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INTERNATIONAL HUMAN RIGHTS AND THE NUREMBERG JUDGMENT

Whitney R. Harris*

The judgment of the International Military Tribunal at Nuremberg, Germany, was handed down on September 30-October 1, 1946, approximately a quarter of a century ago.¹

This international judicial body, created *ad hoc* for the purpose, ruled upon criminal offenses charged by the allied powers in World War II against leaders of Nazi Germany. In addition to determining the guilt or innocence of the accused, the Tribunal laid down principles of international law which it hoped would contribute to the protection of human rights in war and to the overall protection of humanity against war.

As Mr. Henry L. Stimson declared at that time:²

The law made effective by the trial at Nuremberg is righteous law long overdue. It is in just such cases as this one that the law becomes more nearly what Mr. Justice Holmes called it: 'the witness and external deposit of our moral life.'

With the judgment of Nuremberg we at last reach to the very core of international strife, and we set a penalty not merely for war crimes, but for the very act of war itself, except in self-defense. . . .

International law is still limited by international politics, and we must not pretend that either can live and grow without the other. But in the judgment of Nuremberg there is affirmed the central principle of peace—that the man who makes or plans to make aggressive war is a criminal. A standard has been raised to which Americans, at least, must repair; for it is only as this standard is accepted, supported, and enforced that we can move onward to a world of law and peace.

In the twenty-five years which have passed since the Tribunal handed down its opinion, there has been no general war between major powers. But war has not ceased to exist. There have been constant battles among the world's smaller nations with a limited involvement of the major powers. The judgment of the Tribunal has

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¹ *1 TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL* 366 (Secretariat of the Tribunal, pub. 1947-49). [hereinafter cited as *TMWC*.]

² *H. L. STIMSON & MCG. BUNDY, ON ACTIVE SERVICE IN PEACE AND WAR* 590-91 (1948) [hereinafter cited as *STIMSON*].

thus not eliminated the resort to war for the settlement of disputes among nations, but it has contributed to a growing acceptance of the principle that war must become an impermissible means of adjusting such disputes.

THE CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL

An agreement was signed in London on August 8, 1945, by the governments of the United States, Great Britain, France, and the Soviet Union for the prosecution and punishment of the major war criminals of the European Axis.³ The agreement called for the creation of an International Military Tribunal with jurisdiction to try war criminals whose offenses had no particular geographical location.⁴ The constitution, jurisdiction, and functions of the Tribunal were set out in an annexed Charter which constituted an integral part of the agreement.⁵

Provision was made for the adherence of other governments, and by the time the judgment of the Tribunal was handed down, nineteen other countries had joined in the agreement.⁶ By its terms, the agreement was to remain in force for one year and thereafter, subject to the right of any signatory to terminate it upon one month's notice.⁷ No such notice of termination has ever been given. The agreement thus remains viable as a declaration of human rights, binding upon the signatory and adhering nations. Moreover, those states which were parties to the agreement at the time the Tribunal rendered its opinion are undoubtedly estopped from disavowing the principles of law which they invoked against the Nuremberg defendants.

By an Executive Order of May 2, 1945,⁸ President Harry S. Truman designated Mr. Justice Robert H. Jackson, a member of the Supreme Court of the United States, as the representative of the United States in drafting the protocol, and as its chief counsel in preparing and prosecuting charges of atrocities and war crimes against such of the leaders of the European Axis powers as the United States might agree, with any of the United Nations, to bring to trial before an international military tribunal. Justice Jackson signed the London Agreement for the United States pursuant to this authority.⁹

³ TMWC, *supra* note 1, at 8-9.

⁴ *Id.* at 8.

⁵ *Id.* at 10-18.

⁶ *Id.* at 9.

⁷ *Id.*

⁸ W. HARRIS, TYRANNY ON TRIAL 11 (1954) [hereinafter cited as HARRIS].

⁹ TMWC, *supra* note 1, at 9.

The Charter, contained in the London agreement, defined crimes which came within the jurisdiction of the tribunal. Those for which individual responsibility was to be assessed included crimes against peace, war crimes, and crimes against humanity.¹⁰ Although the offenses within these categories were broadly stated, the Tribunal observed in its judgment that: "The Charter is not an arbitrary exercise of power on the part of the victorious Nations, but in the view of the Tribunal, as will be shown, it is the expression of international law existing at the time of its creation; and to that extent is itself a contribution to international law."¹¹

The Tribunal observed further that "the making of the Charter was the exercise of the sovereign legislative power by the countries to which the German Reich unconditionally surrendered. . . ."¹² It was also a covenant, mutually agreed upon, by the signatory and adhering nations.¹³ In his opening address to the General Assembly of the United Nations, only thirty days after the judgment of the Tribunal, Mr. Warren R. Austin, the chief delegate of the United States to the General Assembly, stated: "Besides being bound by the law of the United Nations Charter, twenty-three nations, members of this Assembly, including the United States, Soviet Russia, the United Kingdom, and France, are also bound by the law of the Charter of the Nuremberg Tribunal."¹⁴ On December 11, 1946, the General Assembly expressly affirmed "the principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal."¹⁵ Commenting upon the importance of this resolution, Dr. C. A. Pompe wrote that it "signified a recognition that judicial not political action had been taken, that Nuremberg did not signify an ephemeral, opportunistic deviation from the established rules, but a permanent, irrevocable change, and that it was not a unilateral provision but general law, binding the whole community, which had been applied."¹⁶

PRINCIPLES OF LAW

The principles of law set out in the Charter of the International Military Tribunal and the London Agreement of August 8, 1945, as construed and applied by the Tribunal in its Judgment of September 30-October 1, 1946, are now binding upon the world community. What, then, are the basic human rights which these principles recog-

¹⁰ *Id.* at 11.

¹¹ *Id.* at 218.

¹² *Id.*

¹³ HARRIS, *supra* note 8, at 560.

¹⁴ New York Times, Oct. 31, 1946, at 12, col. 7.

¹⁵ 1 U.N. GAOR 1144 (1946).

¹⁶ C. POMPE, AGGRESSIVE WAR: AN INTERNATIONAL CRIME 317 (1953).

nize and affirm, and which are entitled to protection under international law?

A. *An Individual Charged with Crime under International Law is Entitled to a Fair Trial*

For those accustomed to constitutional guarantees against deprivation of life or liberty for alleged crime it seems implausible that proposals could have been advanced for the use of executive, rather than judicial, action against those charged with the commission of crimes against peace, and related offenses, during World War II. Yet, before enactment of the Charter of the International Military Tribunal, powerful voices were heard, proposing that the "guilty" be shot, out of hand, without benefit of trial.

The Judicial Process

Justice Jackson reported in his Introduction to *Tyranny on Trial*:

Stalin, according to Churchill's account, proposed to line up and shoot fifty thousand high-ranking German leaders. Churchill says he indignantly refused. But Judge Samuel Rosenman, who was in Europe representing President Roosevelt when the latter died, reported of the British officials in his *Working with Roosevelt*: "They wanted to take the top Nazi criminals out and shoot them without warning one morning and announce to the world that they were dead." Churchill, he says, agreed, for he thought long-drawn-out trials would be a mistake.¹⁷

Many Americans, were similarly opposed to giving the German leaders the benefit of a trial. Secretary of the Treasury Morgenthau proposed to President Roosevelt "that a list should be made of German arch-criminals—men whose obvious guilt was generally recognized by the United Nations—and that upon capture and identification these men should be shot at once."¹⁸ Even the Chief Justice of the United States Supreme Court Harlan Stone, in writing about "the power of the victor over the vanquished" observed: "It would not disturb me greatly if that power were openly and frankly used to punish the German leaders for being a bad lot, but it disturbs me some to have it dressed up in the habiliments of the common law and the Constitutional safeguards to those charged with crime."¹⁹

In the end, the advocates of the judicial process did prevail, primarily, as Justice Jackson noted, because of the strong support of President Franklin D. Roosevelt:

¹⁷ HARRIS, *supra* note 8, at xxxii.

¹⁸ STIMSON, *supra* note 2, at 584.

¹⁹ MASON, *Extra-Judicial Work for Judges: The Views of Chief Justice Stone*, 67 HARV. L. REV. 193, 210-11 (1954).

President Roosevelt had steadily and insistently favored a speedy but fair trial for these men, fearful that if they were punished without public proof of their crimes and opportunity to defend themselves there would always remain a doubt of their guilt that might raise a myth of martyrdom. Secretary Stimson, and those associated with him in the War Department, had strongly supported President Roosevelt's policy of no punishment except for those proved guilty at a genuine good-faith trial. They gave unflinching support to me in trying to carry out that policy. The British and French were persuaded eventually to that view and did their utmost to co-operate in carrying the difficult task to successful execution. The Soviet reluctantly joined. Rosenman says that later Churchill acknowledged to him, 'Now that the trials are over, I think the President was right and I was wrong.'²⁰

Thus it was that the leaders of Nazi Germany were brought to trial for crimes allegedly committed by them in World War II. They were accorded rights of accused persons under both the common and civil law systems.²¹ The fairness of the proceedings has never been seriously challenged. Of the twenty-two defendants actually brought to trial, all of whom had been indicted as principal conspirators in the Hitler tyranny, three were acquitted by the Tribunal, seven received varying terms of imprisonment, and only twelve were given a death sentence.²² The fact that the hand of justice could be so fairly laid upon those charged with crimes of such unsurpassing scope and brutality is testimony to the validity of the principle of trial before a determination of guilt and assessment of punishment.²³

Need for an Impartial Tribunal

The right to trial is still imperfect while the victor retains the power to establish the tribunal and to prosecute the accused under its own procedures. The power of the victor to try the vanquished is not part of the precedent of Nuremberg. In 1945, there was simply no other course. At that time no international judicial body existed which was competent to hear the cases against the German war criminals. As Justice Jackson observed, "Only the naive or those forgetful of conditions in 1945 would contend that we could have

²⁰ HARRIS, *supra* note 8, at xxxiv.

²¹ Defendants were permitted to testify in their own defense under oath (a right to which the accused is entitled at common law) *and* to make a closing unsworn statement (a right to which the accused is entitled at civil law). *Id.* at 15.

²² *Id.* at 478-81.

²³ When actual hostilities cease, any further acts against enemy persons should be taken only in accordance with legal process. The decision of the Tribunal makes clear that where the legal process is used to determine responsibility of persons accused of crime in international law it must accord with the basic requisites of fair trial generally observed by courts-martial, military commissions, and similar military tribunals which exercise criminal jurisdiction in international law. Moreover, the International Military Tribunal went beyond the minimum standards of most legal systems by requiring proof of guilt beyond a reasonable doubt. *Id.* at 558.

induced 'neutral' states to assume the duty of doing justice to the Nazis."²⁴

The situation is no better today. Failure of the United Nations to establish a judicial forum with jurisdiction over the type of crimes heard at Nuremberg maintains this void in international criminal law. "Truth is best established in an open judicial forum, and the successful aggressor of the future is far more likely to permit history quietly to pass than to risk self-exposure by prosecuting false charges before an impartially-constituted judicial body."²⁵ Those who may be charged with war crimes, in international law, are entitled, since Nuremberg, to a judicial determination of guilt or innocence. And such determination should be made by a judicial body existing independently of the prosecuting authority.

The end of World War II did not, unfortunately, bring an end of war to the world. "But if wars there must be, until the common sense of man puts an end to them—or they an end to man—we should provide now the means to achieve justice at the conclusion of any such future conflict. We do not wish the guilty to go free, but we do not want the accused unfairly tried, nor any pogrom unleashed upon the peoples of a defeated state."²⁶

B. *People are Entitled to be Free from the Horror, Devastation and Death Caused by Military Aggression*

World society is still characterized by the concept of the nation-state. We are all members of one nation, or another. The nation, as a concept serves its citizens well by affording security of life and manner of living agreeable to most. But the organization of world society into nation-states also creates the historical setting for wars. Nonetheless, within this setting it is *individuals* who initiate and wage wars—and individuals, too, who suffer the consequences. To characterize aggressive war as criminal is to confirm the human right to be free from the misery which war inflicts upon them.

The Charter of the International Military Tribunal declares that the "planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances"²⁷ shall constitute a crime against peace for which there shall be individual responsibility.

²⁴ *Id.* at xxxii.

²⁵ *Id.* at 566.

²⁶ *Id.*

²⁷ TMWC, *supra* note 1, at 11.

Prior Covenants

The Charter was not the first international covenant against aggressive war. The preamble to the 1924 Geneva Protocol for the Pacific Settlement of International Disputes declared that "a war of aggression . . . is . . . an international crime";²⁸ a 1927 resolution of the Assembly of the League of Nations stated that "a war of aggression can never serve as a means of settling international disputes, and is, in consequence, an international crime . . .";²⁹ and the Sixth International Conference of American States resolved in 1928, that a "war of aggression constitutes a crime against the human species"³⁰

Pact of Paris

These statements along with similar pronouncements, culminated in the General Treaty for the Renunciation of War of August 27, 1928—the Pact of Paris—which contains the following two articles:

Article I. The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

Article II. The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.³¹

Sixty-three nations, including all of the Axis Powers, adhered to this Pact. By agreeing to abjure war "in the names of their respective peoples," these nations recognized, even then, that freedom from the consequences of military aggression is a fundamental human right. Indeed, in the preamble, the parties declared that they were: "[D]eeply sensible of their solemn duty to promote the welfare of mankind" and were "[p]ersuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated"³² The International Military Tribunal declared that this "solemn renunciation of war as an instrument of national policy necessarily involves

²⁸ M. HABICHT, *POST-WAR TREATIES FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES* 929 (1931).

²⁹ L. OPPENHEIM, *INTERNATIONAL LAW* 180 (7th ed. 1952).

³⁰ 22 *AM. J. INT'L L.* 351, 357 (1928).

³¹ 46 *Stat.* 2343, 2345-46, T.S. 796; 6 G. HACKWORTH, *DIGEST OF INTERNATIONAL LAW* 9 (DEPT. OF STATE PUBLICATION No. 1961, 1943).

³² 46 *Stat.* 2343, T.S. 796.

the proposition that such a war is illegal in international law; and that those who plan and wage such a war, with its inevitable and terrible consequences, are committing a crime in so doing."³³

Charter Enlarges Upon the Pact of Paris

The Pact of Paris declared the human right to be free from military aggression.³⁴ The Charter of the International Military Tribunal enlarged upon that right in three ways. First, it declared unequivocally that the planning, preparation, initiation, and waging of a war of aggression is a crime in international law; second, it stated that for the commission of this crime there would be individual responsibility; and third, it extended that responsibility to those who participated in a common plan or conspiracy for a war of aggression.³⁵

Aggression. While renouncing war as an instrument of national policy and committing the settlement of international disputes solely to pacific means, the Pact of Paris did not, in so many words, characterize aggressive war as a crime and the perpetrators thereof as criminals. This omission was rectified in the Charter which describes aggressive war as a crime in international law.³⁶ In the words of the Tribunal: "to initiate a war of aggression, therefore, is not only "an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole."³⁷

To wage an aggressive war is, therefore, criminal in international law; to defend against aggression, however, is lawful, unless the means used to defend are disproportionate to the scope of the attack. Many difficulties are inherent in determining whether an act is aggressive or is reasonable retaliation against aggression. Such difficulties do not detract from the basic principle that people have the right to be spared from military aggression. In the case of Hitler's Germany, the evidence of aggression was clear and convincing. In other cases, ascertaining the aggressor may be much more difficult. This, of course, does not disparage the rule. Until war is finally eradicated, the hard task of determining who is the aggressor and of fixing a punishment commensurate with the crime must be performed by impartial judicial authority on evidence fairly adduced in open trial.

Individual Responsibility. Sovereignty has its rightful status

³³ TMWC, *supra* note 1, at 220.

³⁴ 46 Stat. 2343, T.S. 796.

³⁵ TMWC, *supra* note 1, at 11.

³⁶ *Id.*

³⁷ *Id.* at 186.

in international law. Wars are waged in the names of nations, not of individuals. Yet the decisions for war are acts of the leaders of nations. Those who have the power must answer for its exercise. In the case of Nazi Germany, the power of Hitler and his cohorts was absolute. After the Rise to Power, Hitler destroyed every vestige of democracy in Germany.³⁸ In other nations, not ruled by dictators, the ascertainment of individual responsibility is obviously more complicated. The principle of individual accountability remains, nonetheless. As the Tribunal said:

It was submitted that international law is concerned with the actions of sovereign States, and provides no punishment for individuals; and further, that where the act in question is an act of State, those who carry it out are not personally responsible, but are protected by the doctrine of the sovereignty of the State. In the opinion of the Tribunal, both these submissions must be rejected.³⁹

The Tribunal referred to the Charter which states: "The official position of the Defendants, whether as heads of State, or responsible officials in Government departments, shall not be considered as freeing them from responsibility, or mitigating punishment."⁴⁰ And, the Tribunal concluded that "individuals have international duties which transcend the national obligations of obedience imposed by the individual state."⁴¹

Conspiracy. Nor does the responsibility stop with the heads of state who make the initial decision for war. It applies equally as well to their accomplices in a common plan or conspiracy, and includes persons outside the government as well as those who join the government with knowledge of the aggression. The Tribunal said:

Hitler could not make aggressive war by himself. He had to have the co-operation of statesmen, military leaders, diplomats, and business men. When they, with knowledge of his aims, gave him their co-operation, they made themselves parties to the plan he had initiated. They are not to be deemed innocent because Hitler made use of them, if they knew what they were doing.⁴²

The Tribunal had little difficulty establishing a case of criminal conspiracy involving Hitler and his immediate associates. Adolf Hitler disclosed his plans for aggression at least as early as November 5, 1937, when he declared, in a secret conference, his intention to seize territory for Germany on the European continent. "The question for Germany is where the greatest possible conquest could be

³⁸ HARRIS, *supra* note 8, at 44-57.

³⁹ TMWC, *supra* note 1, at 222-23.

⁴⁰ *Id.* at 223.

⁴¹ *Id.*

⁴² *Id.* at 226.

made at the lowest cost," he said.⁴³ And, "If the Fuehrer is still living then it will be his irrevocable decision to solve the German space problem not later than 1943 to 1945."⁴⁴ Certainly all who were present at the 1937 meeting, or were apprised of its message, became committed to the plan for aggression and were accomplices to the attacks which began with the invasion of Poland on September 1, 1939.

Aggressive war was illegal in international law before Nuremberg.⁴⁵ Since Nuremberg, it is likewise, unequivocally, criminal. Those who lead their nations into wars of aggression, and those who conspire with them in the furtherance of such actions, may be held personally accountable for the crime of aggression under international law.

C. *People are Entitled to be Free from the Commission of War Crimes and Crimes Against Humanity Committed in the Course of War.*

The Charter defined war crimes as including, but not limited to,

murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity"⁴⁶

War Crimes

The specifications of the crimes charged in the Nuremberg indictments were not significant departures from principles which had previously been enunciated in international conventions. The Soviet Union had not previously adhered to the Hague or Geneva Conventions, however, and the Tribunal had to pass upon whether this fact relieved the defendants from liability for traditional war crimes in the Eastern territories. The question had already been answered by Admiral Canaris, Hitler's Chief of Military intelligence, in a memorandum delivered to the Chief of the OKW during the war:

Since the 18th century these have gradually been established along the lines that war captivity is neither revenge nor punishment, but solely protective custody the only purpose of which is to prevent the

⁴³ *Id.* at 190.

⁴⁴ *Id.* at 191.

⁴⁵ See notes 28-33 and accompanying text, *supra*.

⁴⁶ TMWC, *supra* note 1, at 11.

prisoners of war from a further participation in the war. This principle was developed in accordance with the view held by all armies that it is contrary to military tradition to kill or injure helpless people; this is also in the interest of all belligerents in order to prevent mistreatment of their own soldiers in case of capture.⁴⁷

The Tribunal agreed with this interpretation of the law. It found numerous violations of the traditional laws of war in the East as well as in the West, for which it imposed individual liability on those who ordered or committed the offenses. The rights stated in the Charter against mistreatment of prisoners and related offenses in time of war were sustained by the Tribunal as principles of general applicability whether or not contained in enforceable treaties or conventions.

Crimes Against Humanity

The Charter went beyond the typical war crimes in defining offenses for which the accused at Nuremberg were to be held accountable. During the war, reports came out of Europe describing unspeakable atrocities committed against civilian populations. Whether such reports could be sustained by evidence to be adduced in open court could not then be foreseen. But, to assure that the issues would be before the Tribunal, a category of crimes against humanity was set out in the Charter embracing "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population," and "persecutions on political, racial, or religious grounds in execution of or in connection with any crimes within the jurisdiction of the Tribunal . . ."⁴⁸ This was not a new concept.

The Commission of Fifteen appointed by the Preliminary Peace Conference to inquire into breaches of the laws and customs of war during World War I found that Germany and its allies had violated elementary "laws of humanity" in the course of that war and recommended that persons guilty of such offenses should be criminally prosecuted, although the two American members of the Commission dissented.⁴⁹ The Americans felt that "inhumane acts" could not be punished by a court of justice, despite the provision in the preamble of Hague Convention IV that the "laws of humanity" constitute a source of international law governing humane warfare.⁵⁰ The Nuremberg Tribunal had no difficulty in applying the latter as a source of international law.

⁴⁷ HARRIS, *supra* note 8, at 506.

⁴⁸ TMWC, *supra* note 1, at 11.

⁴⁹ CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, DIVISION OF INTERNATIONAL LAW, VIOLATIONS OF THE LAWS AND CUSTOMS OF WAR 73 (Pamphlet No. 32, 1919).

⁵⁰ J.B. SCOTT, THE HAGUE PEACE CONFERENCES OF 1899 AND 1907, at 338 (1909).

The inclusion of crimes against humanity in the Charter was not primarily to incorporate standards of humane conduct into the laws and customs of war, but rather to ensure that the unprecedented crimes against civilian populations by Nazi Germany should be answered for by the defendants. The second World War did not begin because of diplomatic misunderstanding, boundary dispute, or similar cause of war found in past conflicts. It was a war of subjugation, ordered by Hitler for the purpose of acquiring living space⁵¹ in Eastern Europe. It had both racial and territorial objectives. The Aryanization of Germany meant the elimination of the Jewish population, gypsies, and even the mentally unfit. Similar racial "cleansing" was involved in suppressing the occupied Eastern territories. This racial war, which, in itself, produced the extermination of upwards of six million non-combatants, led to the formulation of a new crime in international law—the crime of genocide.

Genocide and other crimes against humanity are punishable under the Nuremberg decision only when connected with a war of aggression. The decision could not go beyond the Charter, and the Charter restricted crimes against humanity to those committed in connection with other crimes within the jurisdiction of the Tribunal.⁵² Since only aggressive war, and war crimes proper were within its jurisdiction, the Tribunal was forced to restrict the concept of crimes against humanity to those committed in connection with war. The Nuremberg Judgment does not, therefore, interdict genocide, or like atrocities, as crimes in international law when committed independently of war.

Although the concept of crimes against humanity, as construed by the Tribunal, does not establish a new category of international human rights, it greatly broadens the rights of persons subject to mistreatment in war. Individuals may now be held personally accountable for the commission of offenses against humanity in war whether specifically proscribed as war crimes or defined as criminal in international conventions.

CONCLUSION

In his final address to the Tribunal, Justice Jackson said:

It is common to think of our own time as standing at the apex of civilization, from which the deficiencies of preceding ages may patronizingly be viewed in the light of what is assumed to be 'progress.' The reality is that in the long perspective of history the present century will not hold an admirable position, unless its second half is to redeem

⁵¹ HARRIS, *supra* note 8, at 66.

⁵² TMWC, *supra* note 1, at 11.

its first. These two-score years in the twentieth century will be recorded in the book of years as one of the most bloody in all annals. Two World Wars have left a legacy of dead which number more than all the armies engaged in any war that made ancient or medieval history. No half-century ever witnessed slaughter on such a scale, such cruelties and inhumanities, such wholesale deportations of peoples into slavery, such annihilations of minorities. The terror of Torquemada pales before the Nazi Inquisition. These deeds are overshadowing historical facts by which generations to come will remember this decade. If we cannot eliminate the causes and prevent the repetition of these barbaric events, it is not an irresponsible prophecy to say that this twentieth century may yet succeed in bringing the doom of civilization.⁵³

The causes of these events, so eloquently described by Justice Jackson, have not been eliminated. The era of peace has not yet descended upon the world. A threat of war hangs over almost every continent, and war itself is waged every day somewhere in the world. Armaments are more wide-spread, and more destructive, than ever before in history. Even small nations may now possess the ultimate in power-to-destroy. And the same consequences of war prevail now, as in the past—concentration camps, up-rooted populations, forced labor, killings and torture, wreckage of homes, destruction of property.

Nor has the United Nations proven equal to the task of keeping the peace. Disarmament has not been attained in adequate measure; police-keeping forces have not been established in sufficient numbers; and the judicial process has not been properly utilized to resolve disputes, dispense justice, or punish wrong-doers. We should be striving now to make the International Court of Justice a more useful instrumentality in settling disputes among major powers, to establish regional international courts for resolving controversies among regional states, and to create an international court of criminal justice as an independent body or as a division of the International Court of Justice with jurisdiction over individuals for crimes committed by them under international law.

It is hard to understand why, when all peoples throughout the world, yearn for peace, it is so difficult to avoid war. We are coming to the acceptance of the proposition that the maintenance of peace is of greater importance than the prevalence of social and economic systems. But demands for territory and political adjustments will continue to give rise to military threats. There appear to be some issues, presently irresolvable by legal means, which are more precious to some people, than peace.

Yet, the sentiment for peace ultimately must prevail in the

⁵³ HARRIS, *supra* note 8, at 476.

world. The United Nations could take a step in that direction, beyond the specific proposals for the judicial remedies discussed above, by calling upon all nations and all peoples to observe, in the Spring of each year, a *Period for Peace*, during which cease-fires would be observed in all theaters of war and the attention of all world leaders directed toward the cause of peace. Only when peace is universal will there be an end to aggression, and war crimes, and crimes against humanity, for which the Judgment of the International Military Tribunal at Nuremberg stands sentinel before the conscience of mankind.