

■ Executive Order 9547

Date: May 2, 1945

Author: Harry S. Truman

Genre: law

Summary Overview

On May 2, 1945, President Harry S. Truman issued Executive Order 9547. At the time, World War II was ending in Europe, and representatives from dozens of nations were meeting in San Francisco to draft the United Nations Charter. President Truman himself had just taken office, following the death of his predecessor, Franklin D. Roosevelt, a few weeks before. He had inherited a world war to finish and an international peace to negotiate. He had also inherited the new mantle of American world leadership. With this executive order, President Truman appointed a US official to prosecute international war crimes and dedicated the United States to a prolonged engagement in international affairs.

Defining Moment

On May 8, 1945, Germany signed an unconditional surrender at Reims, France, thus ending the war in Europe. World War II had begun, officially, with the invasion of Poland in 1939 and raged across multiple continents and oceans. However, the aggression of Nazi Germany under Adolf Hitler and the Axis allies had begun much earlier. In Europe alone, millions of men and women had died in combat as well as in bombings and air raids. However, beyond the casualties of the fighting, more than six million Jewish people and other Europeans had perished under Nazi persecution. They had died from mass shootings; from forced marches; from violence in ghettos; from starvation, disease, and exhaustive labor in concentration camps; and from extermination policies carried out in gas chambers in Nazi death camps.

The systematic murder of so many civilians led to an unprecedented international response. As early as December 17, 1942, the leaders of the Allied Powers condemned Nazi extermination policies and promised retribution. As the war progressed, the Allies began planning for the conclusion of the war and its after-

math. In October 1943, the governments of the United States, the United Kingdom, the Soviet Union, and China issued a joint declaration known as the Moscow Declaration, in which they stated that all persons guilty of “atrocities, massacres and cold-blooded mass executions” would be sent back to the countries of their crimes for trial or would be tried by joint decision of the Allied Powers at the end of the war.

In 1945, with the surrender of the Axis powers in Europe, the Allies followed through on the promises of the Moscow Declaration. Even before peace was declared, the United States had begun to plan for the postwar trial of designated war criminals. Some debate had occurred among leaders of the Moscow Conference nations, as some Soviet officials preferred to forego trials and immediately execute members of the Nazi leadership. Others, including President Roosevelt, insisted on public trials to establish a new international precedent for the illegality of atrocities such as those committed by the Nazis. Truman inherited this charge.

To that end, on May 2, 1945, the newly sworn-in President Truman issued Executive Order 9547, by which he appointed US Supreme Court Associate Justice Robert H. Jackson the chief prosecutor for the United States in the war crimes trials that would follow an armistice in Europe. By this order, Truman committed the United States to the conduct of an international tribunal.

A few months later, on August 8, 1945, the United States, the United Kingdom, France, and the Soviet Union signed the London Agreement to establish the International Military Tribunal “for the trial of war criminals whose offenses have no particular geographical location whether they be accused individually or in their capacity as members of the organizations or groups or in both capacities” and to begin the Nuremberg Trial Proceedings of those identified as war criminals. Under the charter of the tribunal, each signatory nation had

to appoint a member and an alternate to serve on the tribunal, to hear the evidence, and to render a decision.

Truman's Executive Order 9547 had already designated the official for the United States.

HISTORICAL DOCUMENT

By virtue of the authority vested in me as President and as Commander in Chief of the Army and Navy, under the Constitution and statutes of the United States, it is ordered as follows:

1. Associate Justice Robert H. Jackson is hereby designated to act as the Representative of the United States and as its Chief of Counsel in preparing and prosecuting charges of atrocities and war crimes against such of the leaders of the European Axis powers and their principal agents and accessories as the United States may agree with any of the United Nations to bring to trial before an international military tribunal. He shall serve without additional compensation but shall receive such allowance for expenses as may be authorized by the President.

2. The Representative named herein is authorized to select and recommend to the President or to the head of any executive department, independent establishment, or other federal agency necessary personnel to assist in the performance of his duties hereunder. The head of

each executive department, independent establishment, and other federal agency is hereby authorized to assist the Representative named herein in the performance of his duties hereunder and to employ such personnel and make such expenditures, within the limits of appropriations now or hereafter available for the purpose, as the Representative named herein may deem necessary to accomplish the purposes of this order, and may make available, assign, or detail for duty with the Representative named herein such members of the armed forces and other personnel as may be requested for such purposes.

3. The Representative named herein is authorized to cooperate with, and receive the assistance of, any foreign Government to the extent deemed necessary by him to accomplish the purposes of this order.

HARRY S. TRUMAN
THE WHITE HOUSE,
May 2, 1945.

GLOSSARY

hereunder: subsequent to this; below this

Document Analysis

Executive Order 9547 is a fairly direct document. It signifies the executive power of the US president in appointing federal officials and in navigating international affairs and treaties. The document's first line cites this executive authority—"the authority vested in me as President and as Commander in Chief of the Army and Navy, under the Constitution and statutes of the United States"—to give credence to the terms of the order that followed. Although not a treaty approved by Congress, the document obligates the United States to an international standard of justice and sets a precedent that remains a source of debate today.

The primary provision confirms the appointment of Robert H. Jackson as the US representative and chief counsel "in preparing and prosecuting charges of atroci-

ties and war crimes against such of the leaders of the European Axis powers and their principal agents and accessories." Provision 1 goes on to state that the US counsel will serve on an international military tribunal to hear the charges against those brought to trial. With this provision, Truman formalizes American support not only for prosecution of war crimes but also for the conduct of trials by a joint body, an international military tribunal.

The second and third provisions of the document give added substance to Jackson's appointment. Truman is not just appointing an official representative, he is putting the full force of the executive branch of the US government behind that representative and his work for the tribunal. With Provision 2, Truman commands all executive agencies as well as the armed forc-

es—which fall under his authority—to make available any personnel and resources needed by the representative to fulfill his duties to the tribunal. In a similar vein, Provision 3 vests the representative with the power “to cooperate with, and receive the assistance of” foreign governments in order to “accomplish the purposes of this order.” By this provision, President Truman gives Jackson the authority to treat with representatives of other nations to accomplish an international charge.

However, the document is not merely an order intended to authorize a new appointment and to command executive agencies and armed forces to support that appointment. It is not just a structural and legal tenet. The order is also an ideological statement. On August 24, 1941, British prime minister Winston Churchill referred to Nazi atrocities in Europe as “a crime without a name.” This document, and the trials that followed, signaled the effort made by the international community to name and respond to those crimes.

Essential Themes

The underlying theme of Executive Order 9547 is a new move toward international collaboration and standards. As President Truman took office and issued this order, officials from fifty nations were meeting to form an international body, the United Nations, to promote and protect global peace. Although separate from the United Nations, the International Military Tribunal served a

similar purpose. The tribunal and the Nuremberg trials of Nazi officials that followed set a new precedent for international affairs. Just as the United Nations signaled a collective will to pursue international security and cooperation, the war crimes trials indicated that nations and their citizens could be called to account for what became known as “crimes against humanity.” Executive Order 9547 signified US support for a standard of international justice and a system of international collaboration. The United States was poised to emerge from World War II as a world power, and Truman’s order served as yet another mark of the rise of American world leadership.

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■ Nuremberg Code

Date: August 20, 1947

Author: Leo Alexander

Genre: court opinion

Summary Overview

Between 1945 and 1949, thirteen trials were held in Nuremberg, Germany. Their purpose was to bring Nazi war criminals to justice, and the defendants included Nazi officials and military officers, as well as doctors, businessmen, and lawyers, who were indicted on such charges as crimes against peace and crimes against humanity. In December 1946, twenty-three German physicians were charged with participating in war crimes and crimes against humanity for their part in euthanasia programs and for performing medical experiments on concentration camp inmates, most of whom either died or were permanently injured as a result. In the so-called Doctors Trial, judges confronted the complex ethical questions that surrounded medical experiments. Many of the defendants argued that there was not a specific international law preventing such experiments and that they were unaware of the difference between legal and illegal experimentation. American doctor Leo Alexander, who along with Dr. Andrew Ivy was assisting the prosecution, developed a framework for ethical medical experiments on human subjects that formed the basis of the Nuremberg Code.

Defining Moment

The United States, the United Kingdom, France, and the Soviet Union established the International Military Tribunal (IMT) in Nuremberg, Germany, to prosecute “the major war criminals of the European Axis,” mostly senior Nazi political and military leaders. The trial before the IMT began in 1945. Twenty-four Nazi officials were indicted, and on October 16, 1946, ten of them were executed by hanging. Twelve more trials took place between 1946 and 1949 and are collectively known as the “subsequent Nuremberg trials.” These cases were tried not before the IMT, but before a US military tribunal, as growing disagreements among the Allies, particularly between the Soviet Union and the

United States, had made further joint international trials impossible.

The first of these subsequent trials began on December 9, 1946, when twenty-three prominent German physicians and medical administrators were brought to trial before an American military tribunal. The defendants in the “Doctors Trial” were accused of war crimes and crimes against humanity for the murder and mutilation of hundreds of thousands of people—mostly Jews, Poles, Russians, and Romani (Gypsies). The accused fell into two broad categories. Some doctors had participated in euthanasia programs, which systematically murdered those considered undesirable by the Nazis, including those with physical and mental disabilities. The other principal accusation was against doctors who had performed medical experiments on concentration camp inmates without their consent. These experiments usually resulted in the death of the subject, or left them with lifelong physical impairments, and so were also a form of systematic murder.

The Doctors Trial lasted for 140 days, as the court considered nearly 1,500 documents and heard the testimony of eighty-five witnesses. On August 19, 1947, the tribunal paused before announcing its verdicts to consider the matter of ethical medical experimentation. Many of the accused doctors had claimed that there was no international law preventing human experiments and that their methods did not differ substantially from those of previous German and American experiments. Two American doctors, Andrew Ivy and Leo Alexander, who were working with the prosecution, had considered the ethical implications of human experiments, and Alexander had presented a draft of guidelines for legitimate research to the court in April. Alexander’s memo included six guidelines for ethical experiments. The court opinion, rendered on August 19, enlarged these guidelines to ten points, under the heading “Permissible Medical Experiments,” and it be-

came known subsequently as the Nuremberg Code. This continues to be a cornerstone of medical ethics and has informed regulations governing experiments with human subjects ever since. Sixteen of the men accused in the Doctors Trials were found guilty, and seven were executed on June 2, 1948.

Author Biography

Leo Alexander was born in 1905 in Vienna, then part of the Austro-Hungarian Empire. He was the son of a Jewish physician and studied medicine at the University of Vienna and the University of Frankfurt. Alexander immigrated to the United States in 1933 and held positions at Worcester State Hospital, Boston City Hospital, Harvard Medical School, and Boston State Hospital before joining the faculty at Duke Medical School in

1941. Alexander worked as an Army medical investigator during World War II and was appointed chief medical officer to the US Council for War Crimes. He was a key advisor during the Nuremberg trials and helped to craft the Nuremberg Code, which established a widely accepted ethical framework for experimentation with human subjects. After the war, Alexander joined the faculty at Tufts University Medical School in Boston, where he taught for nearly thirty years. He worked with hospitals across the country to treat forty former concentration camp inmates who had been victims of Josef Mengele, the infamous Nazi physician at Auschwitz (who eluded capture and was thus not tried at Nuremberg). Alexander died in 1985 in Weston, Massachusetts.

HISTORICAL DOCUMENT

1. The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonable to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.

The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.

2. The experiment should be such as to yield fruitful results for the good of society, unprocurable by other

methods or means of study, and not random and unnecessary in nature.

3. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment.

4. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.

5. No experiment should be conducted where there is an *a priori* reason to believe that death or disabling injury will occur; except, perhaps, in those experiments where the experimental physicians also serve as subjects.

6. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.

7. Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.

8. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.

9. During the course of the experiment the human

subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.

10. During the course of the experiment the scientist in charge must be prepared to terminate the experiment

at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill and careful judgment required of him that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.

Document Analysis

The Nuremberg Code begins with the single most crucial element in ethical medical experimentation, and the thing that was most egregiously missing from the experiments performed in concentration camps: consent. Point one defines consent as voluntary permission without any coercion, from a person who is legally able to provide this consent. The person who is performing the experiment is responsible for making sure that the subject understands exactly the potential consequences of the experiment and cannot delegate this to another person. This voluntary consent is the most important of these points and the basis for all of the other points. In addition to voluntary consent, the experiment must be useful and necessary and conducted in such a way that there is a reasonable expectation that the results will be useful. Humans should only be used for experiments after preliminary animal experiments and other study, so the outcome can generally be predicted. Many of the experiments performed by the doctors on trial were not useful in the end because they were not conducted under appropriate conditions and could not be replicated. The betterment of humanity through science is paramount—only experiments whose risks are outweighed by the potential benefit to humanity should be conducted, and then only if the known risks do not include death or permanent damage.

Even with skilled practitioners, safeguards, and best intentions, experiments do sometimes go wrong, and the subject should be protected from harm, but also made aware of any potential consequences. The subject has the right to withdraw from an experiment at any time, and the scientist is obliged to end an experiment if it seems that injury will result. None of the points in the Nuremberg Code were followed by the doctors on trial, who caused permanent harm and even death, and did not have the permission of their subjects. This document lays out a framework within which future experiments can be conducted in an ethical manner.

Essential Themes

In the aftermath of the unimaginable brutality of the Holocaust, the victorious powers in World War II worked diligently to ensure that war criminals were brought to justice. Those accused of war crimes often argued that they were just following orders, or that they had not violated any specific international laws that they could be tried under. Forced medical experiments on concentration camp prisoners fell into the second category, argued the defendants. The court decision in the Doctors Trial included the ten points that became known as the Nuremberg Code, which outlined ethical behavior for medical experiments. The essential theme in this document is the necessity of fully informed consent, and the steps that must be taken for the reduction of harm to the subject of the experiment. None of the prisoners in concentration camps were given the chance to consent, and the experiments on them caused great harm, suffering, and often death. The Nuremberg Code established the ethical framework for all medical experiments involving human beings and has been used as a standard ever since.

—Bethany Groff, MA

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