

**THE HOLOCAUST AND ITS IMPLICATIONS ON HUMAN RIGHTS AND GENOCIDE IN
THE PRESENT**



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"It would be a dangerous error to think of the Holocaust as simply the result of the insanity of a group of criminal Nazis. On the contrary, the Holocaust was the culmination of millennia of hatred, scapegoating and discrimination targeting the Jews, what we now call anti-Semitism".

UN Secretary-General António Guterres

Abstract

What does the Holocaust teach us about the risk factors of genocide as well as the importance of human rights in the present?

Genocide is arguably one of the worst crimes against humanity. And a clear understanding of the Holocaust, also known as the “paradigmatic” genocide, is vital to predict future mass atrocities and human rights violations (Education Working Group,2010). The Holocaust is remembered as the Nazi state-sponsored murder of 6 million Jews and several million non-Jews and is believed to give rise to the concept of genocide. However, we must not make the mistake of reducing these numbers to a mere statistic as that reduces the magnitude of the downright outrage that took place in the period.

It is important to understand the root causes of the Holocaust in order to analyze similarities and differences with other mass atrocities. In my paper, I shall attempt to understand the events that led up to the Holocaust and culminated in the Final Solution. How did the hatred against the Jews culminate into such an atrocious development? How did the legal system in Nazi Germany facilitate the genocide? It is also vital to understand the role of the German society in the escalation of the Holocaust and the reason for their acceptance of the extreme policies and ideologies of the Nazis. Who was behind one of the biggest mass liquidations in history and what changes did it bring about in International Law?_Finally, I will attempt to analyze the risk factors of genocide according to the Holocaust.

1.A Brief History of Antisemitism in Europe

Antisemitism is known as “history’s oldest hatred” and is defined as hostility, prejudice and discrimination against the Jewish community. It was prevalent since antiquity but was strengthened by the medieval Christian belief that the Jews were responsible for the death of Jesus and the ritual murder of Christians. However, in 19th century Europe, antisemitism developed a racial insinuation. It led to the belief in the superiority of the Aryan and white race over all other races and was supported by pseudo-scientific theories like Social Darwinism. This theory entails a twisted interpretation of the “survival of the fittest” based on the Darwinian evolutionary theory which elucidates the process of natural selection. Darwin had not propounded human intervention and eugenics in what he had claimed to be an entirely natural process. Adolf Hitler had enthusiastically borrowed from these theories to justify systematic racism against the Jews. He affirmed that Germany herself was becoming weak due to the influence of non-Aryan races. To Hitler, the survival of the “evolutionary higher stage” of the Aryan race was determined by the purity of its gene pool. Myths like the stab-in-the-back-myth¹ and the myth of a

¹ According to this myth, the German army had not lost the war but was betrayed by the civilians on the home front, especially the Jews and Communists.

worldwide Jewish conspiracy² confirmed the fears and suspicions of the Germans and played an important role in facilitating antisemitism in Nazi Germany.

These myths, among many others, were espoused by Hitler whose antisemitism came to fruition while he was working as a painter in Vienna. He described the Jews as a “moral pestilence with which the public was being infected, worse than the Black Plague of long ago” (Hitler, 2001, p. 65). He also believed that his conduct against the Jews was consonant with the will of the Almighty creator.³ While giving a speech at the Reichstag on 30 January, 1939, Hitler predicted the “systematic annihilation of the Jewish race in Europe.”

2. Antisemitic Legislation Preceding the Holocaust

In 1920, the National Socialist German Workers Party announced their 25-point programme wherein they mentioned their intention to segregate the Jews from German society and abolish all their civil and political rights. From the beginning of Hitler’s dictatorship, until the outbreak of the Second World War, more than 400 antisemitic laws were passed at the national and regional levels. These laws restricted the rights of the Jews in both public and private domains and singled them out for persecution.

2.1. Nazi Antisemitic Laws of 1933-34

This period witnessed the first wave of antisemitic legislation which aimed at removing Jews from the public domain. One of the major exclusionary laws that were passed was the Restoration of the Professional Civil Service Act of April 7, 1933, which sought to exclude the Jews and others considered “unreliable” from civil service and acted as a precedent for removing them from various occupations. The law also made possible, the compulsory retirement of civil servants who were not of Aryan descent. The professional civil service law made sure that the laws which were hitherto in force to ensure the legal equality of the Jews across the Reich since its foundation in 1871, were finally shattered. It made way for the step-by-step revision of the German laws which culminated in the legalized extermination of the Jews (Longerich,2012, pg.38).

Another major law that was imposed was the “Law against the Overcrowding of German Schools and Universities” which allocated the number of Jewish pupils that could be accepted into academic institutions. Various antisemitic activities were carried out during this period which included the public burning of books by Jewish authors and attacks on Jewish properties and synagogues. This period set off a conflagration that led to one of the deadliest genocides in history.

2.2. The Nuremburg Race Laws of 1935

The Nuremburg race laws were introduced by the Nazi party at its annual rally held in Nuremburg in September,1935. This brought about an immediate and concrete segregation of the Jews from German society. It introduced the “Citizenship Law” which defined who will be granted citizenship and enjoy civil and political rights. These rights were only granted to individuals who were of “German or related blood”. Jews were excluded from German citizenship and were henceforth regarded as “community aliens”. The Nuremburg laws defined the “Jew” as anyone with more than three Jewish grandparents. As

² According to this myth, the Jewish elites were allegedly plotting to rule the world.

a result, thousands of people who did not regard themselves as Jews or had converted from Judaism, became subjects of Nazi terror. Thus, the Jews became foreigners in their own country.

The Nuremberg laws also institutionalized the “Law for the Defence of the German Blood and Honour”. This law forbade marriage or sexual relations between Jewish and non-Jewish citizens and any such act was henceforth regarded as a criminal offense. This law also prohibited Jewish employers from hiring German women or women of “superior racial status” under 45 years of age. The Jews were also forbidden from raising the German flag. While these extreme and exclusionary policies were not exactly received with enthusiasm by the party members or the German citizens, it was passively accepted by the general public without any remarkable opposition. The Nuremberg laws indicated an unprecedented turn in the attitude of hostility and indifference towards the fate of the Jews which presaged the atrocious events that were to eventuate.

2.3. The Final Wave of Antisemitic Legislation

From 1937 onwards, legalized persecution of the Jews radicalized. The judiciary became another instrument of oppression utilized by the Nazis to facilitate the exclusion of the Jews. The essence of the German law became “common sense” i.e., “whatever is good for Germany is legal” (Nedim, 2016). The unfortunate Jews that they targeted were more than often placed into “protective custody”, i.e., concentration camps. The “Aryanization” policy was enforced, through which Jewish owned property was transferred to Aryan proprietors for a trifle of the actual market value. The objective of these legislations was to eliminate the Jews from German society by preventing them from earning a living. These profuse excesses culminated in the Kristallnacht or the “Night of the Broken Glass”

3. The Kristallnacht as an Augury of the Final Solution to the Jewish Question

The Kristallnacht or “the Night of the Broken Glass” was an antisemitic pogrom that was executed by SA paramilitary forces and the German civilians on 9-10 December, 1938. The event was triggered by the assassination of Ernst vom Rath, the legal secretary of the German embassy in Paris by a Polish Jew named Herschel Grynszpan. On the night of the pogrom, the SA troops, backed by the party members, forced their way into synagogues, Jewish shops, and apartments and smashed their interiors, looted them, and finally burned them down. The Jews were forced to watch their synagogues burn and were subjected to torture and various acts of humiliation. It is estimated that 30,000 Jewish men were incarcerated in concentration camps immediately after the pogrom (Taylor, 2011). Reports suggest that 91 Jews were murdered although the post-pogrom maltreatment and suicides of the Jews suggest that this estimate was much higher. The German Jewry had to pay an atonement tax of over one billion Reichsmarks and were held collectively responsible for the damage that had occurred.

It is believed that Hitler’s authorization of the November pogrom helped him realize his ambition for the extermination of the Jewish race. The pogrom was a culmination of all the antisemitic riots and sentiments in Nazi Germany. As a majority of the population had responded passively, it gave the Nazis a green light to subject the Jews to inhumane treatment.

After the pogrom, the issue of the “Jewish question” was brought out into the open. Disregard and contempt towards the fate of the Jews by the majority of the German population facilitated this issue. With the impending war, the Jewish question had to be dealt with immediately and debates were

carried out to deal with this issue. At the core of these debates, the Jews represented a “problem” that had to be solved by planning their comprehensive exclusion and forced expulsion from German society.

4.The Holocaust

The German invasion of Poland on September 1, 1939, triggered the Second World War. At the time, the Nazi officials had not come up with a comprehensive plan to deal with the “Jewish question.” The forced ghettoization of the Jews was carried out as a temporary solution. They were subjected to deplorable conditions of sanitation in the ghettos and many died from starvation and disease within the first few months. Before the onset of the war, the Nazis planned to force the Jews to flee the Reich through their antisemitic policies. With the declaration of the war, persecution of the Jews escalated. Eventually, they were sent to concentration camps where they were systematically liquidated.

4.1. The Wannsee Conference

The Wannsee Conference was a meeting of high ranked German officials held in the Berlin suburb of Wannsee on 20 January, 1942, to discuss a comprehensive plan to deal with the “Jewish question” in Europe. At the time, thousands of Jews had already been murdered but the process according to the Nazi officials, had not yet reached the stage of the “Final Solution”. With the conference, the systematic mass liquidation of the Jews in various territories was outlined to the senior officials of the party, the SS⁴ as well as the civil servants. This plan was made as a part of the solution to the “Jewish question” as ordered by Hitler. The Conference was carried out to make sure that the ministerial bureaucracy would share the knowledge and responsibility for the implementation of the Final Solution (Longerich, 2012, pg. 305).

4.2. The Final Solution to the Jewish Question

In March 1942, about 75 to 80 percent of the victims of the Holocaust were still alive, while 20 to 25 percent had perished. A mere 11 months later, the percentages were exactly the reverse. The Holocaust, therefore, was not an incremental process, but an arbitrary and instantaneous wave of mass murder requiring the mobilization of a massive number of shock troops (Browning, 1993, pg. 10). Five more extermination camps were set up in consequence of the Wannsee Conference. The intensity of the murders was concentrated in Poland where the General Governorate for the Occupied Polish Region was located. While the mass murder of the Soviet Jews had been justified as a means to remove “Jewish Bolshevism”, it became clear that the Nazis had only one objective in mind: to systematically “cleanse” Europe of the Jews and other inferior races and pave the way for lebensraum or “living space” for the Germans.

4.3. The Fate of the Victims

Following the Wannsee Conference, Mass shootings were carried out by the “Einsatzgruppen” i.e., the paramilitary death squads, against the “anti-German” elements. The Jews were also deported via trucks and trains to concentration camps located within occupied Poland. A survivor of the Holocaust recounts the memory of being deported to Auschwitz:

“I was deported with my mother and sister to Auschwitz in April

⁴ The Schutzstaffel: A major paramilitary organization under Adolf Hitler and the Nazi Party

1944. After spending one week in Drancy, a transit camp for French Jews, we were piled for three terrible days into sealed animal wagons, practically without food, without water, and without knowing our destination. My father and brother were deported to Kaunas in Lithuania in a convoy of 850 men, of which only about 20 survived. We never found out the fate of the other men, including my father and brother (Veil,2009, pg., 36, 37).

Concentration and labour camps were set up and extended and by 1942, gas chambers had been installed in the extermination camps. When the massive number of deportees were brought into the camps, the ones fit to work were subjected to hard labor and deplorable living conditions. The ones deemed “unfit” for work were forced to strip off their clothes and were sent into gas chambers. Once they were locked inside the chambers, pesticides like Zyklon B were dispatched into the rooms for their swift liquidation. The piles of bodies were then removed and the homicidal proceedings were carried out all over again.

4.4 Death marches and Liberation

As the Soviet armed forces advanced and the Allied victory became unambiguous, the SS organized “death marches” i.e., forced evacuations of the prisoners in the concentration camps to prevent the victims from spelling out stories of the horror that they had been subjected to.

After months of hard labor, violence, and starvation, the weak and malnourished prisoners had to trek for hundreds of miles and thousands died due to starvation, exhaustion, and exposure. The SS troopers were strictly ordered to shoot anyone unable to walk anymore (United States Holocaust Memorial Museum, Washington, DC, n.d.). The estimate of Jewish victims in this “final phase” of the Third Reich alone is said to be somewhere between 70,000 and 100,000 (Longerich, 2012, pg. 418).

After the victory of the Allied powers, they advanced further into Germany and finally liberated hundreds of thousands of concentration camp prisoners. Only after this liberation was the horrors of Nazi Germany revealed to the world. The Soviet forces had confronted the abysmal conditions of the prisoners. There were piles of corpses everywhere and the negligible number of people who survived were in no better condition than the corpses, only a shadow of what they used to be. The survivors were not just affected physically, but had developed severe psychological trauma and had to face a wearisome road to recovery (United States Holocaust Memorial Museum, Washington, DC, n.d.).

5. Responsibility for the Holocaust?

The “Responsibility for the Holocaust” is the subject of an ongoing debate that has been going on for many years. This debate on the possible origins of the Holocaust is known as the Intentionalism v. Functionalism debate. These terms were coined by the British Marxist historian, Timothy Mason. The Intentionalists argue that the Holocaust was brought about as a deliberate plan of Hitler who personally supervised its execution. This can be validated from as early as the 1920s, by tracing his autobiography where he scapegoated the Jews for the German defeat in the Second World War. The Nazi eugenic world view and the comparison of the Jews to pests can further serve as a part of the limited evidence. The Intentionalists argue that Hitler’s speech at the Reichstag on 30 January ,1939, where he predicted the “annihilation of the Jewish race in Europe” was proof of his objective to carry out the Holocaust.

The Functionalists argue that at the beginning of the war, the Nazis had not come up with a comprehensive plan to exterminate the Jews and that it emerged as a result of a series of extreme decisions that were taken at various levels of the German bureaucracy. This process began with the appointment of Hitler as Chancellor in 1933 and his subsequent dictatorship and manipulation of the entire socio-political system. The unstable governance structure and radical social and economic elements led to a chaotic political atmosphere in the midst of which opportunists implemented the genocidal programs. This atmosphere of ambiguity resulted in resorting to political improvisation which rested upon the deployment of extreme violence, culminating in the Final Solution (Pascoe, 2013).

Although it is very tempting to hold Hitler liable as the sole perpetrator of the Holocaust, it is unfeasible to claim that all the decisions that were carried out, down to the small villages, could have been on account of a single order. Thus, the Holocaust had emerged from various ranks of the German bureaucracy, from the “desk murderers” down to the police battalions appointed to murder the Jews. A case in point is the efforts of the SS troopers, during the death marches, to murder the Jews until the very last day of the war. This corroborates the fact that the Holocaust was not simply brought about with a single order issued from behind a desk, but depended on the machinery of the Nazi government that influenced its intensification (Longerich, 2012).

It can also be argued that while Hitler might not have come up with a concrete plan for the Holocaust, he was a very important figure who supervised its swift and effectual execution. Hitler, known for his extreme rhetoric and policies, might have encouraged fanatic bureaucratic functionaries to take arbitrary decisions that facilitated the mass murders. This phenomenon of “cumulative radicalization” constituted the idea that the Nazi state attempted to formulate policies in line with Hitler’s wishes without him directly being involved (the Weiner Holocaust Library Collections, n.d.).

6. What was the role of the masses in the Holocaust?

One of the main reasons why the Nazis were able to move ahead with their extreme policies and practices was the indifference of the German population and their scathing contempt of the Jews. A majority of the Germans, including the party functionaries, were not particularly enthusiastic about the radical antisemitic policies that were introduced but had passively accepted them.

The aftermath of the Great War in Germany was a situation of complete chaos. The treaty of Versailles was seen as unnecessarily harsh. Under the War Guilt Clause, Germany had to accept complete responsibility for the war. As a result, Germany lost 12% of its land and 13% of its population to the Allies. It was de-industrialized and stripped of a majority of its military resources. The economy was shattered and hyperinflation rose to the extent where people had to carry wheelbarrows of money to buy groceries. In this pandemonium, the desire for stability and revenge rose in the German population. Hitler, with his passionate and extreme orations, seemed to promise the people just that. The renowned psychiatrist Carl Jung referred to him as the “mouthpiece of the collective unconscious of 78 million Germans.” He promised the Germans employment, a stable economy as well as the fulfillment of their desire for revenge by using the Jews as scapegoats of the War. Thus, Hitler became the manifestation of the desire for revenge and economic stability in the Germans. He certainly didn’t transform everyone into Nazis. Rather, it was a joint effort between him and German society. However, people who were sadistic anti-Semites constituted a minority. A majority of the German population chose to simply look away.

7. How did the Nature of International Law change in wake of the Holocaust?

It is an unfortunate reality that all the major advances that have been made in International Law and human rights have been a result of mass atrocities. Although the magnitude of the Holocaust is altogether unprecedented, it left a significant impact on International law and the modelling of International human rights.

In the pre-WW-II period, individuals had no special rights under International Law, and whatever protection and safeguard an individual received were attributed to their nationality. In the international sphere, emphasis was placed on political diplomacy and national sovereignty (Buerghenthal ,2014). One important consequence of the International legal doctrines that were in force before the Second World War was that the manner in which the state treated its nationals was within its exclusive domestic jurisdiction. In this scenario, if other states tried to protest against the treatment of the people, it would have been treated as an intervention in domestic affairs and thus deemed as a violation of International Law. (Buerghenthal, 2014). Thus, if the Germans had carried out the genocidal programs solely against their own citizens, then the International community would have had no right to come in defense of the victims.

When the atrocities of Nazi Germany came to light, there was a need to immediately change the status of individuals under International law to ensure that they can be provided adequate safeguards irrespective of their nationality. In the present, human rights violations are generally dealt with in the state in which they occur. However, there are certain crimes that are so grave that they may constitute *Erga Omnes*⁵ obligations i.e., the international community is obliged to take actions against them. Thus, the Holocaust helped governments realize that International Law must address mankind's concerns if it is to play a meaningful role in preserving and promoting a peaceful world (Buerghenthal, 2014).

7.1 Role of the Nuremburg Trials in the Development of International Laws.

The Nuremburg trials were a series of military tribunals that were set up after the Second World War to prosecute the Nazi officials involved in the Holocaust and other mass atrocities. Although only twenty-two Nazi officials were tried and twelve were sentenced to death, the Nuremburg judgement played a tremendous role in setting unprecedented landmarks in International Law. It is a milestone in the development of International Law as there was no judicial precedent for the creation of an International Military Tribunal. The judgment set a revolutionary precedent that a violation of international legal principles can constitute a crime even in the absence of treaty provisions defining such crimes. This judgment impressed the UN so much that on December 11, the General Assembly affirmed a resolution officially recognizing the principles of International Law enumerated in the Charter of the International Military Tribunal and the Nuremburg judgment (Lopardo, 1978, pg.34).

Although the Nuremburg judgment has been criticized for victor's bias and for dispensing ex-post-facto or retrospective law, it laid down the foundation of modern International Criminal Law. The Nuremburg judgment led to an unprecedented advance in International Criminal Law that culminated in the establishment of a permanent International Criminal Court in 2002. It also served as a model for the

⁵ Latin for "in relation to everyone"

development of the Universal Declaration of Human Rights and the Convention on the Prevention and Punishment of the Crime of Genocide.

The term “genocide” was a progeniture of the Holocaust. It was coined by Raphael Lemkin in his 1944 book “Axis Rule in Occupied Europe.” At the time of the Nuremburg judgment, “genocide” had not acquired the status of a crime under International Law. Lemkin’s extensive efforts and lobbying had led to the adoption of the Genocide Convention by the United Nations General Assembly on 9 December, 1948.

8.Risk factors of Genocide According to the Holocaust

The Holocaust reminds us of our responsibility to prevent and our duty to protect citizens in order to prevent its recurrence. It highlights some risk factors of genocide which we can learn from, such as systematic discrimination, extreme ideologies, armed violence, and hate speeches. By identifying the various stages and warning signs of the Holocaust, a contribution can hopefully be made in the prevention of the same in the future. The risk factors and trigger warnings of genocide are highlighted in a comprehensive manner in Dr. Gregory Stanton’s 10 stages of genocide. This model explicitly lays down the various stages of genocide and the preventive measures that can be employed to combat the same. It states that genocide develops in primarily 10 stages which are “predictable but not inexorable.” These stages may not systematically lead one after another and may occur simultaneously. But generally, all of the stages occur in the course of genocide.

STAGE	DESCRIPTION	SUITABLE PREVENTIVE MEAURES
1.CLASSIFICATION	The cultures of the different groups are classified into “them” and “us” on account of race, nationality, etc.	At this stage, there is a need to establish institutions that transcend such boundaries and actively promote tolerance and understanding
2.SYMBOLIZATION	Names and symbols are attributed to the classifications. E.g.: the yellow star of David on Jews.	To combat this, hate symbols and hate speech can be legally forbidden.
3.DISCRIMINATION	The dominant group establishes laws and customs that may deprive the powerless group of their civil and political rights.	Such discrimination based on race, ethnicity, nationality, etc. must be outlawed. Individuals must have the right to sue such groups and institutions that seek to discriminate against them.
4.DEHUMANISATION	Members of the powerless group are compared to animals and pests. This overcomes the normal human revulsion against murder.	To combat this, there must be made a difference between incitement to genocide and the functioning of regular democracies in order to trace and prevent the escalation of such dehumanization.

5.ORGANISATION	Genocide is always organized, usually by the state, often using militia to prove state deniability.	To combat this, membership in these militias must be banned and legal restrictions must be imposed on the leaders.
6.POLARIZATION	Extremists use the media as well as the law to polarize the dominant groups against the powerless groups	Vigorous objections and restrictions must be imposed on the perpetrators. Security protection must be given to the moderate leaders and assistance must be given to human rights groups
7. PREPARATION	Planning is done for the mass liquidation of the targeted groups. e.g.: Final solution to the Jewish Question.	At this stage, prosecution of the incitement and conspiracy of genocide must be carried out.
8.PERSECUTION	The victims are identified, death lists are drawn up and the victim's human rights are systematically abused	A genocidal emergency must be declared. The UN must organize humanitarian assistance and private relief groups for the inevitable tide of refugees to come
9.EXTERMINATION	It is at this stage of mass liquidation that the crime of genocide is fully achieved	To combat this, rapid and overwhelming intervention by international bodies must be carried out.
10. DENIAL	This is one of the surest indicators of genocide and further genocidal massacres.	The best response is the formation of military tribunals to try the perpetrators of genocide.

9.Conclusion: Genocide as a never-ending vicious cycle?

Genocide is the most severe manifestation of savagery against fellow human beings. And the Holocaust has become the most brutal testimony of that. International Law has vastly changed as a result of the Second World War and the Holocaust, but has failed to prevent such crimes in the present. However, it is important to recognize that International Human Rights standards and the international efforts to enforce them have over time helped to improve human rights conditions in many countries. (Buergethal ,2014). They have also served as a yardstick to measure the human rights conditions of citizens of different countries. This can be attributed to the efforts made at a more legitimate domestic rule as well as provisions for development aid and military assistance for the improvement in the conditions of citizens in many countries.

The Holocaust serves as a reminder of the dehumanization and murder of 6 million Jews and millions of non-Jews. This must not be reduced to mere abstract statistics. The state-sanctioned ideologies of

hatred of the Nazis teaches us the importance of outlawing such atrocious attempts at an early stage. The scathing contempt of the Germans to the fate of the Nazi victims calls attention to the importance of empathy.

The need of the hour is to emphasize on the inherent obligation on the part of the state to protect its citizens from mass atrocities. Responsibility also lies with the International community to take collective action to prevent the escalation of such crimes. The lessons of the Holocaust must not serve as rhetoric but should seek to incite collective action against such atrocities.

The Holocaust ended in 1945 but it left behind a legacy. Although there have been attempts made to compensate the victims and bring the perpetrators to justice, the Holocaust must be remembered so that such a tragedy can never occur again.

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