THE NUREMBERG TRIAL AND CONTRIBUTIONS TO THE DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW: AN APPRAISAL

ANDREW BUYENGUM JACKSON
NIGERIAN DEFENCE ACADEMY KADUNA,
fanbi2005@yahoo.com

GAMBO NELSON
NIGERIAN DEFENCE ACADEMY KADUNA,
nelson.gambo2022@nda.edu.ng

KEYWORDS
military rule, democratic governance, incompatibles, The Gambia, AFPRC/APRC

ABSTRACT
Prior to the Nuremberg trial, war crimes of international magnitude were tried on the state actors. The Versailles Treaty of 1919 which would have brought nation-states to order failed as the result of retribution from the great powers. Closely, the Lieber code of 1863, customary international law, and Briand Kellog pact of 1928 provided a very good playground for international peace and order and it was on this basis that the Nuremberg trial took its shape fostered by Henry Dunant's book; A Memory of Solferino in 1864. The book codifies international humanitarian law and is a reference for the codes of the military tribunal at Nuremberg for the trial of the Nazi leaders for war crimes against humanity after the Second World War. The paper delves into the study of the Nuremberg trial and its contribution to the development of international humanitarian law at the Geneva Convention. An analytical approach was used as methodology and written sources were consulted. The findings reveal that the trial enhanced the codification of international humanitarian law by holding responsible individual's crime under the law in the 1949 Geneva Convention article, the formation of the International Criminal Court, and the Right to Protect. However, the trial was criticized for ethnic cleansing and partiality against the German race. The post-Nuremberg trials of individuals under international humanitarian law provided a new order not only for the law of war but also for medical experimentation and Human Rights which will contribute to the burgeoning literature on International Humanitarian Law and the law of war.

Introduction

The precedence of the codification of the international Humanitarian Law (IHL) revolves around customs, psycho-social, and integrity which are knitted on the interest of one state to another. The aforementioned elements of societal relations had had effect on the conduct of human and state relations which have been developed over time, these were the basics for which IHL was developed.

International Humanitarian Law and International law itself cannot be talked about without the mention of Hugo Grotus also known as the father of international law but before then, in the pre-Grotus era, international humanitarian law or international law existed with no codification. The Greeks make great contributions towards peaceful relationships among city-states taking into consideration for acknowledgment of the rules of warfare, diplomacy, and considerable use of arbitration. With the emergence of the Romans, the great genius for governance and administration in the Middle Ages with the formulation of the principle of the *jus gentium* meaning *people's law* used it to exert their influence on their territories and to maintain proportionality among city-states in both war and peacetime.

In 1625, Hugo Grotus published a work titled; de jure belli ac pacis; on the law of war and peace. The work highlighted four main areas namely: states are responsible for the regulation of lives of individuals and violating them is a punishable crime, formation of law of peace is the foundation of his work, punishment of a state by other states for violation of law, and acceptance of natural law or right reason as the primary determining rules (Palmer and Perkins 2015).

With codification in the late 18th and 19th centuries, international humanitarian law saw a new paradigm shift in the international space precisely in the 1860s. The modern international humanitarian law took its shape in a book written by Henry Dunant titled: A Memory of Solferino in 1864. Dunant wrote this book witnessing a bloody war between French and Austrian Armies in 1863 where about 38,000 people were killed or wounded in 15 hours. In this devastating war, no doctor, nurse, medical, auxiliary personnel, or stretcher bearer, was beyond the attack of the enemy. Dunant, based on his experience during the war, made two proposals, first that: a) each state should establish in time of peace a relief society to aid the army medical services in times of war, and: b) states should conclude a treaty that would facilitate the activities of these relief societies and guarantee a better treatment of the wounded (Geneva Convention 1949).

Concerted efforts were made in the international arena by states even prior to the documentation of international humanitarian law by Henry Dunant to help curb the miseries of war at the global order some of which were the Westphalia treaty of 1648, the Geneva Convention of 1864 and the subsequent; Hague convention of 1899 and 1907, Versailles treaty of 1919, permanent court of international justice of 1922 from League covenant, Montevideo convention of 1933 and others could not absolutely defined, try, punished war crime and relief humanitarian needs in war. At the end of the First World War, great powers nearly produced the blueprint for the protection of international humanitarian law both in peace and wartime, effort to subsume them under a broader category of offence against the peace and security of mankind. Brian Kellogg pact or the Paris Pact states that the state should not use war to resolve disputes among nations (Article 1 of the pact provided that) “the high parties solemnly declare in the names of their respective people that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relationship with one another”.

However, the Nuremberg trial became a revolution in the eyes of international law because it changed the historic judgment of war crimes of such international magnitude. Before the Nuremberg trial, states bear the cost of war charges and prosecution in the international humanitarian law but after the Second World War, allied powers by the London agreement set up a tribunal to try the Nazi leaders for war crimes against humanity at Nuremberg Germany in 1945 which set in a new order in the international humanitarian law. However, the Lieber Conference and Customary International Law had tried to codify laws involving individual responsibility and their trial on the international stage.

There is a burgeoning literature on International Humanitarian Law and the law of war. These works were mostly centered on the development of IHL, the Nuremberg trial, and the military tribunal, the development of medical codes for experimentation and

research, challenges of IHL, and the law of war thereby neglecting the relevance of the Nuremberg trial to the development of International Humanitarian Law, the gap which this paper set to narrow.

The Nuremberg Trial

Nuremberg, a series of trials held in Nuremberg, Germany, in 1945 through 1947, in which former Nazi leaders were indicted and tried as war criminals by the International Military Tribunal. After World War II the Nuremberg War Crimes Trials raised in dramatic fashion the question of the liability of individuals under international law specifically, could the Nazi war leaders be properly tried and punished by an international tribunal for "war crimes," crimes against the peace, and crimes against humanity? Even in the Allied countries, several objections were raised: international law had no application to individuals; the accused could not be held personally accountable for acts performed on direction from authorized spokesmen of the German state: the "law" was in the nature of *ex post facto*. Nevertheless, by the London Agreement of August 8, 1945, Great Britain, France, the U.S.S.R., and the United States set up an International Military Tribunal, adopted a charter for its guidance, and then proceeded to the trial of the alleged offenders (Palmer and Perkins 2015).

The Indictment lodged against them contained four counts: (1) crimes against peace i.e., the planning, initiating, and waging of wars of aggression in violation of international treaties and agreements; (2) crimes against humanity i.e., exterminations, deportations, and genocide; (3) war crimes i.e., violations of the laws of war (humanitarian law); and (4) "a common plan or conspiracy to commit" the criminal acts listed in the first three counts (The New Encyclopedia Britannica Vol. 8, 15th ed).

The authority of the International Military Tribunal to conduct these trials stemmed from the London Agreement against major Axis war criminals whose offenses had no particular geographic location. Later, 19 other nations agreed to the terms of this pact. The tribunal was given the authority to find any individual guilty of war crimes (counts 1-3 stated above), as well as to declare any group or organization criminal. If an organization was found to be criminal, the prosecution may put individuals to trial for their membership, and the criminal nature of the group or organization would no longer be questioned. A defendant had the right to get a copy of the indictment, to provide any relevant explanation for the charges brought against him, to be represented by counsel, and to confront and cross-examine witnesses (Bachmann 2007). Each of the four signatory countries picked a member and an alternate to serve on the tribunal. The inaugural session was held in Berlin on October 18, 1945, and was presided over by Soviet member General I.T. Nikitchenko. At the time, 24 former Nazi leaders were charged with war crimes, and numerous entities (including the Gestapo, the Nazi secret police) were accused of illegal behavior.

Beginning on November 20, 1945, all sessions of the tribunal were held in Nuremberg under the presidency of Lord Justice Geoffrey Lawrence (later Baron Trevethin and Oaksey), the British member. On October 1, 1946, after 216 court sessions, 22 of the initial 24 defendants were found guilty. (Robert Ley committed himself to incarcerated, while Gustav Krupp von Bohlen und Halbach's mental and physical condition precluded his trial.) Three defendants, Hjalmar Schacht, Franz Von Papen, and Hans Fritzsche, were acquitted. Karl Dönitz, Baldur von Schirach, Albert Speer, and Konstantin von Neurath were all sentenced to 10- to 20-year prison terms. Rudolf Hess, Walther Funk, and Erich Raeder were each sentenced to life in prison. Twelve of the accused were sentenced to death via hanging. Ten of them, Hans Frank, Wilhelm Frick, Julius Streicher, Alfred Rosenberg, Ernst Kaltenbrunner, Joachim von Ribbentrop, Fritz Sauckel, Alfred Jodl, Wilhelm Keitel, and Arthur Seyss-Inquart, were hanged on October 16, 1946. Martin Bormann was convicted and sentenced to death in absentia, while Hermann Goring committed himself before being executed.

The tribunal's decisions dismissed the defendants' primary defences. First, it rejected the argument that only states, not individuals, could be found guilty of war crimes; the tribunal ruled that individuals perpetrate crimes against international law, and that international law provisions can be enforced only by punishing those who commit such crimes. Second, it rejected the claim that the trial and adjudication were post-facto. The tribunal responded that such acts had been regarded as criminal prior to World War II (The New Encyclopedia Britannica Vol. 8, 15th ed, 2007).

The second trial involved 20 doctors and three associates in Nuremberg from December 1946 to August 1947 (the “Nuremberg medical trial”) after the international military trial from November 1945 to October 1946. In November 1945, John Thompson, a neurophysiologist, proposed the concept of medical war crimes. Leo Alexander, a neurologist in Boston, coined the terms thanatology (after Jung's idea of Thanatos, a desire for death) and ktenology (from the Greek word for murder) to describe "a scientific technique of genocide." Thompson and Alexander were sent to Germany on an intelligence mission to assess German medical research, and both ended up playing important roles in the Nuremberg medical tribunal. According to Weindling, Alexander "researched the pathology of Nazi medicine by constructing a topographical anatomy of the German scientific crimes and by localizing the functionaries." He sees the Nuremberg trials as a good occasion to examine not only Nazi psychology but also German mentality, which he defines as characterized by "aggression and servile obedience". Such a viewpoint is, of course, a risky simplification. During the medical trial, the Office of Chief Counsel for War Crimes interrogated more than 2250 people. The defendants depicted themselves as victims of Nazi persecution who were committed to patient care while blaming distant or deceased researchers. For example, Karl Brandt claimed to be genuinely pious, humanitarian, and an admirer of Albert Schweitzer. Joachim Mrugowsky referred to his edition of the ethics of the Romantic physician Hufeland. The defendants claimed that their views were consistent with the Hippocratic Oath, although the oath's text is so ambiguous that it can be interpreted in a multitude of ways, and no German doctor ever took it. The accused also highlighted sterilization legislation in other jurisdictions, as well as experiments on convicts in US prisons. The ethical debate surrounding the trials led to the Nuremberg Code on the Conduct of Human Experiments, which includes the notion of informed consent for experiment subjects. According to Talford Taylor, a chief prosecutor at the medical trial, "Curiously enough, we were educated in large part by our opponents." The trial went on different phases.

The first phase (1939-41), which he refers to as the neurological phase, was linked to the euthanasia project (codenamed T4) and served as a trial ground for the killing tactics that would later be employed in the "final solution." Hitler's order authorizing euthanasia coincided with Germany's invasion of Poland. The programme aimed to eliminate adult patients in mental institutions and resulted in the execution of over 70,000 persons, most of whom were gassed. The second phase, which ran from 1939 to 1944, involved large-scale sterilization and human reproduction studies. The Nazi regime sterilised approximately 400,000 persons with supposedly inheritable illnesses without their consent.

The third phase was military experimentation. There are over 30 experiments underway, including initiatives to investigate people's reactions to high altitude, freezing temperatures, and exposure to incendiary bombs, mustard gas, and other poisons. In other experiments, inmates were purposefully infected with typhus, malaria, and epidemic jaundice to aid in the discovery of vaccinations and efficient treatments. In Dachau experiments, naked female captives were placed outside and made to participate in sexual intercourse as a means of warming up.

The fourth phase involved kid experiments (for example, Josef Mengele's research into racial inheritance). All human experiments in concentration camps had to be approved by Heinrich Himmler. Interestingly, Himmler favored homeopathy (Lichterman 2005).

In addition to war crimes and crimes against peace, the tribunal introduces a new charge: crimes against humanity. After ten months of hearings in which none of the twenty-one suspects pleaded guilty, eleven were sentenced to death, and three were acquitted. The others have been condemned to life imprisonment, ranging from ten years to life. The Jewish genocide, which is recalled throughout the trial, is reduced by the bulk of Nazi crimes. On December 20, 1945, the Allied Control Council issued Law No. 10, which permitted trials to be held in each Allied control zone on the basis of the London Statute and created a common legal framework for the prosecution of war criminals other than those convicted by the IMT. (Ramler 2007). Gen. Telford Taylor presided over twelve trials held at the Nuremberg courthouse from December 9, 1946, to April 14, 1949, before an American tribunal. These lawsuits are known as "the Nuremberg trials." The media paid close attention to the doctors' trial (first trial), the Einsatzgruppen trial, and the IG Farben trial. On April 10, 1948, he sentenced fourteen out of twenty-four prisoners to death. The Nuremberg Code, created by the trial of Nazi doctors, defines medical ethics. Law No. 10 also applies to the

FRG's comparatively forgiving German courts (Fleur 2013).

The Contribution of the Nuremberg Trial to the Development of International Humanitarian Law

The trial of Nazi leasers saw a new approach to international rules governing the law of war and the maintenance of peace in the international space. However, the works of the International Law Commission on the content, forms, and degrees of international responsibility, as well as the practice of some states in the past decades, have shown one outstanding feature: to a large extent, the debate seems to have shifted from the classical emphasis on the obligations of the responsible State, towards an awareness and definition of the rights of the injured State or States visa-vis the responsible one (Riphagen 1981). For the first time in history, individuals were held responsible for war crimes on the international scale. Lieber code and Brian Kellog pact came close to addressing issues of individual responsibilities for war crimes distinct from the status quo of the international customary law; "state practice and opinion juris". Hence, the new order has remarkably torn the curtain between international law and the individual composed by state sovereignty. (Kudriavtsev 1990) assert that: This was indeed a necessary and desirable quantum leap.In a world where observing and respecting human rights is one of the fundamental tenets of international law, dealing with large violations of human rights simply through traditional inter-state processes would be completely out of place. The idea that tyrants may shield themselves from prosecution by drafting laws that legalize crime and injustice following a formal sense of the rule of law has become unacceptable in light of international law's new human-rights-oriented approach. Slobodan Milosevic, the former president of Yugoslavia, was recently arrested and indicted, and Charles Taylor of Liberia was also found guilty under the Nuremberg standards. In post Nuremberg tribunal, other trials continued in Japan, Israel, and America. Articles 2 and 3 of the international Law Commission and Article 25 of the Rome Statue provided the framework for individual responsibility at the International Criminal Court which was predicated by the codes of the International Military Tribunal at Nuremberg.

The war and the Nuremberg law give rise to the hope of creating an international law. The Convention on the Prevention and Punishment of the crime of Genocide by the international military tribunal was adopted by the United Nations on December 9, 1948. The United Nations General Assembly unanimously adopted the Universal Declaration of Human Rights on December 10, 1948. The proposition contained in the Chater of the international military tribunal retain to this day their legal and political significance that is enshrined in the United General Assembly decision of December 1, 1946, which confirmed the principle of international law recognized by the Chater of the Nuremberg tribunal and enunciated in its verdict (Kudriavtsev 1990).

The Nuremberg trial marked the watershed in the development of international humanitarian law. According to (Tomuschat 2006): Until Nuremberg, State sovereignty had been the fundamental pillar of the international legal order. Even the UN Charter lists the sovereign equality of states as the first of the fundamental principles governing the mutual relationships among states (Article 2(1)). Under the regime of 'classic' international law, what happened inside a state was almost entirely removed from the legal impact of international law. Similarly, criminal law was dominated by the two guiding principles of territoriality and nationality and no international institutions for the prosecution of grave crimes existed. The shield that state sovereignty offered offenders was eliminated by Nuremberg. Political leaders were no longer able to defend their official roles under the International Military Tribunal Statute. The "official position of defendants, whether as Heads of State or responsible officials in government departments, shall not be considered as freeing them from responsibility or mitigating punishment," according to Article 7. This idea has been incorporated into all subsequent international criminal court and tribunal statutes. Hitler would have likewise been put on trial at Nuremberg if he had been taken prisoner in Berlin at the close of World War II.

The Nuremberg tribunal also sparked the development and establishment of institutions such as the international Criminal Court (ICC), the Geneva convention of 1949, the Rome Statute of 1998, and Responsibility to Protect

(R2P) 1&2 for the maintenance of world peace and stability.

The trial branded the war-mongers, and demonstrated political, legal, and moral impermissibility of aggression against other peoples. It furthered the emergence, development, and consolidation of the democratic movements in the defence of peace which in our day become a powerful anti-war factor.

Post Nuremberg trial of international medical and humanitarian law is sparked with redress in medical research in both peace war time. The change came as the result of the in human treatment of the Jews by Nazi Germany at the concentration camp. At the trial, the Tribunal adopted a code known as the Nuremberg code which states:

> *…the experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury. No experiment should be conducted where there is an a priori reason to believe that death or disabling injury will occur; except, perhaps, in those experiments where the experimental physicians also serve as subjects. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment. Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment. During the course of the experiment the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible. During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill and careful judgment required of him that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject (Reprinted from Trials of War Criminals before the Nuremberg Military Tribunals 1949).*

The subsequent international conferences also align with the codes of Nuremberg. Article 3 of the Geneva Convention of 1949 prohibits "mutilation" of civilians and hors de combat which runs through the second, third and fourth Geneva conventions. Additional protocols 1&2 also guarantee prohibition for mutilation of civilians and hors de combat (Additional Protocol 1, article 75 (2), Additional Protocol 2 Article 4(2) adopted by consensus). The Belmont report on the protection of human subjects of biomedical behavioural research 1979 and the declaration of Helsinki 1996 and 2000.

Challenges of the Nuremberg Trial

The Nuremberg trial fashioned a new approach in the international arena regarding humanitarian law and politics by the International Military Tribunal, however, the trial raised so many questions and criticism about the locus standi, actions, and inactions of the tribunal. These raised the following criticism:

First of all, it was felt that the trial had been imposed upon Germany and that the fact alone of justice being dispensed by prosecutors and judges from the four main victorious Powers discredited the proceedings as a 'diktat' (Tomuschsat 2006). The main point of criticism was the lack of impartiality of the bench. There was no judge from a neutral country called to join the judges at the tribunal and no German judge was chosen either. No consideration had been given to ensuring a balanced composition that could not be objected to as representing 'victors' justice' (Tomuschsat 2006).

Second, the Germans were deterred from defending their course, they were also not given a fair hearing and the emotional impact on the interpretation of the law against the Germans was so pronounced (Ramler 2007). According to a multimedia TV presentation at Technology, Entertainment, Design (TED) 2020 assert that: "Nazi in their struggle for self-defence at Nuremberg tribunal, they quoted Justice Wendell Holmes of America for their population control agenda meted on the Jews at the Concentration Camp". In 1927, Justice Oliver Wendell Holmes delivered infamous decision on population control by sexual sterilization of inmates to discontinue their bloodlines, therefore their actions for war and inhuman treatment at the Concentration Camp accrued to the Holmes judgment (Due process 1927, supreme.justia.com).

Third, the list of offences under the jurisdiction of the International Military Tribunal was also denounced as having no solid foundation in international law. The Statute of the IMT provided, in the first place, for crimes against peace and, in particular, criminalized war of aggression (Article 6(a)). Rightly, the defence at Nuremberg argued that until that time no leading statesman had ever been held accountable for launching a war (Tomuschsat 2006).

Lack of consistency also was another challenge at the tribunal due to the fact that the Allied powers were full of vengeance and just like the Paris Peace Conference, they wanted Germany's palm of flesh due to injuries brought by the Nazis as the result of the war. Therefore, there was no justice for the Nazis.

Lastly, there was an outcry of the jurisdiction of the International Military Tribunal to hear the crimes of the Nazi leaders because nothing of such was heard of in the history of International Law. UN Charter lists the sovereign equality of states as the first of the fundamental principles governing the mutual relationships among states (Article 2(1)). Under the regime of 'classic' international law, what happened inside a state was almost entirely removed from the legal impact of international law. These raised questions as to why was France not indicted during the Napoleonic expeditions and other concerns relating to the subject.

Conclusion

In conclusion, the Nuremberg trial was chiefly set to try war crimes of Nazi Germany, the tribunal not just tried War crimes but also developed the already codified international humanitarian law by establishing ex post facto to try individuals in the international tribunal against the status quo. The trial was the first of its kind in the international arena even though arguments were forwarded against the development it set a precedent for the transformation of international humanitarian law at the Geneva conventions in 1949, Additional Protocols 1&2 till date. Also, in reference to the Nuremberg trials, individuals and groups faced tribunals, the international court of justice, and international criminal court for their crimes. Examples of such trials were: the Tokyo trial of 1948, the Bangladesh liberation war crime trial of 1971, the Rwanda civil war crime trial, the Sierra Leone civil war crime trials, the Liberia civil war crime trials of Charles Taylor, the Yugoslavia War crime trials of Slobodan Milosevic and other 161 high ranking officials. However, the tribunal came under heavy criticism that the tribunal was partial, racial, and unjust against the Germans.

Reference

Boleslav L. L., (2005). "Nuremberg Trials: From medical war crimes to Informed consent", Centre for the History of Medicine, Russian Academy of Medical Sciences, British medical journal , Vol. 331, 408.

Directives for Human Experimentation, http://helix.nih.gov:8001/ohsr/nurembur g.phtml Accessed 15/09/2024.

Due process 1927, https://supreme.justia.com accessed 1December, 2024.

https://history.state.gov/milestones/1945-1952/nuremberg accessed February 2024.

https://ihl-databases.icrc.org/en/ihl-treaties/icc-statute-1998/article-8#:~:text=1.,2

https://www.nationalww2museum.org/war/articles/nuremberg-and-tokyo-war-crimes-trials

https://history.state.gov/milestones/1945-1952/nuremberg Accessed February 21, 2024.

https://www.nationalww2museum.org/war/articles/nuremberg-and-tokyo-war-crimes-trials accessed February 21, 2024.

Jean S. F., (2023). The two most famous trials in history: Nuremberg and Tokyo, (London: Lap Lambert academy publisher, 65-66.

Norman D. P. and Howard C. P., (2015), International relations, (3eds), 279.

Ramler S. (2007). The Origin and challenges of Simultaneous Interpretation: the Nuremberg Trial Experience. *The Japan Association for Interpretation Studies.* (7) 7-18.

Reprinted from Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law (1949). No. 10, Vol. 2, pp. 181-182. Washington, D.C.: U.S. Government Printing Office.

Riphagen, (1981). Second report on the content forms and degrees of international responsibility (part 2 of the draft articles), 2 Y.B. INT'L L. COMM'N (pt. 1), at 79, U.N. Doc. A/CN.4/ 344.

Sascha-Dominik B., (2007). "the legacy of Nuremberg trials- 60 years on" journal of South African law, Vol. 3,

The New Encyclopedia Britannica, (2007). Vol. 8, 15th ed, 834.

The Belmont Report Ethical Principles and Guidelines for the Protection of Human Subjects of Research http://www.fda.gov/oc/oha/IRB/toc11.html accessed 15/09/2024.

Tomuschat C. (2006). The Legacy of Nuremberg. *Journal of International Criminal Justice* 4, 830-844.