law*, Vol. 41, No. 1 (Jan., 1947), pp. 20-37. http://www.jstor.org/stable/2193852.

2 . The historical works on the Nuremberg trial are exhaustive. For a readable and historically veritable coverage of the trials from beginning to end, see Joseph Persico, *Nuremberg: Infamy on Trial* (USA: Penguin Group Incorporated, 1994). For a very sympathetic view of the Nazi defendants, with an emphasis on the life of each defendant and the basis for the crimes that were imputed to him, see Eugene Davidson, *The Trial of the Germans: Nuremberg 1945–1946* (NY: Macmillan, 1966.) For a revisionary account that showed the disorganization and arbitrariness of the trials through the use of justices' deliberations, see Bradley F. Smith, *Reaching Judgment at Nuremberg* (NY: Basic Books, 1977). For a layman's narrative that counters Smith's criticisms of the trial, see Airey Neave, *Nuremberg: A personal account* (London: Coronet House Publishing, 1982). Robert E. Conot, *Justice at Nuremberg* (NY: Basic Books, 1993), is generally considered to be the authoritative work on the Nuremberg trials and is referred to by virtually all scholars studying the Nuremberg trials. Conot praised Nuremberg for the historical resource that it provided for the world, but also pointed out valid criticisms of the trial. By and large, the majority of the scholarship on the Nuremberg trials is somewhat critical, recognizing issues of ex post facto justice, but still presents it as a necessary and relatively fair set of proceedings given the circumstances.

When the Cold War came to a close in the 1990s, historical scholarship began to look at Nuremberg through the lens of Cold War tensions and the division of Europe that had ensued. There are several scholarly works on the Nuremberg trial with an emphasis on its Cold War impacts, one of the most prominent is "Soviets at Nuremberg" by Francine Hirsch.[3] In introducing her methodology, she states that, "new evidence from the former Soviet archives, much of which has just become available to researchers, suggests that there is still a great deal that we need to understand about what happened at Nuremberg and in its wake."[4] Hirsch argues that the Soviet contribution to Nuremberg was actually very substantial, and that the trials were in many ways turned into an international publicity stunt. She argues that it was actually Nuremberg that helped to solidify the divisions between the Soviet Union and the other allied nations. Hirsch's work provides a perspective on the formation of the trials and their Cold War impact from a Soviet perspective.

The wide scope of application and precedent that the Nuremberg trial continues to hold in an increasingly global world makes scholarship on the subject somewhat dependent on current events. Scholarship increases during periods of international crime and questionable legal jurisdiction, especially cases involving prisoners of war, treatment of human beings, and genocide. Historical events such as the Vietnam War and the Gulf War have prompted a fair amount of review of the Nuremberg trials as historical precedent[5]. Issues of international conventions also raise comparison, such as tribunals against African war criminals or residual

3 . Francine Hirsch, "The Soviets at Nuremberg: International Law, Propaganda, and the Making of the Postwar Order" *American Historical Review*, June 2008. Hirsch's article is a very prominent example of scholarship; however, many works on Nuremberg include commentary on the Cold War implications of Nuremberg. The previously stated works also include Cold War implications. See, Persico, *Nuremberg*, as well as Conot, *Justice at Nuremberg*, for commentary on the Cold War implications of the Nuremberg trials.

4 . Hirsch, "The Soviets at Nuremberg," 702.

5 . An example of great comparisons between the Vietnam War and the Nuremberg trials is found in a compilation of essays by Richard Falk. Richard Falk, *The Vietnam War and International Law* (Princeton University Press, 1976).

from the Bosnian crisis.[6]

Throughout all of the scholarly work dedicated to Nuremberg, there are very few that focus on the formation of the London Charter. Linda S. Bishai, in her article “Leaving Nuremberg”[7] discusses the Nuremberg trial in the context of the London Charter. She argues that the American stance at Nuremberg closely resembles the modern stance towards international relations. She argues that it is a constant struggle between ideal justice and realistic stipulations, as the United States tries to avoid international jurisdiction.

Another work that focuses on the drafting of the charter is “The Nuremberg Paradox” by Leila Nadya Sadat.[8] In her article, she maintains that the reason why France embraces international law while the U.S. rejects it is because of legal tradition. However, her work mainly focuses on the French legal system from the Nuremberg trials to present, analyzing its structure compared to the United States.

Many people continue to see the Nuremberg trials as the first step towards international accountability and towards international sovereign law. The U.S. purpose of the trial, from its very conception, was to maintain respect for national sovereignty. However, the intent of the United States during the formation of the IMT is rarely examined. Those that do examine the drafting of the London Charter do not emphasize the diligent role played by Jackson, throughout the drafting of the charter and subsequent trials, to put forth the idea of national jurisdiction. They also fail to categorize the Nuremberg trial within the context of pre-war isolationism and

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6 . Mark A. Bland, “An Analysis of the United Nations International Tribunal to Adjudicate War Crimes Committed in the Former Yugoslavia: Parallels, Problems*”, Prospects*. *Indiana Journal of Global Legal Studies*, Vol. 2, No. 1, pp. 233-274. For a critical analysis of war crimes trials throughout history, see Gary Jonathan Bass, Stay the Hand of Vengeance: The Politics of War Crimes Tribunals (N.J.:Princeton University Press, 2000).

7 . Linda S. Bishai, “Leaving Nuremberg: America's love/hate relationship with international law,” *Review of International Studies, null.* 425-443.

8 . Leila Nadya Sadat, “The Nuremberg Paradox,” The American Journal of Comparative Law, Vol. 58. 151-204.

post-war status as a superpower, both of which contributed to Jackson's insistence to maintain the concept of national sovereignty while creating the charter. This essay examines American drafts of the charter, minutes of the drafting conferences, transcripts from the trial, as well as the final judgment delivered against the defendants, in order to show the intentions of America as they developed during the trial. Nuremberg, before it is examined in its cold-war implications or its pedagogical merits, must be recognized as a trial that was developed cautiously by the American delegation, specifically to respect national sovereignty. My goal is to show the implications that Nuremberg had for foreign policy and international relations of the United States from the postwar period to present day.

Formation of the London Charter

President Franklin Delano Roosevelt during a speech delivered October 7, 1942 stated that, "I now declare it to be the intention of this Government that the successful close of the war shall include provision for the surrender to the United Nations of war criminals."[9] Although the conception of the International Military Tribunal was still far off, the leaders of the Allied nations realized that Nazi holocaust crimes and treatment of prisoners of war went beyond the conduct of mere warfare, and that there would be a need for international punishment. It is also clear that Roosevelt saw that in order for these criminals to be tried it would have to be done by trial and also by an international entity that did not represent one single nation.

By 1942 the allied leaders had created an outline for the United Nations as they agreed that they would continue to fight the axis. But before the UN was officially sanctioned the United Nations War Crimes Commission was established, charged with the task of declaring individuals as 'war criminals' and collecting evidence against them. Before the trials had even been formally

9 . Franklin D. Roosevelt, "Statement on the Plan to Try Nazi War Criminals.," October 7, 1942. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. Accessed May, 3, 2013. http://www.presidency.ucsb.edu/ws/?pid=16174.

discussed between nations there was an organized effort to gather information for a future prosecution. The material gathered by the War Crimes Commission was to serve as the evidence base for any trials that would be held, but there was still no agreement over how the trials should be conducted, who should conduct them, or whether trials were even necessary.

The foreign ministers of four leading allied powers (U.S., U.K, U.S.S.R. and China) met at the Moscow Conference in 1943 to discuss how to cooperatively end the war. The foreign ministers, on behalf of their respective leaders, drafted the Moscow Declaration, which formally pledged all nations to continue fighting against the Axis powers. There was also a statement on atrocities which reads as follows:

> those German officers and men and members of the Nazi party who have been responsible for or have taken a consenting part in the above atrocities, massacres and executions 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 these liberated countries and of free governments which will be erected therein...they will be brought back to the scene of their crimes and judged on the spot by the peoples whom they have outraged.[10]

The signatory powers had begun to negotiate the terms under which the Nazis would be tried, but by 1943 the way that the trials would be conducted was still unclear. The Moscow Declaration put forth a plan in which individual nations judged Nazi criminals by their own court system and rule of law. The International Military Tribunal, however, was based on an international conception of justice. Although the Moscow Declaration is often considered as the basis for the London Charter, it has little resemblance to what was actually drafted. It is significant because it is the first formal declaration that a war crimes trial would take place that was signed by Roosevelt, Stalin, and Churchill; however, the London Charter, as it existed in its final form, was still far off for the allied nations.

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10 . United States Department of State. *Foreign relations of the United States. Conferences at Malta and Yalta, 1945* U.S. Government Printing Office, 1945. 400-413. Accessed May 15, 2013. http://digital.library.wisc.edu/1711.dl/FRUS.FRUS1945.

The true galvanizing of opinion in favor of an international trial took place in February of 1945 at the Yalta conference.[11] The allied leaders decided that the best method would be to create an international judiciary in which Nazi leaders would not become martyred and there would also be a clear record left for posterity. The charter was not yet drafted at this point, but Stalin, Churchill and Roosevelt discussed the sources of evidence and the types of crimes that would imputed to the Nazi leaders among other things.

After the Yalta conference, discussion of the trials and drafting of the charter were put into the hands of legal representatives and brought up for international discussion at a conference in San Francisco in April of 1945. On April 30 a definitive proposal was issued by the United States to create the basis for an international trial for Nazi War Criminals. On May 2, 1942, Justice Robert Jackson was officially named the United States Representative. By June, the four nations had sent delegates to London to discuss how the trials would be conducted.

The discussion included representatives from four nations: the United States, the U.S.S.R., the United Kingdom, and the provisional government of France.[12] Several representatives were sent from each nation to help in the drafting process, which included the primary delegates from each nation going through a process of reconciling drafts article by article, each delegation also had a team of assistants to help in the drafting and negotiating of the charter. Although the document was drafted among these representatives, the final document was signed by several United Nations powers and was intended to be representative of the free world.

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11 . United States, Department of State *A Decade of American Foreign Policy : Basic Documents, 1941-49* Prepared at the request of the Senate Committee on Foreign Relations
Washington, DC : Government Printing Office, 1950. Accessed May 13, 2013.
http://avalon.law.yale.edu/wwii/moscow.asp.

12 . Note that the four nations discussing the charter for the tribunal were not the same four that were represented at the Moscow Conference. The provisional government of France was chosen to help in the drafting process while China was not.

The United States' main representative was Justice Robert H. Jackson. Jackson had previously served as the Attorney General of the United States and was also an Associate Justice for the Supreme Court. He was chosen for his special legal expertise and interest in the formation of international law. He had already delivered speeches on the subject of international law during his time as attorney general[13] and was considered to be a knowledgeable and trustworthy delegate to represent America. He also had a personal staff that travelled to London with him in order to help draft articles, and negotiate terms with other delegates. After serving on the drafting committee of the London charter, Jackson also worked as the lead prosecuting attorney during the Nuremberg trials.

The Soviet representatives were Iona T. Nikitchenko and A.N. Trainin. Nikitchenko was a Soviet general who had already had experience as a judge during the Moscow show trials of the 1930s during Stalin's purges, trials that were characterized by their pre-determined guilty verdicts. After helping to draft the charter, he also served on bench as the primary Soviet judge during the Nuremberg trials. The other Soviet delegate, A.N. Trainin, was a professor of law at Moscow University. He had published a book upon international law, a copy of which was provided to all of the delegates, and which was brought up during discussion several times.

Robert Falco served as the delegate for the provisional government of France. His assistant was Professor André Gros, a French professor of international law. Gros provided much of the intellectual groundwork for the French drafts and worked to reconcile points of dispute and clarification that came up during the drafting process. Robert Falco served at Nuremberg in the capacity as an alternate judge for the nation of France.

The British were represented by Sir David Maxwell Fyfe, who at the time was serving as

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13 . United States. Library of Congress. Federal Research Division. *Report of Robert H. Jackson, U.S. Representative, to the International Conference on Military Tribunals*. Accessed May 13, 2013. Military Legal Resources-Nuremberg. 299.

Attorney General for the Churchill government. He was replaced towards the end of the drafting process by the new attorney general, but with little effect on the outcome of the document. Throughout the drafting process he represented England mainly in the sense of hosting and facilitating discussion between the other delegates. Fyfe served as more of a moderator between the nations, and oftentimes submitted drafts in an attempt to reconcile differences between the representatives. After the drafting of the charter he assisted the prosecution at Nuremberg.

Discussions and drafts began in late June of 1945 and by August 8 they had completed a final draft that was acceptable to all nations. Among the issues considered were those of legal tradition, admission of evidence, and most divisively, the definition of terms such as 'crimes against humanity' and 'aggression' as they would pertain to the trial.

The final draft of the London Charter, signed on August 8, 1945, contained 30 articles that provided for the creation of the International Military Tribunal. Article 6 raised the charges against the Nazi defendants; it is both the most significant article, and the one that drew the most contention during the drafting of the London Charter.

The Drafts

The original American draft was presented during the San Francisco conference, but a revised edition was created June 14 and presented eleven days later when the London Charter was convened June 25, 1945. It was the original draft of the charter that was presented for discussion. Although it contained a clause that addressed the atrocities committed against the jews, it was very limited in both its principles and its jurisdiction. It reads as follows:

> b. Atrocities and offenses, including atrocities and persecutions on racial or religious grounds, committed since 1 January 1933 in violation of any applicable provision of the domestic law of the country in which committed.[14]

The first American draft of the charter addressed the Holocaust crimes only under 'any

14 . *Report of Robert H. Jackson,* 57.

applicable provision of the domestic law'. The charge was not based upon any notion of immutable human rights nor did it impute the sovereign jurisdiction of an international tribunal. It merely stated that crimes committed by Germans against other Germans would be punished under German law. The article, in effect, merely made the IMT the enforcer of German law in the absence of a functioning and upstanding German government. There were no lofty claims of universal human rights or 'crimes against humanity',

The American draft was intentionally drawn up with consideration to how the law would be applied universally, not just to Germany. The American delegation wanted to prosecute Germans for the Holocaust crimes, but they didn't want to overstep the sacred rights of a nation to conduct its own business. If the London Charter created a precedent for international jurisdiction over domestic law, then it was possible that the U.S., or any of the other signatory nations, could be held accountable for their own application of law. The events of the Holocaust were universally recognized as criminal, but at first the American delegation only wanted to prosecute within the bounds of domestic German law as to go further would be to jeopardize the legal autonomy of every free nation.

The first revision of the American draft was proposed by the British on June 28, 1945. The draft explicitly stated the criminal charge of a common plan to commit the crimes of war and aggression,[15] and then stated the separate charge of atrocities that Germans committed against their own citizenry. The two clauses read as follows:

> (d) Entering into a common plan or enterprise aimed at aggression against, or domination over, other nations, which plan or enterprise included or intended, or was reasonably calculated to involve or in its execution did involve, the use of

15 . *Report of Robert H. Jackson,* 87. The charge of 'crimes against the peace' as it was stated in the final draft of the London Charter was originally considered two separate charges in many of the preliminary drafts. One of the charges was launching a war of aggression, while the other charge was initiation of war in violation of international treaties, which was considered a separate crime during the original drafting procedure. Thus, the concepts of 'war crimes' and 'crimes against the peace' are covered in three clauses, not two.

unlawful means for its accomplishment, including any or all of the acts set out in sub-paragraphs (a) to (c) above or the use of a combination of such unlawful means with other means.

(e) Atrocities and persecutions and deportations on political, racial or religious grounds, in pursuance of the common plan or enterprise referred to in sub-paragraph (d) hereof whether or not in violation of the domestic law of the country where perpetrated.[16]

The British redraft was substantial for several reasons. It made belonging to the common plan an explicit charge.[17] But it also made it so that the charge that would become 'crimes against humanity' was applicable only as it related to the common plan of aggression. The war of aggression was now the principle crime that the Nazi conspirators were being tried for, while the atrocities committed against the Jews and other minorities was a small portion of the larger crime of aggressive warfare.

The British also made the atrocities universally criminal “whether or not in violation of the domestic law of the country where perpetrated.”[18] The American draft had originally sought out German atrocities within the parameters of German law. The principle was that it was perfectly acceptable to seek out those who had broken pre-existing law and were therefore considered criminals prior to the formation of the London Charter. The new draft declared that German domestic law was insufficient to prosecute all of the crimes that took place within its borders, and that an international law would have to be enforced. The revision by the British delegation specifically renounced the idea of autonomous German law that was so specifically noted within the American draft.

The American delegation presented a redraft of the charter on June 30, two days after the presentation of the British revision. The charges set out by the British were adopted verbatim

16 . *Report of Robert H. Jackson,* 87.

17 . *Report of Robert H. Jackson, 56-58*. The original American draft did not include a specific charge of a common plan in its original draft, however, insisted on the inclusion of it after the revision presented by the British.

18 . *Report of Robert H. Jackson,* 87.

into the new American draft, which included both a common conspiracy charge as well as a charge against atrocities. The acceptance of the British revision meant that the American delegation was willing to subjugate domestic law to international law in the case of Holocaust crimes.

However, in order to make sure that the international jurisdiction was in no way universal, the Holocaust was only qualified as a crime because of its connection to Nazi Germany, their rise to power, and their waging of an illegal and aggressive war. The original American draft showed the reverence that the delegation held for national jurisdiction over domestic concerns; however, the sovereignty was not entirely immutable by the new draft. If a country committed crimes that affected nations on an international scale, such as an aggressive war, then they were held responsible by an international court. The Holocaust, which was considered a domestic concern, was punishable by an international court only if it could be proved that it had contributed to an international crime. The logic was simple, in order to be judged by an international court, it had to be an international crime with international victims, a war of aggression being a prime example. Under the draft put forth by the United States and United Kingdom, the Holocaust had to have a connection to international crime in order for it to be judged by an international court.

The French submitted their own version of the charter on July 19, and presented it for discussion among the delegates. Their version of the charges reads as follows:

i) the policy of aggression against, and of domination over, other nations, carried out by the European Axis Powers in breach of treaties and in violation of international law ;

ii) the policy of atrocities and persecutions against civilian populations;

iii) the war, launched and waged contrary to the laws and customs of international law;

> and who is responsible for the violations of international law, the laws of humanity and the dictates of the public conscience, committed by the armed forces and civilian authorities in the service of those enemy Powers.[19]

The French draft appears to follow the American draft fairly closely. There are really two major differences between the two. The charges are simplified in the French draft, although they still appear to convey the same meaning. The draft implies the common plan charge in the preamble, unlike the American draft, that makes the common plan charge explicit. These two differences appear to be minor, and in the application of the law they make little difference. The conference between delegates though, shows that the two drafts espoused two very different legal methods for trying the Nazis.

The French delegation stated that the reason for their rejection of the American draft was because it stated aggressive warfare as criminal. Professor Gros, while defending his draft stated that, "We do not consider as a criminal violation the launching of a war of aggression. We think it will turn out that nobody can say that launching a war of aggression is an international crime"[20] The statement by the French delegate is somewhat mysterious in light of the fact that 'policy of aggression' is the first charge stated in their draft. More importantly, the charge of aggression was the cornerstone crime that was stated within the American and British drafts, the common plan charge applied to aggressive warfare and all other crimes appeared in concert with it.

The first reason that the French rejected the American statement that aggressive warfare was criminal was because there was no legal precedent for it. As Gros put it, "If we declare war a criminal act of individuals, we are going farther than the actual law... [21] It's apparent that the French wanted to be careful not to try the Nazis based upon ex post facto justice. They believed

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19 . *Report of Robert H. Jackson,* 293.
20 . *Report of Robert H. Jackson,* 295.
21 . *Report of Robert H. Jackson,* 295.

that to try the Nazis for a crime that was only then being created was a farce. As Gros put it, “the statute of the International Tribunal will stand as a landmark which will be examined for many years to come, and we want to try to avoid any criticisms.”[22] Although the trials were limited in their scope to only prosecuting the Nazi conspirators, the French delegation wanted to be careful to stand upon law that was solidified. In their perspective the Briand-Kellogg pact was not definitive law, and as such, would invite criticism of the trial.

The American delegation, in contrast, had rested their conclusions about the criminality of aggressive warfare upon the Briand-Kellogg Pact of 1928. The Briand-Kellogg Pact of 1928 was an international agreement reached after World War I that denounced aggressive warfare as a form of policy; it was ratified by most major world nations including Germany, Italy and Japan. The French believed that this document was certainly a treaty, but that it wasn't substantive law. Not only was it not substantive law, but the French delegation also made a distinction between being able to try a state for a crime versus trying an individual; “It is said very often that a war of aggression is an international crime, as a consequence of which it is the obligation of the aggressor to repair the damages caused by his actions. But there is no criminal sanction.”[23] Even if there was the possibility of demanding reparations from a government for waging an aggressive war, there was certainly no precedent to convict individual leaders. Aggressive warfare was discouraged by treaties, but the fact that there was no codified and clear existing law that could be applied before the war began, meant that the trial couldn't condemn individual Nazis for an aggressive war.

The French delegation, rather than looking to the Kellogg Briand Pact as precedent, adhered to the principles within the Treaty of Versailles in which it was declared that individual

22 . *Report of Robert H. Jackson,* 295.
23 . *Report of Robert H. Jackson,* 295.

leaders could not be held responsible for war, only a nation collectively could bear guilt. Professor Gros tried to reiterate that individuals could not be held responsible under existing law

> It certainly was the state of the law in 1919 that the acts which brought about a war would not be charged against officers or made the subject of procedure before a tribunal... we have no legal basis to say that launching a war of aggression shows criminal responsibility of the people who launched that war.[24]

The military and government officials could not deemed criminally responsible on an individual basis for waging an aggressive war. The Kellogg-Briand pact, which the Americans saw as the basis for a charge of aggressive warfare was something that the French believed didn't apply to individuals, was not substantive, and didn't provide sanction.

The French still charged the Nazis with the war of aggression, but the charge was based upon the other charges of 'crimes against humanity' and 'war crimes'. Although the Nazis could not be condemned for aggressive warfare in and of itself, the French delegation thought that if the crimes could be tried under common law, then the entire system could be tried fairly. The acts of the Nazis were inherently criminal; there was already precedent in every single law that had ever existed in the modern world. The tribunal didn't have a precedent to convict the leaders individually based in international law, but they could still convict them based on common law.

In the eyes of the French, the conviction of the Nazis was based upon their criminal deeds, not on starting a war. Gros argued that the atrocities should be prosecuted above all else, once the basic criminality of the Nazis was established, then that could be a basis to show that the Nazi war was illegal. Gros explains his argumentation:

> if you define their crimes according to their practical results, if you show that the Germans have been breaking treaties and as a result of that have annexed populations, run concentration camps, and violated international law by criminal acts against people, what you will condemn are those acts which in fact are criminal in all legislation, and you will condemn them for having directed those

24 . *Report of Robert H. Jackson,* 297.

acts.[25]

The French wanted a trial that would convict people on what the world already knew to be criminal. There was no legal basis for the crime of a war of aggression, according to the French, but the other crimes committed by the Nazis needed no precedent because they were obvious.

All of the other acts, by their criminal nature, made the war illegal according to the logic of Professor Gros.

The charge of 'war crimes' was fairly well established under international sanction already through the Geneva Convention of 1929; however, the charge of 'crimes against humanity' had virtually no precedent. The French draft considered the criminality of Nazi actions to be immutable based upon universal conscience. The French draft, more than the other drafts, depended on, “the violations of international law, the laws of humanity and the dictates of the public conscience”[26] as their justification for the charges, as subjective and tentative as those concepts were.

The American delegation, however, continued to maintain that a war of aggression was criminal and that the Nazi leaders were accountable for it. Justice Robert Jackson, representing the American delegation, believed that the war started by the Nazis was inherently criminal in international law, and that the lack of explicit precedent was not a reasonable criticism, “I have no expectation that any rule we could formulate would avoid the criticism of some scholars of international law... Our attitude as a nation, in a number of transactions, was based on the proposition that this was an illegal war from the moment that it was started”[27]

The difference between the two viewpoints is complex, and requires further clarification. The American and British delegations posited that conducting a war of aggression was an

25 . *Report of Robert H. Jackson,* 297.
26 . *Report of Robert H. Jackson,* 293.
27 . *Report of Robert H. Jackson,* 299.

intrinsically criminal enterprise. Although there was no precedent in law, there were international agreements such as the Kellogg-Briand pact that declared aggressive warfare was a criminal enterprise, making the Nazis guilty. The Nazis, by waging an aggressive war that affected the citizens of other nations, made the conduct of their warfare an issue of international concern. Once German conduct in war became an international concern, their internal dealings also became the subject of international concern. The war of aggression was a criminal charge, and 'crimes against humanity' and 'war crimes', by nature of being part of a criminal war, became answerable to an international court.

It is clear from the drafting that Jackson did not intend for the charter to serve as a warrant for the international world to poke into the domestic affairs of any country. He made it clear that the atrocities would have been off limits to international jurisdiction had it not been for the war. During a conference with Professor Gros, Jackson explained his position:

> The reason that this program of extermination of Jews and destruction of the rights of minorities becomes an international concern is this: it was a part of a plan for making an illegal war. Unless we have a war connection as a basis for reaching them, I would think we have no basis for dealing with atrocities. They were a part of the preparation for war or for the conduct of the war in so far as they occurred inside of Germany and that makes them our concern.[28]

From the very outset, the American delegation wanted to qualify the prosecution of Nazi crimes. The reason why the nations were able to judge the Holocaust was not on the grounds of universal morality as many believe. Jackson believed that the atrocities themselves, although grotesque and unjust, did not give free reign for interference by other countries.

The draft provides a discourse on the international relations stance of postwar America, a nation that had been dragged across the Atlantic Ocean twice within thirty years in order to fight costly European wars. After World War I American President Woodrow Wilson created the

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28 . *Report of Robert H. Jackson,* 331.

League of Nations in order to prevent further warfare, however, the United States never joined this league because congress did not want to be held accountable to a larger world body. The United Nations was just such a body, and the London Charter was a document that threatened to bring international accountability to domestic policies. American policy while drafting the charter was one that desired to preserve American autonomy.

The sentiments of Jackson closely mirror the sentiments expressed by Henry Cabot Lodge, a United States senator who opposed the U.S. ratification of the Treaty of Versailles. Lodge made stipulations before he would consider accepting Wilson's proposition, article 4 is a quintessential example of the isolationist ideology that prevailed at the close of World War I. It reads:

> The United States reserves to itself exclusively the right to decide what questions are within its domestic jurisdiction and declares that all domestic and political questions relating wholly or in part to its internal affairs, including immigration, labor, coastwise traffic, the tariff, commerce, the suppression of traffic in women and children, and in opium and other dangerous drugs, and all other domestic questions, are solely within the jurisdiction of the United States and are not under this treaty to be submitted in any way either to arbitration or to the consideration of the Council or of the Assembly of the League of Nations, or any agency thereof, or to the decision or recommendation of any other power.[29]

World War II is generally seen as a major shift in U.S. foreign policy, the isolationist ideology of the interwar period ended and the postwar period ushered in a new period of international concerns. But even as the United States came onto the world stage as an established superpower, there was reservation to subject themselves to a transcendent international law.

Robert Jackson faced a complex dilemma. He was sitting as a delegate for a body in order to judge crimes that were undeniably criminal and unlawful. However, he did not want to invite

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29 . *U.S. Congress, Senate Journal,* 66 Cong., I Sess., Nov. 15, 1919. pp. 8777-8778. Accessed May 13, 2013. Mount Holyoke College, "The Senate and the League of Nations: Henry Cabot Lodge, Reservations with regard to the treaty" Accessed May 28, 2013. https://www.mtholyoke.edu/acad/intrel/doc41.html.

the same transparency and subjugation upon his own nation, should America be responsible for a similar episode at some point in the future. His ambivalence was clearly shown in the conference minutes, but it is also clear that he found distinction between Nazis and Americans. The fact that Nazi Germany had sought out world domination made them the subject of international inquiry and interference. And with the charges qualified as such, it protected the United States from the double-edged sword of its own judgments.

The French representatives charged the Nazis with similar crimes as the Americans did, but the justification for the crimes was exactly the opposite. They saw no precedent of a criminally aggressive war, and believed that the primary crimes of the Nazi conspirators were 'war crimes' and 'crimes against humanity'. These crimes were self-evident, and they were heinous enough that the French found it perfectly acceptable to reach judgment using an international court.

The American delegation, however, continued to maintain that a war of aggression was criminal and that the Nazi leaders were accountable for it. Justice Robert Jackson, representing the American delegation, believed that the war started by the Nazis was inherently criminal in international law, and that the lack of explicit precedent was not a reasonable criticism, "I have no expectation that any rule we could formulate would avoid the criticism of some scholars of international law... Our attitude as a nation, in a number of transactions, was based on the proposition that this was an illegal war from the moment that it was started"[30]

Even though the ideologies of the two nations were vastly different, the charges levied by the two nations were virtually identical, meaning that reconciliation was simply a matter of a few drafts. Professor Gros recognized the similarity and was willing to make concessions. In a discussion over reconciling drafts, he explains:

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30 . *Report of Robert H. Jackson,* 299.

> I should think that in consequence our differences are more or less this: the Americans want to win the trial on the ground that the Nazi war was illegal, and the French people and other people of the occupied countries just want to show that the Nazis were bandits. It is not very difficult to show. There has been an organized banditry in Europe for many years. The result was crimes, and we want to show that those crimes have been executed by a common plan. The result of that will be to show that the Nazis have launched and conducted an illegal war; so it is really a difference of wording, but the results will be shown to the world as you want to show them. I would like to make an appeal to the spirit of conciliation of Mr. Justice Jackson and ask him to consider our intentions and feelings when we are going to speak for the people of occupied countries and show that those Germans have acted as bandits and there has been a conspiracy.[31]

The French delegation recognized that there was little difference between the practical results of the two drafts, how the trial would be 'shown to the world' was the only true difference. And the priority for the French delegation was largely the same as it was at the end of World War I, to show that the Germans were guilty.

The French delegation made reconciliation and adhered to the final draft that made 'crimes against humanity' only criminal if it was 'in execution of or in connection with any crime within the jurisdiction of the Tribunal.' This first concession made it so that international interference was qualified only within aggressive warfare. The charge of a common plan was also attached to the charge of aggressive warfare and not to the other charges. By giving the common plan a special connection with aggressive warfare, the draft further served to solidify the U.S. vision of aggressive warfare as the principal crime. The largest concession on the part of the United States was the lack of a separate clause that formally codified a definition of aggression[32], something that Jackson believed "may well be regarded as a defect."[33]

The final London Charter was agreed upon on August 8, 1945. It was made up of

31 . *Report of Robert H. Jackson,* 382-383.
32 . For a copy of the American proposed definition of 'aggression' see, *Report of Robert H. Jackson,* 375.
33 . *Report of Robert H. Jackson,* vii.

several sections which included the appointment of judges, the admission of evidence, the rights of defendants, and even the covering of expenses. Although the draft was a compromise among all four nations, the draft most closely represented the American conception of the charges.

The Charges

The preamble of article 6 simply states that the judgment of the defendants is within the jurisdiction of the prosecution, and that individuals would be held accountable for conspiratorial crimes. The draft then lists three principle crimes: “Crimes Against the Peace”, “War Crimes” and “Crimes Against Humanity”. The closing paragraph after the listing of specific charges again reiterated the idea of a common plan, and individual responsibility. The differentiation between these three charges as stated in the London Charter is important to grasp and requires some explanation of their origins and implications.

The charge of 'crimes against the peace' is synonymous with 'war of aggression' and includes all planning and devising of a war that was unprovoked. An aggressive war, after the events of the World War I, was considered under the charter to be a criminal offense. 'War crimes' refers to a specific set of charges levied against the Nazi manner of conducting war. It covers violations such as mistreating or killing prisoners of war, which was considered to be a criminal method when conducting warfare. The capture and deportation of non-combatants from other countries was also covered under 'war crimes'. 'Crimes against humanity' specifically denoted crimes that happened within Germany that weren't directly associated with the waging of war. The charge was similar to 'war crimes' but it was differentiated by the fact that it was committed against its own citizens rather than those of another state, thus bringing up questions of jurisdiction.

The first charge, 'crimes against the peace', was the cornerstone of Jackson's justification for prosecuting the Nazi leaders, it reads as follows:

> *(a)* CRIMES AGAINST PEACE: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

The charge of crimes against the peace was present in all drafts, but in the final text of the charter there was specific reference to the common plan within the charge of 'crimes against the peace'. This inclusion very much supported the United States' conception of the charges. By stating the common plan in connection to the war of aggression, the charter, in turn, made it the principle crime of the tribunal.

The charge of 'crimes against the peace' was also based upon previous agreements according to the American delegation. The Kellogg-Briand pact of 1928, which Germany had agreed to, stated, “The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.”[34] The Kellogg-Briand pact serves as one of the first international agreements that pronounced war upon another nation as criminal, and much like the Geneva conventions, had been signed by Germany.

The Kellogg-Briand pact was what the Jackson had in mind when framing the charge of 'crimes against the peace'. As Jackson put it during one of the meetings, “If we go back to the pre-Briand-Kellogg [Kellogg-Briand] pact days, there is no doubt that for a period of international law all war making was legal. And it seems to me that that treaty and the acts which

34 . United States. Kellogg-Briand pact 1928, Papers Relating to the Foreign Relations of the United States – 1929 (In Three Volumes) Volume I Department of State Publication 2018. Washington, DC : Government Printing Office, 1943. Accessed 5/1/13. Yale School of Law, Avalon Project. http://avalon.law.yale.edu/subject_menus/kbmenu.asp.

followed it did something to the law of war, and that change is what we stand on."[35] The Nazi leaders could have been condemned by their breach of the Kellogg-Briand pact alone, the London Charter had simply served to restate the international agreement that had already been broken. So although a country's leaders had not been put on trial for 'wars of aggression' previous to Nuremberg, the concept had existed before the trial was enacted. The International Military Tribunal simply served to enforce an international agreement that had been breached.

The concept of a common plan was also introduced, although in the final draft of the charter it was not stated as a separate charge. Essentially it stated that just because a defendant was merely an accomplice in the crime, did not mean that they were innocent. Most drafts included a charge of conspiracy or common plan, in which a person would be individually charged with guilt regardless of whether they were personally involved or not. The drafts either contained the charge explicitly, or it was within the wording of the article so that it applied to all charges. The framers reasoned that unless a conspiracy charge was added into the draft, then there would be no possibility of reaching those in leadership positions. As Professor Gros, representing the French delegation, explained it, "If someone is sitting behind a desk and sends some people to kill others, the man sitting behind the desk is answerable for murder, at least in French law"[36]

The conspiracy charge was framed differently in different drafts though. In the early American drafts it applied specifically to the war of aggression in such a way that it attested to the common plan to wage an aggressive war, and considered other charges, such as war crimes and crimes against humanity, as mere implements in the greater conspiracy. In other words, what was on trial was the Nazi program as a whole, and their central crime was seen to be the waging

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35 . *Report of Robert H. Jackson*, 337.
36 . *Report of Robert H. Jackson,* 337.

of an aggressive war that had devastated the world, the 'war crimes' charge and the 'crimes against humanity' charge were considered by the American delegation as a means to perpetrate the crime of war of aggression.

In the final draft, the idea of a common plan had a privileged connection with the 'crimes against the peace' charge above the other charges imputed. By making the common plan charge apply especially to the waging of aggressive warfare, it made the other crimes accessory to it. Under the charge of a common plan, the Nazis were put on trial for their subjugation of the state in order to prepare for war, the Holocaust and war crimes were not judged merely in light of their criminality, but for their key role in the Nazi plan for aggression.

The second charge, ‘war crimes’, was, out of all the charges, considered to be well established within international law before the charter was written. It reads as follows:

> *(b)* WAR CRIMES: namely; violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor 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 of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

Major world powers had already codified rules and conduct of warfare in international agreements such as the 1929 Geneva Convention, an agreement that had been ratified by the German government.[37] As Robert Jackson put it in his opening statement, “Even the most warlike of peoples have recognized in the name of humanity some limitations on the savagery of warfare. Rules to that end have been embodied in international conventions to which Germany

37 . *Geneva Convention (III) Relative to the Treatment of Prisoners of War*; August 12, 1949. Accessed May 1, 2013. Yale Law School, Avalon Project. http://avalon.law.yale.edu/20th_century/geneva03.asp. There were several Geneva conventions (First Geneva Convention 1864, Second Geneva Convention 1906, Third Geneva Convention 1929), the 1929 convention was formed in order to create specific rules regarding the treatment of prisoners of war, the earlier conventions helped to codify treatment of civilians and wounded and other rules of war. Germany had been party to all three Geneva conventions. The German delegate had signed the 1929 Geneva document on the 27th of July, 1929, and later ratified it on February 21st, 1934.

became a party."[38]

The charge of war crimes had been transmuted into the London Charter, but it was founded upon the violation of treaties that had been signed years earlier. For the crimes that involved breaches of the conduct of warfare, the leaders could have been charged under virtually any military court, using the Geneva conventions as their basis for indictment. The London Charter had merely restated earlier international agreement and then moved to enforce it upon the leaders of the axis powers. Although international jurisdiction over the crimes of national leaders was unprecedented, the principle of the 'war crimes' was not.

The final charge levied against the Nazis, and now famous dictum, crimes against humanity was the most controversial charge, it reads as follows:

> *(c)* CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, 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.

The charge of 'crimes against humanity' was truly unprecedented in international law, not only because there were no previous agreements, but because it was an international crime that did not directly affect neighboring nations. The 'war crimes' and 'crimes against the peace' charges were both substantiated because of the breach of international agreements that had been agreed upon before World War II began. The actual legal force that these agreements carried was up for debate, although 'war crimes' was much more universally accepted as law than a 'war of aggression'. These agreements pertained to how countries would interact with one another in order to create peace, or at least to maintain moderately humane warfare.

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38 . United States. Library of Congress. Federal Research Division. *Trial of the Major War Criminals Before the International Military Tribunal. Nuremberg. ("Blue Series").* Vol. I. Accessed May 13, 2013. Military Legal Resources-Nuremberg, 136.

The charge of crimes against humanity, rather than guiding international relations, went a step further and sought to control how an independent state treated its own citizenry. The crimes that happened in other countries could be charged as 'war crimes' because they were perpetrated in a state of occupation against another country's innocent civilians. The crimes that the Nazis committed against other Germans was an internal affair though, and for the IMT to declare jurisdiction over those crimes was to invite jurisdiction over all nations.

It was the definition of 'crimes against humanity' that provided the biggest problem for the American delegation, while the French struggled with the concept of an 'aggressive war'. The French argued that aggressive war did not have legal precedent and that it would damage credibility to declare it as such. The American delegation believed that 'crimes against humanity' was not a punishable offense under normal circumstances, because it happened inside the borders of a sovereign nation.

The internal dealings of a nation became international concern when they affected other nations though. Essentially, the London Charter was created in order to show that the Nazis had wreaked destruction upon other nations in a criminal manner. In issuing justice for the destruction caused, the allied nations were obligated to judge the very source of that aggression, which, in some cases included the domestic affairs of a nation. Jackson wanted to show the goal of the Nazi regime to destroy other nations through aggressive war, and then to judge the Holocaust and other crimes as suppliants of that plan.

The Trial and Judgments

The charter was written in such a way that it reflected the American interpretation of international law. But Jackson also made it clear throughout the entire proceedings that the Holocaust crimes would not normally be tried by an international court, but that they were

considered to be crimes that attributed to the war of aggression. At the Nuremberg trial the prosecution charged the Nazis with four indictments, explicitly stating the common plan, when the charter only called for three. Jackson then reiterated the American conception of the crimes in his opening statement, as well as his cross-examinations. Even the final judgment provided by the justices confirmed Jackson's insistence on the maintenance of national sovereignty.

Even though the charter had been finalized without the explicit charge of a common plan, the prosecution simply included the charge in the indictment. This meant that even though the charter contained only three crimes, the Nazis were actually tried for four. The separate indictment served to underline the fact that the aggressive war was the principle crime of the Nazi regime. By making the charge explicit, Jackson, with the other prosecutors, made the privileged connection between the common plan and crimes against the peace even more obvious than stated in the draft.

The common plan indictment appeared on the surface to apply equally to all charges. It introduced the concept of a common plan as a charge that encompassed and included all three of the previous charges, "a common plan or conspiracy to commit, or which involved the commission of, Crimes against Peace, War Crimes, and Crimes against Humanity, as defined in the Charter of this Tribunal"[39] But as the specific charges of the indictment were developed, the language changed. The other crimes became minor in comparison to the charge of aggressive warfare.

As the indictment became more detailed, it began to take on a figure that favored the American interpretation of the charter. Clause G was labeled "WAR CRIMES AND CRIMES AGAINST HUMANITY COMMITTED IN THE COURSE OF EXECUTING THE

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39 . United States. Library of Congress. Federal Research Division. *Trial of the Major War Criminals Before the International Military Tribunal. Nuremberg. ("Blue Series")*. Vol. I. Accessed May 13, 2013. Military Legal Resources-Nuremberg, 29.

CONSPIRACY FOR WHICH THE CONSPIRATORS ARE RESPONSIBLE."[40] The phrasing of the clause was done in such a way that war crimes and crimes against humanity were complementary in nature. The common plan was with respect to waging an aggressive war and the other charges were only crimes to the extent that they furthered that end. They were crimes because they contributed to the larger, more criminal common plan of aggressive warfare.

The indictment even went as far as limiting the furtherance of the common plan within a specified time period. The very first article of Clause G is prefaced as, "Beginning with the initiation of the aggressive war on 1 September 1933..."[41]. By prefacing the crimes in such a way, it implied that the actions were only deemed criminal within the context of the war. All similar criminal activities that may have been performed before this date were not examined. The aggressive war was believed by Jackson to be the only justifiable means of pursuing a conviction of other Nazi crimes. And a separate indictment was the perfect way to illustrate this position to the judges and to the world.

Jackson's opening statement put forth the concept of preserving national sovereignty several times. He delivered his opening statement so that there would be no doubt about the line that existed for international law. He spoke about the economic turmoil in Germany during the rise of the Nazi party, but while recounting the road to war he reiterated the idea of national sovereignty.

> The internal measures by which a nation attempts to solve its problems are ordinarily of no concern to other nations. But the Nazi program from the first was recognized as a desperate program for a people still suffering the effects of an unsuccessful war. The Nazi policy embraced ends recognized as attainable only by a renewal and a more successful outcome of war, in Europe[42]

Neither the 'war crimes' nor the 'crimes against humanity' were brought up as sufficient cause

40 . *Trial of the Major War Criminals,* vol I, 41.
41 . *Trial of the Major War Criminals,* vol I, 41.
42 . *Trial of the Major War Criminals,* vol II, 56.

to bring the leaders before an international tribunal. But he was sure to state that a cause was necessary, interference could not be vindicated upon anything other than aggressive warfare.

That is not to say that Jackson believed that the Nazi conspirators were innocent, only that they were not punishable under international law unless it could be connected to aggressive warfare. Later in the opening statement Jackson referred to persecution of Christians in Germany, "It is not because the Nazi themselves were irreligious or pagan, but because they persecuted others of the Christian faith that they become guilty of crime, and it is because the persecution was a step in the preparation for aggressive warfare that the offense becomes one of international consequence."[43] He classified the persecutions as criminal, but he classified them further still as an international concern because of their special connection to the planning of the war. The criminal action of the Nazi's was only an international concern when it spilled outside the borders of its own nation.

Jackson even categorized the Holocaust crimes committed against the jewish people within its connection to aggressive warfare. In his opening statement, he argued, "The avowed purpose was the destruction of the [j]ewish people as a whole, as an end in itself, as a measure of preparation for war, and as a discipline of conquered peoples."[44] He acknowledged that the persecution and genocide against the jewish people was 'an end in itself', but also that it was in preparation for war.

The parameters of the charter and the organization of the prosecution led the judges to limit the scope of the atrocities as well. The judges had qualified the charge of 'crimes against humanity' even more than the prosecution did. The indictment put forth by the prosecution charged the Nazis with crimes beginning in 1933, in connection with the rise of the Nazi party.

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43 . *Trial of the Major War Criminals,* vol II, 115.
44 . *Trial of the Major War Criminals,* vol II, 119.

The judges went a step further and limited it to the beginning of the war in 1939. Geoffrey Lawrence, appointed as the president of the trials, representing the joint opinion of the justices, qualified the charge of 'crimes against humanity' within his final judgment, which reads:

> To constitute Crimes against Humanity, the acts relied on before the outbreak of war must have been in execution of, or in connection with, any crime within the jurisdiction of the Tribunal. The Tribunal is of the opinion that revolting and horrible as many of these crimes were, it has not been satisfactorily proved that they were done in execution of, or in connection with, any such crime. The Tribunal therefore cannot make a general declaration that the acts before 1939 were Crimes against Humanity within the meaning of the Charter[45]

Jackson and the prosecuting team chose to make the charge of a common plan explicit by including it in the indictment, and also correlated it the charge of aggressive war when the charter made the common plan correlate to all crimes. Essentially, what the United States had given up in the charter was reiterated during the trial by the prosecution. The indictment, the opening statement and even his examination of defendants was aimed at making it clear that the policy of international jurisdiction was a very unique concept, and that it was only the war of aggression that made the Nazi policies open to foreign scrutiny.

Conclusion

The International Military Tribunal was a court to try the Nazi conspirators, but it also served as a stage to set up international policy. The London Charter was written to be applicable exclusively to the IMT, but it was also intended to be a fair trial that would be considered just by posterity. The judgments needed to be fair, but also reciprocal. Jackson conducted the trials carefully, showing that the Nazis were answerable to international law, but that other countries, namely the United States, did not fall under the same type of foreign interference. World War I ended with an independent, disenchanted, and peace-

45 . *Trial of the Major War Criminals,* vol I. 254.

seeking United States, and the Nuremberg trials show that World War II ended in much the same way. However, the United States had become an internationally involved superpower, which made independence from international jurisdiction even more important.

The French had sustained invasion and occupation twice within a thirty-year period, both times at the hands of an overzealous German military. What is interesting is that the main grievance of provisional France was not that the Germans had invaded them aggressively, but that they had done so in a criminal manner. Gros believed that reparations could be paid and that guilt could be inferred upon a nation based upon the Kellogg-Briand pact, both of which were concepts embodied within the Treaty of Versailles. However, the postwar demands of the French were markedly different from that of the World War I. The Treaty of Versailles had demanded reparations from the Germans, while the IMT did not seek payment, only the conviction of the guilty. The allied powers sought a much more conciliatory approach after World War II, trying to re-educate and assimilate the German nation back into the European community.

While the drafting of the London Charter and the subsequent Nuremberg trials are often seen as a precedent of international justice and a move towards the globalization of the world, the results were actually somewhat ambiguous. Following in the same footsteps as Wilson at the end of World War I, the American delegation hoped to make aggressive war a criminal activity and make it so that the European powers would no longer bring them into any foreign disputes. It was an attempt to bring Europe closer together with one another and farther away from the United States.

The French delegation saw the outlawing of war to be not only unprecedented, but

also unrealistic. The crimes of the Nazis were self-evident, and they needed to be judged accordingly. The French saw these laws as universal and had no qualms about international interference so long as the actions were plainly criminal. There was less at stake for the French, who rather than wanting to make an international statement, merely wanted to convict the guilty for the sake of the occupied nations.

After the Nuremberg trials the United States began to hold a much more commanding role in global politics, however, the independence and sovereignty of the United States was always maintained. After World War II the U.S. remained a member of the United Nations and continued to help direct international policy, however, it was always done with reservation of national independence. The 1948 Universal Declaration of Human Rights (UDHR), an international agreement establishing basic human rights, was signed by the United States, then a member of the United Nations. Although the United States had become a member of the U.N. and had adopted the UDHR, there was still no obligation to foreign scrutiny. The agreement was passed as a statement, but it carried no legal force.

Nuremberg was considered to be a step towards international accountability, but the U.S. formed the trials in a way that would keep them above reproach, an approach that continues in U.S. foreign policy today. The most recent attempt at an international court is the International Criminal Court, founded in 2002, which exists for the prosecution of war crimes, crimes against humanity, and genocide. The United States has signed the declaration, but refuses to ratify it and has expressed that it has no intention of becoming a member.

The Nuremberg trials are often seen as the pinnacle of international cooperation.

A time when a group of diverse nations came together and drew up a plan to charge the Nazis for crimes that defiled public conscience. The grandiose charge of 'crimes against humanity' incurs a sense of commonality among all nations; the belief that regardless of religion, race, or culture, that there are certain acts that are abhorrent to a collective conscience of humanity.

The idea of universal law was discussed among the members at the London Conference, but the United States maintained that national sovereignty was paramount. Throughout the process of the trials, evolution of charter drafts, the presentation of the case, the indictments levied against the defendants, and even the final judgments, the American delegation made sure that Nuremberg would stand as a testament to the rights of national sovereignty.

In the postwar environment the U.S. became increasingly more involved in foreign affairs and entangled in the power struggle with the U.S.S.R. that would be known as the Cold War. Jackson, through his work at Nuremberg, did not set a precedent of international jurisdiction, but rather, he reinforced the rights of nations to conduct their own internal affairs. A right that the United States held precious before World War II, and still holds precious in our present time.

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