What's Good for the Goose is Good for the Gander: A Study of the United States Atomic Bomb Project Relative to the Charter of the International Military Tribunal for the Far East

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11-30-04

History 401

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As the smoke cleared on the battlefields of World War II it had become obvious to the Allied Powers that justice needed to be handed out to the Germans and Japanese for their war time atrocities. In what some have called a "victor's justice" the Allied Powers held their two opponents accountable in separate international courts of law. The Japanese trial, which is of interest here, began on May 3, 1946 in Tokyo, Japan. The *Charter of the International Military Tribunal for the Far East*, or the Tokyo Charter, was constructed and ready to be used prior to the Tokyo War Crimes Trial of the Japanese defendants.[1] Within this charter the U.S. set forth the rules and regulations concerning the Tokyo Trial. Unlike the Nuremberg Charter, created for the trial of the Germans, the Tokyo Charter was created solely by the United States without the consent or knowledge of the other Allied Powers. By using this same charter that the United States used against the Japanese, it will be clear that America, too, violated international laws, ironically, against Japan. In order to show this, specific focus has been given to the use of the atomic bomb on Hiroshima, Japan. Additionally, it will be necessary to first show that there was knowledge of how dangerous the bomb itself and its contents would be to the Japanese people. This can be done by examining primary documents from scientists and government officials relaying to one another how dangerous the radiation from the atomic materials was. Once this has been established it will be necessary to describe in detail the actual effects of the bomb being dropped. This will include immediate and long-term effects. Finally, by cross-referencing the use and effects of the bomb with the Tokyo Charter it will be clear that the United States did

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[1]The Tokyo War Crimes Trial is also known as the International Military Tribunal for the Far East, or simply the Tokyo Trial.

violate international law(s).[2]

In 1942 the United States Government took major steps toward developing an atomic bomb, although some work had been done in the years prior. Since this undertaking was considered to be of national interest concerning the war effort, it was important to keep any information about the development of the bomb safeguarded. This secrecy developed from the fear that German, Japanese, or possibly even Soviet spies or scientists could obtain such information and thus be the first state to develop, and possibly use, this powerful new weapon. However, there were secrets that ran much deeper throughout the atomic bomb project, or Manhattan Project as it was commonly referred to. These cloak-and-dagger happenings were known only to a few scientists with the highest possible rank and a handful of government officials. Obviously this makes sense because the more people that know about a secret, the greater risk there is that someone may leak information, purposefully or accidentally. The big hush-hush concerned the radioactive experiments that took place on workers of the project, hospital patients, and even on open environments.

The men and women who worked on the atomic bomb project were spread out across the country. The Office of Scientific Research and Development, the nucleus of research data for national defense, was established by an executive order from the president.[3] The chairman,

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[2]Only when necessary and appropriate, previously established international laws will be used in accordance with the Tokyo Charter. This is being done because Conventional War Crimes, one of the three categories of crimes within the Tokyo Charter, was given no specific definition and therefore is taken to be a reference to international laws that were already in existence concerning war crimes.

[3]University of Chicago, Office of the Vice President for Special Projects, Establishing The Office Of Scientific Research And Development In The Executive Office Of The President

Vannevar Bush, produced three primary centers to undertake the research needed for the atomic bomb project: the University of Chicago, Columbia University, and the University of California, Berkeley.[4] The University of Chicago leased out subcontracts to various other universities and businesses as well. Not much later three more sites were chosen by Brigadier General Leslie R. Groves: Los Alamos, New Mexico; Oak Ridge, Tennessee; and Hanford, Washington.[5] Thus, workers were exposed to harmful materials in more than one place and on more than one occasion.

One of the contracts entered into by the University of Chicago and the U.S. Government called for the university to perform the "Research and design of a toxicity chamber suitable for exposure of men in groups of ten(10) to controlled concentrations of war gases under controlled conditions of temperature, relative humidity and wind velocity."[6] In this case the government was establishing effects of "war gases" on their own citizens, as well as possible weather conditions for the day the bomb would be dropped. It is obvious that the government would have wanted the bomb to be as effective as possible. Therefore, it can be assumed that the weather conditions were taken into consideration so that information could be obtained

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And Defining Its Functions And Duties, 27 May 1941. Box 28, Folder 8.

[4]Dr. Denise DeGarmo, "They Blinded Us With Science: Scientific Underpinnings of US Foreign Policy - The Case of the Atomic Bomb" (American Political Science Association: Southern Illinois University Edwardsville, 2004), 12.

[5]Advisory Committee on Human Radiation Experiments, "The Manhattan Project: A New and Secret World of Human Experimentation," Advisory Committee on Human Radiation Experiments Final Report, <http://tis.eh.doe.gov/ohre/roadmap/achre/intro_3.html> (5 June 2003).

[6]University of Chicago, Office of the Vice President for Special Projects, Research and Development Contract, 13 September 1943. Box 81.

concerning the best day to get a maximum blast and maximum spread of the radioactive "war gases" contained within the bomb. In this case it seems logical that the men would have known that they were being tested on, so scientists could observe their reactions to the radioactive materials that certain high-ranking officials already knew could be dangerous; although it is certainly possible that they did not. This has been a question of contention over the years, that is, whether or not some workers and/or patients were ever told that they were being experimented on. The experiments on patients have raised more questions concerning their knowledge than have the experimentation on the workers. It appears that the workers simply did not know they were being used in a massive experiment. Having so many workers know about such practices would have posed a serious security risk that the government would have had to quell very quickly. Dr. Robert Stone was director of the health division of the Manhattan Project at Chicago and Clinton Laboratories. In 1943 Dr. Stone stated that "'Clinical study of the personnel is one vast experiment.'" and that "'Never before has so large a collection of individuals been exposed to so much radiation.'"[7] This statement came directly from the doctor who was in charge of the health and safety of the personnel.[8] With a statement such as this there is little doubt that being a worker for the government on the atomic bomb project meant being directly involved in a "vast experiment," whether you liked it or not.

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[7]Advisory Committee on Human Radiation Experiments, "The Manhattan Project: A New and Secret World of Human Experimentation," Advisory Committee on Human Radiation Experiments Final Report, <http://tis.eh.doe.gov/ohre/roadmap/achre/intro_3.html> (5 June 2003).

[8]University of Chicago, Office of the Vice President for Special Projects, The Health Program at Chicago and the Clinton Laboratories, States the responsibilities of Dr. Robert Stone in relation to the atomic bomb project, 24 May 1943. Box 61, Folder 5.

As a contract with the Los Alamos Laboratory emphasized, there was a definite need to keep the workers in a rotation process whereby they were regularly in and out of the laboratory. This was done to keep the workers from being overexposed while at the same time allowing them to return to their jobs and work on more radioactive materials. The idea was that the workers would get one month of vacation, paid in full. According to the contract, this leisure time only applied to those workers who might *possibly* be exposed to radiation.[9] So anyone even considered to be in contact with the radioactive materials was given this time off. This supposedly would allow the radiation, accumulated in the body of the worker, to leave the body. Then, after a month, the worker could resume working on radioactive materials with a clean body, at least in theory. This, in and of itself, constitutes a type of experimentation. By periodically draining the workers of their radioactivity, the scientists could consistently measure radiation levels in the workers and simultaneously look for signs of overexposure in the same subjects/workers. This type of experimentation was not unique to Los Alamos. Other such facilities were involved in similar vacation time schemes.

Other contracts blatantly stated how dangerous the work was and the need for particular types of insurance to cover themselves. In one contract between the University of Chicago and the U.S. Government, the government stated that there were "extraordinary circumstances and hazards surrounding the project."[10] The compensation for any disability or death acquired while

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[9]University of Chicago, Office of the Vice President for Special Projects, Contract No. W-7405-eng-36, "Vacations," University of California , Los Alamos Scientific Laboratories, 1942. Box, 28, Folder 8.

[10]University of Chicago, Office of the Vice President for Special Projects, Contract No. W-7401-eng-37, section (k) page 10, Entire Contract between U.S. Government and University

working on the project was lump sum payments of ten thousand dollars. If the worker was deceased then the money of course went to the spouse. Also, according to the same contract, "all work under this contract is to be performed at the expense of the Government."[11] This did not solely mean monetary expenses either. Any mishaps were solely the responsibility of the government. In 1944 the Associate Director for the Health Division, of which Dr. Stone was director, stated that there were no safe ways to determine who *did not* require special hazard insurance. His solution was to give the special hazard insurance to all workers of the Metallurgical Laboratory.[12] In other words, there were no workers who were not being affected by the radioactive elements used in making the bomb. At nearly every facility involved in the atomic bomb project the story was the same. Other similar contracts included Death and Dismemberment Policies and Hazard Pay relative to Radioactive Hazards.

It is important to mention at this point that the scientists were not completely ignorant of radioactive materials and the harm they could cause prior to the development of the atomic bomb. In the early 1920's workers making watches with glow-in-the-dark dials were seriously damaged. The glowing effect was a result of radioactive radium. It is true that radium is not uranium, plutonium, or polonium, the substances used in the atomic bomb project. However, in

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of Chicago, 29 April 1943. Box 68, Folder 4.

[11]University of Chicago, Office of the Vice President for Special Projects, Contract No. W-7401-eng-37, Article XIV- Responsibility Of Contractor-Contingencies, page 16, Metallurgical Laboratory, 29 April 1943. Box 68, Folder 4.

[12]The Metallurgical Laboratory(Met Lab) was the codename for the University of Chicago. Its primary function was to design nuclear reactors, separate the uranium from plutonium, and actually design the bomb. See "They Blinded Us With Science" by Dr. Denise DeGarmo. University of Chicago, Office of the Vice President for Special Projects, Special Hazard Insurance, Memo of C.J. Watson, M.D., Associate Director - Health Division, 4 February

1946, a "secret history" was written stating the following: "The memory of this tragedy," speaking of the radium dial painters, "was very vivid . . . and the thoughts of potential dangers of working . . . where radiation hazards existed were intensified . . .."[13] The workers had to paint the radioactive substance onto the watches. In order to keep the paint brush with a nice pointy tip, the workers were told to lick the end of the brush to give it that special point that was desired. Unbeknownst to the workers, and most likely to the employers at the time, this was literally killing the workers. It was later discovered that they were dying of anemia and "radium necrosis," a disease that literally eats away the jawbone.[14] So even though some of the atomic bomb substances were not initially familiar, memories of what radiation could do still lingered.

Other than the workers being guinea pigs for the scientists and others to experiment on, hospital patients were used as well. In this case there were two kinds of tests: internal and external. The medical team of the Manhattan Project decided that injections of uranium, plutonium, polonium, and/or other radioactive substances would supply them with sufficient data to see the human effects. The Universities of Rochester, California, and Chicago were all involved with plutonium experimental injections. The Army hospital in Oak Ridge, Tennessee

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1944. Box 61, Folder 5.

[13]Advisory Committee on Human Radiation Experiments, "The Manhattan Project: A New and Secret World of Human Experimentation," Advisory Committee on Human Radiation Experiments Final Report. <http://tis.eh.doe.gov/ohre/roadmap/achre/intro_3.html> (5 June 2003).

[14]Dr. Ross Mullner, "Watch Dial Painters, c. 1922-1923," New Jersey Women's History, 2001, <http://www.scc.rutgers.edu/njwomenshistory/Period_5/radiumdial.htm> (22 November 2004).

was also involved.[15] Since the materials that were injected into the patients were national secrets affiliated with the war effort, those patients were no doubt uninformed of the *entire* situation that was happening. The previously mentioned Dr. Stone, was involved with the external doses of radiation. He was in charge of this procedure at Chicago and San Francisco. Although, the same practice occurred at the Memorial Hospital in New York City.[16] The external doses of radioactive elements were given to both healthy and sick patients. Throughout these experimentations some scientists and especially doctors began questioning themselves and their work. Questions of morality, ethics, and national duty came up time and time again, and would continue to do so long after the war was over. In fact, before the first bomb was dropped on Hiroshima, sixty nine scientists formally protested, in writing, to President Harry Truman not to drop the bomb.[17] It became understood among these scientists that they were creating a tool to kill, and from their knowledge of the chemicals inside the bomb they knew it would do much more than allow for a quick and simple death.

The type of behavior exhibited by the scientists, medical teams, and government officials directly shows that they knew that the chemicals used to create the atomic bomb were lethal to human beings. Monthly reports by the scientists allowed others to know the dangers as well.

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[15]The University of Rochester was also involved in polonium and uranium injections. Advisory Committee on Human Radiation Experimentation, "The Manhattan Project: A New and Secret World of Human Experimentation," Advisory Committee on Human Radiation Experiments Final Report. <http://tis.eh.doe.gov/ohre/roadmap/achre/intro_3.html> (5 June 2003).

[16]Ibid., (5 June 2003).

[17]Richard G. Hewlett and Oscar E. Anderson Jr., The New World, 1939/1946, vol. 1 of A History of the United States Atomic Energy Commission (University Park, PA: The

Although, it should be reiterated that very few government and military personnel, outside the highest scientific rung, knew detailed specifics about such undertakings. Only the highest ranking military and government officials that were also close to the scientists and the president were informed.

Knowing that the elements used to create the first atomic bomb were "extra-hazardous," "abnormal," and could, and did, cause disabilities and/or death, the decision was made to go ahead with the dropping of the first atomic weapon in the history of mankind. On the morning of July 16, 1945 the atomic bomb had been tested at Alamogordo, New Mexico. The bomb used in the test was actually the same type used on Nagasaki Japan, not Hiroshima. It was felt that the gun-type uranium bomb, the type used on Hiroshima, would perform as predicted; therefore, it was felt that no test was needed. However, the actual explosion at Alamogordo gave officials some idea of what would happen at Hiroshima. But why were Hiroshima and Nagasaki chosen as targets for the use of this powerful weapon?

According to the report released by the Manhattan Engineer District, otherwise known as the Manhattan Project, there were four main characteristics that the bomb sites should have, including that " . . .the targets should contain a large percentage of closely-built frame buildings . . . that would be most susceptible to damage by blast and fire."[18] This was chosen as an important aspect since it was theorized that the bulk of the damage caused by the bomb would be the initial blast and the fireball that would follow. Also relating to this theorization, it was felt

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Pennsylvania State University Press, 1962), 399.

[18]The Avalon Project at Yale Law School, The Atomic Bombings of Hiroshima and Nagasaki by: The Manhattan Engineer District, June 29,1946, 2002,

that the cities should have a densely built up area approximately one mile in radius. Thirdly, "the selected targets should have a high military strategic value." This characteristic should be self explanatory since everything concerning the atomic bomb was considered to be for the war effort. The last aspect that was seen as being of importance was that the first city was to have been previously untouched from bombings. This would allow the United States to determine the precise, or at least as much as possible, the effects of a single atomic explosion.[19] Once the targets were chosen, the Alamogordo test was a success, and the president's O.K. was given, the only thing left to do was to bomb Japan.

On July 26, 1945 the Potsdam Proclamation was sent to the Japanese Government. This document laid out the unconditional surrender of Japan, along with what would happen if Japan did not surrender. The main section of the proclamation stated that Japan was to surrender unconditionally all of its military forces, and show assurance of good faith, or else suffer the consequences: "'prompt and utter destruction.'"[20] The Japanese Government refused an unconditional surrender and therefore the promise of utter destruction was carried out on August 6, 1945.

The city of Hiroshima is a relatively flat area. When the bomb hit early in the morning, maximum devastation was accomplished. This was due in part to the detonation of the bomb seconds before it actually hit the soil. This allowed the explosion to spread farther and faster than had the bomb detonated on impact. Of the seven square miles actually built up, nearly four

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<http://www.yale.edu/lawweb/avalon/abomb/mpmenu.htm> (23 November 2004).

[19]Ibid., (23 November 2004)

[20]Hewlett and Anderson Jr., 1962, 395.

and a half square miles were completely destroyed.[21] Buildings over three thousand yards away from the hypocenter were completely annihilated. Due to a lack of warnings and the population having become accustomed to airplanes flying overhead, the Enola Gay was virtually ignored.[22] Because the city was caught almost completely off guard, much of the estimated population of 250,000 people had not taken shelter. People on their way to work and even some schoolchildren were in the open when the bomb exploded. Around one hundred thousand people died as a direct result of the bomb blast. This amounts to almost one half of the entire population of the city being killed immediately.[23] Sixty percent of the immediate deaths were, according to the health department at Hiroshima, caused by flames that reached temperatures of up to seven thousand degrees Fahrenheit.[24] The three primary categories of death caused by the bomb were flash burns, radiation, and "other," which mainly included being killed from collapsing buildings. According to the U.S. Strategic Bombing Survey, set up to study the effects of U.S. aerial attacks, approximately fifteen to twenty percent of deaths were caused by radiation

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[21]Nuclear Age Peace Foundation, U.S. Strategic Bombing Survey: The Effects of the Atomic Bombing of Hiroshima and Nagasaki Chairman's Office 19 June 1946, 2004, <http://www.nuclearfiles.org/redocuments/1946/460619-bombing-survey1.html> (31 October 2004).

[22]The Enola Gay was the B-29 aircraft that dropped the atomic bomb on August 6, 1945.

[23]See bar graph on page 23 for information concerning the relationship between death and distance from blast. No statistics were found concerning a distinction between civilian and military deaths and civilian and military structural damage.

[24]Mitsuru Ohba and John Benson, "Introduction: About the A-Bomb," A-Bomb WWW Museum, July 2000, <http://www.csi.ad.jp/ABOMB/data.html> (21 November 2004).

sickness.[25] Long-term effects of the bomb have been studied to date. In those findings one can see an increase in cancers, birth defects, sterility, and other abnormalities associated with radiation exposure. Statistics show, however, that the blast itself killed the majority of the population. Therefore, the people who remained, to suffer radiation effects, would have been exposed to relatively low doses of radiation and comprised a very small group compared to the previously existing population. Even still, horrendous side effects occurred, but had the blast not been so powerful and killed a majority of the population, then the actual effects of radiation on the people of Hiroshima could be better studied. The majority of people who were left to suffer with radiation would have been at such a distance that the radiation levels would have been seriously diluted, even during the fallout. Even though there have been professional studies conducted, the fact remains that the survivors studied were mere remnants of a catastrophic event. This is not to say that any tests performed were absolutely worthless. Indeed they can be very helpful in determining the effects of radiation in connection with certain amounts of radiation exposure. For instance, at levels that were considered dangerous, even for war, the number of births to babies with mental retardation nearly quadrupled.[26] After the bomb had been dropped, President Truman gave a statement to the world that if the Japanese still refused to surrender,

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[25]Nuclear Age Peace Foundation, U.S. Strategic Bombing Survey: The Affect of the Atomic Bombings of Hiroshima and Nagasaki Chairman's Office, June 1946, 2004, <http://www.nuclearfiles.org/redocuments/1946/460619-bombing-survey1.html> (31 October 2004).

[26]William J. Schuller, Effects of Atomic Radiation: A Half-Century of Studies From Hiroshima and Nagasaki (New York, New York: John Wiley & Sons, Inc., Publication, 1995), 189.

they may expect a rain of ruin from the air, the like of which has never been seen on this earth. Behind this air attack will follow sea and land forces in such numbers and power as they have not yet seen, and with fighting skill of which they are already well aware.[27]

Overall, the dropping of the first atomic bomb was a success, in a militaristic way. Any enemy military sites were certainly demolished. Hiroshima was the one of the largest supply depots for the Japanese military. However, according to the U. S. Strategic Bombing Survey, "Its shipping activities had virtually ceased by the time of the attack.[28] By the time the U.S. had the first bomb ready in the summer of 1945, the Japanese supplies were running very thin. In fact, Vannevar Bush later recalled that the atomic bomb allowed the U.S. to win the war, but that it was only a matter of time because Japan was basically on its last leg. Although, one of the reasons given for the use of the bomb, and not staying on track with the invasion of Kyushu, was that American lives would be saved. Scholars have long since debated over the question of whether or not lives were saved by using the bomb. In actuality all that people can do is theorize because the bomb *was* used and it is quite impossible to reverse time and see what would have happened had the bomb not been dropped. Suppose for a moment that by using the bomb lives would have been saved, American lives of course. Does that justify the deaths and suffering of tens of thousands of others? According to President Truman, yes. According to Truman, "it was far better to kill 60,000 Japanese than . . . Americans."[29]

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[27]Herbert Feis, The Atomic Bomb and the End of World War II, 2nd ed. (Princeton, New Jersey: Princeton University Press, 1966), 123.

[28]Nuclear Age Peace Foundation, (31 October 2004).

[29]National Archives and Records Administration, "The Decision to Drop the Atomic Bomb," Truman Presidential Museum & Library, <http://www.trumanlibrary.org/whistlestop/study_collections/bomb/large/documents/fulltext.php

Having written about the extreme dangers of radioactivity among the workers on the atomic bomb project, the knowledge of those dangers by certain people, the reasons why Hiroshima was chosen, the effects of the bomb, and why the bomb was used, it is now necessary to take a look at the international laws of that time. This is done in relation to the aforementioned subjects. After examining those international laws a conclusion can finally be drawn regarding the question of whether or not the United States violated any international laws in relation to any and all involvement with, and only with, the atomic bomb.

As mentioned previously, the primary tool to be used as a guide for the international laws will be the Tokyo Charter. According to Chapter II/Article 5, "Jurisdiction And General Provisions," there were three categories of crimes for which the Japanese could have been tried; thus, the same three categories will be used here. The first of these laws, Crimes against Peace, was created by the Allied Powers, post-World War Two, so that the high ranking officials of Nazi Germany could be held responsible for war time atrocities. In order to commit a crime against peace, one would have to plan, prepare, initiate, or wage "a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements or assurances . . .."[30] This law has caused some trouble with scholars. Exactly what is a "war of aggression?" Are not all wars aggressive? The fact is that there was no definition for a war of aggression at that time. Although the Pact of Paris, established in 1928, was responsible for prohibiting war as an act of

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?fulltextid=21> (23 November 2004). This was in response to whether or not the bomb should be used in place of a military invasion.

[30]U. S. Department of State Far Eastern Series, 12, Trial of Japanese War Criminals (Washington: United States Government Printing Office, 1946), 40.

national policy and thus providing some sort of basis to build from. This served as a guide to give some sort of relevance and distinction to the term war of aggression. Basically, it was a way to stop wars of conquest as well as wars of unprovokedness. There would not be a legal definition for such a term until 1984 when the United Nations General Assembly decided to take up the task.[31] The United States did not prepare, wage, plan, or otherwise initiate the Second World War in any way, especially by building or using the atomic bomb. Therefore, regardless of whether they were engaged in the war or not, it appears that America did not in any way violate the law in respect to Crimes against Peace.

The second group of crimes the Tokyo Tribunal had jurisdiction over was the Conventional War Crimes. The only definition given in the charter is that conventional war crimes are "Namely, violations of the laws or customs of war."[32] It would seem as though the definition for such crimes lay in limbo. Except, under group three of the indictments section of the charter, the Laws and Customs of War relevant to the Conventional War Crimes and Crimes against Humanity are referred to in the Appendix.[33] So referring to Appendix D, one finds that the United States used the Hague Convention on Land Warfare (Hague Convention IV), established in 1907, as an important aspect for which to base the definition of Conventional War Crimes on.[34] The first line under Article 23 states that it is "especially" illegal to "employ

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[31]B.V.A. Roling, The Tokyo Trial and Beyond: Reflections of a Peacemonger, ed. Antonio Cassese (Oxford: Polity Press, 1993), 70.

[32]U.S. Department of State Far Eastern Series, 12, 40.

[33]U.S. Department of State Far Eastern Series, 60-61.

[34]Ibid., 90. Of particular importance is Section II Chapter I Articles 23 and 25.

poison or poisoned weapons."[35] The atomic bomb's sheer power of explosiveness was greater than anything up to that point. Additionally, the bomb contained chemicals and elements that were extremely harmful to humans, as shown previously. If the United States Government was concerned for their own workers' health and well-being because of the dangers of radioactive materials, then that in and of itself shows that the elements and other such materials were poisonous to the human body, and thus prohibited by international law for use in war. After the bomb had been dropped, many people suffered immediately from radioactive illnesses such as leukemia. As mentioned previously, when long-term radiation effects were examined, the effects were just as dangerous. So certainly the elements comprising the atomic bomb can be considered poisonous and a breach of the Hague Convention of Land Warfare Section II Chapter I Article 23(a).

Still working under Article 23, line (e) states that it is especially forbidden to "employ arms, projectiles, or material calculated to cause unnecessary suffering."[36] The first red flag that goes up after reading this should relate to the term "unnecessary." What exactly is unnecessary suffering, and is there such a thing as necessary suffering, and if so what constitutes such suffering? This makes it difficult to relate this aspect of the law to possible war crimes. However, causing non-military citizens to suffer through the effects of radiation seems, quite logically, to constitute an unnecessary suffering. Others within the blast range were charred and

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[35]Richard A. Falk, Gabriel Kolko, and Robert Jay Lifton, eds., Crimes of War: A Legal, Political, and Psychological Inquiry Into the Responsibility of Leaders, Citizens, and Soldiers for Criminal Acts in Wars (New York: Vintage Books, 1971), 38.

[36]Falk, Kolko, and Lifton, eds., 38.

suffered from flash and fire burns, cataracts, bleeding of gums, and more. Again, it is not clear what a necessary suffering is, but citizens of any state should not have to suffer from militaristic quarrels. Unfortunately, this has yet to be avoided in all *major* military conflicts. Had such atrocities happened to soldiers then it seems that the *law* may have, sadly, deemed the suffering necessary. It is not enough to simply state that the materials that were released from the atomic bomb were "extra-hazardous," and how that made the innocent people of Hiroshima to suffer, *unnecessarily,* but the fact remains that the U.S. knew that the materials were dangerous before dropping the bomb and it was carried out anyway, with such knowledge. This shows that the citizens unnecessarily suffered and that the U.S. therefore violated the Hague Convention on Land Warfare Section II Chapter I Article 23 (e).

Article 25 states that "The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited."[37] Being that Hiroshima was at one time an important military site, it is certainly acceptable to say that the town or village was defended, to some degree. But what about the civilian buildings and dwellings. In this case it seems important to mention that had the U.S. used other types of bombs, which would have not caused such wide-spread destruction, then "undefended" buildings or dwellings may have not been hit. However, with such a destructive force as was caused by the bomb there were no doubt undefended buildings and dwellings that were hit. Those places would have likely fallen under the category of *bystander* since it can be assumed that a military site would have been defended, again, to some degree. It can also be said that destroying non-military aspects of the city was a

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[37]Falk, Kolko, and Lifton, eds., 39.

goal. The Interim Committee on the Atomic Bomb, which was conceived under President Harry S. Truman, was created to consider the military, scientific, political, and any other type of questions concerning the atomic bomb.[38] In their report the members of the committee unanimously agreed that the bomb should be used on a "dual target." This referred to a city in which there were military dwellings that were "surrounded or adjacent to houses and other buildings most susceptible to damage."[39] This was agreed upon by the committee because it was felt that such an event would cause a "deep psychological impression—to shock as many Japanese as possible."[40] Therefore, it seems that there is no doubt that undefended dwellings and buildings were not only destroyed, which in and of itself violates Article 25, but were deliberately targeted. By doing this the United States had entered into a gruesome form of combat: creating civilian targets and assigning them military importance.

Turning once again to the Tokyo Charter, the United States also used the Treaty of Versailles of 1919 against the Japanese. Particularly, Article 171 of the treaty was used to show a breach of the laws of war pertaining to the use of poison gases. According to Part V, of which Article 171 is a section, the particulars of the Articles were aimed specifically at Germany, but they were actually an "initiation of a general limitation of the armaments of *all* nations."[41] (emphasis added) Thus, the United States was able to use the Versailles Treaty against the

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[38]Feis, 38.

[39]Ibid., 47 - 48.

[40]Ibid., 47.

[41]Steven Schoenherr, The Versailles Treaty June 28, 1919, 8 February 2004, <http://history.sandiego.edu/gen/text/versaillestreaty/vercontents.html> (28 November 2004).

Japanese after World War II. Therefore the same law is used here to evaluate the behavior of the U.S.. Article 171 states that it is illegal to use "asphyxiating, poisonous, or other gases and all analogous liquids."[42] It has already been shown that the elements released from the atomic bomb were poisonous to humans. However, the elements contained within the bomb were not liquid or "gases." The primary isotope used in the bomb was uranium-235, contained in the naturally occurring element uranium. When the Uranium is enriched to be used as a weapon, the concentration of uranium-235 is heightened while the other isotope of uranium, uranium-238, is decreased in concentration. However, whether uranium is found naturally in the earth or it is being enriched for a weapon, it still remains a metallic substance. When the bomb exploded over the city of Hiroshima, though, the radioactive isotopes were then in a *gaseous* state. Technically, that would make the use of the bomb a violation. However, it is important here to take a look back to the time in which the Treaty of Versailles of 1919 was created.

It was just after World War One and gas warfare was newly introduced, particularly the lethal chlorine gas. Weapons such as those were on the minds of the men in charge of creating the ban on the use of poisonous gases. Therefore, they specifically were banning the gas bombs used during WWI, and had no idea of the possibilities of a future weapon such as the atomic bomb. In relation to the Hague Convention of 1907 mentioned previously, in which the council stated that they could not possibly predict the circumstances of all human activity ever, the same idea can be applied here. It is true that nobody at that time could have completely foreseen the construction of or implications of the atomic bomb. There are two possible ways to view a

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[42]Ibid., (28 November 2004).

solution to the problem of whether or not the gaseous state of the uranium after the explosion would violate a law made by men that never fathomed such a weapon: first, one could say that a gas is a gas and the law is the law, in which case the United States would be in violation of the law. The second way to view this problem is to state that a special case such as the atomic bomb would need a special or at least a new law to govern its use. Since there were no such laws at the time it would be impossible to create one now to fit into this research, especially now knowing the end result. Consequently, in light of this wrinkle in the research, I have deemed that because of a lack of proper lawful support, it is not possible to determine whether or not the use of the bomb was unlawful according to Article 171 of the Versailles Treaty.[43] It is paramount, however, that it is understood that this does not state that the U.S. *did not* violate the law, it will simply take more in depth research to construct a definitive answer, if possible.

The previous *breeches* of international laws were all under the category of Conventional War Crimes, the second of three types of crimes of which the Tokyo Trial had jurisdiction over. So finally it is time to turn to the last and final category of the crimes which the tribunal had jurisdiction over, Crimes against Humanity. According to the charter, Crimes against Humanity constitutes, partly, "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war . . .."[44] The use of the atomic bomb had nothing to do with enslavement, deportation, or extermination. Therefore, murder and inhumane acts are the only terms actually relevant in the aforementioned quote.

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[43]Department of Energy, Uranium Stewardship Activities: Uranium Facts, 2004, <http://www.ne.doe.gov/uranium/facts.html> (28 November 2004).

Unfortunately, nowhere has a definition for murder or inhumane acts been found in this research, relevant to international law for this time period. Was it murder to take the lives of civilians by using the atomic bomb, or were they, as many have stated, in the way and acceptable casualties of war? As stated earlier, it was part of the plan to bomb a "dual-target" city so that not only military sites would be hit, but homes as well. This plan makes it pretty clear that the civilians at Hiroshima that were killed, immediately and from long-term effects, were not merely casualties of war because they happened to be near or around military sites. In fact it would seem that the deliberate targeting of civilian establishments, and therefore civilians, constitutes a murderous act. Again, to say with certainty is not possible at this time without the proper and *specific* definition of what constituted a murderous act. Was it inhumane to scorch the skin of civilians by flash and fire burning, or to have them suffer from radioactive illnesses? It can surely be said that most people would say that such acts were and are immoral, but again a lack of a definition leaves this question empirically unanswered. It would be quite easy to obtain definitions for such terms by mixing and matching various forms of law, but they would not be international laws. The definition for murder or an inhumane act may not be the same today as it was over fifty years ago. The fact is, that when dealing with legal terms and definitions relevant to particular situations it is important to be very specific and pertinent. In this case it is simply not possible, and it is not honest or entirely correct to use such a false substitution. Therefore, the question of whether or not the United States violated any Crimes against Humanity, *according to international law*, will have to go unanswered, for now.

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[44]U.S. Department of State Far Eastern Series, 40.

Life is not complete without a sense of irony. The preceding has been no exception. The Tokyo Charter was designed solely by the United States to charge and try alleged Japanese war criminals for acts they committed immediately prior to and during World War Two. That same charter was used here to find out if the United States committed war crimes during World War Two. Additionally, the main focus was an act committed by the United States against Japan. To show that the U.S. did or did not violate international law, according to the Tokyo Charter and other international laws established before it, the extreme dangers and toxic nature of the components of the atomic bomb were investigated. This was accomplished by using primary documents as the major source. For example, contracts between the government and universities were used with relevant information stating specifically how hazardous the materials were to the workers. Other such materials included memos that were both official and unofficial, letters, insurance policies, and other such materials that circulated in and around the high-ranking officials involved in the atomic bomb project. After establishing the dangers of the materials and elements that made up the bomb itself, a brief look at the immediate and long-term effects of the bomb was undertaken. Some of those effects included instantaneous death by the explosion or by other related means, varying degrees and types of burns, and radiation illness. The sources used for this aspect of the paper included various internet resources, primarily concerning nuclear peace and general information about the bombings of Hiroshima and Nagasaki. Also used was a source by a scientist who worked for a U.S. government organization sent to scientifically study such long-term effects.[45] Finally, the Tokyo Charter was examined more

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[45]This refers to William J. Schull, cited previously, who worked for the Atomic Bomb

closely and carefully alongside the information preceding it. There were three major components of the charter that were used: the types of crimes the Tokyo Trial had jurisdiction over. Therefore, the same crimes were used to examine the United States' case of war crimes.

Of the three crimes examined, Crimes against Peace was not relevant to the U.S.'s role in using the atomic bomb against Japan. The second, Conventional War Crimes, found that the United States had violated Section II Chapter I Article 23 lines (a) and (e) of the Hague Convention on Land Warfare, 1907. These laws were violated because of the use of poisonous materials and the causing of unnecessary suffering. Also, Article 25 of the same convention was breeched for attacking and specifically targeting undefended buildings and dwellings. Moreover, Part V Article 171 of the Versailles Treaty of 1919 is seen as insufficient for concluding an answer related to atomic bomb violations. Even though the substance used within the bomb was poisonous to humans, it was deemed necessary by this author to conduct further research in order to come to a definite answer as to whether or not the gaseous state of the radioactive isotopes can be filed under the same meaning of gases in the aforementioned international law. This conclusion may sound technically absurd, but *opinions* are not ethical tools used in a court of law to decide cases, therefore, neither were they used here to determine breeches of international law. The last set of crimes, Crimes against Humanity was not so cut and dry either. It turned out that due to a lack of a specific definition for murder and an inhumane act, according to international laws, that no conclusions could be drawn relevant to this specific set of crimes, in order to answer the question that was ultimately posed for the entire paper: Did the United States of

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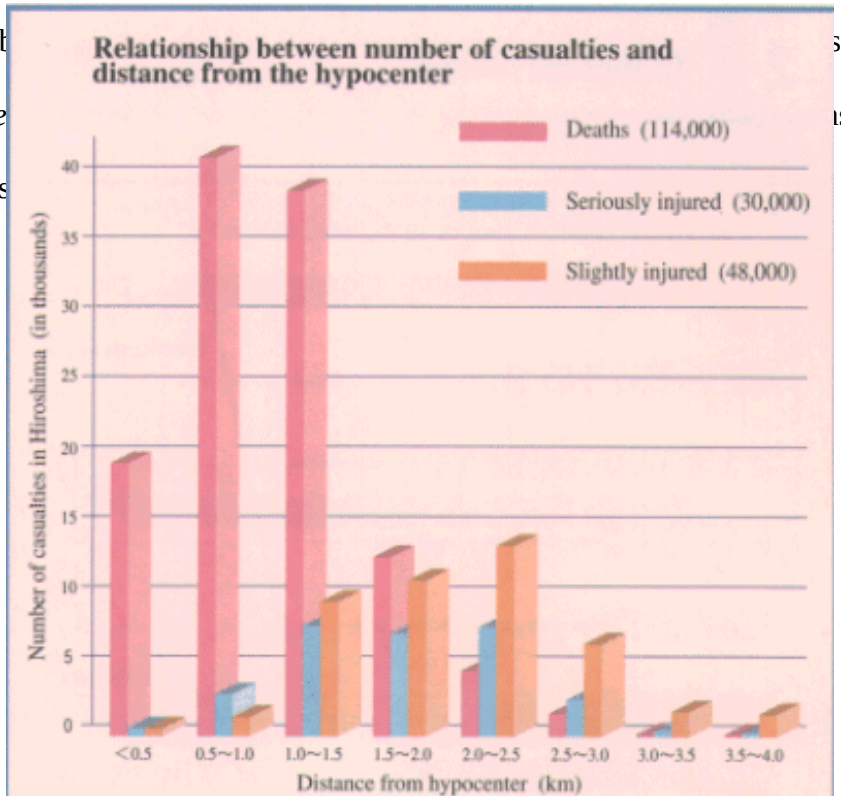
Casualty Commission directly after WWII. He is a scientist and has played a major role in follow up studies concerning the long-term effects of the bombings. For more information see

America violate international laws, relevant to the Tokyo Charter, by involving itself in the use of the atomic b shown the various laws that *were* nswer to this question is yes



his book Effects of Atomic Radiation: A Half-Century of Studies from Hiroshima and Nagasaki.

Source: Ohba, Mitsuru and John Benson. "Introduction: About the A-Bomb," A-Bomb WWW Museum. July 2000. <http://www.csi.ad.jp/ABOMB/data.html> (21 November 2004).

Bibliography

Books

Falk, Richard A., et al. Crimes of War: A Legal, Political, and Psychological Inquiry Into the Responsibility of Leaders, Citizens, and Soldiers for Criminal Acts in Wars. New York: Vintage Books, 1971.

Feis, Herbert. The Atomic Bomb and the End of World War II, 2nd ed. Princeton, New Jersey: Princeton University Press, 1966.

Hewlett, Richard and Oscar E. Anderson Jr.. The New World, 1939/1946, Vol. 1 of A History of the United States Atomic Energy Commission. University Park, PA: The Pennsylvania State University Press, 1962.

Roling, B.V.A.. The Tokyo Trial and Beyond: Reflections of a Peacemonger. Edited by Antonio Cassese. Oxford: Polity Press, 1993.

Schuller, William J.. Effects of Atomic Radiation: A Half-Century of Studies from Hiroshima and Nagasaki. New York, New York: John Wiley & Sons, Inc., Publication, 1995.

Archival Documents

University of Chicago. Office of the Vice President for Special Projects. Contract No. W-7405-eng-36. Contract for the management and operation of the Los Alamos National Laboratory through the University of California by the United States Government, 1942. Box 28, Folder 8.

- - -. Office of the Vice President for Special Projects. Contract No. W-7405-eng-37. Entire Contract between the United States Government and the University of Chicago, 29 April 1943. Box 68, Folder 4.

- - -. Office of the Vice President for Special Projects. Establishing The Office Of Scientific Research And Development In The Executive Office Of The President and Defining Its Functions and Duties. Executive Order by President Franklin Delano Roosevelt, 27 May 1941. Box 28, Folder 8.

- - -. Office of the Vice President for Special Projects. The Health Program at Chicago and the Clinton Laboratories. Statement concerning Dr. Robert Stone and his Health Division's responsibility for the health and safety of the work and workers at Chicago and Clinton Laboratories, 24 May 1943. Box 64, Folder 5.

- - -. Office of the Vice President for Special Projects. Research And Development Contract. Contract between the United States Government and the University of Chicago concerning research and development relative to the atomic bomb project, 13 September 1943. Box 81.

- - -. Office of the Vice President for Special Projects. Special Hazard Insurance. Memo of Dr. C.J. Watson, Associate Director of the Health Division for the Manhattan Project, 4 February 1944. Box 61, Folder 5.

Government Document

United States Department of State Far Eastern Series, 12. Trial of Japanese War Criminals. Washington: United States Government Printing Office, 1946.

Internet Resources

Advisory Committee on Human Radiation Experiments. "The Manhattan Project: A New and Secret World of Human Experimentation." Advisory Committee on Human Radiation Experiments Final Report. <http://tis.eh.doe.gov/ohre/roadmap/achre/intro_3.html> (5 June 2003).

The Avalon Project at Yale Law School. The Atomic Bombings of Hiroshima and Nagasaki by: The Manhattan Engineer District, June 29, 1946. 2002. <http://www.yale.edu/lawweb/avalon/abomb/mpmenu.htm> (23 November 2004).

Department of Energy. Uranium Stewardship Activities: Uranium Facts. 2004. <http://www.ne.doe.gov/uranium/facts.html> (28 November 2004).

Mullner, Ross, Dr.. "Watch Dial Painters, c. 1922-1923." New Jersey Women's History. 2001. <http://www.scc.rutgers.edu/njwomenshistory/Period_5/radiumdial.htm> (22 November 2004).

National Archives and Records Administration. "The Decision to Drop the Atomic Bomb." Truman Presidential Museum & Library. <http://www.trumanlibrary.org/whistlestop/study_collections/bomb/large/documents/fulltext.php?fulltextid=21> (23 November 2004).

Nuclear Age Peace Foundation. U.S. Strategic Bombing Survey: The Effects of the Atomic Bombing of Hiroshima and Nagasaki Chairman's Office 19 June 1946. 2004. <http://www.nuclearfiles.org/redocuments/1946/460619-bombing-survey1.html> (31 October 2004).

Ohba, Mitsuru and John Benson. "Introduction: About the A-Bomb." A-Bomb WWW Museum. 2000. <http://www.csi.ad.jp/ABOMB/data.html> (21 November 2004).

Schoenherr, Steven. The Versailles Treaty, June 28, 1919. 2004. <http://history.sandiego.edu/gen/text/versaillestreaty/vercontents.html> (28 November 2004).

Unpublished Professional Paper

DeGarmo, Denise, Dr.. "They Blinded Us With Science: Scientific Underpinnings of US Foreign Policy- The Case of the Atomic Bomb." American Political Science Association: Southern Illinois University Edwardsville. 2004.