

# INTERNATIONAL LAW ASSOCIATION PANEL DISCUSSION ON “THE HOLOCAUST AS CATALYST FOR INTERNATIONAL JUSTICE”: SUMMARY OF EXTEMPORANEOUS REMARKS

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## I. THE DREAM

After more than 40 million persons had been killed in war, there was an overwhelming determination to prevent the recurrence of such tragedies. The slaughter of six million Jews and millions of others, such as the Roma and others perceived as enemies of the Reich, certainly served as a sharp catalyst for the creation of a more humane world order. The United Nations was created “to save succeeding generations from the scourge of war” by serving as the forum for peaceful resolution of disputes. The principles of international criminal law that emerged from the International Military Tribunal and the twelve subsequent war crimes trials at Nuremberg was to serve as the foundation cornerstone for a new rule of international criminal law designed to deter future aggression, genocide and other crimes against humanity. That was the dream.

## II. WHAT HAPPENED TO THE DREAM?

An unfair veto power had to be written into the United Nations Charter to win the needed consent by two-thirds of the United States Senators; as required by our constitution. It took 40 years to ratify even the genocide convention that we sponsored. The cold war between the Soviet Union and the United States blocked effective action in the United Nations. Charter provisions calling for universal disarmament and the creation of an international military force were simply ignored. The Security Council, instead of acting as the arm to maintain peace on behalf of all nations, became a political instrument to uphold the interests of its privileged Permanent Members. Many provisions of the Charter

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were never given a chance. General Assembly mandates for the creation of an international criminal court were referred to United Nations committees that were unable to reach any consensus. The world went back to killing as usual. The dream of hope was replaced by a nightmare.

With the collapse of the Soviet Union, competing nationalisms erupted in violent strife. When it was reliably reported that more than 10,000 women had been raped in the former Yugoslavia as part of a program of "ethnic cleansing", major powers could no longer remain indifferent. The Security Council created a special International Criminal Tribunal to try the leading perpetrators of crimes committed in that territory since 1991. Shortly thereafter, rival ethnic tribes in Rwanda butchered 800,000 innocent people. World leaders were aware of danger but did little or nothing to prevent the murder. It will remain the everlasting shame of this century that such atrocities could be allowed to occur. President William Clinton and United Nations Secretary General Kofi Annan went to Rwanda to apologize to the survivors. Perhaps it was better than nothing, but it was certainly not enough. This new holocaust became the catalyst for the creation of yet another ad hoc tribunal by the Security Council to deal with the atrocities committed in Rwanda.

With similar crimes being committed elsewhere all over the globe, it soon became apparent to many that a permanent international criminal court was needed. An assortment of retroactive courts, created a la carte after the crimes were committed, left much to be desired. United Nations committees went back to work and, after much wrangling and many compromises, a statute for a Permanent international criminal court was finally adopted in Rome in July 1998 by overwhelming vote. The minimum of 60 ratifications needed to put the treaty into effect was reached on July 1, 2002 and had passed 80 ratifications a few months later. A truly international criminal court—the first since Nuremberg—became a reality.

### III. CONCLUSIONS:

What lessons can be drawn from this brief scan of history? It is clear that progress toward the rule of law cannot be quickly or easily obtained. But it is also clear that the progress is real – even though there are many steps still to be taken. It is a sad irony that the United States that had inspired the world at Nuremberg, by its insistence upon rules of universal law, was not ready to accept the new criminal court. It justified its opposition by completely unfounded fears about political persecutions by uncontrolled prosecutors. It ignored the many safeguards against such risks and the priority given to all national courts so that the ICC could never intervene if the defendant's national courts were willing and able to provide a fair trial to the wrongdoer.

The new court has very limited jurisdiction. Only crimes of concern to the international community as a whole can even be considered and there is no retroactivity. Even war itself—the crime of aggression, condemned at Nuremberg as “the supreme international crime”—cannot be considered by the court until there is an agreed definition and other safeguards to assure that the role of the Security Council is not diminished. The Court statute provides that victims of crimes against humanity shall be entitled to “restitution, compensation, and rehabilitation.” How these farsighted principles will be implemented will depend upon the member states.

We see therefore that misguided opposition by the current United States administration is a hurdle yet to be overcome. Before it can move closer to universality, the court will have to prove that it is a fair and effective instrumentality to help curb major international crimes and to bring to justice those who threaten the peace and security of humankind. The American Bar Association and leading American jurists as well as the Secretary General of the United Nations and the entire European community have hailed this new legal institution as the missing link in the world’s legal order. I am convinced that when the American public recognizes the truth they will agree that the most effective way to prevent future holocausts and to secure the tranquility of humankind is through the rule of law. The International Criminal Court deserves the full support of all nations.