
The Soviets at Nuremberg: International Law, Propaganda, and the Making of the Postwar Order

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THE NUREMBERG TRIALS OF NOVEMBER 1945 TO OCTOBER 1946 are still seen through the distorting lens of the Cold War. Nuremberg was a foundational event of the postwar era, generating numerous retellings in memoirs, monographs, and films. The classic account of the trials is an Anglo-American tale of liberal triumph in which the high-minded U.S. chief prosecutor, Robert H. Jackson, along with representatives of the other Western powers, put the desire for vengeance aside and gave the Nazis a fair trial before the law—marking one of “the law’s first great efforts to submit mass atrocity to principled judgment” and ushering in a new era of international human rights.¹ This narrative became established in the West during the long decades of competition between the Soviet Union and the United States, when Soviet materials relating to the trials, and to postwar diplomatic relations in general, were off limits in the Soviet archives.

For politicians and historians who helped create the classic narrative of Nuremberg, the role of the Soviets in the International Military Tribunal (IMT) was, and remains, an awkward fact. Most English-language accounts describe Soviet participation in Nuremberg as “the Achilles’ heel” of the trials: regrettable but unavoidable, a Faustian bargain that the U.S. and Britain made in order to bring closure to the war and bring the Nazis to justice.² Popular works that have shaped conventional

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¹ This triumphalist account dominates the literature. For examples, see Bradley F. Smith, *The American Road to Nuremberg: The Documentary Record, 1944–1945* (Stanford, Calif., 1982), and Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven, Conn., 2001). The quote is from Douglas, *Memory of Judgment*, 1. For a somewhat more tempered triumphalist account, see Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton, N.J., 2000), 147–205. One of the few works to offer a sustained critique of the Nuremberg narrative and its “legacy to posterity” is Donald Bloxham, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory* (New York, 2001).

² For an account based primarily on the British archives and on memoirs, and told from an Anglo-

wisdom about the trials give little attention to the substantive role that the Soviets had in all aspects of the IMT.³ Those commentators who do focus on Soviet participation often do so in order to highlight the flaws of such tribunals and to make a point about “victors’ justice,” in the most extreme cases as part of a larger project to discredit the historical record of the Holocaust.⁴

Even with the Cold War long over, the classic narrative of Nuremberg has proven resilient. The few post-1989 studies that challenge our assumptions about the IMT and its meaning, almost all of which are from Russia, have received little attention in the United States.⁵ Meanwhile, new evidence from the former Soviet archives, much of which has just become available to researchers, suggests that there is still a great deal that we need to understand about what happened at Nuremberg and in its wake.⁶ This evidence shows how the IMT functioned as a medium for postwar

American perspective, see Ann Tusa and John Tusa, *The Nuremberg Trial* (London, 1983). For an account based in part on the U.S. archives and told from the U.S. perspective, see Joseph E. Persico, *Nuremberg: Infamy on Trial* (New York, 1994). U.S. and British memoirs take a similar view. See, for example, Telford Taylor, *The Anatomy of the Nuremberg Trials* (New York, 1992), and Airey Neave, *Nuremberg: A Personal Record of the Trial of the Major Nazi War Criminals in 1945–6* (London, 1978). The quote is from Christopher J. Dodd, *Letters from Nuremberg: My Father’s Narrative of a Quest for Justice* (New York, 2007), 341. See also Bass, *Stay the Hand of Vengeance*, 196. Bass argues that “Soviet vengeance was utterly unhindered by liberal legalistic norms.”

³ This is especially true of the spate of newspaper articles about Nuremberg that appeared in connection with the sixtieth anniversary of the IMT, and also in connection with the trials of Slobodan Milošević and Saddam Hussein. Many spoke about “the lessons of Nuremberg” and “the Nuremberg standard.” Also notable is the PBS American Experience documentary *The Nuremberg Trials*, which aired in 2006—and which celebrated Nuremberg as the triumph of U.S. Chief Prosecutor Robert H. Jackson and gave no real attention to the positive role of the Soviets in the trials. To be sure, there were some exceptions to this tendency to downplay the role of the Soviets: law professor Michael J. Bazzyler, speaking in Nuremberg on the sixtieth anniversary of the start of the IMT, noted that “Soviet contributions to the trials were numerous,” even as he concluded that Soviet participation “diminishes the legacy of the IMT.” Bazzyler’s speech was published as “The Role of the Soviet Union in the International Military Tribunal at Nuremberg,” in Herbert R. Reginbogin and Christoph J. M. Safferling, eds., *Die Nürnberger Prozesse: Völkerstrafrecht seit 1945* (Munich, 2006), 45–52. (The quote is from p. 51.)

⁴ David Irving, recently arrested in Austria on the charge of Holocaust denial, features a good discussion of the Soviet prosecution at Nuremberg in his *Nuremberg: The Last Battle* (London, 1996), published in Russian as *Niurnberg: Posledniaia bitva* (Moscow, 2005). Soviet participation in Nuremberg also receives pride of place in the publications of the Institute for Historical Review, an organization notorious for disseminating Holocaust denial literature. See, for example, Mark Weber, “The Nuremberg Trials and the Holocaust,” *Journal of Historical Review* 12, no. 2 (1992): 167–213.

⁵ Here I am referring in particular to the excellent work of Natalia Lebedeva and other Russian scholars, whose findings have not been assimilated into popular Western accounts of the trials. See, for example, Yuri Zorya and Natalia Lebedeva, “The Year 1939 in the Nuremberg Files,” *International Affairs* (Moscow) 10 (October 1989): 117–129. For a first-rate discussion of the Soviet Union’s compilation of evidence for the IMT, see Marina Sorokina, “People and Procedures: Toward a History of the Investigation of Nazi Crimes in the USSR,” *Kritika: Explorations in Russian and Eurasian History* 6, no. 4 (2005): 797–831. Also deserving of greater attention is George Ginsburgs’s excellent *Moscow’s Road to Nuremberg: The Soviet Background to the Trial* (The Hague, 1996), which documents the Soviet Union’s preparation for Nuremberg and contribution to the legal underpinnings of the IMT. Ginsburgs, an American legal historian of the USSR, did not use Russian archival materials (which were unavailable to him), but drew on numerous other sources, including Lebedeva’s published and unpublished work. The most comprehensive and insightful Soviet scholarly work on Nuremberg is N. S. Lebedeva, *Podgotovka Niurnbergskogo protsesssa* (Moscow, 1975). In the 1970s, Lebedeva had privileged, albeit limited, access to Soviet archives. See also Lebedeva’s recent essay about the Nuremberg Trials, “SSSR i Niurnbergskii protsess,” in N. S. Lebedeva and V. V. Ishchenko, eds., *Niurnbergskii protsess: Uroki istorii* (Moscow, 2007), 139–165. In her essay, Lebedeva references a number of the same archival sources that I do in this piece. Her essay and edited collection were published while this article was in press.

⁶ Much archival evidence about the role of the Soviets in the IMT has only recently become available to researchers. Russian scholars have had a leading role in bringing such evidence to light with the

cooperation among states with different visions and goals—and also how it became the battleground for an intense political and ideological struggle among those same states about the meaning of World War II and the shape of the new international order. Given the prevalence of international tribunals in our current political landscape and the frequent invocations of “the Nuremberg model,” it would seem that attaining a more complete picture of Nuremberg, and of the behind-the-scenes politics of the trials in particular, is a matter of more than just academic interest.

A new narrative of Nuremberg that includes a full accounting of the role of the Soviets contains numerous twists and turns—and more than a few surprises. First, there is compelling evidence that the Soviet Union made significant contributions to the legal framework of the IMT and also to a new postwar vision of international law. It did so despite the fact that Soviet domestic legal practices contradicted Western liberal principles of the law. Furthermore, making the USSR’s contributions to the jurisprudence of the IMT all the more striking, it is clear that there were direct continuities in personnel and objectives linking the Soviet delegation at the Nuremberg Trials to Stalin’s notorious Moscow Trials of 1936–1938. The Russian archival record leaves no question that the Soviet regime and its secret Commission for Directing the Nuremberg Trials envisioned Nuremberg as a “show trial”—that is, as an exercise in didactic legalism—and made a significant effort to control the Soviet legal team and the course of the trials.⁷

Yet despite these intentions, and despite the major contributions that the Soviet participants made to the actual trial, Nuremberg turned into an embarrassment for the USSR. In Nuremberg we see not just “intimations of the coming Cold War” but in fact one of the Cold War’s first major battles, taking place at a critical moment when the postwar relationship between the United States and the USSR was still unformed and before the USSR had achieved the status of an international superpower.⁸ The Soviets did not fare well in this contest. Indeed, it was the U.S. that seized control of the IMT and made Nuremberg its own. The IMT became a devastating propaganda failure for the Soviet “propaganda state.” It exposed Soviet inadequacies before the world and ultimately shaped Soviet leaders’ attitudes toward the postwar order.⁹

THE FIELD OF INTERNATIONAL LAW EXPERIENCED A RENAISSANCE in the Soviet Union in the late 1930s, a direct result of both the changing international situation and the

publication of document collections. See G. P. Kynin and I. Laufer, eds., *SSSR i germanskii vopros, 1941–1949: Dokumenty iz Arkhiva vneshnei politiki Rossiiskoi Federatsii*, 3 vols. (Moscow, 1996–2003). See also Wojciech Materski, Anna M. Cienciala, and Natalia S. Lebedeva, eds., *Katyn: A Crime without Punishment* (New Haven, Conn., 2008).

⁷ On political trials and didactic legalism, see Judith N. Shklar, *Legalism: Law, Moralism, and Political Trials* (Cambridge, Mass., 1986).

⁸ Persico argues that in Nuremberg “we see intimations of the coming Cold War in microcosm.” *Nuremberg*, x–xi.

⁹ On the Soviet “propaganda state,” see Peter Kenez, *The Birth of the Propaganda State: Soviet Methods of Mass Mobilization, 1917–1928* (Cambridge, 1985). The Soviet term for show trial, *pokazatel'nyi protsess*, referred to a trial with explicit educational goals, and did not have pejorative implications.



FIGURE 1: The Palace of Justice, site of the International Military Tribunal. Nuremberg, Germany, 1945–1946. United States Holocaust Memorial Museum [hereafter USHMM], courtesy of William O. McWorkman.

deadly political intrigues of Stalin's Great Terror. This represented a major turn-about. Indeed, as late as 1935, Soviet legal experts at Moscow's Institute of Law, the USSR's premier legal institution, rejected international law because of its "bourgeois underpinnings."¹⁰ The most vocal critic was Evgenii Pashukanis, a leading figure of Soviet Marxist jurisprudence and the director of the institute, who had tyrannized the field for more than a decade. According to Pashukanis, "the victory of the bourgeoisie" throughout Europe had led to the establishment of the rules and institutions of modern international law, "which protected the general and basic interests of the bourgeoisie, i.e. bourgeois property." Pashukanis explained that "bourgeois jurists" refused to acknowledge a simple fact: that capitalist states and socialist states were destined to engage in a struggle against one another and thus could not enter into meaningful agreements.¹¹ An important proponent of a more pragmatic approach

¹⁰ The Institute of Law went through several name changes in the 1930s. From 1930 to 1935 it was the Institute of Soviet Construction and Law, from 1936 to 1938 the Institute of State and Law, and from 1938 to 1953 the Institute of Law. I will refer to it throughout as the Institute of Law.

¹¹ Evgeny Pashukanis, "Selections from the Encyclopedia of State and Law: International Law," in Piers Beirne and Robert Sharlet, eds., *Pashukanis: Selected Writings on Marxism and Law* (London, 1980), 168–183, esp. 171–172. In March 1935, the Institute of Law had a heated discussion about Pashukanis's ideas on international law. Archive of the Russian Academy of Sciences [hereafter ARAN], f. 360, op. 4, d. 400, ll. 1–14. Pashukanis revised some of his ideas in response to this discussion (as can be seen in E. Pashukanis, *Ocherki po mezhdunarodnomu pravu* [Moscow, 1935]), but the revisions did not go far enough.

to international relations was Andrei Vyshinskii, who taught law at Moscow State University (MGU) and who had been appointed deputy state prosecutor of the USSR in 1933. Vyshinskii defined law as “a set of normative prescriptions” and maintained that international law could be used to reinforce and secure the Soviet state order.¹²

One of Vyshinskii’s subordinates at MGU was Aron Trainin, a brilliant professor of criminal law, trained before 1917 in Western European legal traditions.¹³ After the Soviet Union joined the League of Nations in 1934, Trainin, at Vyshinskii’s behest, undertook an investigation of international legal projects pursued during the interwar period, with the goal of coming up with a Soviet version of international criminal law. Trainin began this project quietly, since international law was still in disrepute. Before long, however, Vyshinskii’s star began to rise. In 1935 Vyshinskii was named procurator general of the USSR, and between 1936 and 1938 he helped Stalin conduct the infamous Moscow Trials, a series of show trials that initiated Stalin’s Great Terror throughout the USSR. In January 1937, Vyshinskii’s rival, Pashukanis, became a victim of the Terror; he was arrested, like hundreds of thousands of other Soviet citizens, on charges of “Trotskyism” and shot. Vyshinskii assumed the post of director at the Institute of Law—and emerged as the undisputed leader of the Soviet legal profession.¹⁴ The field of Soviet international law was about to come into its own.

The year 1937, known best in the USSR for extralegal measures and kangaroo courts, also brought the publication of Trainin’s major work, *The Defense of Peace and Criminal Law*. This book criticized the League of Nations for failing to make the provocation of aggressive war a criminal offense and for failing to create an international criminal court to punish aggressors. Immediately following World War I, the League of Nations had contemplated creating a High Court of International Justice to try crimes against “the universal law of nations.” But the signatories had been unable to agree which crimes “the universal law of nations” prohibited, and in 1920 the idea was abandoned.¹⁵ Trainin lamented this missed opportunity and the

¹² Quoted from Beirne and Sharlet’s introduction to *Pashukanis*, 33. They are citing A. Vyshinsky, *The Law of the Soviet State* (New York, 1948), 62. Vyshinskii’s ideas are set out in A. Ia. Vyshinskii, *K polozheniiu na fronte pravovoi teorii* (Moscow, 1937).

¹³ Trainin began his career as a criminal lawyer and did not take up international law until the mid-1930s. For biographical sketches, see ARAN, f. 1711, op. 1, and the introduction to A. N. Trainin, *Izbrannye proizvedeniia: Zashchita mira i ugovovnyi zakon*, ed. R. A. Rudenko (Moscow, 1969), 5–14. Most Soviet legal scholars of Trainin’s generation received a broad legal education grounded in a range of Western European traditions. For examples, see V. E. Graber, *The History of International Law in Russia, 1647–1917: A Bio-Bibliographical Study*, trans. and ed. W. E. Butler (Oxford, 1990). Aron Trainin should not be confused with Il’ia Trainin. The latter was a member of the Extraordinary State Commission for the Establishment and Investigation of Crimes of the Fascist German Invaders and Their Accomplices, and had a leading role at the Academy of Sciences’ Institute of Law during the 1940s.

¹⁴ Vyshinskii publicly denounced Pashukanis as a “Trotskyite” who had been advancing “pseudo-Marxist” legal theories with the intention of weakening the USSR before its enemies abroad. Vyshinskii, *K polozheniiu na fronte pravovoi teorii*, 5. On Vyshinskii’s rise to power, see Arkady Vaksberg, *Stalin’s Prosecutor: The Life of Andrei Vyshinsky* (New York, 1990), and Peter H. Solomon, Jr., *Soviet Criminal Justice under Stalin* (Cambridge, 1996).

¹⁵ A. Trainin, *Zashchita mira i ugovovnyi zakon* (Moscow, 1937), 21–32. Trainin described unsuccessful international efforts to label “aggressive war” a punishable criminal offense, noting that the Kellogg-Briand Pact of 1928 and the Pan-American Conference of 1928 renounced wars of aggression, but that neither provided mechanisms to punish such offenses. See also Ginsburgs, *Moscow’s Road to Nuremberg*, 20–23. On the League of Nations and its failed efforts to create an international court, see

enduring absence of a “criminal code to defend peace,” noting that in current international law, “hunting rabbits unlawfully is punished more severely than organizing the military destruction of people.”¹⁶ Vyshinskii attached his name to Trainin’s work as editor and wrote an impassioned introduction in which he proclaimed that “criminal law must be utilized for defending peace, must be mobilized against war and against the instigators of war.”¹⁷ The threatening actions of Hitler’s Germany—including the formation of the Axis Alliance between Germany and Italy, and the Anti-Comintern Pact between Germany and Japan, both in 1936—made the publication of this work timely. But it was Vyshinskii’s newfound power that made it possible.

IT WAS TOWARD THE END OF THE SECOND WORLD WAR that the Soviets began to fully envision international law as an instrument for reshaping the international order. Trainin, who spent the duration of the war at the Institute of Law, had a major hand in this endeavor. He wrote extensively on questions of war, peace, and international law, often working on direct assignments from the People’s Commissariat of Foreign Affairs.¹⁸ Trainin’s wartime efforts culminated in his 1944 work *The Criminal Responsibility of the Hitlerites*.¹⁹ This book, which was published amid an international outcry about Nazi atrocities and several months after the first public Soviet trial of German war criminals in the USSR, proposed a set of “international legal principles” for trying the Nazis and the other Axis powers.²⁰ Again, Vyshinskii attached himself to the work as its editor and wrote the introduction. By now, he was well ensconced in the world of Soviet diplomatic relations as deputy commissar of foreign affairs.²¹

The main innovation of Trainin’s new book was its argument that “the Hitlerites” should be tried not just for “war crimes” committed during the course of war, but also, and more importantly, for launching a war of aggression—and thus committing

Benjamin B. Ferencz, “The Legacy of Nuremberg: International Criminal Courts,” *Pace International Law Review* 10 (1998): 203–235. At the Paris Peace Conference, the victors had proposed using such a court to prosecute individuals for “crimes against humanity.” Taner Akçam, *A Shameful Act: The Armenian Genocide and the Question of Turkish Responsibility* (New York, 2006), 2–3.

¹⁶ Trainin, *Zashchita mira i ugovnyi zakon*, 90.

¹⁷ V. I. Vyshinskii, introduction to *ibid.*, 4.

¹⁸ ARAN, f. 499, op. 1, d. 24, ll. 9, 37–38; d. 32, ll. 124ob–125, 143–156. Trainin moved to the Institute of Law in 1938.

¹⁹ Trainin presented the main arguments of this work for discussion at a meeting of the Academy of Sciences’ Division of Economics and Law (to which the Institute of Law belonged) on November 23, 1943. ARAN, f. 499, op. 1, d. 32, ll. 27–50.

²⁰ A. N. Trainin, *Ugolovnaia otvetstvennost’ gitlerovtsev*, ed. A. Ia. Vyshinskii (Moscow, 1944), translated into English as *The Criminal Responsibility of the Hitlerites*, ed. A. Y. Vyshinsky (Moscow, 1944). On this work and its significance, see Ginsburgs, *Moscow’s Road to Nuremberg*, chap. 4. The first public Soviet trial was the Kharkov Trial, conducted by the Military Tribunal of the Fourth Ukrainian Front in December 1943. Trainin wrote extensively about the legal aspects of this trial. Arieh J. Kochavi, “The Moscow Declaration, the Kharkov Trial, and the Question of a Policy on Major War Criminals in the Second World War,” *History* 76 (1991): 401–417; Alexander Victor Prusin, “Fascist Criminals to the Gallows! The Holocaust and Soviet War Crimes Trials, December 1945–February 1946,” *Holocaust and Genocide Studies* 17, no. 1 (2003): 1–30.

²¹ Vyshinskii assumed this post in 1940. On Vyshinskii’s diplomatic career, see A. Gromyko, “‘Zagadka’ Vyshinskogo,” in O. E. Kutafin, ed., *Inkvizitor: Stalinskii prokuror Vyshinskii* (Moscow, 1992), 296–305. Also Vaksberg, *Stalin’s Prosecutor*.

a fundamental “crime against peace.” Arguing that “peace is the greatest social value” and the basis of all “international association,” Trainin argued that “crimes against peace” constituted the gravest international offenses.²² The idea of a “crime against peace,” that is, of treating war itself as a punishable criminal act, had been raised in international conferences.²³ But Trainin gave the concept its definitive formulation, which would later serve as a basis for the Nuremberg Charter. According to Trainin, “crimes against peace” included “acts of aggression,” “propaganda of aggression,” “the conclusion of agreements with aggressive aims,” “the violation of treaties which serve the cause of peace,” “provocation designed to disrupt peaceful relations between countries,” “terrorism,” and “support of armed bands (fifth columns).”²⁴ He argued that such an understanding of “crimes against peace” should become part of “a new convention on international crime,” which would be part of a “general system of treaties defining the new regime of international relations after the defeat of Hitlerism.”²⁵

Trainin’s new work was also significant for its contribution to an ongoing discussion among the Allies about using the legal concept of “complicity” to try the Nazis for participating in a criminal conspiracy against peace. Most works about Nuremberg describe the “complicity charge” as a U.S. innovation that met with resistance from the other Allies.²⁶ In fact, however, the Soviets were keen proponents of this charge from early on, recognizing its great utility. Trainin, for his part, devoted an entire chapter to the concept of complicity, defining it as “a complex phenomenon” that “embraces various understandings among criminals” and can include “the dangerous form of participation in an organization, bands, blocs, gangs, conspiracies,” and so on. In such cases, he explained, a member of an organization “may not know all the other members” of the organization “but should answer for all their criminal activities.” (Here Trainin acknowledged an intellectual debt to Vyshinskii, noting that he was borrowing from the definition of complicity that the latter had elaborated in 1938 during the Moscow Trials.) According to Trainin, the concept of complicity, which was firmly established in Soviet domestic law, was even more important in international law, because in international crime the perpetrator never acts alone, but “with the aid of a complicated executive apparatus” and with “the

²² Trainin, *Criminal Responsibility of the Hitlerites*, 47–48; Trainin, *Ugolovnaia otvetstvennost’ gitlerovtsev*, 35–36. Also Ginsburgs, *Moscow’s Road to Nuremberg*, 26, 78–79. Ginsburgs rightly credits Trainin with making “a pioneering attempt to gain recognition for the phenomenon of crimes against peace and the idea that such offenses must incur the severest penalties congruent with the common tenor of criminal jurisprudence.” He notes that Trainin’s ideas had “revolutionary” implications for “the future development of international law doctrine.” Unfortunately, Ginsburgs’s important study, published more than a decade ago, has not altered the common misperception that it was the United States that came up with the formula for “crimes against peace.”

²³ In this work, too, Trainin discussed past international efforts to label aggressive acts as “criminal” (noting the Kellogg-Briand Pact, along with the 1927 Universal Peace Congress in Athens and the Inter-Parliamentary Congresses of 1924, 1928, 1930, and 1932), arguing that none went far enough.

²⁴ Trainin, *Criminal Responsibility of the Hitlerites*, 54; Trainin, *Ugolovnaia otvetstvennost’ gitlerovtsev*, 40. Trainin differentiated crimes of “interference with peaceful relations between nations” from “crimes connected with war.” (In these and subsequent examples I am citing the English-language version of Trainin’s work in the text, which is consistent with the Russian version.)

²⁵ Trainin, *Criminal Responsibility of the Hitlerites*, 133; Trainin, *Ugolovnaia otvetstvennost’ gitlerovtsev*, 101.

²⁶ For recent examples, see Persico, *Nuremberg*, 16–18; Bloxham, *Genocide on Trial*, 20; and Elizabeth Borgwardt, *A New Deal for the World: America’s Vision for Human Rights* (Cambridge, Mass., 2005), 225. Borgwardt maintains that “conspiracy was a purely Anglo-American legal doctrine.”

assistance of numerous human organizations.” In such cases, he added, “higher-ups” (such as “the Hitlerite officers and the German commanders”) bear the greatest criminal responsibility, since “they are guilty of the formulation and execution of a policy representing a continuous insult to the foundations of international law and of creating a system of governmental banditry.”²⁷

Trainin’s new work was translated into English, French, and German, and soon surfaced in important political circles in the West. In October 1944, it was discussed at a meeting of the United Nations War Crimes Commission (of which the USSR was not a member).²⁸ In December, it made the rounds of the U.S. State Department and the U.S. War Department. In January 1945, Murray Bernays of the U.S. War Department’s Special Projects Branch cited Trainin’s definition of a “crime against peace” when penning his own memo on the topic for the White House.²⁹ Soon after, Trainin’s work was handed off to Supreme Court Justice Robert H. Jackson—who would soon be named the United States’ chief prosecutor at Nuremberg and who would express his approval of Trainin’s characterization of the criminal nature of aggressive war.³⁰ In May and June of 1945, on the eve of the London Conference to draft the charter of the IMT, Trainin’s work circulated among the British. D. Maxwell Fyfe, who would head the British delegation at the London Conference, reportedly declared it “a godsend” for clarifying important issues of the day.³¹

Trainin was part of the Soviet team that went to London. He later went to Nuremberg, too, where he served as an adviser to the Soviet prosecution. In London, the Four Powers (the United States, Britain, France, and the USSR) adopted his nomenclature and the essence of his definition of “crimes against peace”; they listed “war crimes” and “crimes against humanity” as separate, albeit related, charges.³²

²⁷ Trainin, *Criminal Responsibility of the Hitlerites*, 110, 112, 115; Trainin, *Ugolovnaia otvetstvennost’ gitlerovtsev*, 81–82, 85. The key chapter (chap. 8) is titled “Souchastie v mezhdunarodnykh prestupleniakh: Gitlerovskaia klika” (“Complicity of the Hitlerite Clique in International Crimes” in the English-language version). Also Ginsburgs, *Moscow’s Road to Nuremberg*, 79–80.

²⁸ At the October 10, 1944, meeting of the United Nations War Crimes Commission, the chairman noted that the commission had received three copies of Trainin’s *The Criminal Responsibility of the Hitlerites*, all in Russian. At the October 31, 1944, meeting, Dr. Bohuslav Ečer from Czechoslovakia (the only commission member who knew Russian) presented an analysis of Trainin’s book. On November 11, 1944, a written transcript of this analysis was circulated to all commission members. National Archives and Records Administration—College Park, Record Group 238: World War II War Crimes Records, Entry Number 52: Reference Files 1933–1946, Box 7: Miscellaneous Reports and Correspondence, United Nations War Crimes Commission, Minutes—October 10, 1944; Minutes—October 31, 1944; Report—October 31, 1944. Trainin’s work was also discussed at subsequent meetings.

²⁹ In this secret memo from January 4, 1945, Bernays explained the Soviet view “that the launching of an aggressive war is today a crime in international law” and that “this is made clear in a book entitled, ‘The Criminal Responsibility of the Hitlerites’ by A. N. Trainin, a Soviet professor of law . . . who expresses not only his own opinion but also the official attitude of the Soviet Government.” Truman Library, Rosenman Papers, War Crimes File, Memorandum from Murray C. Bernays and D. W. Brown, January 4, 1945. On the memo, see also Ginsburgs, *Moscow’s Road to Nuremberg*, 92–93. Ginsburgs is citing N. S. Lebedeva, “K istorii sozdaniia Mezhdunarodnogo voennogo tribunala,” in L. L. Ananian, ed., *Uroki Niurnberga: Materialy k mezhdunarodnoi konferentsii, Moskva, 11 noiabria–13 noiabria 1986 g.: Doklady sovetkikh uchastnikov konferentsii*, 3 vols. (Moscow, 1986–1988), 1: notes 3, 79.

³⁰ Ginsburgs, *Moscow’s Road to Nuremberg*, 93. Ginsburgs is citing Robert H. Jackson, *Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials, London, 1945* (Washington, D.C., 1949), 299.

³¹ Ginsburgs, *Moscow’s Road to Nuremberg*, 93. Ginsburgs is citing Lebedeva, “K istorii sozdaniia Mezhdunarodnogo voennogo tribunala,” notes 2, 3, and 84. The London Conference was held from June 26 to August 8, 1945.

³² In Article 6 of the Nuremberg Charter, “crimes against peace” were defined as “planning, prep-



FIGURE 2: Aron Trainin, in the center with a mustache, speaks with his colleagues at a meeting in London to work out the Allied agreement to create the International Military Tribunal. Iona Nikitchenko, who would later be named the USSR's chief judge at Nuremberg, is on his right. London, England, August 1945. Photo by Charles Alexander. USHMM, courtesy of the Harry S. Truman Library.

At the London Conference, the Four Powers also decided to integrate the complicity charge into the Nuremberg Charter, agreeing that “leaders, organizers, instigators, and accomplices participating in the formulation or execution of a common plan or conspiracy to commit” specified crimes “are responsible for all acts performed by any persons in execution of such plan.”³³ This definition, advanced by the Americans, was accepted enthusiastically by the Soviets. It was, after all, remarkably similar to the one that Trainin himself had put forward.

The exact degree to which the Soviets, versus the other members of the Four Powers, were responsible for the formulation of the charges in the Nuremberg Charter remains unknown. What is clear is that historians who credit the United States with coming up with the major legal innovations of the Nuremberg Trials far over-

aration, 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.” *Nuremberg Trial Proceedings*, vol. 1, published online through the Avalon Project at Yale Law School, <http://www.yale.edu/lawweb/avalon/imt/proc/imtconst.htm> (accessed April 11, 2008).

³³ This definition was set out in Article 6 of the Nuremberg Charter, *ibid*.

state their case.³⁴ The Soviets and the Americans came from different political systems with different legal traditions but found common ground when it came to formulating the Nuremberg Charter. The Soviets were quite comfortable with the idea of “complicity,” having perfected their own rendition of the charge during the Moscow Trials to implicate people for the dubious crime of Trotskyism. Moreover, it was the Soviets, on record as criticizing the League of Nations for not going far enough to condemn and criminalize “aggressive war,” and more comfortable than the Americans with the ex post facto application of the law, who provided the legal rationale for the charge of “crimes against peace.” It was through such contributions that the Soviets helped shape the IMT and also laid important groundwork for the development of postwar international human rights law. These contributions would soon be forgotten in the West—a direct result of the politics of the Cold War.

WHILE TRAININ AND HIS IDEAS ABOUT INTERNATIONAL LAW made it to London and Nuremberg as an indirect result of Stalin’s Great Terror, the connections between the brutal politics of the Soviet 1930s and Nuremberg in fact go far deeper. For Stalin and Vyshinskii, there was a strong link between the Moscow Trials of 1936–1938 and the Nuremberg Trials. It is important to remember that at the Moscow Trials, Grigori Zinov’ev, Nikolai Bukharin, and numerous others had been convicted on trumped-up charges, not simply as Trotskyites, but as Trotskyites who had organized with the direct aid of the Hitler regime and aimed to establish a fascist dictatorship in Russia.³⁵ Both sets of trials, from the Soviet perspective, were intended to bring “the Hitlerites” (a label that included Nazi Germans as well as their supporters) to justice. As if to reinforce this link, Stalin recruited for Nuremberg some of the same judges and prosecutors who had served during the Moscow Trials. Principal members of the Soviet team at Nuremberg—Judge Iona Nikitchenko, Assistant Judge Aleksandr Volchkov, and Assistant Prosecutor Lev Sheinin—had made their careers by helping Vyshinskii convict Zinov’ev, Bukharin, and other “old Bolsheviks” in the 1930s, thus facilitating the spread of Stalin’s campaign against purported “enemies of the people.” The USSR’s chief prosecutor at Nuremberg, Roman Rudenko, had gotten similar experience between 1936 and 1938 as the chief prosecutor for a series of show trials of engineers and mine managers in Ukraine.³⁶

³⁴ See, for example, Borgwardt, *A New Deal for the World*, and Smith, *American Road to Nuremberg*. Smith states that “what the world now knows as the Nuremberg trial system was primarily developed in late 1944 and early 1945, almost exclusively by a group of American government officials” (x).

³⁵ This charge was reiterated in slightly different forms at all three of the Moscow Trials. At the 1937 trial, Vyshinskii maintained that it had been established that Trotsky and his allies had “entered into negotiations with one of the leaders of the German National-Socialist Party with a view to waging a joint struggle against the Soviet Union.” A. Y. Vyshinsky, *Traitors Accused: Indictment of the Piatakov-Radek Trotskyite Group* (New York, 1937), 6.

³⁶ Nikitchenko was approximately fifty years old in 1946; he had joined the Bolshevik Party in 1914 and had headed a military tribunal during the civil war. A. Poltorak, *The Nuremberg Epilogue* (Moscow, 1971), 153–155. Rudenko was approximately forty years old and procurator of the Ukrainian SSR in 1946; he had been a party member for some twenty years. Hiroaki Kuromiya, *Freedom and Terror in the Donbas: A Ukrainian-Russian Borderland, 1870s–1990s* (Cambridge, 1998), 223. On Sheinin’s career, see Arkadii Vaksberg, “Pravaia ruka velikogo inkvizitora,” *Literaturnaia gazeta*, no. 42 (5264) (October 18, 1989): 12. All of the members of the Soviet legal team, along with Gorshenin and several political advisers, were part of the USSR’s Commission on the Nuremberg Trials, which met several times a week



FIGURE 3: Aleksandr Volchkov and Iona Nikitchenko, the USSR's assistant judge and chief judge on the International Military Tribunal in Nuremberg, Nuremberg, Germany, 1945–1946. Photo by Charles Alexander. USHMM, courtesy of the Harry S. Truman Library.

During the Nuremberg Trials, these men continued to report directly to Vyshinskii, who from 1945 headed the Soviet Union's secret Commission for Directing the Nuremberg Trials. This Moscow-based commission included in its ranks such highly placed figures as the new procurator general of the USSR, Konstantin Gorshenin; the people's commissar of justice, Nikolai Rychkov; the president of the Supreme Soviet, Ivan Goliakov; and the head of the Counterespionage Division of the People's Commissariat of Defense, Viktor Abakumov. It also included high-ranking officials from the People's Commissariat of Internal Affairs (NKVD), the People's Commissariat of State Security (NKGB), and the People's Commissariat of Foreign Affairs (NKID), as well as a representative from the Extraordinary State Commission for the Establishment and Investigation of the Crimes of the Fascist German Invaders and Their Accomplices (ChGK), a Soviet institution established in November 1942 to compile evidence about Nazi war crimes committed in the USSR.³⁷

in Nuremberg. (This commission should not be confused with Vyshinskii's secret Moscow-based Commission for Directing the Nuremberg Trials.)

³⁷ In August 1945, Molotov and Beria began planning the "establishment of a commission under Vyshinskii's leadership"—should it be decided to participate in an international tribunal. According to their correspondence, the commission would include representatives from the Office of the Military Procurator, the NKVD, SMERSH, and the People's Commissariat of Defense. This was the precursor to the Vyshinskii Commission. Archive of the Foreign Policy of the Russian Federation [hereafter AVPRF], f. 06, op. 7, p. 20, d. 210, ll. 9–10. SMERSH, an acronym for "death to spies," was the USSR's main counterespionage organ. Other members of the Vyshinskii Commission were Vsevolod Merkulov (head of the NKGB), Bogdan Kobulov (from the NKGB), Sergei Kruglov (from the NKVD), Ivan Lavrov



FIGURE 4: Roman Rudenko, the USSR's chief prosecutor on the International Military Tribunal, addresses the court. The members of the Soviet delegation sit behind him in their military uniforms. Nuremberg, Germany, 1945–1946. Photo by Charles Alexander. USHMM, courtesy of Robert Kempner.

The “Vyshinskii Commission,” as it came to be known, attempted to micromanage all aspects of Soviet participation in the IMT. It approved all Soviet lawyers, political advisers, journalists, artists, translators, stenographers, and other personnel for Nuremberg. It found and groomed witnesses for the Soviet prosecution, using NKVD agents to prepare them for cross-examination. It screened all written and visual materials for use in the trials, and worked with the Soviet prosecution to select documents (from captured German archives and other sources), photographs, and newsreel footage to introduce as evidence of Nazi intentions and Nazi crimes. It line-edited, and rewrote entire sections of, the speeches and written communications of the Soviet legal team—leaving behind an astonishing paper trail. Commission members circulated marked-up drafts of the speeches of the Soviet prosecution for weeks before sending copies to Commissar of Foreign Affairs Viacheslav Molotov, and then to Stalin, for comments, suggestions, and final approval.³⁸ During the course of the trials, Vyshinskii traveled several times to Nuremberg to give direct orders to the Soviet legal team and to Soviet journalists. He made such trips in his role as deputy commissar of foreign affairs, since his commission was secret and he had no official connection to the IMT. Back in Moscow, Vyshinskii reported to Molotov and Stalin on a regular basis, seeking their opinions on matters large and small.

(from the NKID), and Pavel Bogoiavlenskii (from the ChGK). State Archive of the Russian Federation [hereafter GARF], f. 7445, op. 2, d. 391, ll. 49–56. On the ChGK, see Sorokina, “People and Procedures.”

³⁸ In most cases, copies of such materials—and copies of high-level correspondence about the course of the Nuremberg Trials in general—also went to Anastas Mikoian, Grigorii Malenkov, and Lavrentii Beria.

Western lawyers and journalists at Nuremberg were well aware that Nikitchenko and Vyshinskii had played active roles in the Soviet show trials of the 1930s. Moreover, while details about the Vyshinskii Commission and its attempts to direct the Nuremberg Trials have come to light only recently, it was commonly understood at the time that the members of the Soviet prosecution (and all Soviet personnel in Nuremberg in general) were under close surveillance and were perpetually awaiting directives from their superiors back home. Western memoirs of Nuremberg make note of the evasiveness and “obvious embarrassment” of the Russians, who were under tight rein from Moscow, and depict Vyshinskii as an “ominous figure” lurking in the dark corridors of the Palace of Justice. Many Western works about Nuremberg do not mention Trainin at all—but those that do, remember him as a “distinguished legal academician” and as “an agreeable man to do business with.”³⁹

It is tempting to draw a sharp line between Trainin and Vyshinskii—to see Trainin as a great legal mind with Western sensibilities and to see Vyshinskii and his commission as the embodiment of Soviet totalitarianism. And it is true that while Vyshinskii was a known executioner, Trainin spoke the language of “Western civilization,” expressing deep concern about the humane treatment of populations during wartime and peacetime. Drawing a line between these men might allow us to separate the USSR’s positive contribution to the IMT from other, unsettling elements of the Soviet past. If we can imagine Trainin as a closet dissident who embodied Western values, we can insert him into the Anglo-American narrative of Nuremberg with little impact. Of course, it is not that simple. Trainin and Vyshinskii were on the same side and were working toward common goals. Both understood that law was about politics, and that international law was about international politics, power, and prestige. In this, the two men were not dissimilar from the representatives of the Western powers, who also saw international legal mechanisms as a means for advancing their countries’ political agendas. But more to the point, both Trainin and Vyshinskii saw the IMT as a vehicle for furthering official *Soviet* goals both abroad and at home. Trainin was far from a lone wolf; there was no such thing among Soviet academics who occupied official posts during this period. His entire oeuvre, including his works on the defense of peace and international criminal law, had been vetted by dozens of colleagues and subjected to hours of discussion at the Institute of Law before seeing publication. And it was Vyshinskii, head of the institute, official editor of most of Trainin’s works, and supreme architect of the Soviet show trial, who invariably had the last word, using his renowned rhetorical skill to refine Trainin’s prose and add final flourishes.

FROM MOSCOW’S PERSPECTIVE, THE NUREMBERG TRIALS, like the Moscow Trials, were to be an exercise in education and enlightenment—a show trial extraordinaire. The Soviets took it as a given that the Nazi leaders were guilty and deserved to be hanged. The Soviet Union’s Great Patriotic War—the “Nazi-German war of aggression” described at Nuremberg—had devastated the USSR, leaving 27 million Soviet citizens

³⁹ Taylor, *Anatomy of the Nuremberg Trials*, 59, 211; Tusa and Tusa, *The Nuremberg Trial*, 75; and Sidney S. Alderman, “Negotiating on War Crimes Prosecutions, 1945,” in Raymond Dennett and Joseph E. Johnson, eds., *Negotiating with the Russians* (Boston, 1951), 69.

dead and another 25 million homeless. The Soviets had held their own highly publicized trial of three Germans and one Russian collaborator in December 1943 in Ukraine, charging not just the four accused but also the heads of the German state and armed forces (in absentia) with “methodically striving for the extermination of the Slavic peoples.”⁴⁰ The Soviets pushed for and agreed to participate in an international tribunal of major Nazi leaders (this time present and accounted for) for the sake of catharsis, and with the faith that a public trial and conviction of “the Hitlerites” would serve positive political goals—demonstrating the evils of fascism and the valor of the peace-loving Soviet people.⁴¹

The Soviets, like the other participants in the IMT, had assembled a team of prominent journalists, writers, artists, cartoonists, photographers, and filmmakers at Nuremberg to bring the trials to the population back home as well as to an international audience in Europe, North America, and beyond. Included in their ranks were the writers Il’ia Erenburg and Vsevolod Vishnevskii, the photographer Evgenii Khaldei, the political cartoonist Boris Efimov, the filmmaker Roman Karmen, and other figures with reputations in the USSR and abroad. Karmen, whose wartime footage was used as evidence at Nuremberg, attended the trials for their ten-month duration, producing newsreels for Soviet viewers as well as the film *Judgment of the People*.⁴² All of the Soviet correspondents reported to the Soviet Information Bureau (Sovinformbiuro), the official Soviet press and propaganda administration that had been established in 1941 to cover, and control information about, the war. Sovinformbiuro also conducted “soft espionage,” providing Soviet authorities in Moscow and Berlin with reports about the course of the trials—and about the conduct of the Soviet personnel, in particular.⁴³

The Soviet regime was accustomed to using the drama of the courtroom to “enlighten” its population and to initiate major political campaigns. In this sense, a direct line connects the Nuremberg Trials not just with the Moscow Trials of the mid-1930s but also with the Soviet show trials (and mock agitation trials) of the 1920s.⁴⁴ But there were important differences between these other trials and the Nuremberg Trials. First, while the international media did not know what to make of the so-called “bourgeois wreckers” and Trotskyites who stood trial in the USSR during the 1920s and 1930s, there was general agreement worldwide that the Nazis as a group bore significant guilt.⁴⁵ Second, outside the borders of the USSR, on the

⁴⁰ Kochavi, “The Moscow Declaration,” 404.

⁴¹ Official Soviet goals for the trials were articulated in the Soviet newspapers *Pravda* and *Izvestiia*. For a collection of articles, see G. I. Aleksandrov, ed., *Sud istorii: Reportazhi s Niumbergskogo protsesssa* (Moscow, 1966).

⁴² On the Soviet correspondents at Nuremberg, see Boris Polevoi, *V kontse kontsov: Niumbergskie dnevniki* (Moscow, 1969); Poltorak, *Nuremberg Epilogue*; Il’ia Erenburg, *Sobranie sochinenii v vos’mi tomakh*, vol. 8: *Liudi, gody, zhizn’*, books 5–7 (Moscow, 2000); and Boris Efimov, *Nevydumannnye istorii* (Moscow, 1976). For Karmen’s account of Nuremberg, see Roman Karmen, *No pasaran! Gody i liudi* (Moscow, 1972).

⁴³ In 1944, Sovinformbiuro expanded to include a special division on propaganda for foreign countries.

⁴⁴ On the Moscow Trials, see Robert Conquest, *The Great Terror: A Reassessment* (New York, 1991). On the agitation trials of the 1920s, see Elizabeth A. Wood, *Performing Justice: Agitation Trials in Early Soviet Russia* (Ithaca, N.Y., 2005).

⁴⁵ In the 1930s, a number of Western observers, including prominent journalists such as Walter Duranty from the *New York Times*, accepted the Moscow Trials at face value. Others, such as the members of the Commission of Inquiry into the Charges Made against Leon Trotsky in the Moscow Trials,

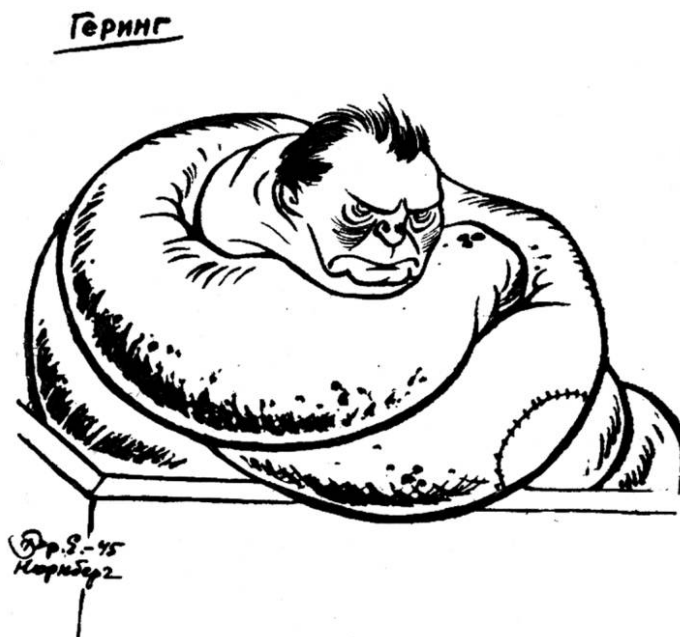


FIGURE 5: Hermann Goering as drawn by Boris Efimov. This caricature was part of the artist's series "Fascist Menagerie." It was published in the Soviet newspaper *Izvestia* on December 5, 1945. Efimov's political cartoons appeared in the Soviet press alongside articles on the course of the trials. Reproduced courtesy of Boris Efimov.

international stage of Nuremberg, the Soviets could not control "the script"—the course of the trials or the narrative that the trials told—despite their best efforts to do so.

The Vyshinskii Commission, operating from Moscow before and during the ten months of the trials (and unable to establish a private Moscow-Nuremberg phone line), experienced great difficulties in its efforts to "direct" the trials and to manage Soviet personnel on the ground. Vyshinskii wanted the members of the Soviet legal team to consult with his commission about each decision regarding the IMT, no matter how minor. But for the Soviet legal team, connecting long-distance through back channels with a secret commission, often with short deadlines, posed insurmountable problems. For Nikitchenko and Rudenko, it was uncomfortable and inconvenient to have to wait for the go-ahead from Moscow, given that the other chief judges and chief prosecutors were not under similar constraints. Much to Vyshinskii's extreme displeasure, Nikitchenko and Rudenko sometimes made important decisions on their own, without his commission's approval—in one near-disastrous case, signing English-language documents before the Russian-language translations were completed.⁴⁶

established in May 1937 in the United States, believed that the defendants in the Moscow Trials were innocent.

⁴⁶ They made this particular blunder shortly before the trials began. The Vyshinskii Commission discussed it at a meeting in Moscow on November 8, 1945—harshly criticizing Rudenko and Nikitchenko (who were present) for irresponsible behavior. GARF, f. 8131, op. 38, d. 238, ll. 18–21.



FIGURE 6: Joachim von Ribbentrop as drawn by Boris Efimov, from the series "Fascist Menagerie." This caricature was published in the Soviet newspaper *Krasnaia zvezda* on December 15, 1945. Reproduced courtesy of Boris Efimov.

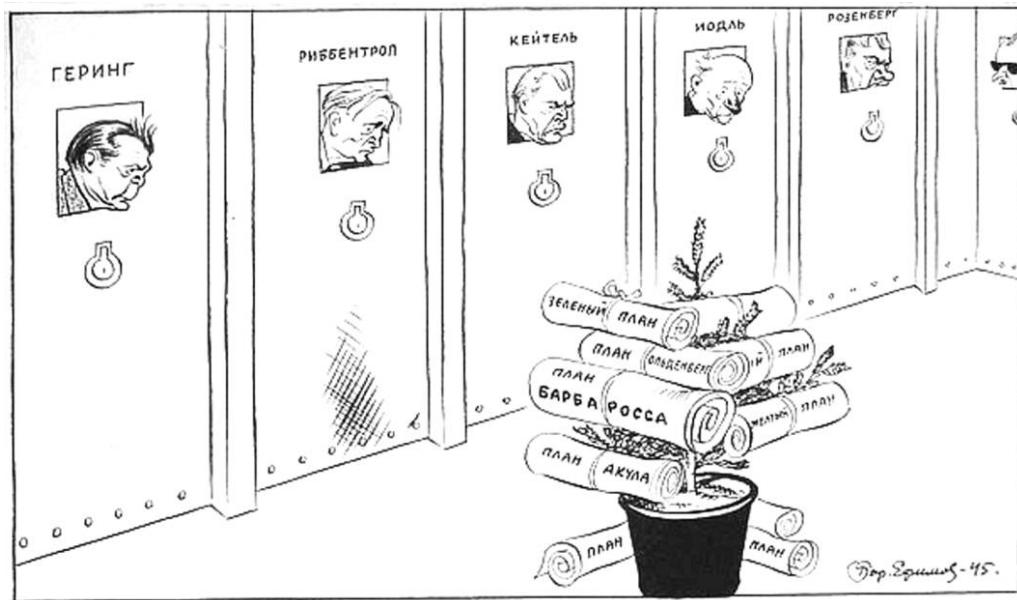


FIGURE 7: “Plan for decorating the Christmas tree” by Boris Efimov, from the series “Fascist Menagerie.” The tree is decorated with evidence of Nazi crimes. The defendants named from left to right are Hermann Goering, Joachim von Ribbentrop, Wilhelm Keitel, Alfred Jodl, and Alfred Rosenberg. The cartoon was published in *Izvestiia* on December 27, 1945. Jonathan Zimmerman provided a scan of the original cartoon. Reproduced courtesy of Boris Efimov.

To be sure, the very decision to participate in an international tribunal meant relinquishing a certain measure of control. All of the countries of the prosecution made compromises that affected the staging as well as the content of the IMT. For example, the Soviets reluctantly agreed to the Americans’ proposal to convene the IMT in Nuremberg, in the U.S. zone of occupied Germany, and the Western powers agreed that the Soviet judges could wear their military uniforms during the trials. Moreover, representatives from each of the Four Powers, coming from different legal systems and traditions, made compromises regarding the format of the judicial proceedings: the inclusion of opening and closing statements, the rules for cross-examination, and so forth.⁴⁷ Soviet leaders were willing to compromise on procedural issues as long as Nuremberg told a straightforward tale of good versus evil—as long as the Allies agreed from the start that the “Hitlerites alone” (the Germans and the other Axis powers) would be treated as villains. The Soviets, who mistrusted the British and the Americans to begin with, had cause for concern on this score; they were uncertain whether classified information about the Soviet-German Non-Aggression Pact of 1939—whose secret protocols dividing Poland and the Baltic states into Soviet and German spheres of influence implicated the USSR in a major crime against peace—had surfaced in diplomatic circles in the West.⁴⁸

⁴⁷ On these difficulties and compromises, see Ginsburgs, *Moscow’s Road to Nuremberg*, 99–103; Tusa and Tusa, *The Nuremberg Trial*, 74–78; Taylor, *Anatomy of the Nuremberg Trials*, 122–123; and Alderman, “Negotiating on War Crimes Prosecutions,” 65–69.

⁴⁸ Protocols of the meetings of the Vyshinskii Commission and of the meetings of the Soviet team in Nuremberg betray an anxiety about how much information the other delegations had about Soviet foreign policy. There was particular concern about what the Americans might have discovered from

The Four Powers all had similar concerns (albeit to a greater or lesser degree) about their own political systems, wartime behavior, and foreign policies being scrutinized before the world. At a November 1945 meeting of the chief prosecutors some eleven days before the start of the IMT, representatives from each of the Four Powers agreed that the prosecution would stand together and prevent the German defense from making “political attacks” against them in open court, “in connection with the aggressive war charge” in particular. The prosecutors also agreed that the four delegations would all submit memorandums to one another divulging information about their countries’ own wartime transgressions—in order to be best prepared to quash the defense’s attacks. Yet important details about how the IMT would handle the defense’s efforts to incriminate the countries of the prosecution were lost when correspondence about this issue was translated from English into Russian. Both the original correspondence and the Russian-language translation maintained that the prosecution would object to the defense’s attempts to introduce information concerning the politics and policies of the Allies. But whereas the original noted that the tribunal (comprising judges from all of the Four Powers) could still overrule such objections, the Russian-language translation contained no such caveat. Neither the origin of nor the reason for this deviation from the original is known. What is clear is that the Soviets and the Americans were left with different expectations about whether the German defense team was likely to succeed in its bid to make accusations against the Four Powers in open court.⁴⁹ The British submitted a memorandum within a month; it noted that the German defense could be expected to focus on examples of “so-called British imperialism” from the period well before the start of World War II.⁵⁰ The Soviets and the French held off on submitting memorandums, perhaps uncertain about what the Americans and the British would do with the information.⁵¹

Meanwhile, back in Moscow, Vyshinskii did not miss a beat. He (presumably in collaboration with other members of his commission) put together, and committed to paper, a list of issues or hot-button topics that the Soviets wished to keep out of the courtroom. The issues were “the relationship of the USSR to the Versailles peace,” “the Soviet-German Non-Aggression Pact of 1939 and all questions related to it,” “Soviet Foreign Minister Molotov’s visit to Berlin and German Foreign Minister Ribbentrop’s visit to Moscow,” “questions connected with the sociopolitical

captured Nazi documents and from interrogations of the Nazi defendants. See, for example, GARF, f. 7445, op. 2, d. 391, ll. 45–46, 54–56.

⁴⁹ The details of the November 9 meeting are recapped in a March 8, 1946, English-language letter from Jackson to Rudenko and Auguste Champetier de Ribes. Jackson noted that it was “agreed that we would all resist such attacks” and that “the United States, being late in the war and remote from the scene, was little exposed to attack itself and was perhaps in the best position to lead the effort to restrict the proof closely to the charges and try to stop political discussions.” GARF, f. 7445, op. 2, d. 8, l. 394. The Russian-language translation of the letter (ll. 47–48) reads the same as the original *except* for the caveat about the tribunal’s right to overrule the prosecutors’ objections. It is an open question whether this difference between the original and the Russian-language translation was intentional. It is possible that the Americans or even the Soviet legal team tailored the translation out of concern that Moscow would balk at mention of the judges overruling the prosecutors’ objections.

⁵⁰ Cited from Zorya and Lebedeva, “The Year 1939 in the Nuremberg Files,” 121.

⁵¹ Jackson noted in his March 8 letter that on “December 1, 1945 Sir David Maxwell Fyfe circulated a memorandum in accordance with this decision” but that “[n]o information has been received from the French or the Soviet Delegations.” GARF, f. 7445, op. 2, d. 8, l. 394.

structure of the USSR,” “the Soviet Baltic republics,” “the Soviet-German agreement about an exchange of the German population of Lithuania, Latvia, and Estonia,” “the foreign policy of the Soviet Union and in particular questions about the Straits and the supposed territorial pretensions of the USSR,” “the Balkan question,” and “Soviet-Polish relations (the questions of Western Ukraine and Western Belorussia).”⁵² As the list indicates, Vyshinskii and his colleagues were well aware that a number of the USSR’s actions and policies both before and during the war had violated international norms or treaties. At a November 26 meeting in Nuremberg, Vyshinskii (in town for a short visit) discussed the list with select members of the Soviet delegation, including Nikitchenko, Rudenko, Volchkov, Sheinin, and Trainin.⁵³ Their mandate was to prevent these issues from becoming topics of discussion during the trials.

Not until March 1946, when it became clear that the German defense intended to raise some of these issues before the IMT, did the Soviet delegation submit to the other delegations a written list of topics that it wanted to keep out of the courtroom. Rudenko sent the list to Jackson on March 11—three days after Jackson wrote him that he had “basis to believe” that the defense was planning to focus on Soviet (as well as English and French) war crimes and crimes against peace in its presentations to the court. In the letter, Rudenko spoke to the importance of taking measures to prevent “the accused and their defense” from using “the present legal process” to focus on issues outside of the jurisdiction of the IMT. He then provided a list of those issues that the Soviets were most concerned about, including most of the items that Vyshinskii had enumerated several months earlier. The three primary issues were “questions connected with the sociopolitical structure of the USSR,” “the foreign policy of the Soviet Union,” and “the Soviet Baltic republics.” Then, getting into specifics, Rudenko listed those issues related to Soviet foreign policy that the USSR considered most sensitive (and thus most essential to exclude from public discussion): “the Soviet-German Non-Aggression Pact of 1939 and questions related to it (the trade agreement, the establishment of borders, negotiations, and so on),” “Ribbentrop’s visit to Moscow and the negotiations in November 1940 in Berlin,” “the Balkan question,” and “Soviet-Polish relations.”⁵⁴

Perhaps the most surprising thing about this episode is the timing. The Jackson-Rudenko exchange, and Rudenko’s submission of the Soviet list of hot-button topics, took place just days after Winston Churchill’s famed “Iron Curtain” speech, when tensions between the Soviets and the Western powers were especially high. Deliv-

⁵² *Ibid.*, d. 391, l. 47.

⁵³ *Ibid.*, ll. 43–46. Those in attendance approved the list of questions. It has long been known that such a list existed. Zorya and Lebedeva discuss it in detail in “The Year 1939 in the Nuremberg Files,” 120–122. Michael Marrus, drawing on the work of these scholars, writes that the Soviet delegation in Nuremberg “prepared a list of topics that they wanted banned from the trial and discussed these with Vyshinsky when he came to Nuremberg” in late November. Marrus, *The Nuremberg War Crimes Trial, 1945–46: A Documentary History* (Boston, 1997), 133. The archival evidence states, however, that it was Vyshinskii who presented the Soviet delegation with the list.

⁵⁴ For Rudenko’s letter, see GARF, f. 7445, op. 2, d. 8, l. 170. Jackson had written in his March 8 letter to Rudenko and de Ribes that he had “reason to believe that the defense plans to attack Soviet policy as constituting aggression in connection with the Finnish, Polish, Balkan and Baltic States situations, and the French policy in the West and in the treatment of prisoners of war, as well as to attack English policy on all of the grounds anticipated in Sir David’s memorandum.” GARF, f. 7445, op. 2, d. 8, l. 394.

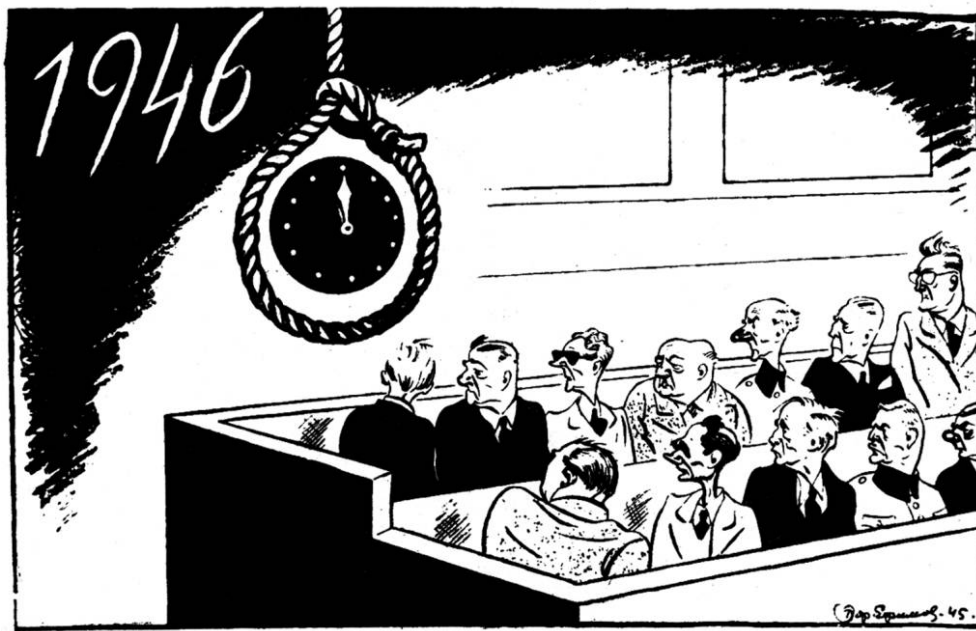


FIGURE 8: “The twelfth hour of the Hitlerites” by Boris Efimov, from the series “Fascist Menagerie.” The cartoon, which was published in *Izvestiia* on January 1, 1946, depicts the trepidation of the Nazi defendants. In fact, 1946 brought hope to the defendants as tensions grew between the Soviets and the other countries of the prosecution. Reproduced courtesy of Boris Efimov.

ering his speech in Fulton, Missouri, on March 5—while the Soviet prosecution was finishing its presentation of the USSR’s case against “the Hitlerites” back in Nuremberg—Churchill went so far as to metaphorically throw the Soviets into the dock with the Nazis. He proclaimed that “Communist parties or fifth columns” constituted “a growing challenge and peril to Christian civilization” and called for Anglo-American resistance to Soviet aggression and tyranny.⁵⁵ American newspapers (which circulated at Nuremberg) ran the speech the following day under the headline “Unite to Stop the Russians”—causing glee among the Nazi defendants. Arkadii Poltorak, a member of the Soviet legal team at Nuremberg, recalled that as news of the speech spread, “unconcealed hope shone” on the defendants’ faces, and the dock in the courtroom resembled “a disturbed hive.”⁵⁶

The Soviets responded to Churchill’s speech with outrage, declaring that the British and the Americans were trying “to push into oblivion the sacrifices of the Soviet people that had insured the liberation of Europe from the Hitlerite yoke.” Stalin, seeking to distance the Soviets (and himself) from the Nazis, publicly countered that

⁵⁵ Sir Winston Churchill, “The Sinews of Peace,” in Churchill, *Winston S. Churchill: His Complete Speeches, 1897–1963*, ed. Robert Rhodes James, 8 vols. (New York, 1974), 7: 7285–7293.

⁵⁶ Poltorak, *Nuremberg Epilogue*, 90. Poltorak was the Soviet appointee to the General Secretariat of the IMT. He noted that after this news spread, the Nazi defendants attempted to take advantage of “the new situation” and “drive a wedge” between the Soviets and the West—that Hermann Goering, for example, “began to speak in detail of the plans which Britain and France laid as early as 1940 for the bombing of the Caucasian oilfields” (91–93). Molotov and Vyshinskii, who were at the USSR’s consulate in Paris for dinner on March 5, described the speech as “nothing less than an appeal for a new war.” AVPRF, f. 06, op. 8, p. 1, d. 8, ll. 29–34, reprinted in Kynin and Laufer, *SSSR i germanskii vopros*, 2: 475–479.



FIGURE 9: The defendants in the dock at the International Military Tribunal. In the front row from left to right are Hermann Goering, Rudolf Hess, Joachim von Ribbentrop, Wilhelm Keitel, Ernst Kaltenbrunner, Alfred Rosenberg, Hans Frank, Wilhelm Frick, Julius Streicher, Walther Funk, and Hjalmar Schacht. In the second row are Karl Doenitz, Erich Raeder, Baldur von Schirach, Fritz Sauckel, Alfred Jodl, Franz von Papen, Arthur Seyss-Inquart, Albert Speer, Konstantin von Neurath, and Hans Fritzsche. Seated in front of them are their defense lawyers. The Soviet chief prosecutor, Roman Rudenko, is in the bottom left corner. Nuremberg, Germany, 1946. Photo by Charles Alexander. USHMM, courtesy of Gerald (Ger) Schwab.

it was in fact Churchill and Hitler who shared much in common—that both subscribed to race theories and had imperialistic ambitions.⁵⁷ Churchill’s speech and its implications became a topic of concern for the members of the Vyshinskii Commission, who suggested that Rudenko’s upcoming closing speech had gained special political significance in light of Churchill’s attempt to blur the line between villains and victims. The leaders of the Communist Party’s Administration of Propaganda and Agitation spoke to this issue in a report to Gorshenin, arguing that Rudenko needed to show how the barbarous crimes of the Hitlerites were rooted in “fascist ideology” and make clear how “fascism’s destruction”—which the Soviets were in large part responsible for—had benefited “all of humanity.”⁵⁸ These recommendations were integrated into Rudenko’s closing speech. But Churchill’s impact on the spectacle of Nuremberg could not be undone.

In allowing Rudenko to give the USSR’s list of sensitive topics to Jackson and the other chief prosecutors, Vyshinskii and those above him had decided to treat the

⁵⁷ Joseph Stalin, “Reply to Churchill,” reprinted in the *New York Times*, March 14, 1946, 4.

⁵⁸ The head of the Administration of Propaganda and Agitation, Grigorii Aleksandrov, forwarded this memorandum—which was penned by his next in command, L. F. Kuz’min—to Gorshenin on August 26, 1946. Kuz’min explained that an “illumination of these questions was acquiring special significance” in light of Stalin’s response to Churchill’s speech. GARF, f. 7445, op. 2, d. 373, ll. 87–90.

public war of words between the Western powers and the USSR as bluster. They remained committed to the IMT and put their trust, at least for the moment, in what one Soviet diplomat and informant later referred to as “the gentlemen’s agreement” made among the Four Powers (or at least the four chief prosecutors) to maintain a united front in Nuremberg and to prevent the IMT from becoming a forum for discussing the victors’ own breaches of international law.⁵⁹ By now, Vyshinskii and his commission might also have concluded that the intelligence departments of the Western powers had information about the USSR’s foreign policy and wartime behavior anyway (which does seem to have been the case)—and that there was thus little to lose, and perhaps something to gain, in laying at least some of their cards on the table. In any case, those members of the Soviet team who believed that the four chief prosecutors would honor their commitment to stand together would prove to be mistaken. The international courtroom of Nuremberg would not be free from the politics of postwar competition.

AS THE “GRAND ALLIANCE” OF THE SECOND WORLD WAR came undone, the IMT became both the site and the subject of an intense propaganda struggle between the USSR and the Western powers. The Soviets had a difficult time, proving far less adept than the other countries of the prosecution (and the U.S. in particular) at shaping, and directing the flow of, information about the trials. Back in Moscow, Vyshinskii and his commission received frequent telegrams from members of the Soviet legal team about the IMT’s progress. They also received regular “intelligence reports” about the trials and about everyday life in Nuremberg from NKVD agents and also from Sovinformbiuro. These reports (sent by telegram or passed off by hand from Nuremberg to Berlin and thence to Moscow) were not encouraging. The members of the Soviet legal team and the Soviet press corps had limited, if any, prior experience on the international stage. They were far from Moscow, and there was a lot of room for things to go wrong.

In December 1945, about six weeks into the trials, Mikhail Dolgopolov—a senior editor at Sovinformbiuro and “informal informant” to Soviet leaders in Moscow—sent a six-page classified letter to his superiors highlighting some of the practical problems that the Soviet propaganda team was facing in Nuremberg. He sent the letter to the head of Sovinformbiuro, Solomon Lozovskii; it was subsequently forwarded to Molotov and Gorshenin.⁶⁰ The letter made it clear that the USSR was having significant problems presenting itself in a positive light, not just through the media but also to the international audience that was at Nuremberg. This aspect of international relations—the immediate and practical side of self-presentation—was something that the Soviets had not given much thought to ahead of time. As the trials unfolded, its importance became apparent.

Dolgopolov complained that Soviet representatives in Nuremberg were completely “cut off from life in the Soviet Union.” The Soviet correspondents did not receive Moscow newspapers for weeks at a time and did not have a single radio

⁵⁹ AVPRF, f. 07, op. 13, p. 41, d. 9, l. 115.

⁶⁰ GARF, f. 7445, op. 2, d. 407, ll. 1–6. The letter was dated December 30, 1945. Lozovskii forwarded it to Molotov on January 15, 1946, and Molotov forwarded it to Gorshenin on January 27, 1946.

receiver in their residence. He contrasted this with the situation of the other delegations, who received “London, Paris, and other newspapers” as well as “new magazines and books” on a regular basis, sent from their home countries. These materials were laid out in the room of the press camp at the Faber Palace for all to read. He explained that the Soviet representatives found themselves “in a state of complete disinformation,” and thus at a significant disadvantage. He noted that it was difficult to work without seeing Moscow newspapers and periodicals, and that without official news from Moscow, the Soviet correspondents were “deprived of the chance to answer the numerous questions of foreign correspondents, who turn to us on different occasions in connection with the appearance in their newspapers of all sorts of reports about the Soviet Union.”⁶¹

According to Dolgoplov, the Soviets were failing to take advantage of this unique international setting to present the Soviet Union to the world in the best possible light. Whereas the American administration had opened “a field movie theater” to serve the personnel at Nuremberg, a captive public of “correspondents from all over the world,” the Soviets had no similar venue. “We are letting slip away an excellent opportunity to show our films to representatives of the world press,” he complained. Even more troubling, Soviet technical personnel in Nuremberg were making a bad impression. The “overwhelming majority” of Soviet interpreters (who had the crucial task of providing the Soviet legal team with simultaneous translations of the speeches and statements that the other prosecutors, judges, and lawyers made in court) were incompetent at their jobs, and “everyone is talking about this.” Furthermore, even those technical personnel with top-notch skills were doing a poor job representing the Soviet Union, because of their unpolished appearance. “The clothing of our female personnel is so bad and looks so poor that the Americans and English make fun of them,” Dolgoplov reported. “It had to be explained that we choose personnel not for their external appearance and attractiveness” but for their abilities. But this failed “to convince our foreign colleagues.” He suggested that if Soviet citizens were going to be sent abroad to major events such as “the Nuremberg Trials, where they will meet representatives from all over the world,” it was essential “to give some attention” to such things.⁶²

Finally, Dolgoplov addressed the difficulties that the Soviets were having combating U.S. efforts to spread negative information about the Soviet Union both in Nuremberg and in the American zone in general. He recounted rumors about life in the USSR and the treatment of returnees, and gave a detailed description of a chance meeting that he and some of his colleagues had had with a Soviet citizen during a weekend trip to Munich. The Soviet citizen had identified himself as an Azerbaijani who had been “taken prisoner by the Germans at the very start of the war” and was now “working as an orderly in a hospital for the Americans.” According to this Azerbaijani, he and the “many other” Soviet citizens living in the American zone wanted to return to the Soviet Union but were afraid of being subjected to punitive measures. Dolgoplov wrote: “We tried to dispel the fear of this Azerbaijani and attempted to find out who was spreading such rumors.” The Azerbaijani told

⁶¹ *Ibid.*, ll. 1–2.

⁶² *Ibid.*, ll. 2–4. He noted that the journalists and the court could relax only when the USSR’s most skilled interpreter, Oleg Troianovskii, was translating into Russian.

him, "All of ours" talk about arrests and deportations back home, and "the Americans do too."⁶³

Dolgoplov's letter ended on a note of hope, calling for a greater mobilization of the Soviet press corps to disseminate information about the USSR's case against the Nazis. He explained that in mid-January 1946, Soviet Chief Prosecutor Rudenko would begin to present the USSR's case before the IMT, and "judging from the talk of other correspondents, henceforth they intend to cover the trials in their newspapers even less." Rather than bemoan this perceived lack of interest in covering the Soviet case, Dolgoplov proposed that the Soviets take measures to "fill this gap": that they send more journalists, photographers, and writers to Nuremberg, and increase Soviet reportage of the trials for both the Soviet and the foreign press.⁶⁴

This letter made the rounds of Soviet leaders. It is clear that Molotov read it with considerable attention: it is covered with annotations in his handwriting. The Soviets did send more correspondents to Nuremberg in the weeks that followed. But other, similar secret reports that were passed on through Sovinformbiuro (including a series of letters penned by the writer and informant Vsevolod Vishnevskii, raising some of the same complaints) suggest that Soviet personnel at Nuremberg continued to experience significant difficulties presenting themselves, the USSR, and the Soviet narrative of World War II to an international audience.⁶⁵

While Dolgoplov focused on issues of Soviet self-presentation and propaganda in his correspondence, other informants sent reports about the substance of the trials—and by spring 1946, these reports were the most troubling of all. In early April, the diplomat, journalist, and Sovinformbiuro informant Mikhail Kharlamov sent a letter to Georgii Malenkov, the head of the Secretariat of the Central Committee of the Communist Party, detailing serious problems that had arisen during "this new stage" of the trials. It had been about a month since Chief Prosecutor Rudenko had finished presenting the Soviet case against the Nazis, and also about a month since Churchill's "Iron Curtain" speech. Now the German defense team was presenting its case before the IMT, introducing documents as evidence and calling witnesses. And it was attempting, with success, to use the court "to make provocative attacks" against the USSR—to accuse the USSR of war crimes and thus (in Kharlamov's words) to "complicate" the position of the Soviets. This was having the effect of "weakening the strength of the evidence put forward earlier by the Soviet prosecutor." It was also exacerbating—and laying bare for the whole world—the split between the Soviets and the Western powers. According to Kharlamov, as a result of "the tactics of the defense" and "the international situation," the united front of the prosecution had come undone and "ceded its place to the isolation" of the Soviets.⁶⁶

Kharlamov explained that the German defense team was "focusing on the events of 1939 and on the Polish problem." The defense had pressed "to present testimony from the diplomatic adviser [Friedrich] Gaus about the alleged conclusion on the eve of the Hitlerite attack on Poland of a secret agreement between the USSR and Ger-

⁶³ *Ibid.*, ll. 4–5.

⁶⁴ *Ibid.*, l. 6.

⁶⁵ See, for example, GARF, f. 8131, op. 37, d. 2196, ll. 159–166.

⁶⁶ AVPRF, f. 07, op. 13, p. 41, d. 9, ll. 112–116. Kharlamov was head of the group of Soviet journalists at Nuremberg. The letter was dated April 4, 1946.

many about the division of spheres of influence.” Despite Soviet protests, “the court allowed the defense to read out Gaus’s provocative testimony in open court on April 1”—feeding “this food right away to the reactionary Western press.” In addition, “the tribunal had allowed Ribbentrop to add to this attack . . . testifying that the USSR had been prepared to go to war on the side of Germany under certain conditions.” Moreover, it was not just the “events of 1939” that the defense was intent on taking before the IMT and the world. Kharlamov complained that the Soviet legal team had “not seriously concerned” itself “with protesting the defense’s request to summon fascist witnesses” before the court to testify about the Germans’ innocence (and the USSR’s guilt) in the Katyn massacre of Polish military officers. As a result, “our prosecution lost the opportunity to prevent them from being called” to the stand. He also complained that the Soviet prosecution had not been energetic enough in protesting a number of the defense’s claims: that “the arming of our country had compelled Germany to arm itself,” that “the conclusion of the Franco-Soviet Pact had compelled Germany to break the Locarno Pact,” and that “our ‘instigation’ in Yugoslavia had compelled Germany to invade that country in the spring of 1941.”⁶⁷

A number of these accusations against the USSR—about Katyn and about the Soviet-German Non-Aggression Pact, for example—were in fact true. But for the Soviets, this was beside the point. From the Soviet perspective, the British and the Americans had gone back on their word and had helped the German defense to turn Nuremberg into a forum for attacking the USSR. Kharlamov complained that the Soviet prosecution team “was not able to establish the needed support from the other prosecutors” to keep questions about “the events of 1939” out of the courtroom “even though there exists a prior mutual gentlemen’s agreement [*predvaritel’naia vzaimnaia dzhentl’menskaia dogovorennost’*]” to do so. It had somehow slipped from view, Kharlamov continued, “that we are a country of victors, that we went to Nuremberg in order to prosecute the German fascist criminals and not to become the object of their provocative attack.”⁶⁸ According to Kharlamov, both the defense’s attack on the Soviet Union and the Western powers’ role in allowing it to happen had taken the Soviet legal team by surprise. In fact, thinking that the most critical part of the trials was over, Gorshenin and Trainin (who had been in Nuremberg while the Soviet prosecution was presenting its case to the IMT) had already returned to Moscow.⁶⁹ Unprepared for the defense’s attack, and expecting their wartime allies to prevent items on the list of hot-button issues from being discussed in open court, Rudenko and his team had let their guard down, allowing the defense to denigrate the USSR before the whole world.

Kharlamov argued that it was essential to strengthen the Soviet prosecution at Nuremberg, and recommended the immediate dispatch of more advisers.⁷⁰ Upon receiving this note, the Vyshinskii Commission sent Gorshenin and the political adviser Vladimir Semenov to Nuremberg.⁷¹ But the damage could not be undone: the Western powers, in allowing the German defense to present evidence that incrim-

⁶⁷ Ibid., ll. 113–115.

⁶⁸ Ibid., ll. 115–116.

⁶⁹ Ibid., ll. 112, 114–116.

⁷⁰ Ibid., l. 116.

⁷¹ The memo was forwarded to Molotov and Vyshinskii. The latter penned the directive to send more

inated the Soviets in crimes against peace, had distanced themselves from the USSR and undermined Soviet efforts to use the trials to present an unambiguous narrative of good versus evil. At the same time, the Americans seemed intent on using Nuremberg to advance their own agenda—an agenda that included setting themselves up as the moral arbiters of the postwar order. Vyshinskii and his commission had to face the fact that they had little, if any, hope of further “directing” the Nuremberg Trials.

The final reminder to the Soviets that they could not control the storyline of Nuremberg—and the biggest affront to their vision of what Nuremberg should be—came in October 1946 with the verdict. Much to the Soviets’ dismay, three of the twenty-two major German war criminals standing trial—Hans Fritzsche, Franz von Papen, and Hjalmar Schacht—were found “not guilty” on the grounds of “reasonable doubt.” The court concluded that the prosecution had failed to prove that these defendants had knowingly participated in a conspiracy to commit any of the crimes enumerated in the Nuremberg Charter. (In addition, the IMT did not find the Reich Cabinet, the General Staff, and the German High Command to be criminal organizations.) Judge Nikitchenko gave a dissenting opinion in all of these cases, stating that there had in fact been sufficient evidence of guilt—that these decisions by the IMT did “not correspond to the facts of the case” and were “based on incorrect conclusions.”⁷² Stalin and Molotov were furious about these verdicts and responded in part with secret plans to instigate a “massive campaign of protests against the freeing of the three criminals” in “the entire Soviet zone” of occupied Germany and in Berlin.⁷³ Having lost control of Nuremberg, the Soviets concluded that international legal institutions were of limited use to them, and refocused their efforts on shaping the postwar order through other means.

GIVING THE SOVIETS THEIR RIGHTFUL PLACE in the Nuremberg Trials—recognizing their positive and negative contributions to the trials, and understanding how Nuremberg became one of the first fronts of the Cold War—leads to a fundamental shift in our conceptualization of the IMT, and, in fact, of the entire postwar moment. Indeed, it is clear that a number of longstanding assumptions about Nuremberg, from the idea that the IMT marked a moment of international cooperation outside of the Cold War to the depiction of the trials’ legal innovations as Western inventions, are overstated or flat-out wrong. The Four Powers all saw the IMT as a medium for advancing their own state interests and foreign policies. The Soviets, for their part, had emerged from the Second World War exhausted but triumphant, and their leaders saw Nuremberg as a forum through which to establish the USSR as a major international actor at a time when the postwar order was still emerging. But the

advisers to Nuremberg. AVPRF, f. 07, op. 13, p. 41, d. 9, l. 111. See also *ibid.*, d. 8, l. 109, cited in Kynin and Laufer, *SSSR i germanskii vopros*, 2: 790, fn. 302.

⁷² “Judgment: Dissenting Opinion of I. T. Nikitchenko,” in *Nuremberg Trial Proceedings*, vol. 1, <http://www.yale.edu/lawweb/avalon/imt/proc/juddiss.htm> (accessed April 11, 2008). At the time, international public opinion about whether Fritzsche, von Papen, and Schacht had been treated too leniently was mixed. The three were later tried and convicted by German courts.

⁷³ AVPRF, f. 012, op. 7, p. 106, d. 178, l. 49, reprinted in Kynin and Laufer, *SSSR i germanskii vopros*, 2: 712–713.

Soviet team at Nuremberg became frustrated time and again as the USSR's wartime allies (and capitalist rivals) demonstrated a superior understanding of how to use the international arena to their advantage. The Soviets made significant contributions to the jurisprudence of the IMT from start to finish, with the contribution of the concept of "crimes against peace" in particular. But in spite of these contributions, the Soviets found themselves isolated at Nuremberg, with little influence over the actual course or outcome of the trials.

Indeed, a full accounting of the trials shows how the actions of the Western powers in Nuremberg alienated the USSR and exacerbated postwar tensions. Soviet complaints about the Anglo-American betrayal at Nuremberg did have merit.⁷⁴ Neither the Soviets nor their wartime allies wanted to have their own foreign policies and wartime actions scrutinized on the international stage, and thus the Four Powers had all agreed at the start that the IMT would be a form of "victors' justice." Once the trials were in progress, however, the U.S. and its Western allies (who were uncomfortable with Soviet participation in the IMT to begin with and who saw Soviet grabs for power in Eastern Europe and parts of Asia as a serious threat) used Nuremberg to pursue what looked like a deliberate anti-Soviet agenda. The Western prosecutors and judges allowed incriminating evidence against the Soviets to be introduced and read in open court. Meanwhile, British, French, and U.S. war crimes (which arguably included incidents of mistreatment of POWs, the atomic bombing of Hiroshima and Nagasaki, and the firebombing of German cities) were kept out of the courtroom. The Soviets resented this double standard and saw the willingness of the other countries of the prosecution to allow the defense to attack the USSR as a calculated political tactic. In allowing Nuremberg to become a forum for censoring Soviet policies and behavior, the Western powers sent a clear message to the USSR that the international courtroom would not be a neutral space free from Cold War politics. The Soviets would remember this when negotiations began about the creation of new United Nations organizations, such as an International Criminal Court for Genocide.⁷⁵

Nuremberg shaped the Cold War era in other respects as well. Through their participation in the IMT, the Soviets gleaned important lessons that shaped their development as an international power. The Soviet Union, drained of resources and personnel after a long war fought on its soil and lacking the international public relations expertise of the United States, was in a vulnerable position at Nuremberg. And while Nuremberg was a bitter disappointment for the Soviets, it taught them what a "superpower" was supposed to look like. Indeed, the IMT served as a critical

⁷⁴ Vladislav M. Zubok argues that in March 1946, the Soviets were already losing interest in international institutions, concerned that "the Western powers" would see their participation "as a sign of Soviet weakness and readiness for unilateral concessions." Zubok, *A Failed Empire: The Soviet Union in the Cold War from Stalin to Gorbachev* (Chapel Hill, N.C., 2007), 51–52. Nuremberg no doubt bolstered the Kremlin's view that the U.S. was intent on the Soviets' having a "subordinate role" on the international stage.

⁷⁵ The Soviet Union joined the United Nations at its founding in 1945 but remained suspicious of its agenda. (Of course, the same could be said for the U.S.) For a brief survey of Soviet attitudes toward the UN, see Alexander Dallin, *The Soviet Union at the United Nations: An Inquiry into Soviet Methods and Objectives* (New York, 1962). Between 1946 and 1948, the *New York Times* chronicled Soviet objections toward various UN propositions and also documented Western and other efforts to use the UN to take the Soviets to task. See, for example, "Court for Genocide Opposed by Russia," *New York Times*, April 13, 1948, 11.

training ground for the Soviets, whose diplomats, legal experts, and interpreters had had limited prior experience on the international stage. It provided ample evidence that the war-torn USSR needed to put more resources into securing better equipment and preparing its personnel for important diplomatic work.

The Soviets also learned at Nuremberg that their methods of agitation and propaganda, which had worked just fine within the USSR, were not suited for the international arena. The Soviet regime's demand for extreme centralization, as well as Soviet journalists' practices of evading the questions of their foreign colleagues and keeping all information secret until orders from Moscow instructed otherwise, handicapped Soviet public relations efforts. The Soviets recognized the weaknesses of their approach. It now seems improbable, but after Nuremberg, the United States and Britain served as critical propaganda models for the USSR. In the months following the trials, Soviet leaders and agitation experts engaged in serious discussions about appropriating propaganda and information-management techniques from the American and British press corps. Some Sovinformbiuro officials even wanted to turn their organization into a more flexible public relations machine based on the Anglo-American model—but Stalin seems to have nixed this particular idea (which was unusually blatant in its suggestion that the USSR borrow from the West) before it got off the ground.⁷⁶ As it recovered from the war, the USSR did train new personnel for diplomatic work abroad and did revamp its propaganda and agitation apparatus, doing so on its own terms.

Just as Nuremberg had exerted a significant impact on the development of the early Cold War, the Cold War shaped the postwar human rights regime. In the wake of the trials, the language of international law and universal rights, which had gained traction at Nuremberg, would become further politicized and would be wielded as a potent weapon in the struggle between the Soviet Union and the United States. Soviet leaders and legal experts, for their part, understood the political efficacy of this language, and worked on introducing Nuremberg-inspired legislation in the USSR. In late November 1946, Aron Trainin, back at Moscow's Institute of Law, reviewed a draft of the new Soviet Criminal Code and noted the "extraordinarily important" fact that it included "a special section on 'International Crimes against Peace and Humanity.'" ⁷⁷ Trainin praised this effort to introduce into Soviet law "those ideas of international criminal justice that had found expression in the Nuremberg Trials," asserting that the Soviet criminal code would be the first in the world to include these new "norms of international law."⁷⁸

In subsequent decades, the United States and the USSR would both invoke the language of Nuremberg to take each other to task for violations of international law.⁷⁹ One of the most famous incidents took place in 1960, when the new procurator general of the USSR—none other than Roman Rudenko—tried the American U-2

⁷⁶ On the transformation of Sovinformbiuro into such an agency, see Russian State Archive of Social and Political History (RGASPI), f. 17, op. 125, d. 386, ll. 30–34.

⁷⁷ The meeting, a session of the Division of Economics and Law, was held on November 28, 1946. Trainin spoke on the theme of "Legal Questions of the Nuremberg Trials." ARAN, f. 499, op. 1, d. 71, ll. 74–118, esp. l. 96.

⁷⁸ *Ibid.*, ll. 96–97.

⁷⁹ In the 1950s, Trainin wrote a report detailing how the U.S. had committed "crimes against peace" and "crimes against humanity" in Korea. It is not clear who commissioned this report or what became of it. ARAN, f. 499, op. 1, d. 502, ll. 1–4.

pilot Francis Gary Powers for trespassing into Soviet airspace. In his much-publicized final speech to the court, Rudenko attacked the U.S. government for organizing and inciting “monstrous crimes against peace.”⁸⁰ Looking further ahead, in the brisk Cold War climate of the late 1960s and 1970s, Soviet and U.S. leaders would each criticize the other’s domestic policies as constituting “crimes against humanity.” Meanwhile, dissident groups in the USSR and civil rights organizations in the U.S. would use this same language of law and rights to wage struggles for reform within their own countries.⁸¹

With the Cold War now over and with international courts and tribunals so widespread in our current political landscape, it is high time to revisit the Nuremberg Trials. This does not make the endeavor any less daunting. No scholar who cares about international human rights wants to disparage Nuremberg and all that it symbolizes in our culture. But reconsidering Nuremberg in light of new evidence from the Soviet archives does not mean discounting the IMT’s significance as a major foundational event of our era. Nor does it mean throwing out Nuremberg as a positive precedent. Instead, it means recognizing that the IMT, like other “principled interventions,” was a combination of principle, self-interest, and compromise from start to finish—a mixture that simultaneously enabled and handicapped the proceedings.⁸² Moreover, and equally important, reconsidering Nuremberg means acknowledging the multiple uses of the law and its institutions. The same legal mechanisms (i.e., tribunals) and legal principles (i.e., complicity) can be used for positive or negative ends, to buttress legitimate or illegitimate processes, in liberal or authoritarian states. The IMT showed that international legal principles, which were based on a hodgepodge of national laws and precedents, could transcend their origins. At the same time, the postwar era has also shown that universal principles, once established, can be used for ends that contradict their original intentions. In the postwar USSR, the international legal principles codified at Nuremberg would be invoked to punish so-called “enemy nations,” Soviet “returnees” from German POW camps, and other groups on trumped-up charges of forming fifth columns and plotting terrorist acts against the Soviet state.⁸³

Ultimately, acknowledging the Soviet contribution to Nuremberg means looking with open eyes at the complex political forces that shaped the IMT and the postwar order. Nuremberg was as much about politics as it was about justice—and it could not have been otherwise. The USSR and the Western powers all had somewhat different ideas about the meaning of “justice” and how it should be served. But the

⁸⁰ Rudenko assumed this post in 1953. “1960: Moscow Jails American U-2 Spy Pilot,” BBC News, On This Day (August 19, 1960), http://news.bbc.co.uk/onthisday/hi/dates/stories/august/19/newsid_2962000/2962600.stm (accessed April 11, 2008).

⁸¹ On the Cold War and the U.S. civil rights movement, see John Fousek, *To Lead the Free World: American Nationalism and the Cultural Roots of the Cold War* (Chapel Hill, N.C., 2000). On the Soviet dissident movement in the 1960s and 1970s, see Joshua Rubenstein, *Soviet Dissidents: Their Struggle for Human Rights* (Boston, 1985).

⁸² On the concept of “principled interventions,” see Richard Falk, “Reframing the Legal Agenda of World Order in the Course of a Turbulent Century,” in Richard Falk, Lester Edwin J. Ruiz, and R. B. J. Walker, eds., *Reframing the International: Law, Culture, Politics* (New York, 2002), 46–69. A recent work by a journalist that captures this mixture brilliantly is Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York, 2003).

⁸³ These so-called “enemy nations” (groups such as the Chechens) were accused, in most cases without merit, of collaborating with the Nazis.

Four Powers all saw Nuremberg as a political event with significant consequences for the making of the postwar order. It was this vision of the IMT that brought them to the table and made them willing to negotiate in the first place. It was also this vision of the IMT that motivated them to find common ground and draw up international laws and rights that, however flawed in practice, still provide a set of ideals toward which states and their citizens can aspire. And yet it was also the shared recognition that Nuremberg was about politics that motivated the United States to pursue its postwar agenda through the IMT at the expense of the Soviet Union. While all of the countries of the prosecution saw Nuremberg as a political contest, it was a contest at which the United States particularly excelled. The fact that the Anglo-American narrative of the IMT continues to prevail testifies to the success of the U.S. and its Western allies in making Nuremberg their own.

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