The Role and Rights of Victims at the Nuremberg International Military Tribunal

I. Introduction

One of the least analysed and discussed aspect of the Nuremberg IMT is the relatively small emphasis that was placed on role and rights of the victims and survivors of Nazi policies during the Tribunal’s proceedings. This may come as a surprise to many people, given that one of the main perceived purposes of the trial was to provide a sense of justice and vindication for the millions of victims of Nazi policies. However, the American and British prosecutors failed to call any survivors to testify. Although French and Soviet prosecutors did call a number of survivors to provide evidence during the trial, the reality was that these survivor witnesses were peripheral to the proceedings given that the trial was very much dominated by the American prosecution case and approach. The overall conclusion that one draws in examining the trial from the perspective of victims and survivors is that it was a disappointment. This was not just because the American (and British) prosecutors failed to call any survivors to testify, thus largely excluding survivors from the proceedings, but was also due to the founding Statute of the IMT making no mention of the words ‘victim’ or ‘survivor’. This meant that the IMT did not foresee that survivors might testify or otherwise have some role in proceedings, and would thus need to have rights to protection and support before, during and after their testimony. Furthermore, the possibility of victims and survivors receiving or being awarded some form of reparations was never discussed before or during the IMT proceedings.

This situation should be compared and contrasted to recent international criminal courts, where I would argue that the trend towards enhanced victim awareness, support, protection, reparation and participation has been one of the greatest innovations of modern international criminal justice. After a considerable hiatus in the formation of international criminal courts during the Cold War period, the International Criminal Tribunal for the former Yugoslavia (the ‘ICTY’) was established by the UN Security Council in 1993. The Statute of the ICTY introduced a number of innovative and progressive measures to assist and protect victims that represented a great advance for the rights and concerns of victims internationally. These measures were largely replicated by the Statute of the International Criminal Tribunal for Rwanda (the ‘ICTR’) formed in the following year. These measures included,

1 Defining the word ‘victim’ is often fraught with difficulties and in many cases will depend on the context in which it is used. For the purposes of this article, a ‘victim’ will be broadly defined as someone who had been killed, injured, imprisoned, denied their liberty or otherwise suffered harm as a direct result of Nazi racial and other repressive policies. These victims of the Nazis or their allies included a wide variety of minorities, the most prominent being Jews, Gypsies, disabled persons, gays and lesbians, Slavs, other religious minorities, and people of colour. The definition includes people whom, although not direct victims of Nazi policies in the above sense, nevertheless were in a close relationship with someone who suffered from any of these types of harms.

2 A ‘survivor’ in the sense used in this article will be someone, who lived through imprisonment or other forms of denial of liberty, torture, or other forms of harm as a direct result of Nazi racial policies or policies of repression. Thus for the purposes of this article all survivors were also victims.

3 For example, evidence of the conditions at Auschwitz was provided by a French survivor Marie Vaillant-Couturier, and by a Soviet survivor Severina Shmaglerskaya. See Conot R, Justice at Nuremberg, Harper & Row Publishers, 1983, at 300 and 304 respectively. The Russians also called Abram Suzkever (testified on the liquidation of the Vilna ghetto) and Samuel Rajzman (testified on Treblinka). Lawrence Douglas makes the interesting point that the three Russian witnesses were presented in a way to the IMT that seemed to obscure the fact that they were Jewish. See Douglas L, The Memory of Judgment: Making Law and History in the Trials of the Holocaust, Yale University Press, 2001, at 78-79.

4 It is true that a number of American Jewish organisations attempted to influence the American government in their approach to the Tribunal. However, such organisations did not generally represent survivors (who were principally the remnants of European Jewry), and the influence of these organisations did not appear to have been great anyway.

5 See Resolution 827, which was passed by the Security Council on the 25 May 1993. It is significant that the Security Council acted under Part VII of the UN Charter as this means that all member States of the UN are bound to cooperate with the ICTY.

6 The ICTR was established by Security Council Resolution 955, passed in November 1994.

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first, the establishment of Victims and Witness Units or Sections\(^7\) to assist and support victims in their dealings with the respective Tribunals.\(^8\) Secondly, the Tribunals were given the power to develop special procedural rules or measures of protection for victims and witnesses.\(^9\) Thirdly, special 'vulnerable' victims, particularly women and children, were given special consideration in the rules developed by the ICTY and ICTR.\(^10\) The final feature of the ICTY was that for the first time an international criminal court made an attempt to facilitate victim reparation or compensation.\(^11\) The Statute of the International Criminal Court (ICC) agreed to at Rome in 1998 not only replicates these measures, but also introduces a number of further innovations in favour of victims. For the first time in international criminal justice the ICC Statute allows for the possibility of victims having their own legal representation, and thus playing an active part in the proceedings.\(^12\) This is very much in line with the Continental European criminal justice model.\(^13\) The ICC Statute also provides for a much more serious attempt to ensure victims receive reparation. This includes the ability of the ICC to make orders for 'appropriate' reparations directly against convicted offenders in favour of victims,\(^14\) and the establishment of a victims' Trust Fund that can also be utilised to satisfy any orders for victim reparations.\(^15\)

In a previous article I set out what I perceived to be the main reasons why there has been this large turnaround in concern for and in the rights of victims and survivors in modern international criminal courts as compared to the IMT.\(^16\) I do not wish to repeat what I said there, but what I intend to do in this article is to first make the argument in Part II as to why more survivors should have testified and generally have been more involved in the proceedings of the IMT. Part III will then examine the reasons why victims played such a relatively small role in the IMT. It will be seen that many of these reasons were genuine ones. However, it will be the major contention of this article that none of these reasons should have precluded more survivors from testifying and being involved in the IMT proceedings. Consequently, each of these reasons for the lack of survivor involvement will be analysed in Part IV in order to see how the genuine concerns against survivor testimony could have been overcome or at least

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\(^7\) The ICTY's Unit has been described as "the first of its kind in any international context". See Rydberg A, 'The Protection of the Interests of Witnesses – The ICTY in Comparison to the Future ICC' (1999) 12 Leiden Journal of International Law 455 at 462

\(^8\) This includes administrative, financial and other practical arrangements to bring a witness from their country to The Hague or Arusha, and providing basic information to witnesses regarding the work of the Tribunals and trial procedures. The Units also offer emotional support and counselling and arranges medical and psychological care where needed, as well as provides protection to witnesses during their stay at The Hague or Arusha. Another important task of the Units is to make recommendations to the Tribunals regarding what special protection measures for witnesses might be needed. See Rydberg A, ibid.

\(^9\) For example, Rule 96 of the ICTY's Rules of Procedure and Evidence specifies, inter alia, that in cases of sexual assault no corroboration of the victim's testimony shall be required, the defence of consent is to be limited, and that a victim's prior sexual history shall not be admitted in evidence.

\(^10\) See Rules 98(B), 105 and 106 of the ICTY's Rules of Procedure and Evidence. These are considered to be weak provisions and unlikely 'to produce concrete results' as they require the ICTY to refer their judgment for an award of compensation to the offender's national legal system, and it is unlikely that victims will find satisfaction in this legal system. See van Boven T, 'The Position of the Victim in the Statute of the International Criminal Court', in von Hebel J, Lammers G & Schukking J (eds), Reflections on the International Criminal Court: Essays in Honour of Adriaan Bos, T.M.C. Asser Press, The Hague, 1999, 77-89 at 81-82.

\(^11\) See Article 22 of the ICTY Statute ('The International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. ....'). See also Garkawe S, 'Victims and the International Criminal Court: Three major issues' (2003) 3 International Criminal Law Review 345 at 353-354 for a list of the special measures that were developed by the ICTY.

\(^12\) See Joutsen M, 'Listening to the Victim: The Victim's Role in European Criminal Justice Systems' (1987) 34 (1) Wayne Law Review 95

\(^13\) Article 75(2) of the ICC Statute.

\(^14\) Article 79 of the ICC Statute.

\(^15\) See Garkawe, note 9, at 349-351.
minimised. It will thus be shown that survivors and victims could have played a much greater role in the IMT and this would not only have enhanced the proceedings, but also provided a greater sense of justice to the most effected victim communities of the Nazi regime.

II. The arguments in favour of greater survivor involvement and testimony during the IMT proceedings

In this part I want to suggest four important reasons why survivors should have had more of a role and more involvement with the IMT proceedings. The first reason is that this would have highlighted the aspect of the trial that dealt with what many now view as the essential feature of World War II and the IMT itself – namely the Holocaust and the Nazi’s crimes against other minorities. It may seem surprising to many that the IMT was not primarily about this. The American prosecution case (which, as stated above, dominated the proceedings) focused mainly on the waging of, and conspiring to, wage aggressive war. These were seen as the major crimes of the Nuremberg defendants, and not the Holocaust and the Nazi crimes against other minorities.

Evidence for this is found in the dramatic screening by the American prosecution of the documentary film entitled ‘Nazi Concentration Camps’. Given the lack of survivor testimony during the American (and British) prosecution case, this happened to be one of the very few times that victims’ suffering was actually shown during the course of the trial. However, even this film was problematic from the perspective of victims and survivors. In an important article Lawrence Douglas points out that not only was the word ‘Jew’ mentioned only one time during the film, but what the film was really about was

‘... political terror and the excesses of war. It documents a barbaric campaign to exterminate political enemies of a brutal regime. ... It does so, however, in a manner that understands extermination in terms of the perverted logic of political control and military conquest. The film understands the crimes to be the consequences of aggressive militarism rather than genocide.’

A second major and related reason why survivor evidence would have enhanced the IMT was that it would have injected real life experiences and stories into the proceedings, thereby making the trial much more dramatic and memorable. It seems incongruous to suggest that while many (including this writer) regard the IMT as the most important criminal trial in history, the reality of the trial was anything but dramatic and memorable. Apart from some moments of particular interest and drama, the trial was actually quite a lacklustre one for the majority of the time. This was because most of the duration of the IMT proceedings was spent on rather technical and routine arguments concerning the voluminous and detailed documentary evidence that the Nazis themselves had compiled, particularly the issues of whether this evidence was admissible, and if so, the significance of such evidence. This documentary evidence was the main thrust of the proof of the Nazi crimes that the prosecution

\[\text{\footnotesize \textsuperscript{17} Count One of the indictment referred to conspiracy, whereas Count Two referred to ‘crimes against the peace’, the then equivalent to the modern crime of aggression. Robert Jackson, the Chief American Prosecutor, stated in his opening address on November 21, 1945: ‘My emphasis will not be on individual barbarities and perversions which may have occurred independently of any central plan.’ Quoted in Marrus M, The Nuremberg War Crimes Trial 1945-46: A Documentary History, Bedford Books, 1997, at 83. Jackson’s assistant, Sidney Alderman, addressed the Tribunal two days later in the following terms: ‘After all, everything else in this case, however dramatic, however sordid, however shocking and revolting to the common instincts of civilized peoples, is incidental to, or subordinate to, the aggressive war aspect of the case. All the dramatic story of what went on in Germany … even the concentration camps and the Crimes against Humanity, the persecutions, tortures, and murders committed – all these things would have little juridical international significance except for the fact that they were the preparation for the commission of aggression against a peaceful neighbouring peoples’. Quoted in Marrus, op cit, at 123-124.}

\[\text{\footnotesize \textsuperscript{18} See Douglas L, ‘Film as witness: Screening Nazi Concentration Camps before the Nuremberg Tribunal’ (1995) 105 (2) Yale Law Journal 449 at 477.}

\[\text{\footnotesize \textsuperscript{19} Bloxham remarks that ‘[i]n it took considerable pressure from several [prosecution] staff, as well as from a body of journalists bored by the relentless documentary barrage which the prosecution case had become, to persuade Jackson to put on the stand even the few witnesses [the prosecution] did call’. See Bloxham D, Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory, Oxford University Press, 2001, at 61-62.} \]
providing, although of course they also relied upon the defendants' own admissions and evidence from their own key witnesses, such as Dieter Wisliceny, Otto Ohlendorf, Rudolf Höss and Erich von dem Bach-Zelewsky. The exceptions to the otherwise technical proceedings occurred during the screening of 'Nazi Concentration Camps', and perhaps most dramatically, the examination, cross-examination and final statements of the defendants themselves. Given this history, it is submitted that having more actual survivors of Nazi persecution testify and be involved in proceedings (as the Statute of the ICC now contemplates) would have added an extra dimension and drama to the proceedings. This would have also had the effect of improving the IMT's legitimacy in front of the world community and particularly in front of a sceptical German public. It would further have personalised the crimes of the Nazis and their allies, thus not making their crimes seem like an endless list of gruesome statistics contained within voluminous, bureaucratic and seemingly repetitive documentation.

The third reason for greater victim and survivor involvement was that testifying would have been a cathartic experience for survivors themselves. While this might have not been well-known at the time, there is much evidence today from psychologists and others that there is therapeutic value for survivors of traumatic events being able to tell their story in a publicly recognised process. For example, Brendon Hamber, a psychologist who did a lot of work with victims and survivors during the South African Truth and Reconciliation Commission hearings stated:

"Providing space for victims to tell their stories, particularly in public forums, has been of use to many. It is indisputable that many survivors and relatives of victims have found the public hearing process psychologically beneficial."22

The need for the survivors of Nazi oppression to be able to tell their side of the story was shown by the overwhelming desire of many survivors to give evidence some 15 years after the IMT proceedings in the Eichmann trial.24 It was during this trial in Israel that survivors were strongly encouraged to testify. History shows that many took this opportunity to pour their heart out in describing what happened to them. In a sense, the Eichmann trial became the counter-balance for the lack of survivor testimony during the IMT proceedings,25 and clearly showed the possible benefits for survivors in having the chance to tell of their experiences and to thus feel listened to in a publicly sanctioned process.

The final reason in favour of greater survivor testimony and involvement is that it is a matter of justice. Survivors were the actual people harmed by the crimes of the Nazis and their allies, and yet did not seem to have the opportunity to testify or otherwise become involved in the IMT proceedings. This stands in direct contrast to the fact that all the defendants were able to testify and make final statements. While I am not suggesting that every survivor who wanted to testify should have been allowed to do so (see later), it is clear that denying the right of all survivors to testify was unjust.

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20 Robert Jackson stated in his opening address of November 21, 1945 that 'We will not ask you to convict these men on the testimony of their foes. There is no count in the Indictment that cannot be proved by books and records. The Germans were meticulous record keepers ...' Quoted in Marrus, note 17, at 82.
21 Eichmann's deputy, whose testimony accounted for the murder of about 5,200,000 Jews in the East.
22 He led mobile SS killing squad, Einsatzgruppe D, and his evidence included the admission that about 90,000 Jews were killed under his command.
23 The commandant of Auschwitz, who was able to testify to 3,000,000 people dying at Auschwitz.
24 Chief of the anti-partisan forces, whose evidence affirmed the indiscriminate extermination of innocent civilians during anti-partisan operations or reprisals.
27 Douglas states that ‘survivor testimony enjoyed pride of place at the Eichmann trial ...; at Nuremberg, by contrast, testimony of the final solution was most importantly provided by non-Jews.’ Douglas, note 3, at 78. Douglas also provides a critical analysis of the issue of non-Jews speaking for Jews at Nuremberg. While this is an important issue, it is beyond the scope of this article.
III. The reasons why victims and survivors played a relatively small role during the IMT proceedings

Having established that there are strong reasons as to why survivors should have played a greater role in the American and British prosecution cases, in this part I want to examine the main reasons why survivors played such a small role. These reasons are numerous and inter-related, and as stated above, most of them were genuine.

The first reason for the lack of victim testimony and involvement was that as the IMT was designed to deal only with defendants, who were at the highest levels of the Nazi establishment. It would have been unlikely for a survivor to have specific information about the criminal culpability of these defendants, such as copies or proof of the orders they gave or the policies they promulgated. Their experiences were more likely to have been with perpetrators who were much lower down the chain of command. These were generally not those indicted at the IMT.

Very much related to this reason was a second reason – the Allies already had in their possession voluminous and detailed documentary evidence that the Nazis themselves had compiled. This self-incriminating evidence, combined with the confessions of the defendants themselves and the information provided by important other prosecution witnesses, made survivor testimony largely unnecessary for convictions to be achieved. In relation to the possibility of some survivors testifying (as occurred with the French and Soviet prosecutions), there was also no need to specifically provide for protection for victims in the IMT Charter because the Nazi regime no longer posed any threat to witnesses as it had been comprehensively defeated. This can be compared to the situation that, for example, confronted the ICTY where the warring parties in the former Yugoslavia still retained much power and thus the ability to exact revenge and intimidate prosecution witnesses. This thus required specific and concrete measures of protection and support in order to encourage witnesses (including victims and survivors) to come to The Hague to give evidence.

A third reason for the lack of victim involvement and testimony was that at the time of the IMT there was a general lack of awareness and/or disbelief of the full extent of the Nazi crimes, including the Holocaust and other atrocities. It took some time before the international community was able to fully comprehend the extent of the criminal culpability of the Nazi regime.

A fourth and important reason for the lack of survivor testimony was the perception that they were psychologically unable to be useful as witnesses due to the terrible experiences they had endured. Directly following the Holocaust and World War II there was a sense that the horrors experienced by victims and survivors was so great that little could be done to help them, and clearly this did not bode well for them being perceived to be useful witnesses during the IMT. It was really only until well after the IMT, with much more research of the psychological effects of war and living through the horror of concentration and extermination camps becoming known, that the assumption that survivors were psychologically unable to provide testimony might be questioned.

A related fifth reason was the common perception that survivors would make very biased witnesses given the extreme nature of the persecution they had endured. Thus, even if they could have been able psychologically to testify, they were still perceived as being too emotional and thus not capable of providing objective and factual evidence. It is submitted that this would have led to prosecution concerns that such witnesses would end up being counter-productive for the prosecution case.

Blokhams states: ‘The treasure trove of documents preserved for the prosecution had convinced the trial planners, and Jackson in particular, that everything they needed to illuminate the darkest corners of the Nazi era was in printed form’. Bloxham, note 19, at 60. Another way of putting this is that the documentary approach ‘favored paper over people’. Douglas, note 3, at 78.

See the witnesses referred to above in notes 21 to 24.

Robert Jackson takes this position in his opening statement to the IMT. See note 20.

See, for example, Danielli Y et al (eds), International Responses to Traumatic Stress, New York: Bayward, 1996.

Bloxham makes the point that ‘with regard to the potential use of four witnesses, who had been involved to varying degrees with resistance movements in the Third Reich’, the American Chief Prosecutor, Robert Jackson, objected to putting them on the witness stand on the basis that ‘they had a strong bias against the Hitler regime[1]’. Bloxham, note 19 at 61.
There is a related sixth reason for excluding survivors from giving testimony that is in addition to the above perceptions concerning the possible lack of reliability and objectivity of their evidence. It seems likely that prosecutors would have held a genuine fear that having survivors testify would leave them liable to cross-examination from defence counsels, and this might further traumatisate them and delay the possibility of their psychological recovery.

A very significant seventh reason for the lack of victim involvement related to the domination of proceedings by the American prosecutors. This has a number of dimensions. One of these related to the adversarial nature of American criminal trials in the Anglo-American common law tradition, where victims are excluded from being parties to the proceedings and thus lack any substantive rights. It is submitted that it is no coincidence that the two civil law allies, the French and the Soviet Union, did allow some victims to testify, whereas the two common law allies, America and Great Britain, did not.

In civil law jurisdictions victims generally do have the right to be a party to criminal proceedings. The other dimension of the domination of proceedings by the American prosecutors has already been referred to above. This was the emphasis placed by the Americans on the concept of conspiracy, particularly in relation to the Nazi decisions to wage aggressive war. The IMT in its judgment decided to confine the charge of conspiracy to crimes against the peace; it did not extend these to the war crimes or crimes against humanity charges. This meant that the first two charges, conspiracy and crimes against the peace, dominated the American prosecution case at the expense of the last two charges much more directly relevant to victims and survivors, namely, war crimes and crimes against humanity.

The final reason for the American and British prosecution cases not allowing survivors to testify or be involved in the proceedings was that the prosecution came under pressure of time and resources. The trial was already scheduled to last a long time due to the fact that there would be four different prosecuting powers, a massive indictment against a very large number of individual and organisational defendants, and multiple and complex charges. Furthermore, the trial concerned an unprecedented level, volume and scope of wrongdoing to be prosecuted in the one criminal trial. Such a vast and complex prosecution had previously never been attempted before in the history of criminal law. Finally, the volume of the massive documentary evidence and their tabling and argument all took an enormous amount of time. It was thus not surprising that some months into the trial the prosecution found themselves under a large amount of pressure by Allied governments to wind up their case. In these circumstances where there was already more than sufficient evidence for convictions without any survivor testimony it was not unexpected that survivor evidence was not sought, and the prosecution did not seek to involve survivors and victims more in the trial. These matters were not priorities at the time.

**IV. Some conclusions — what might have taken place during the IMT**

It is now very easy to be critical of the American prosecutors when examining the Nuremberg IMT from a victim perspective. Hindsight is of course a wonderful thing when we are in the luxurious position of being able to look back at history. At the time of the IMT, the prosecutors were facing enormous pressures and conflicting duties towards international law, the historical record, their own

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33 See Joutsen, note 13.
34 The conduct of the trial and its procedures had to be decided by agreement between the four powers, and often this was not easy as each country’s legal system had its own norms and culture. Although the Americans generally got their way on most issues, some concessions to the inquisitorial type criminal justice systems of France and to a lesser extent, the Soviet Union, were granted. For example, the trial did not have a jury, defendants could be tried in absentia, and perhaps to a lesser extent judges were able to play a more interventionist role than what was customary in common law adversarial criminal trials.
35 Along with the 22 individuals indicted by the IMT, seven organisations were also placed on trial.
36 The charges were set out in Article 6 of the Charter. Most of these charges were also quite novel to criminal law at the time, such as the ‘crimes against the peace’ charge and the ‘crimes against humanity’ charge.
37 Robert Jackson in his opening address of November 21, 1945 said that ‘Never before in legal history has an effort been made to bring within the scope of a single litigation the developments of a decade, covering a whole continent, and involving a score of nations, countless individuals, and innumerable events’. Quoted in Marrus, note 17, at 80.
governments, a sceptical German public, their own legal systems, and from the other prosecuting nations. So I want to make clear and stress that this article is not intended to be a critique of prosecution approaches towards victims and survivors. In fact, many of the reasons for not involving victims and survivors in the IMT and not having more survivors testify, as set out in Part III, were very genuine and logical ones.

However, keeping these above considerations in mind, I still feel that more could and should have been done to involve victims and survivors in the IMT’s proceedings. The analysis in Part II of this article did show that there were very good reasons why more survivors should have been able to testify. These included that it would have improved the IMT’s proceedings and made them more personal, interesting and relevant, it would also have been a cathartic and beneficial experience for victims themselves, and finally, it was a simple matter of justice.

On the other hand, the analysis in Part III suggests that there were many genuine reasons for the relative lack of survivor testimony. I shall now examine each of these reasons in turn as they each may provide us with some lessons on what could have been done to encourage greater survivor testimony and involvement.

The first reason was that it was unlikely for a survivor to have specific information about the culpability of the indicted defendants at the IMT. The lesson to be learnt here is that any survivor chosen to provide evidence should have been carefully selected, so that they would have some useful knowledge and information for the IMT. While this may have precluded most survivors, I strongly believe some could have been found that would have provided relevant and useful testimony. A good example might have been Alfred Weczler and Rudolf Vrba, two Slovakian Jews who had escaped from Auschwitz on April 17, 1944, and found their way back to Bratislava. Robert Conot commences his landmark book on the IMT, Justice at Nuremberg, with a brief mention of their story. The Jewish community in Slovakia at first doubted them, but after they had provided a large amount of detail they came to be believed, and the Rabbi of the community, Rabbi Weissmandel, wrote a Report based on their description of what they had been through. This Report, known as the Weczler/Vrba Report, became very influential and Conot points out that it was a significant factor in the eventual move towards a criminal trial that finally resulted in the IMT. I am not sure what happened to these two individuals, but they did not give testimony during the IMT trial. It seems to the writer that they would have been ideal witnesses as their evidence was the first eye witness account of the extermination camps made available to the Western world. Their testimony, even though it might not have been directly relevant to the culpability of any particular defendant, certainly would have added to the proceedings and the prosecution case in respect of the charge of crimes against humanity.

The second reason for the relative lack of survivor testimony was that it was largely unnecessary for convictions to be won. While this was an understandable and valid reason, I do not think it should have precluded such testimony. A similar conclusion can be drawn in respect of the third reason provided – that there was a general lack of awareness and/or disbelief of the full extent of the Nazi’s crimes. Again, while this might have been understandable on some levels, by the time of the IMT proceedings there was knowledge of the extermination camps and the terrible persecution and extermination of minorities by the Nazis and their allies.

The fourth reason for the relative lack of survivor testimony was the perception that victims were psychologically unable to be useful as witnesses. This was also related to the fifth reason, namely, their alleged bias given their experiences, and the consequential perception that they would have been too emotional and thus incapable of providing objective and factual evidence. The sixth reason is also relevant here – the fear that having survivors testify would leave them liable to cross-examination from defence counsel, and this might further traumatise them. All these reasons have validity, but collectively

38 Conot, note 3.
39 Conot, note 3, at 3.
40 The main evidence I have for this is after Conot’s initial description of their story at the very start of his book, their names are no longer mentioned anywhere in his detailed descriptions of the IMT proceedings.
they can be countered by reiterating again that any survivors chosen to give evidence should have been carefully selected. Furthermore, most importantly, each survivor giving evidence should have been provided with the best of psychological and physical support and assistance before, during and after their testimony. The trial procedures should have been explained to them beforehand, as well as the possibility of cross-examination and how they needed to handle this. Overall, I believe that these genuine concerns embodied in these three reasons should not have precluded survivors from testifying, provided the above safeguards were put in place.

The seventh reason for the lack of survivor involvement and testimony, the dominance of the American prosecution case, is not a genuine one that should have precluded survivors and victims from testifying or otherwise being involved in proceedings.

The final reason for the American and British prosecutors not allowing survivors to testify was the issue of the pressure of time and resources. Again, while this reason does provide an explanation for the relative lack of survivor involvement in the trial, time and resources should not have been an excuse to exclude the involvement and testimony of survivors. The requirement of fundamental justice often means that time and resources must be expended in order for fairness to be achieved, and this is a good example.

In conclusion, while the IMT proceedings can be seen as largely a 'victim free' trial, it is hoped this article has shown that there are some good reasons why this should not necessarily have been the case. The article has also shown that there were some genuine reasons as to why survivors had so little input into the trial, but at the same time it has outlined some concrete ways in which more survivors could have given evidence and been more involved in proceedings. Given that the scene has been set for far greater victim involvement in future international criminal courts, the lessons to be learnt from the Nuremberg IMT, arguably the most important criminal trial in history, should not be lost.
Rolle und Rechte der Opfer vor dem Nürnberger Internationalen Militärtribunal

Sam Garkawe

Rolle und Rechte der Opfer vor dem Nürnberger Internationalen Militärtribunal

Der Beitrag beschäftigt sich mit der Stellung der Opfer im Verfahren vor dem IMT in Nürnberg. Schon ein oberflächlicher Blick lässt erkennen, dass die Opfer eine untergeordnete Rolle gespielt haben. Das mag überraschen, war es doch Ziel des internationalen Strafverfahrens, gerade den Millionen von Opfern Gerechtigkeit zu Teil werden zu lassen.


Im Nachhinein ist es einfach, das Vorgehen der Ankläger zu kritisieren. Bei genauerer Betrachtung gab es allerdings, wie hier gezeigt wird, gute Gründe, die Opfer nicht extensiv als Zeugen in den Prozess einzubeziehen. Für zukünftige internationale Strafverfahren sollten allerdings die Lehren aus Nürnberg gezogen und Opfer am Strafverfahren beteiligt werden, was sowohl bei den UN-Tribunalen als auch beim Internationalen Strafgerichtshof in den jeweiligen Statuten zugleich mit intensiver Vorsorge für die psychologische Betreuung der Opfer vorgesehen ist.