

**Remarks of Professor Jennifer Trahan  
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Commemorating the 80th Anniversary of the Nuremberg Judgment”**

***Has the United States Repudiated the Lessons of Nuremberg?***

I will discuss whether the United States, in its policies and practices, has learned the lessons from the prosecutions before the International Military Tribunal (“IMT”) at Nuremberg.

There are several lessons one could draw from Nuremberg. I will discuss three.

*First* is the imperative of pursuing individual criminal responsibility for crimes such as genocide, war crimes, and crimes against humanity. *Second* is the need to prosecute what at Nuremberg was called “crimes against peace” and today is termed the crime of aggression. *Third* is that justice must not be one-sided, but apply equally to all—a commitment eloquently articulated by Nuremberg Chief Prosecutor for the United States, Robert H. Jackson, although not evinced in the trials themselves.

If these indeed are the lessons of Nuremberg, the United States has only very partly lived up to some of them.

***The First Lesson***

In deciding to conduct the main trial of 22 Nazi officials before the IMT, the Allies—after serious initial consideration whether to instead conduct summary executions—made the momentous decision to impose individual criminal responsibility for the crimes committed during, and in commencing, World War II.

Despite international law at that time, being fairly state centric, it was seen as palpably insufficient to condemn Germany for the crimes committed, without reaching the conduct of individual high-level perpetrators.

Thus, Benjamin Ferencz, who served as Chief Prosecutor of the subsequent *Einsatzgruppen* trial, has written:

“The primary lesson of Nuremberg was that individuals, regardless of rank or station could be held criminally responsible by an international tribunal.”

The famous statement in the IMT’s Judgment is that

“crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.”

The IMT thus created tremendously important precedent that set the foundation, after the conclusion of the Cold War, for the development of the field of international justice.

### *The Second Lesson*

A second key feature of the main Nuremberg trial before the IMT was its focus on crimes against peace—what we now call the crime of aggression.

Public perceptions of the trial are that it focused on the Holocaust and prosecuting the crime of genocide, but counts one and two of the Indictment focused on crimes against peace and conspiracy. The central focus of the IMT was on the initiation of war. Genocide was not even charged. It was subsequent trials such as the *Einsatzgruppen* trial that focused on mass killing by mobile execution squads and supplemented, along with the other topical trials, the IMT’s focus.

Explaining the central focus of the IMT, the Tribunal’s Judgment famously stated:

“To initiate a war of aggression is not only an international crime; it is the supreme international crime, differing only from other war crimes in that it contains within itself the accumulated evil of the whole.”

**The idea was that it is the initiation of war (or other acts of aggression) that can set in motion the chain of causation that leads to the commission of all of the other crimes.**

### ***The Third Lesson***

**A third lesson one can derive from the Nuremberg Tribunal is a commitment to the evenhanded application of the rule of law. This is articulated by US Chief Prosecutor Robert H. Jackson in his Opening Statement:**

**“And let me make clear that while this law is first applied against German aggressors, the law includes, and if it is to serve a useful purpose it must condemn aggression by any other nations, including those which sit here now in judgment.”**

**Admittedly, however, only Germans were tried at Nuremberg and only Japanese were tried before the Tokyo Tribunal.**

**Indeed, the one-sided nature of the trials was built into the Nuremberg Tribunal’s Charter. Article 1 of the Charter states that the Tribunal was established “for the just and prompt trial and punishment of the major war criminals of the European Axis.” Thus, the IMT evinced only selective justice.**

**But in its ethos, it has come to symbolize—and was accepted by the UN General Assembly in its issuing of the Nuremberg Principles—as standing for much more.**

***If* the legacy of Nuremberg entails these three lessons, the United States has only somewhat lived up to some of these aspirations to varying degrees under different US administrations.**

### ***Applying the First Lesson***

**The United States has to some extent endorsed the legacy of the need for individual criminal responsibility in the face of mass atrocity crimes.**

**In the past, it has provided key support for the establishment of a number of criminal tribunals, such as the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia. I will not go into details, as some of the war crimes ambassadors who facilitated this support and some of the Prosecutors of those tribunals are here today. Suffice it to say that, in addition to political support, many US nationals played key roles at these tribunals, and the United States has provided significant funding.**

**However, the United States has been far more tepid or openly hostile when it comes to another international judicial institution, the International Criminal Court—a tribunal that could be in a position to investigate or prosecute US nationals or those of a key ally.**

**The US delegation at the Rome Conference sought to limit ICC jurisdiction to (1) situations only referred by the UN Security Council or (2) brought with the consent of the state whose nationals were being investigated or prosecuted.**

**Again, we are here today with some of the war crimes ambassadors who have been in charge of this strategy, so I will only briefly say that US policy towards the ICC has vacillated between one of conditional engagement on a case-by-case basis during the Obama and Biden administrations, to a policy of obstruction during the George W. Bush and two Trump administrations.**

**Conditional engagement meant that the United States would support the ICC in instances where it chose to do so, but not in other situations.**

**The George W. Bush administration during his 1<sup>st</sup> term pursued a four-pronged attack to insulate the United States from the ICC. The Trump administration has twice imposed sanctions (travel bans and asset freezes) on ICC officials and others. More recently, the US Secretary of State announced a campaign to “disable” and “dismantle” the Court.**

**The United States has thus only partly internalized the first lesson of Nuremberg. The United States has sometimes evinced its support for international justice and international judicial institutions (at least during some US administrations)—but even where supportive, the support does not extend to the possible prosecution of US nationals or those of a key ally. Currently, the United States, under the Trump Administration has walked away from even this commitment.**

### ***Applying the Second Lesson***

**As to the second lesson of Nuremberg, despite the IMT's central focus on prosecuting crimes against peace, the United States, is largely antagonistic to prosecuting the crime of aggression.**

**In 1998, despite widespread support for including the crime of aggression in the Rome Statute—where it is included as one of the four core crimes—the United States was one of only fifteen states that opposed including crime of aggression.**

**When the definition of the crime was agreed upon during later negotiations of the Special Working Group on the Crime of Aggression (“SWGCA”), which met primarily in Princeton, New Jersey, the United States failed to attend these negotiations. In fact, it was the only permanent member of the UN Security Council to fail to attend.**

**When the definition of the crime and conditions for the ICC's exercise of jurisdiction over it were adopted by consensus in 2010 in Kampala, Uganda at the Review Conference, the United States, along with several aligned states, insisted on severely truncating the ICC's jurisdictional regime regarding the crime when a situation is referred by a State Party or the Prosecutor acts on his or her own.**

**The United States was thus largely responsible for the limited jurisdictional regime that now exists before the ICC vis-à-vis the crime of aggression, which differs from the ICC's general jurisdictional regime that applies to the crimes of genocide, crimes against humanity, and war crimes.**

Specifically, as to the crime of aggression, under Rome Statute Article 15bis(5), for cases initiated by State Party referral or the Prosecutor, there is a carve out from ICC jurisdiction for aggression committed [by](#) the nationals of non-States Parties and crimes committed on their territories.

This carve-out of jurisdiction has now benefitted Russia. While Ukraine is a Rome Statute State Party and has ratified the Kampala crime of aggression amendments, the ICC still cannot exercise jurisdiction over Russian aggression. An entire new tribunal needs to be established to prosecute this crime if it is to be prosecuted. While I do support the establishment of the Special Tribunal, had the United States not truncated jurisdiction, it would be unnecessary.

Thus, the United States, at least under one administration, has partly learned the second lesson of Nuremberg—the importance of prosecuting the crime of aggression—but apparently only when the conduct of Russian nationals is concerned. Even then, that support only occurred during the Biden administration; the Trump administration has announced its opposition to the tribunal.

### *Applying the Third Lesson*

Finally, all of this raises the question whether the United States respects the evenhanded application of the rule of law when it comes to international criminal justice. Perhaps the United States actually only embraces the selective application of justice that was a feature of the Nuremberg (and Tokyo) Tribunals (or, currently, no justice at all).

Through US hostility towards the ICC, one sees quite clearly that the United States is, at best, resisting the even-handed application of the rule of law when it comes to the conduct of US nationals as well as the conduct of at least one key ally. At worst (currently), the United States tries to destroy a judicial institution.

US hostility to prosecuting the crime of aggression—articulated during the Trump administration—even took the form of threats to countries and individual legal advisers. During summer 2025

discussions of the “Harmonization Amendment” which would align the ICC’s ability to exercise its jurisdiction over the crime of aggression with its general jurisdictional regime, the US delegate threatened states with use of force and individual legal advisers with sanctions and asset freezes. And this was *before* the United States intervened militarily in Venezuela and initiated a war with Iran.

## Conclusion

In conclusion, the situation is extremely ironic. It was the United States that spearheaded the prosecutions at Nuremberg and Tokyo—prosecutions that centered on crimes against peace—and the United Kingdom and France (and the then USSR) supported them.

Now, three of the Nuremberg Allies (and here I add the United Kingdom and France, given their negotiating positions) are doing their best to ensure that this legacy of the Nuremberg Tribunal is not revived—except perhaps when it comes to Russian aggression.

Eighty years after the close of Nuremberg, are these countries still only willing to embrace international justice selectively? International justice cannot be a tool to be employed at will against the nationals of some countries when the nationals of other countries remain above the rule of law. That is not the rule of law.