

Housing, Land and Property Deprivation in the Nuremberg Indictments

The Nuremberg indictment accused all defendants as guilty on four counts: count one: the common plan or conspiracy; count two: crimes against peace; count three: war crimes; and count four: crimes against humanity. Those crimes relevant to the HRAH including deportation for slave labour and for other purposes of the civilian populations of and in occupied territories; plunder of public and private property, i.e. spoliation; wanton destruction of cities, towns and villages and devastation not justified by military necessity; and Germanization of occupied territories, were described in count three of the indictment. Count four also outlined crimes relevant to the HRAH including deportation and other inhumane acts committed against civilian populations before and during the war and persecution on political, racial, and religious grounds.¹ Other inhumane acts and persecution had as associated conduct despoilment and confiscation and destruction of personal property.²

The Nuremberg trial was held between 21 November 1945 and 1 October 1946. The judgment was delivered on 30 September 1946 and 1 October 1946. Out of the total 24 defendants and six criminal organizations,³ 17 individual defendants were prosecuted for Germanization and spoliation: nine individuals for both offenses; six for Germanization and two for spoliation. Of the total 17 defendants, 16 were found guilty of these crimes.⁴

The case of Alfred Rosenberg, charged on all four counts, exemplifies the practices of plunder and deportation associated with both spoliation and Germanization under counts three and four. Rosenberg was an intellectual leader in the Nazi party and in 1940 was made the head of the Centre of National Socialist Ideological and Educational Research. In this role, Rosenberg organized and directed an initiative, the Einsatzstab Rosenberg, which was responsible for the plunder of museums, libraries, and private homes. Between 1940 and 1944 the Einsatzstab confiscated over 21,903 art objects and pillaged 69,619 Jewish homes. In 1941 he was appointed Reich Minister for Occupied Eastern Territories during which time he devised policies of Germanization; giving orders to segregate Jewish populations and to orchestrate mass deportations of labourers from the Eastern Territories, specifically the "Heu Aktion" in which 40,000 to 50,000 youths were sent to the Reich in 1944. Rosenberg was found guilty on all counts of his indictment and was sentenced to death for war crimes and crimes against humanity.⁵

While Rosenberg's case illustrated one aspect of plunder; that of public and private art assets, other defendants were found guilty of plunder on the basis of a range of actions including⁶:

1. Degradation and starvation of the occupied populations by stripping occupied territories of foodstuffs for removal to Germany
2. Seizure of raw materials and industrial machinery in all of the occupied territories

¹ Avalon Project, *Nuremberg Trial Proceedings, Vol. 1, Indictment: Count Three-War Crimes; Count Four-Crimes against Humanity*. Available at: http://avalon.law.yale.edu/subject_menus/imt.asp

² *Ibid.*

³ In addition to the indictments against major war criminals, the prosecution entered indictments against six criminal organizations: (1) the leadership of the Nazi party, (2) the Schutzstaffel (SS) and (3) Sicherheitsdienst (SD), (4) the Gestapo, (5) the Sturmabteilung (SA) and (6) the "General Staff and High Command," which comprised several categories of senior military officers.

⁴ For a compendium of these cases see Appendix §§§

⁵ Avalon Project, *Nazi Conspiracy and Aggression, Volume 2, Chapter XVI, Part 7, Alfred Rosenberg*. Available at: http://avalon.law.yale.edu/imt/chap16_part07.asp and *Judgement: Sentences*, <http://avalon.law.yale.edu/imt/judsent.asp>

⁶ Avalon Project, *Nuremberg Trial Proceedings, Vol. 1, Indictment: Count Three-War Crimes*, para (e). Available at: <http://avalon.law.yale.edu/imt/count3.asp>

3. Confiscation of businesses, plants and other properties
4. Forcing owners of property to go through the forms of "voluntary" and "legal" transfers in an attempt to give legality to illegal acquisitions of property
5. Establishment of comprehensive controls over the economies of all of the occupied countries and direction of their resources, their production and their labour in the interests of the German war economy, depriving the local populations of the products of essential industries.
6. Despoliation of all of the occupied countries of essential commodities and accumulated wealth, including: debasement of the local currency systems and disruption of the local economies, financing of extensive purchases in occupied countries through clearing arrangements by which loans were exacted from the occupied countries, imposition of occupation levies, exacting financial contributions far in excess of occupation costs, issuing occupation currency, and using excess funds to finance the purchase of business properties and supplies in the occupied countries.
7. Abrogation of the rights of the local populations in the occupied portions of the U.S.S.R. and in Poland and in other countries to develop or manage agricultural and industrial properties, and reservation of this area for exclusive settlement, development, and ownership by Germans and their so-called racial brethren.
8. Destruction of industrial cities, cultural monuments, scientific institutions, and property of all types in the occupied territories to eliminate the possibility of competition with Germany.
9. The defendants secured for themselves and their adherents:
 - a. Positions in administration of business involving power, influence, and lucrative perquisites
 - b. The acquisition on advantageous terms of foreign properties, business interests, and raw materials.

We see then that plunder or spoliation at Nuremberg covered various violations of the HRAH including not only theft of artefacts and assets but also confiscation of lands, businesses, commodities, and all manner of resources. Additionally, the intentional destruction or dismantling of the local economies of the occupied territories as well as forcible "legal" land transfers were prosecuted under the auspices of plunder as both a war crime and crime against humanity.

Alfred Jodl, charged on all four counts of the indictment.

From 1935 to 1938, Alfred Jodl was chief of the National Defense Section in the German High Command and, later, chief of the Operations Staff of the High Command of the Armed Forces. Jodl was charged with war crimes and crimes against humanity, including that of spoliation, in his role in the German High Command for carrying out, "as a systematic policy, a continuous course of plunder and destruction." On the territory of the Soviet Union the Nazi conspirators destroyed or severely damaged 1,710 cities and more than 70,000 villages and hamlets, more than 6,000,000 buildings and made homeless about 25,000,000 persons" in implementation of this systematic policy.⁷

On 28 October 1944, Jodl ordered the evacuation of all persons in northern Norway and the burning of their homes so as to deter them from aiding Russian forces. Jodl testified that he opposed the operation, but Hitler had ordered it. He also testified that the order was not fully executed. However, the Norwegian government provided evidence that such an evacuation did

⁷ Avalon Project, *Nuremberg Trial Proceedings*, Vol. 22. Available at: http://avalon.law.yale.edu/subject_menus/imt.asp.

take place, and that 30,000 houses were damaged. The IMT found Jodl guilty of all four counts of his indictment and he was sentenced to death.⁸

Subsequent Nuremberg Trials were held under Control Council Law No.10. In these proceedings, seven groups of individuals were prosecuted for war crimes and crimes against humanity including Germanization and spoliation. In addition to ministries and special units of the Nazi administration, private entities including industrial enterprises were also prosecuted. Out of 113 individuals, only 19 were acquitted and two committed suicide before delivery of the verdict.⁹

As these cases illustrate, Nuremberg and its subsequent trials were highly effective in prosecuting individuals for violations of the HRAH as war crimes and crimes against humanity. These perpetrators were held accountable for their actions in the trial proceedings and were delivered punishment ranging from life imprisonment to death by hanging. Retribution, as an aspect of remedy, was successfully attained through criminal prosecution at Nuremberg. However, the extent to which this retribution formed an actual aspect of remedy in that it was satisfactory to victims is not as clear.

The justice process at Nuremberg provided virtually no access to victims. There was no victim called to the stand to testify, no victim statements used at the trial, nor were any victims in attendance at the actual trial or subsequent trials. For evidence, the prosecution relied solely on documentary evidence, which was ample given the meticulous records kept by the Nazi government, and the testimony of defendants. According to Benjamin B. Ferencz, an American war crimes investigator and chief prosecutor in the CCL10 trial against Nazi extermination squads known as the Einsatzgruppen, "...the Nuremberg Trials under the allied armies were an entity unto itself. They played no significant role in the lives of victims. The survivors were not even in the audience, which was mostly German."¹⁰

From the perspective of victims, the trials might as well have been taking place in another world—many felt that they were not intended as remedy for them, but rather for the allied powers. Not only was retribution not necessarily delivered to victims, but the return of what was lost to individuals and communities, material and nonmaterial, was not within the scope of the Tribunal.

According to Frederick Terna, a survivor of various concentration camps, including Auschwitz:

Attempts to recover property or possessions were rebuffed at every turn...Generally, I was aware that the trials were going on, who the accused were, and I followed it as closely as the newspapers allowed me, but I do not remember the details...We [survivors] were far removed from the action...The Nuremberg trials were seen as a necessary action. War crimes needed to be defined and punished, but the trials did not have an impact on us as survivors...Justice was a far-away concept. It certainly was not available on a personal or local level. The Nuremberg trials were a distant happening, important for the abstract concept of international law,

⁸ Avalon Project, *Nazi Conspiracy and Aggression*, Volume 2, Chapter XVI, Part 7, "Alfred Jodl," at:

http://avalon.law.yale.edu/imt/chap16_part07.asp and *Judgement: Sentences*, at: <http://avalon.law.yale.edu/imt/judsent.asp>.

⁹ Avalon Project, *Trials of the War Criminals before the Nuerenberg Military Tribunals Under Control Council Law No. 10*. <http://avalon.law.yale.edu/imt/indict4.asp>.

¹⁰ Interview with Benjamin Ferencz (2005) in Yael Danieli, "Reappraising the Nuremberg Trials and their Legacy: the Role of Victims in International Law," *Cardozo Law Review*, Vol. 27, No. 4 (February 2006), p. 1642.

but did not touch us personally then.¹¹

Another survivor, Yisrael Gutman, felt that the allies

...only used evidence that was collected to accuse the perpetrators and avoided the full scope of what happened to humanity and human society in general and the Jewish dimension in particular. Thus they did not expose the main issue of this war... [that it] took place against the civilian population. No one sought us as a community that had anything to do with the trial. No one tried to approach us and say: Do you have anyone who will be there? Do you have witnesses? They did not seek any of it. If I had showed up there [the trial] they would not have let me in.¹²

It seems then, that while the Nuremberg Trial was a seminal step in strengthening the status of violations of the HRAH and its associated elements as war crimes and crimes against humanity in international criminal law, the Trial fell short of fulfilling the needs of victims to an effective remedy, inclusive of both retribution and restoration. As we know, the codification of legal norms on reparation in the Basic Principles was only adopted relatively recently, in 2005, however, the concept of remedy inclusive of some form of reparations, whether compensation or satisfaction, was articulated in CIL, in particular in the Fourth Hague Convention of 1907. While the London Charter cited CIL, in general, and Hague Conventions, in particular, as providing the legal basis for prosecution, the Tribunal did not order reparations in any form, compensatory or otherwise.

¹¹ Interview with Frederick Terna (31 October 2005). *Ibid.* p. 1643.

¹² Interview with Yisrael Gutman (8 December 2005). *Ibid.* p. 1644.