



American Society
of International Law



THE NUREMBERG TRIBUNAL: Justice and Accountability

A RESOURCE FOR TEACHERS CREATED BY THE
AMERICAN SOCIETY OF INTERNATIONAL LAW

The American Society of International Law
International Law Curriculum Series

The Nuremberg Tribunal: Justice and Accountability

A resource for teachers

Created by the American Society of International Law

With support from the Open Society Foundations

Essential Question:	Essential Understanding	Essential Knowledge	Essential Skills
<p>What is justice?</p> <p>How is justice best obtained in a post-conflict society?</p>	<p>The role of the United States in the prosecution of Nazi war criminals</p> <p>The need for an international response to international crimes</p> <p>The tension between justice and peace and ways to resolve that tension</p> <p>The continued existence of war crimes, crimes against humanity and genocide in the post-WWII world</p> <p>The existence of non-judicial methods used to provide resolution in post-conflict societies</p>	<p>Nuremburg</p> <p>Robert Jackson</p> <p>Genocide</p> <p>Yugoslavia</p> <p>South Africa</p> <p>Rwanda</p> <p>International Military Tribunal (IMT)</p> <p>South African Truth and Reconciliation Commission (TRC)</p> <p>International Criminal Tribunal for the former Yugoslavia (ICTY)</p> <p>International Criminal Tribunal for Rwanda (ICTR)</p> <p>International Criminal Court</p>	<p>Identifying key themes and values that guided the formation of the International Military Tribunal.</p> <p>Identifying, analyzing, interpreting and drawing conclusions from primary and secondary sources.</p> <p>Learning to recognize strengths and weaknesses of both sides of an argument and expressing and understanding the viewpoint of a position with which you may not personally agree.</p>

The Nuremberg Tribunal: Justice and Accountability

A resource for teachers

“The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated.”

Justice Robert H. Jackson, Chief of Counsel, Nuremberg International Military Tribunal
Opening Statement

Overview:

The United States played a leading role in the aftermath of World War II (WWII) in the prosecution of the Nazi war criminals. Confronted with horrors of Nazi ravaged Europe, Allied powers had to answer the question of what to do with the men who had wreaked such devastation. The Nazi leadership had violated international peace and non-aggression treaties in waging war and had committed war crimes in the treatment of civilians and prisoners of war and in the campaign of extermination of the European Jewish population. After the enormity of the Holocaust had been realized, humanity needed a new word to describe the horrors committed by the Nazi Party against Jews, Roma (Gypsy), and other “non-conforming” populations, including homosexuals, the developmentally disabled, and others. The term coined for these offenses was “Genocide.” The Nuremberg trials paved the way for contemporary war crimes trials for Yugoslavia, Rwanda, and now the International Criminal Court.

This module assumes students have already studied World War II and its effects and aftermaths, including a general introduction to the Holocaust and Nuremberg.

Lesson I: The Nuremburg Trials

A. Introduction (15 minutes)

Reading Assignment: Use STUDENT HANDOUT #1-1 & 1-2 (Memo to President Roosevelt on International Conference on Military Trials & Memo from the United Kingdom on International Conference on Military Trials). These materials should be assigned prior to the day the lesson will be taught.

The Allied leaders differed in their opinion of what justice should be for defeated German leaders. Soviet leader Joseph Stalin proposed executing 50,000-100,000 German staff officers. The British Government released an official policy statement (Handout 1-2) which argued against trials for captured German officers due to the complexities of trying so many individual cases. Contrary to his government's official position, British Prime Minister Winston Churchill did not like the idea of executing soldiers who had fought for their country and advocated for the prosecution of the Nazi leaders in trials at places where crimes had been committed. There were even disagreements within the U.S. government. Roosevelt's Treasury Secretary, Henry Morgenthau, proposed shooting prominent Nazi leaders, exiling others, and having the remainder tried in local courts. Secretary of War Henry L. Stimson drafted a plan for an international trial of the major Nazi war criminals. Ultimately, President Truman adopted the plan for an international criminal trial coupled with domestic prosecutions of lower level war criminals and convinced the other Allied powers to endorse the idea of an international trial.

Even then, there was disagreement about the kind of trial that would be held. Soviet leaders proposed "show trials," where rules of evidence and actual possible findings of innocence would be ignored and the defendants would merely be brought before the court to be publicly pronounced guilty. But the United States was able to convince the Allies that an international criminal tribunal with clearly articulated crimes following evidentiary requirements and proof of guilt beyond a reasonable doubt would be of greater benefit in preventing future global conflicts like World War II and would defend the Allied powers against claims of victor's justice.

Classroom Exercise: Compare and contrast the views reflected in the handouts containing the two memos about what to do about war crimes committed during WWII.

Students should consider the following questions:

1. What is the position of each nation as to who should be brought to justice following World War II?
2. President Roosevelt died before the end of World War II and his successor, President Harry S. Truman, had to make the decision of the course that the United States would take in regards to the Nazi war criminals. If you were advising President Truman, what would you advise? Why? Which of the proposals do you think provides more equitable justice?

B. Holding an International Criminal Trial (15 minutes)

Reading Assignment: Use STUDENT HANDOUT #2 (Excerpts from the Charter of the International Military Tribunal). This should be assigned prior to the day the lesson will be taught.

Before the trials could proceed, the Allies had to agree upon a set of rules to govern the prosecution of those brought before the Tribunal. The Charter of the International Military Tribunal was the result of political negotiations between the parties and gave the judges, prosecutors, and defense attorneys of the Tribunal the rules that would be applied to the individuals to be tried by the court. The trials took place in Nuremberg, Germany, a town that was considered to be the birthplace of the Nazi party. The United States, Great Britain, the Soviet Union, and France each provided one judge and a prosecutor. President Truman selected a Justice of the U.S. Supreme Court, Robert Jackson, to represent the United States as Chief Prosecutor. The International Military Tribunal (IMT) began in October 18, 1945 with indictments against 24 major war criminals.

Suggested Video (7:14): Excerpts from Justice Robert H. Jackson's Opening Statement - <http://www.youtube.com/watch?v=L50OZSeDXeA>. If you do not have access to this video, use STUDENT HANDOUT #3 (Excerpts from Justice Jackson's Opening Statement).

Classroom Exercise: Have students identify and describe in their own words the three crimes that an individual could be tried for at Nuremberg. With those crimes clearly understood by the class, hold a discussion about Article 8 of the IMT Charter. It can be prompted with the following questions:

- Is it important for people in military service to obey the orders of their superiors? (The answer is "yes" for many reasons. You can give examples of commanders having more information about the battle than the "person on the ground." You can also raise examples of strict chains of commands allowing commanders to order military personnel to maintain order, prevent looting, and protect civilians, orders that were frequently ignored prior to the 20th century.)
- Given that it is important for military people to obey orders, why did Article 8 take that away as a defense for the crimes being prosecuted at Nuremberg? (Answers might include "gravity of the crimes" "common morality of humanity" "the orders were unlawful and participants in the Holocaust knew this.")
- Is this fair to the average soldier? Can they effectively disobey an order they feel is immoral or unlawful? If, by choosing to disobey, the soldiers would be subjected to discipline, does that change your feelings about allowing "superior orders" as a defense in a trial following a conflict?
- Should this rule still apply today?

C. Victors' Justice or Victims' Justice? (15 minutes)

Critics of post-conflict justice often challenge the proceedings as “victors’ justice,” implying that the winning side of a conflict is simply trying to rewrite history to prove that their side was the “good guys.” These critics sometimes point out that the winning side may be guilty of crimes just as serious as the losers. These criticisms have been applied for more than 60 years to the Nuremburg Tribunals.

While the Allies did not commit any actions that rivaled the Holocaust, they did engage in many actions that would be considered war crimes in today’s world. For instance, the Allied forces used a tactic called “fire-bombing,” where they intentionally created a situation on the ground in Dresden, Germany, that would allow the bombs used to target manufacturing plants to create a massive firestorm, resulting in the deaths of thousands of German civilians who had no connection to the German military. Allied forces also often attacked civilian targets that were only tangentially related to the German military forces.

Proponents of these kinds of courts often point out that the victims of war crimes and atrocities during a conflict have no other chance to see those who harmed them face justice. For decades, there was no entity like the International Criminal Court, so there was no impartial court to provide justice to victims. This meant that only nations could attempt to provide an avenue for that justice and the only nations that would be interested in doing so were likely to be those who had been involved in the conflict. This almost always meant that, if there was going to be some form of criminal sanctions against the offenders, it would have to come from the winners of the conflict.

After nearly ten months of trials, twelve Nazi leaders were sentenced to death, seven were sentenced to imprisonment, and three were found not guilty. Among those sentenced to death was Herman Goering, the commander of the German Air Force. Goering committed suicide by a cyanide pill hours before his scheduled hanging. In his suicide note he objected to the use of hanging as the method of execution for a high-ranking military leader and wrote, “I would have no objection to getting shot.”

Classroom Exercise: Have students discuss the implications of allowing the winners of a military conflict to hold trials for the losers. Questions might include:

- Does the fact that the victors of World War II were the ones creating the Nuremburg Tribunal mean that it is tainted somehow?
- Would executing Germany’s political and military leaders without a trial have been somehow less hypocritical?
- Is there any good done by having a trial, even if it is overseen by the victors, instead of executions?
- Does the fact that some of the individuals prosecuted were found not guilty make the trials fairer, or does it not change the victors’ justice claim? Do those not-guilty verdicts represent a failure to obtain justice for the victims of the Holocaust, or is the act of having a trial enough to provide them justice in itself?

Lesson I Resources:

Web-based Resources:

- The Robert H. Jackson Center (<http://www.roberthjackson.org/>) has a comprehensive collection of information, history, and biographical material about Justice Jackson. It also includes links to other sources related to his time in Nuremberg.
- PBS has a teacher's guide specifically devoted to the Nuremberg Trials that contains a wealth of information. It is available for free online at <http://www.pbs.org/wgbh/amex/nuremberg/tguide/index.html>.
- The Red Cross has a curriculum for teachers on International Humanitarian Law (IHL). It includes primary source materials such as case studies, videos, photographs focusing on the rules of war, identifying violations of the law, responsibility, and ensuring justice. Modules 3 and 4 address specifically the question of dealing with violations and rationales for justice (judicial and non-judicial). The lessons and resources are available for free online at: www.redcross.org/ehl.

Video Resources:

- The Robert H. Jackson Center has excerpts of Justice Jackson's opening statement (7:14) before the International Military Tribunal available at <http://www.youtube.com/watch?v=L50ZSeDXeA>.
- PBS has a documentary on the Nuremberg Trials available at <http://www.youtube.com/watch?v=KTsTzOhkIDk&feature=topics>
- The National Holocaust Memorial Museum has excellent resources in their "for teachers" section, including a specific section on the post-war trials available at <http://www.ushmm.org/wlc/en/article.php?ModuleId=10005140>.
- ASIL has a video featuring Benjamin Ferencz, a former Nuremberg prosecutor, talking about his experiences during World War II and the Nuremberg trials. The video is available online at <http://www.asil.org/interview-ben-ferencz>.

If You Have Additional Time:

1. Position paper: Students will prepare a one page executive summary written as if they were an advisor to President Truman. Their summary should advise him on who should be brought to justice following World War II and the manner by which they should be brought to justice.
2. Role Playing: Divide the class into groups of prosecutors, judges, and defense attorneys. Have the students research their roles, the aims and parameters of the tribunal, and the charges. When prepared, the students will present a mock trial that should be videotaped for presentation to other classes.
3. Research Project: Have students research the International Military Tribunal for the Far East and report on the charges, the process, and the prosecutor. How were these trials different from Nuremberg? How were they similar? You can find materials on the Far East IMT at <http://www.trumanlibrary.org/educ/tokyo.htm>.

Lesson II: The Nuremberg Legacy

Overview: Justice Jackson described the trials at Nuremberg as “one of the most significant tributes that Power has ever paid to Reason.” Following the close of the Nuremberg prosecutions, there were many discussions about and several attempts to create a permanent international criminal court. These attempts routinely stalled or were opposed by a large number of nations.

Not until the early 1990s, when two major genocidal events significantly impacted the international community, did the push for applying international criminal law gain momentum. The world still struggled with how to address these issues, and experimented with a number of different types of international criminal law institutions, including *ad hoc* tribunals created to address specific instances of genocide, war crimes, and crimes against humanity; hybrid tribunals that used both international and domestic resources; peace and reconciliation processes, which emphasized community restoration over judicial proceedings; and a permanent international criminal court.

A. Reacting to Atrocity (20 minutes)

Reading Assignment: Use STUDENT HANDOUT #4 (The Genocide Convention). This should be assigned prior to the day the lesson will be taught.

The Holocaust shocked many people who had thought humanity had progressed beyond the kind of violence the Nazi regime demonstrated. In order to effectively prevent future actions similar to the Holocaust, Dr. Raphael Lemkin created the word “genocide” (*genos*=people, *cide*=killing) to describe the attempt to destroy an entire group of individuals. After World War II, the attempts to create a permanent international criminal court to deal with the serious crimes addressed in Nuremberg failed. It wasn’t until the world failed to prevent two genocides that could have been stopped, that holding individuals accountable at an international level was once again an option.

Yugoslavia was a country in the Soviet bloc. After the end of the Cold War, it fell into a period of political, ethnic, and religious violence. Some individuals used this as a chance to undertake “ethnic cleansing” against religious and ethnic minority populations. While the U.N. did not step in to stop the violence from occurring, they did respond to reports of mass killings, rapes, and torture by eventually creating a criminal tribunal. On May 25, 1993, the U.N. Security Council passed Resolution 827, creating the International Criminal Tribunal for the former Yugoslavia (ICTY), the first international criminal judicial body since World War II.

Suggested Video (2:10): Reporting the genocide in Srebrenica, Bosnia by CBS News (available on YouTube at <http://www.youtube.com/watch?v=SS-6fAXZSSk>)

Shortly after the creation of the ICTY, the African nation of Rwanda experienced a brief but deadly period of internal conflict, centered on tensions between the two major ethnic groups in the country, the Tutsi and the Hutu. Between April and June of 1994, an

estimated 800,000 Rwandans were killed. U.N. peacekeepers were already on the ground in Rwanda, but did not intervene to prevent the attacks. The speed and brutality of the killings, many of which were done with machetes and included young women and children among the victims, shocked the Security Council, which passed Resolution 955, creating a tribunal for Rwanda, the ICTR. The ICTY and ICTR are both considered *ad hoc* tribunals, meaning they were used as one-time solutions, answers to specific problems rather than the start of a systematic approach for handling all international crimes. Both of these tribunals had the authority to prosecute anyone in their jurisdiction (the territory where the crimes were committed) for war crimes, crimes against humanity, and genocide. While there was a sense of guilt by the international community for failing to stop these genocides, the tribunals' power to prosecute individuals for these crimes was not uncontroversial. In addition, the ability of these tribunals to indict government officials, who in the past had been shielded against prosecution by the concept of "sovereign immunity," represented a new development that raised concerns among nations.

Classroom Discussion: Why would the leaders of countries be nervous about courts that could prosecute anyone for committing war crimes, crimes against humanity, or genocide? Discussion may focus on inconsistencies in the international community's response, pursuing accountability in some circumstances but not others. Students may also be encouraged to discuss whether and how such prosecutions might complicate peace negotiations.

B. Peace vs. Justice (15 minutes)

Reading Assignment: Use STUDENT HANDOUT #5 (National Reconciliation Act).
This should be assigned prior to the day the lesson will be taught.

As international trials for war crimes became more common, another debate began to emerge. Not everyone was convinced that trials were the best way to ensure peace in a post-conflict country. South Africa chose to use a Truth and Reconciliation Commission (TRC) to attempt to heal the country following the fall of apartheid, rather than using trials. The TRC granted immunity (the protection from criminal prosecution) to anyone who agreed to voluntarily confess to *all* violent and discriminatory acts committed under apartheid. The rest of the world was unsure of how to react to this. Even as trials were being started for similar crimes in the former Yugoslavia and Rwanda, South Africa's people were allowing those who confessed to "go free."

South Africa's TRC was organized with three specific committees: human rights violations; reparation and rehabilitation; and amnesty. The last committee, which specifically addressed how and when an offender might be offered immunity against prosecution, caused many advocates of international criminal trials to question whether the TRC would allow for actual justice for victims of the country's apartheid government.

Arguments about the ability to maintain peace without justice or the risks of justice provoking further violence became common. Countries like Uganda and Sierra

Leone had to face these issues head on as they attempted to recover from violent internal conflicts. Concerns about granting amnesty for the most serious crimes were countered by arguments focused on protecting civilians who were targeted by individuals unwilling to stop fighting without a guarantee of immunity.

Suggested Video (6:13): The International Center for Transitional Justice has a video examining the relationship between peace and justice and the tension between the two concepts (available on YouTube at <http://www.youtube.com/watch?v=PWFpngEfu84>).

Classroom Discussion: How should a country decide the best approach to addressing genocide, crimes against humanity, or war crimes in its past? Should there be an international rule against allowing people who committed those crimes to be granted amnesty? What happens when the conflict is still going on and the combatants agree to stop fighting only if they are granted immunity? Does that change your opinion on whether or not they should face a trial?

C. Proactive Responses (10 minutes)

The multiple *ad hoc* international criminal bodies that addressed crimes throughout the 90's and early part of the 21st century quickly revealed some flaws in using the reactive approach to justice. First, the lack of a permanent court meant that there was no deterrent effect. Leaders of countries and revolutions were not afraid of being prosecuted for committing genocide, war crimes, or crimes against humanity, and so they were willing to use those tactics to improve their personal power, fight government or rebel forces, or obtain control of valuable natural resources. Second, each individual international criminal tribunal had to be funded separately, and it became increasingly difficult to get wealthier countries to contribute to courts that took a long time to start up, try their cases, and render verdicts. Finally, there was a lack of common rules between the different tribunals. They often used similar regulations, but there were significant differences between the courts, which meant that there was no single, agreed upon process for holding international violators responsible.

During the 1990s, the push for a permanent international criminal court regained momentum. As the flaws of the *ad hoc* process became apparent, nations gathered to discuss creating a uniform method for addressing violators of international criminal law. The United States played a key role in coordinating this effort and was essential to getting many countries reluctant to commit themselves to abiding by the rule of law to agree to be part of the process. It also helped introduce the principle of "complementarity," which gave individual countries the right to investigate and prosecute their own citizens and prohibited the ICC from conducting any investigation or prosecution if a country had already done so in good faith.

As the negotiations on a permanent court neared completion and nations prepared to agree to the Rome Statute which would create the International Criminal Court (ICC), the United States remained concerned about some of the provisions of the statute and attempted to introduce provisions that would allow the United States and other permanent

members of the UN Security Council more direct control over the Court. Its proposals were rejected, and the Rome Statute was adopted on July 17, 1998. In late 2000, U.S. President Bill Clinton signed the Rome Statute but indicated that he continued to have reservations about the Court and would “not recommend that my successor submit the treaty to the Senate for ratification until our fundamental concerns are satisfied.” As of 2013, there are more than 120 nations that have joined the Court; the United States is not a member, although it has supported referral of the situations in Sudan and Libya to the Court.

Suggested Video (4:14): PBS has a multi-part video on the history of the ICC. Part 2 includes a discussion of the United States’ response to the Rome Statute (available online at http://www.pbs.org/pov/reckoning/video_history02.php).

Classroom Discussion: What are the risks of participating in the International Criminal Court? Would supporting an international court that prosecutes people who commit war crimes, crimes against humanity, and genocide weaken or strengthen America’s role in the world?

Lesson II Resources:

Web-based Resources:

- The U.S. Holocaust Museum has an overview of Dr. Raphael Lemkin and the creation of the concept of genocide - <http://www.ushmm.org/wlc/en/article.php?ModuleId=10007050>.
- The BBC has a good overview of the Rwandan genocide - <http://www.bbc.co.uk/news/world-africa-13431486>
- The South African Government's home for the Truth and Reconciliation Commission includes information that can be used to supplement classroom discussions - <http://www.justice.gov.za/trc/>
- The International Center for Transitional Justice has a factsheet addressing questions about the tension between peace and justice - <http://ictj.org/sites/default/files/ICTJ-Global-Peace-Justice-2009-English.pdf>
- The International Criminal Court has a collection of information about the Court's creation and current practices online - http://www.icc-cpi.int/en_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx
- The Washington University Law School in St. Louis, Missouri, has a set of papers focused on the debate between pro and anti-ICC sides in the U.S. available for free online at <http://law.wustl.edu/harris/pages.aspx?id=1882>.

Video Resources:

- ASIL has a video interview featuring David Crane, former Chief Prosecutor of the Special Court for Sierra Leone, discussing the court and the case of *Prosecutor v. Charles Taylor*, the first former Head of State to be convicted in an international criminal tribunal online at www.youtube.com/watch?v=vCwLWpt4Uug.
- The ICTY has an extensive YouTube channel with over 1,000 videos. Some are informational and educational, while others are actual proceedings from before the Tribunal. It is available online at www.youtube.com/ICTYtv. The ICTR has a somewhat less developed channel, but it does have a three part series (45 minutes) on the Tribunal's foundation. It is available online at www.youtube.com/ICTRTPIR.
- The ICTY prepared a special video about the Tribunal's creation, growth, and progress in 2001. It is available online at <http://www.icty.org/sid/9980>.
- Archbishop Desmond Tutu served as the Chairman of the South African Truth & Reconciliation Commission. An interview with him (10:01) about the TRC, the role of forgiveness in the TRC, and the stress of serving as the Chairman is available on YouTube at http://www.youtube.com/watch?v=eRDBWoV_hA0.
- PBS has multiple videos that can be used to supplement the individual sections above. "Genocide: Worse Than War" (1:54:17) is a full-length documentary movie about genocide across the past 100 years and around the world. It is available online at video.pbs.org/video/1469571951/. The second video is the multi-part series "History of the ICC" (16:40) which can be watched together or in three different parts. It is available online at www.pbs.org/pov/reckoning/video_history_of_icc.php.

WARNING: These videos contain graphic images of violence.

STUDENT HANDOUT #1-1

International Conference on Military Trials: Memorandum to President Roosevelt from the Secretaries of State and War and the Attorney General (1945)

Recommended Program

After Germany's unconditional surrender the United Nations could, if they elected, put to death the most notorious Nazi criminals, such as Hitler or Himmler, without trial or hearing. We do not favor this method. While it has the advantages of a sure and swift disposition, it would be violative of the most fundamental principles of justice, common to all the United Nations. This would encourage the Germans to turn these criminals into martyrs, and, in any event, only a few individuals could be reached in this way.

We think that the just and effective solution lies in the use of the judicial method. Condemnation of these criminals after a trial, moreover, would command maximum public support in our own times and receive the respect of history. The use of the judicial method will, in addition, make available for all mankind to study in future years an authentic record of Nazi crimes and criminality.

We recommend the following:

The German leaders and the organizations employed by them, such as those referred to above (SA, SS, Gestapo), should be charged both with the commission of their atrocious crimes, and also with joint participation in a broad criminal enterprise which included and intended these crimes, or was reasonably calculated to bring them about. The allegation of the criminal enterprise would be so couched as to permit full proof of the entire Nazi plan from its inception and the means used in its furtherance and execution, including the prewar atrocities and those committed against their own nationals, neutrals, and stateless persons, as well as the waging of an illegal war of aggression with ruthless disregard for international law and the rules of war. Such a charge would be firmly founded upon the rule of liability, common to all penal systems and included in the general doctrines of the laws of war, that those who participate in the formulation and execution of a criminal plan involving multiple crimes are jointly liable for each of the offenses committed and jointly responsible for the acts of each other. Under such a charge there are admissible in evidence the acts of any of the conspirators done in furtherance of the conspiracy, whether or not these acts were in themselves criminal and subject to separate prosecution as such.

The trial of this charge and the determination of the guilty parties would be carried out in two stages:

The United Nations would, in the first instance, bring before an international tribunal created by Executive Agreement, the highest ranking German leaders to a number fairly representative of the groups and organizations charged with complicity in the basic criminal plan. Adjudication would be sought not only of the guilt of those

individuals physically before the court, but also of the complicity of the members of the organizations included within the charge. The court would make findings adjudicating the facts established, including the nature and purposes of the criminal plan, the identity of the groups and organizations guilty of complicity in it, and the acts committed in its execution. The court would also sentence those individual defendants physically before it who are convicted.

The above would complete the mission of this international tribunal.

Thereafter, there would be brought before occupation courts the individuals not sent back for trial under the provisions of the Moscow Declaration, and members of the organizations who are charged with complicity through such membership, but against whom there is not sufficient proof of specific atrocities. In view of the nature of the charges and the representative character of the defendants who were before the court in the first trial, the findings of that court should justly be taken to constitute a general adjudication of the criminal character of the groups and organizations referred to, binding upon all the members thereof in their subsequent trials in occupation courts. In these subsequent trials, therefore, the only necessary proof of guilt of any particular defendant would be his membership in one of those organizations. Proof would also be taken of the nature and extent of the individual's participation. The punishment of each defendant would be made appropriate to the facts of his particular case. In appropriate cases, the penalty might be imprisonment at hard labor instead of the death penalty, and the offenders could be worked in rebuilding the devastated areas.

Source: The Avalon Project: <http://avalon.law.yale.edu/imt/jack01.asp>

STUDENT HANDOUT #1-2

International Conference on Military Trials: Aide-Memoire from the United Kingdom (1945)

1. H.M.G. [Her Majesty's Government] assume that it is beyond question that Hitler and a number of arch-criminals associated with him (including Mussolini) must, so far as they fall into Allied hands, suffer the penalty of death for their conduct leading up to the war and for the wickedness which they have either themselves perpetrated or have authorized in the conduct of the war. It would be manifestly impossible to punish war criminals of a lower grade by a capital sentence pronounced by a Military Court unless the ringleaders are dealt with equal severity. This is really involved in the concluding sentence of the Moscow Declaration on this subject, which reserves for the arch-criminals whose offences have no special localization treatment to be determined in due course by the Allies.

2. It being conceded that these leaders must suffer death, the question arises whether they should be tried by some form of tribunal claiming to exercise judicial functions, or whether the decision taken by the Allies should be reached and enforced without the machinery of a trial. H.M.G. thoroughly appreciate the arguments which have been advanced in favour of some form of preliminary trial. But H.M.G. are also deeply impressed with the dangers and difficulties of this course, and they wish to put before their principal Allies, in a connected form, the arguments which have led them to think that execution without trial is the preferable course.

3. The central consideration for deciding this difficult choice must, in H.M.G.'s view, be reached by asking—what is the real charge which Allied people and the world as a whole makes against Hitler! It is the totality of his offences against the international standard which civilised countries try to observe which makes him the scoundrel that he is. If he were to be indicted for these offences in the manner that is necessary for reasons of justice in a criminal court, and if his fate is to be determined on the conclusion reached by the tribunal as to the truth of this bundle of charges and the adequacy of the proof, it seems impossible to conceive that the trial would not be exceedingly long and elaborate. He, of course, must have in such a trial all the rights properly conceded to an accused person. He must be defended if he wishes, by counsel, and he must call any relevant evidence. According to British ideas, at any rate, his defence could not be forcibly shut down or limited because it involves a great expenditure of time. There is nothing upon which British opinion is more sensitive in the realm of criminal procedure than the suspicion that an accused person—whatever the depths of his crime—has been denied his full defence.

4. There is a further consideration which, in the view of H.M.G. needs to be very carefully weighed. If the method of public trial were adopted, the comment must be expected from the very start to be that the whole thing is a "put-up job" designed by the Allies to justify a punishment they have already resolved on. Hitler and his advisers—if they decide to take part and to challenge what is alleged—may be expected to be very

much alive to any opportunity of turning the tables. Public opinion as the trial goes on is likely to weary at the length of the process. It is difficult to think that anybody would in the course of time look on Hitler as an injured man, but it is by no means unlikely that a long trial will result in a change of public feeling as to the justification of trying Hitler at all. Will not some people begin to say "The man should be shot out of hand"? And if in the complicated and novel procedure which such a trial is bound to adopt—for Russian, American and British ideas must in some way be amalgamated—the defence secured some unexpected point, is there not a danger of the trial being denounced as a farce?

Source: The Avalon Project: <http://avalon.law.yale.edu/imt/jack02.asp>

STUDENT HANDOUT #2

Charter of the International Military Tribunal

JURISDICTION AND GENERAL PRINCIPLES

Article 6.

The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(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;

(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;

(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.

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

Article 7.

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.

Article 8.

The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

Article 16.

In order to ensure fair trial for the Defendants, the following procedure shall be followed:

(a) The Indictment shall include full particulars specifying in detail the charges against the Defendants. A copy of the Indictment and of all the documents lodged with the Indictment, translated into a language which he understands, shall be furnished to the Defendant at reasonable time before the Trial.

(b) During any preliminary examination or trial of a Defendant he will have the right to give any explanation relevant to the charges made against him.

(c) A preliminary examination of a Defendant and his Trial shall be conducted in, or translated into, a language which the Defendant understands.

(d) A Defendant shall have the right to conduct his own defense before the Tribunal or to have the assistance of Counsel.

(e) A Defendant shall have the right through himself or through his Counsel to present evidence at the Trial in support of his defense, and to cross-examine any witness called by the Prosecution.

Source: The Avalon Project: <http://avalon.law.yale.edu/imt/imtconst.asp>

STUDENT HANDOUT #3

Excerpts from Robert Jackson's Opening Statement Nuremberg International Military Tribunal November 21, 1945

May it please Your Honors:

The privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility. The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated. That four great nations, flushed with victory and stung with injury stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason.

This Tribunal, while it is novel and experimental, is not the product of abstract speculations nor is it created to vindicate legalistic theories. This inquest represents the practical effort of four of the most mighty of nations, with the support of 17 more, to utilize international law to meet the greatest menace of our times—aggressive war. The common sense of mankind demands that law shall not stop with the punishment of petty crimes by little people. It must also reach men who possess themselves of great power and make deliberate and concerted use of it to set in motion evils which leave no home in the world untouched. It is a cause of that magnitude that the United Nations will lay before Your Honors. ...

What makes this inquest significant is that these prisoners represent sinister influences that will lurk in the world long after their bodies have returned to dust. We will show them to be living symbols of racial hatreds, of terrorism and violence, and of the arrogance and cruelty of power. They are symbols of fierce nationalisms and of militarism, of intrigue and war-making which have embroiled Europe generation after generation, crushing its manhood, destroying its homes, and impoverishing its life. They have so identified themselves with the philosophies they conceived and with the forces they directed that any tenderness to them is a victory and an encouragement to all the evils which are attached to their names. Civilization can afford no compromise with the social forces which would gain renewed strength if we deal ambiguously or indecisively with the men in whom those forces now precariously survive. ...

In justice to the nations and the men associated in this prosecution, I must remind you of certain difficulties which may leave their mark on this case. Never before in legal history has an effort been made to bring within the scope of a single litigation the developments of a decade, covering a whole continent, and involving a score of nations, countless individuals, and innumerable events. Despite the magnitude of the task, the world has demanded immediate action. This demand has had to be met, though perhaps at the cost of finished craftsmanship. To my country, established courts, following familiar procedures, applying well-thumbed precedents, and dealing

with the legal consequences of local and limited events seldom commence a trial within a year of the event in litigation. Yet less than 8 months ago today the courtroom in which you sit was an enemy fortress in the hands of German SS troops. Less than 8 months ago nearly all our witnesses and documents were in enemy hands. The law had not been codified, no procedures had been established, no tribunal was in existence, no usable courthouse stood here, none of the hundreds of tons of official German documents had been examined, no prosecuting staff had been assembled, nearly all of the present defendants were at large, and the four prosecuting powers had not yet joined in common cause to try them. I should be the last to deny that the case may well suffer from incomplete researches and quite likely will not be the example of professional work which any of the prosecuting nations would normally wish to sponsor. It is, however, a completely adequate case to the judgment we shall ask you to render, and its full development we shall be obliged to leave to historians.

...

The case as presented by the United States will be concerned with the brains and authority back of all the crimes. These defendants were men of a station and rank which does not soil its own hands with blood. They were men who knew how to use lesser folk as tools. We want to reach the planners and designers, the inciters and leaders without whose evil architecture the world would not have been for so long scourged with the violence and lawlessness, and wracked with the agonies and convulsions, of this terrible war.

Source: The Robert H. Jackson Center: (<http://www.roberthjackson.org/the-man/speeches-articles/speeches/speeches-by-robert-h-jackson/opening-statement-before-the-international-military-tribunal/>)

STUDENT HANDOUT #4

Convention on the Prevention and Punishment of the Crime of Genocide

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,

Recognizing that at all periods of history genocide has inflicted great losses on humanity, and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided:

Article I: The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article II: In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article III: The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article IV: Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article V: The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the

present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

Article VI: Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article VII: Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition. The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article VIII: Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

Article IX: Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

...

Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948.

STUDENT HANDOUT #5

Excerpts from the “Promotion of National Unity and Reconciliation Act” 1995

CHAPTER 2: THE TRUTH AND RECONCILIATION COMMISSION

2. Establishment and seat of Truth and Reconciliation Commission

- (1) There is hereby established a juristic person to be known as the Truth and Reconciliation Commission.
- (2) The seat of the Commission shall be determined by the President.

3. Objectives of Commission

- (1) The objectives of the Commission shall be to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by-

- (a) establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date, including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations, by conducting investigations and holding hearings;

- (b) facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective and comply with the requirements of this Act;

- (c) establishing and making known the fate or whereabouts of victims and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them;

- (d) compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission contemplated in paragraphs (a),(b) and (c) , and which contains recommendations of measures to prevent the future violations of human rights.

- (2) The provisions of subsection (1) shall not be interpreted as limiting the power of the Commission to investigate or make recommendations concerning any matter with a view to promoting or achieving national unity and reconciliation within the context of this Act.

- (3) In order to achieve the objectives of the Commission-

- (a) the Committee on Human Rights Violations, as contemplated in Chapter 3, shall deal, among other things, with matters pertaining to investigations of gross violations of human rights;

- (b) the Committee on Amnesty, as contemplated in Chapter 4, shall deal with matters relating to amnesty;

- (c) the Committee on Reparation and Rehabilitation, as contemplated in Chapter 5, shall deal with matters referred to it relating to reparations;

- (d) the investigating unit referred to in section 5 (d) shall perform the investigations contemplated in section 28 (4) (a); and

(e) the subcommittees, referred to in section 5 (c), shall exercise, perform and carry out the powers, functions and duties conferred upon, assigned to or imposed upon them by the Commission.

4. Functions of Commission: The functions of the Commission shall be to achieve its objectives, and to that end the Commission shall-

- (a) facilitate, and where necessary initiate or coordinate, inquiries into -
 - (i) gross violations of human rights, including violations which were part of a systematic pattern of abuse;
 - (ii) the nature, causes and extent of gross violations of human rights, including the antecedents, circumstances, factors, context, motives and perspectives which led to such violations;
 - (iii) the identity of all persons, authorities, institutions and organisations involved in such violations;
 - (iv) the question whether such violations were the result of deliberate planning on the part of the State or a former state or any of their organs, or of any political organisation, liberation movement or other group or individual; and
 - (v) accountability, political or otherwise, for any such violation;
- (b) facilitate, and initiate or coordinate, the gathering of information and the receiving of evidence from any person, including persons claiming to be victims of such violations or the representatives of such victims, which establish the identity of victims of such violations, their fate or present whereabouts and the nature and extent of the harm suffered by such victims;
- (c) facilitate and promote the granting of amnesty in respect of acts associated with political objectives, by receiving from persons desiring to make a full disclosure of all the relevant facts relating to such acts, applications for the granting of amnesty in respect of such acts, and transmitting such applications to the Committee on Amnesty for its decision, and by publishing decisions granting amnesty, in the Gazette;
- (d) determine what articles have been destroyed by any person in order to conceal violations of human rights or acts associated with a political objective;
- (e) prepare a comprehensive report which sets out its activities and findings, based on factual and objective information and evidence collected or received by it or placed at its disposal;
- (f) make recommendations to the President with regard to-
 - (i) the policy which should be followed or measures which should be taken with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims;
 - (ii) measures which should be taken to grant urgent interim reparation to victims;
- (g) make recommendations to the Minister with regard to the development of a limited witness protection programme for the purposes of this Act;
- (h) make recommendations to the President with regard to the creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures which should be taken or introduced in order to prevent the commission of violations of human rights.

Glossary of Terms

Ad hoc tribunals: Specific, “one-off” criminal courts set up to address crimes committed only in a certain place and/or time.

Amnesty/Immunity: The promise to an individual or group of individuals of no criminal prosecution for a specific act or set of acts, usually in exchange for testimony or information.

Apartheid: A national system of racial segregation enforced through the laws and strength of the state. Most frequently the term applies to the South African government policy enforced by the National Party from 1948-1994.

Complementarity: The principle in the Rome Statute that prevents the International Criminal Court from investigating or prosecuting individuals who are being investigated or prosecuted by their home country.

Crimes against Humanity: Crimes committed against civilian populations in violation of the law of nations, usually used to refer to acts similar to war crimes, but on a widespread or systematic basis, and they can be committed during peace time as well as during war.

Deterrence: The idea that judicial punishment or other methods of accountability will serve to prevent individuals from committing future crimes or offenses.

Genocide: a set of defined acts, including murder, deportation, or other acts committed with the intent to destroy a national, ethnical, racial, or religious group. Coined by Dr. Raphael Lemkin, the term comes from the words “genos” (people or group) and “cide” (killing).

Hybrid tribunals: A form of *ad hoc* court that includes both domestic and international elements, such as judges from both the host country and foreign countries.

Impunity: escaping punishment for a crime or wrongdoing.

International Criminal Court (ICC): The permanent court created by the Rome Statute and given the authority to prosecute war crimes, crimes against humanity, and genocide, committed by individuals either who come from countries that have ratified the Statute or who commit crimes in those countries.

International Criminal Tribunal for the former Yugoslavia (ICTY): The *ad hoc* tribunal set up to specifically address the crimes committed in the former Yugoslavia in the early 1990s.

International Criminal Tribunal for Rwanda (ICTR): The *ad hoc* tribunal set up to specifically address the crimes committed in Rwanda.

International Military Tribunal (IMT): The first international criminal tribunal, set up to try individuals for violating the laws of war and international norms during World War II.

Jurisdiction: The legal authority to hold an individual accountable for criminal offenses.

Dr. Raphael Lemkin: A Jewish-American scholar that coined the term “genocide” following World War II.

Nuremberg, Germany: The birthplace of the Nazi Party prior to the start of World War II and the location of the International Military Tribunals.

Peace and Reconciliation Processes: The choice by a nation to use non-judicial methods to deal with violators of domestic and international laws prohibiting war crimes, crimes against humanity, and genocide. These processes are usually intended to provide victims and perpetrators with a method to restore or renew a relationship or community relations.

Rome Statute: The legal document that created the International Criminal Court and provides it with the rules it uses for prosecuting international crimes. Individual nations must sign and ratify the Statute to become part of the ICC.

South African Truth and Reconciliation Commission: The specific method employed by the South African government to address the post-apartheid tensions in the country. The Commission granted immunity to any individual who committed acts in support of the Apartheid government, so long as they told the complete truth about their actions.

Sovereignty: The concept that says that a country controls what happens inside its borders and that other nations do not have the right to interfere in its internal actions.

Superior Orders: The idea that soldiers in a conflict may claim that they were ordered to commit crimes and were not able to refuse to obey those orders.

Victor’s Justice: The claim that post-conflict trials, like the IMT, represent only the political will of the winners of the conflict, not true justice, since no court holds the right to prosecute the victors for any crimes they may have committed.

War Crimes: Violations of the rules of war for which there can be criminal responsibility.

Frequently Asked Questions by Students

1. If Adolph Hitler had lived, do you think he would have been put on trial?

Given the hypothetical nature of the question, it lends itself to a valuable exercise in both reviewing the historic events and deliberations and to playing out the counterarguments and limitations that history did not test. For example, you can have the students run through the standards of who would be tried by the IMT at Nuremberg and discuss whether Hitler would have been included and then have the students offer possible arguments against his trial or present alternative forms of accountability.

2. Why was Nuremberg chosen as the site of the trials?

While Berlin was considered, the aerial bombing campaign during the war destroyed the infrastructure and buildings of the city to the point where facilities were not adequate. Nuremberg had a courthouse and detention facilities that could accommodate the needs of the Tribunal, and it was the birthplace of the Nazi party, thereby providing the symbolic power of holding the trials meant to restore the rule of law in a town that abandoned the law for the gun.

3. Did the United States do anything to try to prevent gross atrocities in Rwanda, Cambodia, the Former Yugoslavia, or Sudan?

This is an infinitely complicated question the answer to which is laden with political and moral judgments. Have the students research what did happen or have the students discuss what they consider to be action aimed at preventing genocide. Would they include using military force? Sending humanitarian aid? Taking in refugees? Since one of the main goals of the International Criminal Court is to deter genocide, crimes against humanity, and war crimes, is the establishment of the ICC a long term measure in preventing future atrocities? If not, why not?

4. Why are there so many different international courts? Can't there be just one?

It is often difficult for states to agree on the specific crimes and defenses, removed from geographic and temporal limitations, that they will then be bound by and have little if any control over. Hence it took the experience of these ad hoc tribunals before the International Criminal Court could be appropriately conceptualized and agreed to.

5. Who are the judges on these courts? How are they chosen?

For the ICTY they were selected by the General Assembly of the United Nations following established procedures (see ICTY Statute Art. 13). For the ICC, judges are elected by the state parties to the ICC and must be citizens of the states party to the Rome Statute.

Class Trivia/ Quiz

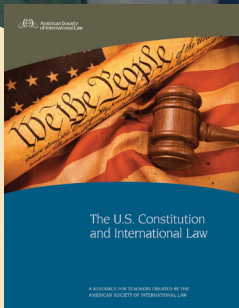
1. At the end of World War II, German Nazis were:
 - a. Rounded up and executed
 - b. Imprisoned
 - c. Forced into labor camps
 - d. Prosecuted before the International Military Tribunal
2. The tribunal at Nuremberg was established by
 - a. United States, Soviet Union, United Kingdom, Japan
 - b. Soviet Union, France, China
 - c. United States, United Kingdom, Soviet Union, France
 - d. United States, United Kingdom, France
3. (T/F) Treasury Secretary Henry Morgenthau advocated an international tribunal to try all the Nazi war criminals.
4. Which of the following was not a prosecutable offense according to the IMT Charter?
 - a. War Crimes
 - b. Crimes against Humanity
 - c. Genocide
 - d. Crime of Aggression
5. The Charter of the IMT recognized which forms of discrimination?
 - a. Racial & Political
 - b. Religious
 - c. All of the above
 - d. None of the above
6. (T/F) The defendants at Nuremberg had the right to an attorney and to cross-examine witnesses.
7. Which of the following Nazi defendants committed suicide before his execution?
 - a. Hans Frank
 - b. Herman Goering
 - c. Adolf Hitler
 - d. Karl Doenitz
8. (T/F) Only the political leaders of the Nazi government were tried at Nuremberg as they bore the gravest responsibility.

9. Which of the following was the first international criminal tribunal since the IMT?
- International Criminal Tribunal for Rwanda (ICTR)
 - International Criminal Tribunal for the former Yugoslavia (ICTY)
 - International Criminal Court (ICC)
 - Special Court for Sierra Leon (SCSL)
10. Genocide includes which of the following:
- Murder
 - Serious bodily harm
 - Sterilization
 - All of the Above
11. Which of the following statement about the South African Truth & Reconciliation Commission is false:
- The TRC had three committees: Human rights violations, Reparation and Rehabilitation, and Amnesty
 - The TRC was established by the United Nations
 - The TRC was an alternative to a criminal prosecution
 - The aim of the Commission was to provide an historical record for the victims of human rights violations
12. The International Criminal Court (ICC) is:
- In charge of prosecuting individuals for crimes committed during the 1990s in the former Yugoslavia, Rwanda, and Sierra Leone
 - Created by the Rome Statute
 - Allowed to prosecute anyone it wants
 - In Rome, Italy

Class Trivia/ Quiz: The Answers

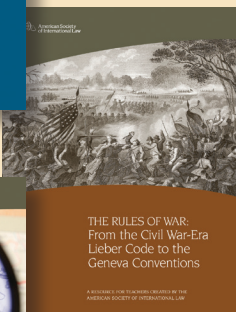
1. d
2. c
3. False
4. c
5. c
6. True
7. b
8. False
9. b
10. d
11. b
12. b

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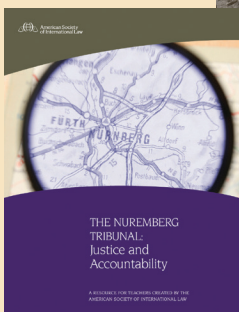
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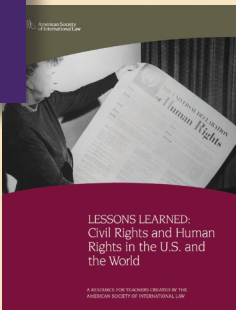
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