

Geoffrey Roberts

Nuremberg Trial anniversary

The Second World War ended in May 1945 with the devastating defeat of Hitler's Axis alliance. Fearing capture by the approaching Soviet Red Army, Hitler committed suicide in his Berlin bunker. A few days later Germany surrendered.

Hitler may have escaped retribution for his war crimes but many of his accomplices did not. Seventy-five years ago this week in the Bavarian city of Nuremberg, 24 leading Nazis were charged with conspiracy to wage an aggressive war that resulted in the deaths of 50 million people.

Among those in the dock were Hitler's former deputy Rudolf Hess, Luftwaffe chief Hermann Goering, Foreign Minister Joachim von Ribbentrop, Nazi ideologist Alfred Rosenberg, and Hans Frank, who presided over the Holocaust in Poland. The most important figure missing from this line-up of Nazi bigwigs was Heinrich Himmler, head of the SS, who cheated prosecution by poisoning himself to death.

The trial was conducted by an International Military Tribunal (IMT) of the victorious powers that occupied Germany at the end of the war – Britain, France, the Soviet Union and the United States.

Hundreds of journalists attended as the media event of the century unfolded. From the gallery Stalin's favourite cartoonist, Boris Efimov, sketched caricatures of the defendants, an art he had perfected during the trials of Old Bolshevik leaders in 1930s Moscow. The star prosecutor was Robert H. Jackson, an American, who read the indictment and presented much of the detailed evidence of Nazi atrocities. David Maxwell Fyfe was considered the most effective British prosecutor, and conducted a masterly cross-examination of Goering. The lead Soviet prosecutor, Roman Rudenko, was selected by Stalin for his oratorical skills and gave some commanding performances. Sir Norman Birkett, a British judge at Nuremberg, called it "the greatest trial in history".

The prosecution's case was based on a mountain of documentation from captured German archives together with eyewitness accounts of Nazi war crimes. Many repentant former Nazis took the stand, as did Field Marshal Friedrich Paulus, captured by the Soviets at Stalingrad, whose insider testimony about Germany's plans and preparations for aggressive war riveted the court.

Proceedings were filmed and screened in cinemas across the world by contemporary newsreels. Film shown in evidence at the trial included American and British footage of the camps at Dachau, Buchenwald and Bergen-Belsen – the pictures showed haphazard piles of dead bodies and pitifully emaciated survivors, some of the most searing images captured of the Nazi death camps.

The trial lasted almost a year, until October 1946, when 12 of the accused were sentenced to death, while Hess and others were given long terms of imprisonment. Three defendants were acquitted, including Hans Fritzsche, the head of German radio, tried in place of Hitler's propaganda chief, Joseph Goebbels, who, like his Fuhrer, had committed suicide, taking his wife and six children with him.

The court rejected the argument that waging war was a state rather than an individual responsibility. Never again could anyone accused of international crimes claim they were simply following their country's orders. The trial established the illegality of aggressive war and introduced the concept of crimes against humanity into international law. It also strengthened the rules of warfare, especially the principle that civilians were not legitimate military targets.

It also paved the way for other notable international declarations such as: the Genocide Convention and the Universal Declaration of Human Rights in 1948, the Geneva Convention on the Laws and Customs of War in 1949, and the 1950 Nuremberg Principles on War Crimes.

After the IMT trial the Americans held a further series of trials in Nuremberg (sited in their occupation zone) of those involved in Nazi crimes: SS murder squads, concentration camp doctors, civil servants, business executives, and German generals. Of particular importance was the High Command Trial, which resulted in gaol time for German military leaders, and

the Doctors' Trial, which led to the creation of the Nuremberg Code on the ethics of medical research involving humans. Under this code, such research must avoid injuring or killing its human subjects – a principle flagrantly violated by Nazi medical experiments in the camps.

The idea of prosecuting major Nazi war criminals is often attributed to the United States. But a new book by the American historian, Francine Hirsch, has highlighted the role of a little-known Soviet jurist, Aron Trainin. After the Soviet Union joined the League of Nations in 1934, Trainin, who was Jewish, proposed that international law should be strengthened and aggressive war declared illegal. He even proposed the establishment of an international court to try 'persons violating peace' - an idea that presaged today's International Criminal Court.

During the Second World War he further developed his ideas, arguing the Nazis should be held to account not only for crimes committed during the war but for launching the war itself. He also introduced the concept of 'crimes against peace' and called for an international tribunal to try the 'Hitlerites'.

The Soviets were at the forefront of demands to prosecute Nazis war criminals. After their invasion of the USSR in summer 1941, the Germans occupied vast swathes of Soviet territory. When the Red Army recaptured these lands the Soviets were shocked by the scale of Nazi killings in the occupied territories, which included the mass murder of Soviet Jews – the first phase of Hitler's attempted genocide of European Jewry. In November 1942 the Soviet Government established an Extraordinary State Commission to document and publicise Nazi war crimes.

The British and American allies were also keen to expose Nazi atrocities but resisted the idea of a trial. Plans to punish Germany's leaders after the First World War for systematically violating the laws and customs of war had come to nothing. Kaiser Wilhelm II, for example, escaped trial by the simple expedient of fleeing to neutral Holland. Hence the British and Americans favoured the more certain method of exemplary extra-judicial executions. The Soviet leader, Joseph Stalin, had no compunction about executing Nazis but thought an international public trial to establish the illegality of aggressive war would create a more effective deterrent against future aggression and aggressors.

Trainin's stance - that the Nazis could and should be tried for crimes against peace-- was eventually accepted by the British and Americans. But their view of how such a trial should be conducted was very different from that of the Soviets. As far as Stalin was concerned the Nazis were self-evidently guilty and the purpose of the trial was to propagandise that fact and then to rubber-stamp the indictment. The French, who had a similar, inquisitorial-based legal system, tended to agree with the Soviets but shared Anglo-American qualms about staging a show trial rather than following due process.

The Americans, in particular, wanted a trial in which the accused would be charged, prosecuted, and defended, with independent judges rendering a verdict on the basis of the evidence and arguments that had been presented by both sides. And, to prevent the accused turning the trial into a platform for Nazi propaganda, the indictment would be framed to constrain such tactics.

The outcome of these contesting views was the August 1945 London Agreement that established the IMT and pronounced that Nazi leaders would be prosecuted for crimes against peace, war crimes and crimes against humanity. The agreement specified the tribunal's sole task to be 'the trial and punishment of the major war criminals of the European Axis countries', thus precluding any consideration of wartime actions by the victor states.

Bargaining continued since the British wanted the tribunal to meet in private while the Americans preferred a public trial to showcase their legal prowess and underline the importance of the rule of law in international affairs. And the Soviets wanted the trial to take place in Berlin –in their occupation zone - but acceded to western wishes for it to be held in Nuremberg. The city had the facilities to accommodate a large-scale trial and it had been the prewar venue for Nazi mass rallies - the inspiration for the notorious 'Nuremberg Laws' that reduced Germany's Jewish population to second-class citizens and forbade marriage and extramarital intercourse between Germans and Jews.

The Nazis' lawyers argued that Germany had been provoked into war by Britain and France and that the invasion of the USSR was a pre-emptive strike against a planned Soviet invasion of German territory. The existence of the Holocaust and other atrocities were either denied by the defendants or disowned as events in which they had no involvement.

The defence did score on a couple of issues. Firstly, in relation to the Nazi-Soviet pact of August 1939. Stalin's non-aggression treaty with Hitler had kept the USSR out of the war in return for a Soviet sphere of influence in Poland and the Baltic States. A couple of weeks after the Germans attacked the Poles, the Red Army invaded eastern Poland. From the Soviets' point of view they were justly recapturing territories – Western Belorussia and Western Ukraine – annexed by the Poles during the Soviet-Polish war of 1920. But it didn't look good in the context of the Nuremberg IMT. As ex-Foreign Minister Ribbentrop pointed out in his testimony, if the German invasion of Poland was deemed aggressive war then what about the Soviet action?

Even more troubling for the Soviets was the Katyn massacre - the murder of some 20,000 Polish POWs during the war. Rather unwisely, Soviet prosecutors had included this atrocity as part of the Nazi indictment. But the Soviets were responsible for killing those Poles, not the Nazis.

When the Red Army invaded Poland they captured hundreds of thousands of Polish POWs. Most of them lived to fight another day, some for the western allies, others for the Soviets in a Polish People's Army created after the German attack on the USSR. Polish military officers and police officials, however, were deemed by the Soviets to be the class enemy, a threat to the new Soviet order in eastern Poland and a potential 5th column if the USSR was dragged into the war between Britain, France and Germany. In spring 1940 Stalin authorised their liquidation.

Katyn, the place where many of the executed Poles were buried, was near Smolensk and came under German occupation. When the Germans exhumed the bodies in 1943, the Soviets said the Nazis had killed the Poles – a plausible claim given the many massacres for which they were actually responsible. But the Soviet plan to use Nuremberg to reinforce their accusation backfired when witnesses for the defence contradicted it.

Nuremberg turned out to be far from the propaganda show the Soviets had hoped for. The accused were allowed considerable leeway in conducting their defence and the judges rendered a measured series of verdicts. Ten of those sentenced to death were hanged on 16 October 1946. Herman Goering escaped the hangman's noose by committing suicide the

night before, while Martin Bormann, Hitler's private secretary, had been tried and sentenced in absentia.

The trial and its outcome were hailed as righteous in the allied world. The guilty had been punished and the allied narrative of a "just war" against Nazi Germany had prevailed. Not everyone agreed. A critical body of opinion in neutral states such as Ireland interpreted the Nuremberg IMT as victor's justice. Yes, the Nazis had committed war crimes but so, too, had the allies.

"Imagine", said de Valera's Minister of Justice, Gerald Boland, "the people who murdered the cream of the Polish army and buried them in mass grave in the Katyn Forest, those who bombed the City of Dresden, which was undefended and full of refugees, and those who atom-bombed Hiroshima and Nagasaki, having to the cheek to try anyone for war crimes!"

When Eduard Hempel, former head of the German Legation in Dublin, asked him to intervene on behalf of the condemned Nazi leaders, de Valera called in the British ambassador and told him the executions would be a "tragic mistake". He also asked his officials to prepare some papers on the Nuremberg Trial. The Department of External Affairs reported the trial was based on retrospective law, was an instrument to punish the defeated and could be compared to British judicial executions in Ireland during the struggle for independence.

Ironically, the road to a trial of major Nazi war criminals had begun in 1940 with demands from the small states of western Europe for retribution following Hitler's attacks on their countries. Had Ireland suffered the same fate of invasion and occupation, it is not inconceivable that the Irish government, too, would have taken a different view of the Nazis' criminal responsibility for launching and conducting a savage war.

Geoffrey Roberts is Emeritus Professor of History at UCC and a Member of the Royal Irish Academy. Francine Hirsch's book – Soviet Judgement at Nuremberg – is published by Oxford University Press

