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ORIGINS OF THE GENOCIDE CONVENTION*

Henry T. King,[†] Jr., Benjamin B. Ferencz[‡] & Whitney R. Harris^{§**}

REMARKS OF HENRY T. KING, JR.

I first saw Raphael Lemkin—the man who coined the word “genocide” and identified it as an international crime—at the Grand Hotel in Nuremberg in 1946. At that time, he was unshaven, his clothing was in tatters, and he looked disheveled. Lemkin was very upset. He was concerned that the decision of the International Military Tribunal (IMT)—the Nuremberg Court—did not go far enough in dealing with genocidal actions. This was

* The Frederick K. Cox International Law Center sponsored the symposium “To Prevent and to Punish: An International Conference in Commemoration of the Sixtieth Anniversary of the Negotiation of the Genocide Convention,” a conference drawing renowned international law scholars to Case Western Reserve University School of Law in Cleveland, Ohio on September 28, 2007 to share their expert analysis of the origins of the Genocide Convention and its future potential. A webcast of the Conference is available at <http://law.case.edu/centers/cox/webcast.asp?dt=20070928>.

[†] Professor of Law, Case Western Reserve University School of Law. Mr. King practiced law in New York with Milbank, Tweed & Hope, served as a Nuremberg war crimes prosecutor, and then had a long and distinguished career as a corporate counsel, which included more than twenty years with TRW Inc., where he was chief corporate international counsel. He teaches International Arbitration and is U.S. director of the Canada-U.S. Law Institute. A former chairman of the American Bar Association's Section of International Law and Practice, he served on the ABA's special task force on war crimes in the former Yugoslavia and was the U.S. chairman of a joint working group, organized by the American, Canadian, and Mexican bar associations, on the settlement of international disputes. Mr. King has written a book on Albert Speer, one of the Nuremberg defendants, entitled *The Two Worlds of Albert Speer*. The University of Pittsburgh School of Law named Mr. King a Fellow honoris causa of the Center for International Legal Education on March 9, 2002. On June 4, 2002, Mr. King was awarded an honorary degree of Doctor of Civil Laws by the University of Western Ontario. Mr. King was a guest of the government of The Netherlands on March 11, 2003, for the inauguration of the International Criminal Court at The Hague. Mr. King is Senior Advisor to the Robert Jackson Center at Jamestown, New York.

[‡] Mr. Ferencz served as Chief Prosecutor of the “Einsatzgruppen trial” at Nuremberg in 1947. Upon returning to the United States, Mr. Ferencz took up private practice for a number of years before deciding in 1970 to start focusing his energies on world peace. Throughout the 1970s and 1980s Mr. Ferencz wrote prolifically on the issues of peace and international law. With the close of the Cold War, Mr. Ferencz saw a critical step in the creation of a more peaceful world with the affirmance of the Rome Statute in 1998. Since then, Mr. Ferencz has been active at Preparatory Commission sessions for the ICC, monitoring and making available his expertise on current efforts to define aggression. Additionally, Mr. Ferencz has continued to mobilize support for the ICC, take on media pundits, and educate an often misinformed media about the ICC.

because the IMT limited its judgment to wartime genocide and did not include peacetime genocide. At that time, Lemkin was very focused on pushing his points. After he had buttonholed me several times, I had to tell him that I was powerless to do anything about the limitation in the Court's judgment.

I thought that Lemkin was a "crank" at the time, and gave him short shrift. But Lemkin, despite his appearance, was to have a vital role in pushing genocide as an international crime and in the development of the United Nations Convention on Genocide.

Raphael Lemkin was a Polish-Jewish lawyer whose family was decimated by the Nazis. His interest in what was to be known as "genocide" starts with concern over the unpunished Turkish massacre of hundreds of thousands of Armenians. The Turkish official who ordered the massacre was not brought to trial, but the young man who allegedly assassinated him was. Lemkin saw a great anomaly where an individual was on trial—possibly for life—for allegedly committing a single murder, while the instigator of the massacre of thousands of people went free; Lemkin wanted to correct this injustice. In the 1930s, Lemkin prepared a draft of a law punishing those who committed the destruction of people on the grounds of race, religion or national origin. He wanted the concept of universal jurisdiction to apply to the law's enforcement, so that violators could be tried wherever they were caught, regardless of where the crime was committed or of either the defendant's nationality or official status.¹ Lemkin worked for years to get this law adopted, and he was at Nuremberg to pursue this objective when I met him in 1946.

The term "genocide" means the destruction of a national, racial, or religious group. The definition comes from the Greek word "genos" (race, tribe) and the Latin "cide" (killing).

[§] Mr. Harris served on the prosecutorial staff of Supreme Court Justice Robert H. Jackson in the trial of major German war criminals at Nuremberg. He served as a prosecutor throughout the trial until October 1, 1946, and was primarily responsible for the prosecution of Ernst Kaltenbrunner, of the Gestapo and the SD. For his work at Nuremberg, he was awarded the Legion of Merit. He stayed on in Germany to serve as Chief of Legal Advice during the Berlin Blockade. Mr. Harris joined the Southern Methodist University Law School faculty following his military service. He was Director of the Hoover Commission's Legal Services Task Force; served as the first Executive Director of the American Bar Association; and was Solicitor General of Southwestern Bell Telephone Company in St. Louis where he practiced law until his retirement.

** Unfortunately, Mr. Harris was unable to attend the conference, but kindly provided his prepared remarks for publication.

¹ Lemkin's draft eventually became a U.N. Convention. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention].

Abolishing genocide is about learning to value diversity. As Raphael Lemkin wrote in 1944:

Our whole cultural heritage is a product of the contributions of all nations. We can best understand when we realize how impoverished our culture would be if the peoples doomed by Germany, such as the Jews, had not been permitted to create the Bible or to give birth to an Einstein, a Spinoza; if the Poles had not had the opportunity to give to the world a Copernicus, a Chopin, a Curie; the Czechs a Huss, and a Dvorak; the Greeks a Plato and a Socrates; the Russians a Tolstoy and a Shostakovich.²

Hitler's concept of a "master race"—namely the Germans—brought the Nazis into direct conflict with those who favored diversity. Hitler wanted to dignify genocide as a sacred purpose of the German people. National Socialism was, in his mind, the doctrine of the biological superiority of the German people.

A hierarchy of racial values determined the ultimate fate of the many peoples that fell under German domination. Jews and Gypsies were to be completely annihilated. The Poles, the Slovenes, the Czechs, the Russians, and all other "inferior" Slav peoples were to be kept on the lowest social level. Those thought to be related by blood—the Dutch, the Norwegian, the Alsatians—were given the choice to either espouse Germanism or share the fate of the "inferior" people.

Raphael Lemkin coined the term "genocide" in 1944,³ and in 1945, President Harry S. Truman charged Robert Jackson—the architect of Nuremberg—to conduct the trial of the major Nazi war criminals. At the time of Justice Jackson's appointment, enough was known of the genocidal activities of the Nazis to recognize that this would be one of the points of focus at the trial.

Jackson was appointed on May 2, 1945, and he reported back to President Truman on June 6, with a plan for conducting the trials. Included in that report as crimes that the trials should deal with were "atrocities and persecutions on racial and religious grounds committed since 1933."⁴ These genocidal activities were to be among the crimes the Nazis were charged with. Jackson's recognition of genocidal activity as a crime was the first of its kind in an international criminal proceeding. Jackson also recognized that genocidal activity could take place in peacetime as well as wartime

² RAPHAEL LEMKIN, GENOCIDE PROPOSED CHANGES IN THE UNITED NATIONS CHARTER 2 (1946), cited in Matthew Lippman, *The Drafting of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide*, 3 B.U. INT'L L. J. 1, 3 (1985).

³ RAPHAEL LEMKIN, AXIS RULE IN OCCUPIED EUROPE 79 (1944) ("New conceptions require new terms.").

⁴ Robert H. Jackson, *Atrocities and War Crimes: Report from Robert H. Jackson to the President*, 12 DEP'T ST. BULL. 1071, 1076 (1945) [hereinafter Jackson Report].

when, in his report to President Truman, he specified that the trial should cover genocidal crimes occurring "since 1933."⁵

President Truman directed Jackson to negotiate with the allies (the United Kingdom, France, and the U.S.S.R.) to develop a procedure for the trial of the major Nazi war criminals. These negotiations took place in London in the early summer of 1945. The negotiations were difficult at times, particularly with the U.S.S.R., but were eventually successful. The result was the London Charter of August 8, 1945.⁶

The London Charter (Charter) specified genocidal activity as a crime, but the term was limited on its face to wartime genocide and did not include peacetime genocide, either explicitly or implicitly.⁷

Crimes against humanity are referenced as follows:

Article 6(c)

Crimes against humanity: namely, murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.⁸

This definition was both hurtful and helpful to the development of a definition of the crime of genocide. As a matter of first instance, the definition stated that "persecution on political, racial or religious grounds" was actionable only when committed in the execution of or in connection with any crime within the jurisdiction of the tribunal.⁹ This meant that such activity was condemned only when related to crimes against peace or war crimes. Thus, in the opinion of the IMT, only wartime genocide was deemed actionable. Regardless, the definition was helpful because it held such persecution to be a crime "whether or not in violation of the domestic law of the country where perpetrated."¹⁰ In other words, German law was irrelevant with regard to punishment for these crimes. And, more specifically, German law could not authorize such crimes. The test in adjudging these crimes was to be based on international law, and not local law. Read in the abstract, this was, indeed, an important limitation on sovereignty and one that would prove helpful in dealing with such crimes subsequently.

⁵ *Id.*

⁶ Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 280 [hereinafter London Agreement].

⁷ *See id.* at 288.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

Genocide was recognized as a crime against top Nazis on October 6, 1945, by stating in the indictment:

[The Defendants] conducted deliberately and systematically genocide via the extermination of racial and national groups, against the civilian population of certain occupied territories in order to destroy particular races and classes of people and national, racial or religious groups, particularly Jews, Poles and Gypsies and others.¹¹

The trial began on November 20, 1945, and for almost a year, the IMT and the world heard of the genocidal activities of the Nazis through evidence consisting primarily of documents of the Nazis' own making.

The evidence produced at Nuremberg gave full support to the charge of genocide. Raphael Lemkin was particularly impressed with the statements by Sir Hartley Shawcross and Sir David Maxwell-Fyfe for the British prosecution, and Auguste Champetier de Ribes and Charles Dubost for the French prosecution, who elaborated at length and with great eloquence on the crime of genocide throughout the proceedings. Lemkin also commented favorably on the work of Brigadier General Telford Taylor in the Subsequent Proceedings. Taylor used the concept of genocide to good effect, for example, in the case of the Nazi doctors who experimented on captive human beings. In this case, the defendants performed experiments ranging from castration and sterilization on the one hand, to outright killings and abortions on the other. Certainly the commission of these crimes against Jews, Poles, and others fit Nazi genocidal ambitions.

On December 11, 1946, the United Nations General Assembly broadly endorsed the Nuremberg principles as reflected in the IMT judgment, and by separate resolution affirmed the principle of genocide as a crime. The adoption of the resolution relating to genocide was followed by a push towards the drafting and adoption of a U.N. Convention on genocide. This was accomplished in October 1948, and with sufficient ratifications, the Convention went into effect in 1951.¹² Most of the countries in the world have now ratified the Genocide Convention.¹³ Even the United States has ratified the Convention, though after forty years of scrutiny and with significant reservations.¹⁴

¹¹ 2 TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL 45–46 (1947) [hereinafter TRIAL OF MAJOR WAR CRIMINALS].

¹² Genocide Convention, *supra* note 1.

¹³ *See id.* (Sixty-eight countries have signed, ratified, or acceded to the Convention).

¹⁴ Genocide Convention, *supra* note 1, *reprinted in* 29 INT'L LEGAL MATERIALS 779, 782 (1989) (highlighting the U.S. reservations to the Genocide Convention) [hereinafter Reservations].

The first reservation of the United States relates to Article IX of the Convention.¹⁵ Article IX of the Convention provides that disputes concerning the application of the Convention, including those relating to the responsibility of a state for genocide, “shall be submitted to the International Court of Justice.”¹⁶ The United States’ reservation to the Convention states that with respect to any disputes involving the United States, such disputes may only be submitted to the International Court of Justice with the specific consent of the United States.¹⁷ That consent is required in each case. The United States’ second reservation has the effect that nothing in the Convention requires or authorizes legislation, or other action by the United States, that would be prohibited by the U.S. Constitution, as interpreted by the United States.¹⁸

These reservations are crippling. They mean that no case regarding the enforcement of the Convention involving the United States may be brought before the International Court of Justice without the consent of the United States. Further, the United States shall be the sole judge as to whether actions required under the Convention are prohibited by its Constitution. In light of this, one might conclude that the adherence of the United States to the Convention was more symbolic than binding in actuality.

Genocide was the basis for the conviction of Adolf Eichmann by Israel in 1962. In the 1990s, the U.N. Security Council, by resolution, established tribunals at The Hague and Tanzania to cover, among other crimes, genocide in the former Yugoslavia and Rwanda.¹⁹ The International Criminal Court, which went into effect in 2002, includes the crime of genocide as a separate offense within its purview, in addition to crimes against humanity and war crimes (and aggression, when defined).²⁰

The genocide provisions implemented in these examples are direct descendants of genocide as charged at Nuremberg, although the latter have more particularity. The Rome Statute—establishing the International Criminal Court—encompasses peacetime genocide as well as wartime genocide.²¹

Nuremberg was largely the creation of Supreme Court Justice Robert H. Jackson. In his report to President Harry S. Truman of June 10, 1945 outlining a blueprint for Nuremberg, Jackson proposed the elimination of

¹⁵ *Id.*

¹⁶ Genocide Convention, *supra* note 1, at art. IX.

¹⁷ Reservations, *supra* note 14, at 782.

¹⁸ *Id.*

¹⁹ S.C. Res. 827, para. 2, U.N. Doc. S/RES/827 (May 25, 1993) (empowering tribunal to prosecute persons for serious violations of “international humanitarian law”); S.C. Res. 955, para. 1, U.N. Doc. S/RES/955 (Nov. 8, 1994).

²⁰ Rome Statute of the International Criminal Court, July 17, 1998, art. 5(1)(a), U.N. Doc. A/CONF. 183/9.

²¹ *Id.*

the defenses of sovereign immunity (acts of state) and superior orders.²² These recommendations became a part of the London Charter of August 8, 1945, upon which Nuremberg was based.²³ These two features became very significant to the recognition of genocide as a crime against humanity. For example, when asked why he carried out the extermination of 2,500,000 individuals at Auschwitz, Rudolf Hoess—the Auschwitz Commandant—said he was carrying out orders. Similarly, Otto Ohlendorff, when asked why he ordered the extermination of 90,000 Jews, Gypsies, and Russian Commissars in southern Russia, answered that he was ordered to do so. Because of Jackson’s foresight in drafting the London Charter, this was no excuse for Hoess and Ohlendorff’s misdeeds. Both were sentenced to hang for their crimes. Moreover, Jackson’s elimination of the defense of sovereign immunity has been included in subsequent structures for war crimes trials, and is the reason Slobodan Milosevic was before the bar of justice at The Hague.

Another way Jackson played a role in holding those who carried out genocidal acts accountable was his advocacy of the principle of universal jurisdiction. Universal jurisdiction is a longstanding concept in international law, stemming from its application in the seventeenth century to pirates, so long as the nation trying them had physical possession of the individuals. In his opening statement at Nuremberg, Jackson said, “the real complaining party at your bar is civilization.”²⁴ This parallels his statement that “to pass these defendants a poisoned chalice is to put it to our lips as well.”²⁵

The IMT went along with the concept of universal jurisdiction when it said in its judgment that the four plaintiff nations at Nuremberg were doing collectively what each could have done individually. The principle of universal jurisdiction is particularly applicable to extreme international crimes such as genocide. In the Adolf Eichmann trial, Eichmann’s defense was that because Israel was not a state at the time the crimes were committed, he could not be charged with a violation of Israeli law. The Israeli Court brushed this defense aside, and held that Eichmann’s crimes were so terrible that the doctrine of universal jurisdiction applied and he could be tried in any court in any country, regardless of where the crimes were committed. Thus, Eichmann was sentenced to hang based on the Israeli Court’s adoption of the principle of universal jurisdiction.

²² Jackson Report, *supra* note 4, at 1073 (“With the doctrine of immunity of a head of state usually is coupled another, that orders from an official superior protect one who obeys them. It will be noticed that the combination of these two doctrines means that nobody is responsible.”).

²³ London Agreement, *supra* note 6, at art. 7.

²⁴ Robert H. Jackson, THE CASE AGAINST THE NAZI WAR CRIMINALS: OPENING STATEMENT FOR THE UNITED STATES OF AMERICA 90 (1946).

²⁵ *Id.* at 7.

Another significant way in which Nuremberg aided in the recognition of genocide as an international crime was the drafting of the crimes against humanity provision in the London Charter.²⁶ This provision states, in effect, that the law of Germany provided no cover for those charged with such crimes. In other words, Hitler's order to implement the "final solution" could not be used as a defense by those carrying it out. This was truly an invasion of sovereignty, as it had previously been understood. But it gave genocide status as a crime over and above national boundaries. Specifically, local law or the orders of local officialdom could no longer justify criminal activity such as genocide. A higher law that included genocide as a crime—international law—was to be the order of the day.

The conviction and hanging of individuals at Nuremberg for genocidal activity was also important to the acceptance of genocide as a crime. The conviction of Julius Streicher, the "Jew-Baiter of Nuremberg," is a case in point. In finding Streicher guilty, the IMT stated: "Streicher's incitement to murder and extermination at the time when Jews in the East were being killed under most horrible conditions clearly constitutes persecution on political and racial grounds in connection with war crimes as defined by the Charter and constitutes a crime against humanity."²⁷

Indeed, Nuremberg made an important contribution to the recognition of genocidal activity as criminal when it included, among the crimes charged, "persecution on political, racial and religious grounds," and when it excluded domestic law as justification for such crimes. The limitation in the IMT's judgment in covering only wartime genocide was not followed in Control Council Law #10 of December 20, 1945, which governed the Nuremberg Subsequent Proceedings.²⁸

Conclusion:

There is an old adage that goes "you shouldn't judge a book by its cover." This certainly applied in the case of Raphael Lemkin, as I knew him at Nuremberg. He was disheveled and rough-cut as he appeared to me, but he possessed a soul that had steely determination to correct a national and international wrong, and the world is better for it today. It was Lemkin's determination to identify and codify genocide that made genocide a front-burner crime at Nuremberg. Our world today is much better as a result of his efforts. The Genocide Convention and the structures of the ad hoc tribunals of The Hague, Sierra Leone, and Tanzania, as well as that of the In-

²⁶ London Agreement, *supra* note 6.

²⁷ TRIAL OF MAJOR WAR CRIMINALS, *supra* note 11, at 549.

²⁸ Control Council Law No. 10, Dec. 20, 1945, CONTROL COUNCIL FOR GERMANY, OFFICIAL GAZETTE, Jan. 31, 1946, Art. II (1)(c) *reprinted in* AUGUST VON KNIERIEM, THE NUREMBERG TRIALS 513 (1959).

ternational Criminal Court, all are very explicit in identifying genocide as an international crime of the greatest magnitude.

It was one of the great coincidences of history that Robert Jackson's emergence as a leader in the international legal community at Nuremberg almost coincided with Lemkin's definition of genocide and the publication of his critical book, *Axis Rule in Occupied Europe*, outlining the particulars of the genocidal activities by the Nazi regime in Europe.²⁹

Jackson, in his report to President Truman of June 6, 1945, stated that "persecution on racial or religious grounds" should be one of the bases for the trial of the Nazis.³⁰ This approach was followed in the London Charter of August 8, 1945, which provided the basis for the Nuremberg trial. Jackson followed up his focus on genocide in the indictment of the Nazi leaders on October 6, 1945, when in the indictment, he referenced genocide as one of the crimes with which the Nazis were charged.

Genocide conducted on the scale of the Holocaust requires participation by considerable numbers of people acting under the leadership of key officials. By eliminating the defenses of sovereign immunity and superior orders, Jackson wanted to call to account those who carried out genocide and other crimes and to punish them accordingly. This gave bite to the crime of genocide. Moreover, Jackson's approach in eliminating these two defenses was replicated in the structure of the two ad hoc tribunals at The Hague and Tanzania, and in the Rome Statute establishing the International Criminal Court.

Finally, implicit in Jackson's approach, as reflected by his opening and closing statements at Nuremberg, is the principle that, like genocide, some international crimes are so heinous that they can be the subject of trials in any court that is willing to take jurisdiction over them. This approach removes technical jurisdiction obstacles to such trials. The principle of universal jurisdiction certainly provided the basis for the trial of Adolf Eichmann in the Israeli courts for his monstrously genocidal activities. Moreover, the principle of universal jurisdiction is incorporated in the U.N. Torture Convention, and it was used by the U.S. Circuit Court of Appeals to

²⁹ Lemkin, *supra* note 3.

³⁰ Jackson Report, *supra* note 4, at 1076.

convict John Demjanjuk.³¹ It is also incorporated into the Restatement of the Foreign Relations Law of the United States.³²

I close with an acknowledgment of respect and gratitude for Raphael Lemkin and Robert Jackson, in recognition of their activities in creating a better world for all of us. Genocide remains a crime in today's world, and those who commit it are now being tried and punished for the acts. Hopefully, this will dissuade others from the commission of the crime of genocide.

At war's end, Raphael Lemkin said that we needed diversity for the world to progress. What he said was true then, and it is emphatically more true today in the highly mechanized and technologically oriented world in which we live. As our world grows "smaller," our appreciation for diversity must grow larger.

With regard to Robert Jackson and his contribution to the recognition and punishment of genocide as a crime at Nuremberg, I can say confidently that there would have been no Nuremberg without Robert Jackson. It was his creation! As he put it so well: "This is the first case I have ever tried where I had to first persuade others that a court should be established, help negotiate its establishment, and when that was done, not only prepare my case, but find myself a courtroom in which to try it."³³

Thank you for letting me share with you my experience at Nuremberg, which brought for me and I believe others, a dawn of hope for a better world for all mankind.

REMARKS OF BENJAMIN B. FERENCZ

I'll try to summarize some personal observations, experiences, and conclusions with regard to the subject we are supposed to be dealing with. The title of the program is "To Prevent and to Punish." This particular panel is supposed to address the topic: "The Origins of the Genocide Convention."

³¹ G.A. Res. 39/46, art. 2, 5 U.N. Doc. A/RES/39/46 (Dec. 10, 1984) (declaring that each state shall take measures to prevent acts of torture in any territory under its jurisdiction and that each state shall likewise take such measures as may be necessary to establish its jurisdiction where the alleged offender is present in any territory under its jurisdiction); *Demjanjuk v. Petrovsky*, 776 F.2d 571, 582 (6th Cir. 1985), *vacated*, 10 F.3d 338 (6th Cir. 1993) (*Demjanjuk* was an alleged Nazi war criminal certified to stand trial on capital charges in the State of Israel; in the original circuit court decision, the court vacated the order when *Demjanjuk* was acquitted of charges in Israel.).

³² RESTATEMENT (THIRD) OF THE LAW: THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 404 (1986).

³³ Gordon Dean, *Preface* of ROBERT H. JACKSON'S THE CASE AGAINST THE NAZI WAR CRIMINALS: OPENING STATEMENT FOR THE UNITED STATES OF AMERICA v, xiii (1946).

Origins of the Genocide Convention

I had, in my archives, a 75-page report by one of the very active participants—an NGO representative, Nehemiah Robinson—who met regularly with Lemkin and with others who pushed the Convention through.³⁴ It contains a description and the precise citation of every single step as the Convention went through the United Nations machinery. You have there the most authentic and clearest presentation of the origins of the structure of the Convention itself. The real origins, however, go back to Nuremberg and what was revealed at the Nuremberg trials about the Holocaust.

There have been atrocities, of course, of somewhat similar magnitude in other parts of the world since ancient times. The extermination of the Incas comes quickly to mind. And without getting into a dispute over whether or not the events in 1915 in Turkey with regard to the Armenians constituted genocide or not, it will be sufficient to say that for the victim or survivors it does not matter much what you call it. Giving enormous atrocities a special name has a special purpose: to stigmatize it, to emphasize how outrageous it is, and to identify it more readily. Genocide was not invented by Lemkin. He merely invented the term.³⁵

The crime of genocide was not within the competence of the International Military Tribunal (IMT). The IMT Charter listed only three major crimes. The most important one was the Crime Against Peace,³⁶ commonly known as Aggression or Aggressive War. The second, Crimes Against Humanity,³⁷ was an evolutionary progression from statements made in the past about the dictates of the human conscience and the need for humanity. Of course, that would include crimes of the magnitude of what we now call genocide. War Crimes,³⁸ the third category subject to jurisdiction of the IMT, had been prohibited long ago. For example, a code of conduct for the Regulation of Armies in the Field had been drawn up during the American Civil War. I will refrain from discussing those things further, however, and instead will describe my personal observations of the IMT.

A Witness to Genocide

I was a witness to what is now called genocide. As a soldier in the U.S. Army in World War II, after serving about three years in combat, from

³⁴ NEHEMIAH ROBINSON, *THE GENOCIDE CONVENTION: ITS ORIGINS AND INTERPRETATION* (World Jewish Congress, 1949), reprinted in 40 CASE W. RES. J. INT'L L. 315 (2008).

³⁵ LEMKIN, *AXIS RULE IN OCCUPIED EUROPE*, *supra* note 4, at 79.

³⁶ Charter of the International Military Tribunal in the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, art. 6, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279.

³⁷ *Id.*

³⁸ *Id.*

the beaches of Normandy to the Battle of the Bulge, I was assigned to General Patton's headquarters to investigate crimes committed in the liberated concentration camps, as well as the murder of downed Allied fliers. I entered Buchenwald and Mauthausen and a host of other camps to collect evidence of the crimes. I witnessed the effects of genocide—dead and starving people lying all over the ground. I could not tell if they were dead or alive. But I do not want to go into the horrors of it. First, we have little time. And secondly, it is far from comprehensible to a normal rational mind that human beings could be treated that way. I saw the consequences and later I got to know the mass murderers and their mentality.

The most important aspects of our subject today—prevention and punishment—require understanding the mentality of the killers. Are they sadistic beasts out for the joy, pleasure, or whatever it may be? They are not. They are people who could be sitting in this room. I will give you a more specific example, but I think we should introduce it with some photographic materials.³⁹

What you are going to witness is the opening of the biggest murder trial in human history; the classic case of genocide where the defendants—twenty-two of the original twenty-four—were accused of murdering over a million human beings in cold blood, including men, women, invalids, and children. This was known as the Einsatzgruppen Trial, and was focused on special extermination squads camouflaged with the name “*einsatzgruppen*,” which means action groups. When the trial opened in the Nuremberg Court-house, this is what the audience [heard]:

May it please your Honors. It is with sorrow and with hope that we here disclose the deliberate slaughter of more than a million innocent and defenseless men, women, and children. This was a tragic fulfillment of a program of intolerance and arrogance. Vengeance is not our goal, nor do we seek merely a just retribution. We ask this court to affirm by international penal action man's right to live in peace and dignity regardless of his race or creed. The case we present is a plea of humanity to law. We shall establish, beyond the realm of doubt, facts, which, before the dark decade of the Third Reich, would have seemed incredible. Reports will show that the slaughter committed by these defendants was dictated not by military necessity but by a supreme perversion of thought: the Nazi theory of the master race. We shall show that these deeds of men in uniform were the methodical execution of long-range plans to destroy ethnic, national, political, and religious groups which stood condemned in the Nazi

³⁹ At this point in his remarks Mr. Ferencz showed a video clip of him delivering his opening statement at Nuremberg. See *infra* note 40.

mind. Genocide, the extermination of whole categories of human beings, was a foremost instrument of the Nazi Doctrine. . . .⁴⁰

There you have the opening of what was not a very long trial. It was based upon the official top secret reports we captured, which disclosed exactly how many people each unit had killed, as well as the towns they were from and the name of the commanding officer. I took a sampling and flew from Berlin—where these documents were found—to General Telford Taylor in Nuremberg. Taylor was the Chief of Counsel for the subsequent trials. Later we became law partners and he became a distinguished professor at Columbia University. His initial response to my request that we put on another trial was very hesitant. He simply said, “We can’t. We don’t have budget for it. It’s not been included in the original plans. The Pentagon has not approved it.” I pleaded with him. He understood the importance of it and he said, “Can you handle it in addition to your other work?” I said I could, and he said, “You’ve got it.” So, that is how I became the Chief Prosecutor of the biggest murder trial in history. I was twenty-seven years old, and it was my first case.

I rested the prosecution’s case after two days. I did not call a single witness but relied on the secret reports of the accused. The defendants came in with their alibis and lies. It took about five months or so to clean up. Eventually, they were all convicted and thirteen of them were sentenced to death. Among the defendants were six SS generals, who were all selected by virtue of their rank and their education. In fact, most of them had doctoral degrees. According to the report of Dr. Rasch (who actually had two doctorates), he had managed to execute 33,771 Jews on September 29–30 of 1941.

To understand the mentality of mass murderers, the most articulate man to listen to was General Dr. Otto Ohlendorf. He was a doctor of economics, father of five children, a handsome young man, and relatively honest. He explained not merely that it was superior orders, but the rationale behind the killings. He said the rationale was self-defense. “Self-defense?” I asked. The Soviet Union was not attacking him. Germany attacked Poland, Belgium, Holland, France, Sweden, Norway; how could he get away with self-defense? “Ja,” he said, “We knew that they were planning to attack us and we knew that the Soviets would not be bound by any rules, so in anticipation we launched an anticipatory strike to defend ourselves.” That was his principle line of defense, and he claimed: “I couldn’t challenge the Head of State, he had more information than I had. I was in no position to do that so

⁴⁰ Video: Einsatzgruppen Trial: U.S. Prosecution Opens Case Against Einsatzgruppen Members (National Archives-Film 1947), available at <http://www.ushmm.org/lcmedia/viewer/wlc/film.php?Reflid=DFE0665F>.

I carried out that obligation and I would do it again in defense of the nation.”

Most genocides are committed in presumed defense of some particular ideal; whether it be religion, ideology, race, self-determination, or nationalism. These are the things that usually motivate people to go out and kill and prepare to be killed. They justify it as necessary to protect their own conception of what the world should be like. It is important to understand that point. These are not wild, raving maniacs. You cannot kill an idea with a gun; you can only change it by a better idea. And that is something we have to recognize as well.

Changing the Way People Think

As I have indicated, it is very difficult to change the way people think when it relates to such a strongly held, even indoctrinated ideal. It certainly can be done, but it takes a long time and perseverance. Let me give some examples.

First, slavery was the basis for a civil war in the United States because some thought vital interests were at stake—for instance, the economy of the country. No one would make such a suggestion today. Second, the rights of women. Our Constitution provided they could not vote. That has completely changed now.

There are many other illustrations that time does not allow me to list. The idea of sovereignty itself is an obsolete notion. We live in an interdependent world. Take the computer, for example. You push the button and right away you are in China, or India, or someplace else in the world. The ancient notion that a sovereign state can do whatever it wishes within its own borders troubled Justice Jackson and others at the beginning of the IMT trial. Jackson and General Telford Taylor felt strongly that the time for change had come. No nation and no person should be above the law. The whole notion of a sovereign ruler has to change. . . .

Prevention of genocide is the primary goal. Punishment helps to avert vengeance and encourages earlier reconciliation. But punishment itself does not operate in a vacuum. We live in a political atmosphere and we see it everyday and are affected by the circumstances that we punish. At the point when you decide to punish, you have already failed. . . . [Yet,] punishment is important because it tells the victims we care. We know what happened and we set a historical record that is indisputable.

As incredible as it may seem, there are some people who still deny the existence of the Holocaust. Not in my presence, for their safety. The secret minutes of the January 1942 conference in Berlin, which are on display in a German museum there, show conclusively the specific plans for the “Final Solution of the Jewish Problem,” which involved the deliberate

murder of about twelve million men, women, and children.⁴¹ Who were the people figuring this out? They were doctors, lawyers, professors, and people in the SS of the highest intelligence. I know exactly how the Einsatzgruppen commanders arranged to murder many thousands of children. They bashed the infant's heads against a tree to save ammunition. There are other ways, but I will not go into them here.

What You Can Do About It?

What can you do about it? You can do a lot about it. For an example of what one individual can do, look to Lemkin. I thought he was a “nudnick” (pest), but I took him seriously. He gave me his book. And for that reason, in that opening minute you heard of the Einsatzgruppen Trial, although genocide was not listed as a crime in either the IMT Charter or the Control Council Law, I called it genocide. It was the classic case of genocide. And I was thinking of Lemkin when I did that. There are many other individuals who had an impact on the future. Arvid Pardo of Malta argued that the seafloor was the common heritage of mankind.⁴² I was in Hamburg last week, and there we have an imposing Law of the Sea Tribunal, to settle maritime disputes by law. I could list many instances where one individual made a difference regarding the environment, the Law of the Sea, and other major advances. A.N.R. Robinson of Trinidad and Tobago put the idea of an International Criminal Court on the agenda of the United Nations and became one of its most ardent champions. When I went to school there was no such thing as international criminal law. There were not such things as international courts prior to Nuremberg. The progress has been fantastic.

This is a revolution that is taking place and it is all being supported by the new miraculous means of communication. The young people can save the world by new systems of education. It begins in the cradle. And given enough determination, within one or two generations, or maybe sooner, we will have created a more humane world of the sort that we tried to create at Nuremberg and which Lemkin stood for. If you have enough drive and persistence and keep with it, you can change the world. And do you

⁴¹ *Besprechungsprotokoll* (Jan. 20, 1942), available at <http://www.ghwk.de.deut.protokoll.pdf>, translated in *Protocol of Conference* (Jan. 20, 1942), available at <http://www.ghwk.de.engl/Prot-engl.pdf>. See also House of the Wannsee Conference: Memorial and Educational Site, <http://www.ghwk.de.engl/kopfengl.htm> (last visited Feb. 8, 2008).

⁴² See Press Release, U.N. Information Service, *Dr. Arvid Pardo, 'Father of Law of Sea Conference' Dies at 85, in Houston, Texas*, U.N. Doc. SEA/1619 (July 16, 1999). See also DIV. FOR OCEAN AFFAIRS AND THE LAW OF THE SEA OFFICE OF LEGAL AFFAIRS, *THE LAW OF THE SEA: CONCEPT OF THE COMMON HERITAGE OF MANKIND, LEGISLATIVE HISTORY OF ARTICLES 133 TO 150 AND 311(6) OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA* 8 (United Nations 1996).

have an obligation to change it? I think you do. I think we owe it to the memory of those who perished. We owe it to the children that some of you have or will have to never stop trying to make this a more humane and secure world.

REMARKS OF WHITNEY R. HARRIS

The genesis of the Nuremberg trial was the Moscow Conference of October 1943, which concluded with a statement issued by President Roosevelt, Prime Minister Churchill, and Premier Stalin declaring their determination to hold individuals responsible for crimes committed by their respective countries in the course of World War II.⁴³ The statement warned that officers, men, and members of the Nazi Party who were responsible for, or took a consenting part in atrocities, massacres, or executions would be punished by joint decision of the Allied governments. The statement concluded: "most assuredly, the three Allied Powers will pursue them to the uttermost ends of the earth and will deliver them to their accusers in order that justice may be done."⁴⁴

On May 8, 1945 President Harry Truman appointed Supreme Court Justice Robert H. Jackson the United States Chief of Counsel charged with obtaining the agreement of the Allies to a trial of the major Axis war criminals before an international military tribunal. Jackson succeeded in persuading the British to agree to the proposed trial and, on June 26, 1945, representatives of the United States, Great Britain, France, and the Soviet Union met in London for the purpose of drafting an agreement for the trial of the Axis war leaders.

I had served as a line officer in the U.S. Navy throughout World War II. Toward the end of the war, the Navy assigned me to active duty with the Office of Strategic Services (OSS). OSS sent me to London to be in charge of the investigation of war crimes in the European Theater. I was on this mission when representatives of the Allied Powers convened to negotiate an agreement for the trial of the major Axis war leaders. From time to time, I was able to provide the American negotiators with incriminating Nazi documents. I was ultimately invited to join the prosecuting staff, and I moved to Nuremberg with the first group of American prosecutors.

The principal repressive agency of the Nazi regime was the Reich Main Security Office (RSHA),⁴⁵ which combined both intelligence and spe-

⁴³ See Declaration of German Atrocities, U.S.-U.K.-U.S.S.R., Nov. 1, 1941, 9 DEP'T. ST. BULL. 310-11 (1943).

⁴⁴ *Id.* at 311.

⁴⁵ RSHA dealt with matters of intelligence and security within Germany. *Reich's Main Security Office [RSHA] Reichssicherheits Hauptamt*, INTELLIGENCE RESOURCE PROG., <http://www.fas.org/irp/world/germany/intro/rsha.htm> (last visited Feb. 1, 2008).

cial police agencies. Since I had acquired some knowledge of the Nazi intelligence system while in OSS, I was assigned the case against the Gestapo and SD, two organizations within the RSHA. I was also assigned the case against the chief of the RSHA, Ernst Kaltenbrunner, who had succeeded Reinhard Heydrich in that position on January 30, 1943, after Heydrich's assassination in Czechoslovakia.

The major crime against humanity charged to the Nuremberg defendants was the extermination of Jews, Gypsies, Polish and Soviet intelligentsia, and other unwanted minority groups. As this crime was primarily the responsibility of the Gestapo and SD within the government and the SS within the Party, this portion of the case fell primarily into my hands.

Our basic evidence against the Nazi defendants was documentary; I had collected documents in Great Britain while serving in OSS and Colonel Robert Storey, Justice Jackson's first executive trial counsel, had assembled a much greater collection in Paris. All these incriminating documents were assembled in the Palace of Justice, classified, translated, and made available to both prosecution and defense counsel. In preparing the case against the Gestapo, SD, and Kaltenbrunner, I searched the Document Room seeking evidence of Nazi crimes against humanity.

One document I found was a letter written by SS Untersturmfuehrer Becker, the operator of a gas van in the Eastern territories, to Walter Rauff, the head of the motor vehicles department of the Gestapo. In the letter, Becker complained of a malfunctioning gas van he was operating, which caused victims to die in suffocating agony rather than in gentle sleep as intended.⁴⁶

Shortly before the trial began, I learned that the British had Otto Ohlendorf, the head of Amt III of the RSHA, under interrogation in London. I asked that the British to send Ohlendorf to Nuremberg so that I might interrogate him on the organization of the RSHA, of which my defendant, Kaltenbrunner, was the chief. The British did so, and I began my interrogation by asking Ohlendorf about his activities during the war. He said that, except for 1941, he had served as chief of Amt III of the RSHA. Naturally, I asked what he had done during that year. When he replied that in 1941 he had been in command of Einsatzgruppe D, I immediately recalled the Becker letter, which had been written from an Einsatzkommando, and was inspired to ask him how many men, women, and children his group killed during that year. He replied, "90,000."⁴⁷ This exchange broke the case on the extermination program of the Einsatzgruppen in the Eastern territories, and we were then able to establish, through the testimony of Ohlendorf and

⁴⁶ See Transcript of Record at 560–61, Int'l Military Trib. At Nuremberg, vol. III (Dec. 1945).

⁴⁷ Transcript of Record at 319, Int'l Military Trib., vol. IV (Dec. 1945).

others, that approximately 2,000,000 persons, mainly Jews, had been murdered by these units of the RSHA. It was the initial proof of the Holocaust.

Ohlendorf testified that he knew of Becker and Rauff, and that the Becker letter was genuine. He added that the gas vans were of various sizes, large enough to kill from fifteen to twenty-five persons at one time. The Soviet member of the Tribunal, General Nikitchenko, asked the following questions of Ohlendorf:

[Question]: In your testimony you said that the Einsatz group had the object of annihilating the Jews and commissars, is that correct?

[Answer]: Yes.

[Question]: And in what category did you consider the children? For what reason were the children massacred?

[Answer]: The order was that the Jewish population should be totally exterminated.

[Question]: Including children'?

[Answer]: Yes.

[Question]: Were all the Jewish children murdered?

[Answer]: Yes.⁴⁸

Hermann Graebe, the German manager and engineer in charge of the branch office of the Solingen Firm in the Ukraine from September 1941 until January 1944, witnessed two such mass murders and belied any contention that these murders were carried out by subterfuge and without force. Graebe's interest in the mass executions arose from the fact that in addition to Poles, Germans, and Ukrainians, he employed Jews on the various construction projects under his supervision. He described an action that took place in Rowno on July 13, 1942:

On the evening of this day I drove to Rowno and posted myself with Fritz Einsporn in front of the house in the Bahnhofstrasse in which the Jewish workers of my firm slept. Shortly after 2200 the ghetto was encircled by a large SS detachment and about three times as many members of the Ukrainian militia. Then the electric arclights which had been erected in and around the ghetto were switched on. SS and militia squads of four to six men entered[,] or at least tried to enter, the houses. Where the doors and windows were closed and the inhabitants did not open at the knocking, the SS men and militia broke the windows, forced the doors with beams and crowbars and entered the houses. The people living there were driven on to the street just as they were, regardless of whether they were dressed or in bed. Since the Jews in most cases refused to leave their houses and resisted, the SS and militia applied force. They finally succeeded, with strokes of the whip, kicks, and blows with rifle butts, in clearing the houses. The people were driven out of their houses in such haste that small children in bed were left behind in several cases. In the streets women

⁴⁸ *Id.* at 337-38.

cried out for their children and children for their parents. That did not prevent the SS from driving the people along the road at running pace, and hitting them, until they reached a waiting freight train. Car after car was filled, and the screaming of women and children and the cracking of whips and rifle shots resounded unceasingly.⁴⁹

They were transported to their ultimate deaths.

Graebe further described a mass execution he observed on October 5, 1943, at Dubno, Ukraine:

I drove to the site, accompanied by my foreman, and saw near it great mounds of earth, about thirty meters long and two meters high. Several trucks stood in front of the mounds. Armed Ukrainian militia drove the people off the trucks under the supervision of an SS man. The militia men acted as guards on the trucks and drove them to and from the pit. All these people had the regulation yellow patches on the front and back of their clothes and thus could be recognized as Jews. My foreman and I went directly to the pits. Nobody bothered us. Now I heard rifle shots in quick succession from behind one of the earth mounds. The people who had got off the trucks—men, women and children of all ages—had to undress upon the orders of an SS man, who carried a riding or dog whip. They had to put down their clothes in fixed places, sorted according to shoes, top clothing, and underclothing. I saw a heap of shoes of about 800 to 1,000 pairs, great piles of under linen and clothing. Without screaming or weeping these people undressed, stood around in family groups, kissed each other, said farewells, and waited for a sign from another SS man, who stood near the pit, also with a whip in his hand. During the 15 minutes that I stood near I heard no complaint or plea for mercy. I watched a family of about eight persons, a man and a woman, both about 50, with their children of about 1, 8 and 10, and two grown-up daughters of about 20 to 24. An old woman with snow-white hair was holding the one-year-old child in her arms and singing to it and tickling it. The child was cooing in delight. The couple were looking on with tears in their eyes. The father was holding the hand of a boy about 10 years old and speaking to him softly; the boy was fighting his tears. The father pointed to the sky, stroked his head and seemed to explain something to him. At that moment the SS man at the pit shouted something to his comrade. The latter counted off about 20 persons and instructed them to go behind the earth mound. Among them was the family which I have mentioned. I well remember a girl, slim and with black hair, who as she passed close to me, pointed to herself and said, “twenty-three.” I walked around the mound and found myself confronted by a tremendous grave. People were closely wedged together and lying on top of each other so that only their heads were visible. Nearly all had blood running over their shoulders from their heads. Some of the people shot were still moving. Some were lifting their arms and turning their heads to

⁴⁹ *Id.* at 255.

show that they were still alive. The pit was already two-thirds full. I estimated that it already contained about 1,000 people. I looked for the man who did the shooting. He was an SS man, who sat at the edge of the narrow end of the pit, his feet dangling into the pit. He had a tommy gun on his knees and was smoking a cigaret [sic]. The people, completely naked, went down some steps which were cut in the clay wall of the pit and clambered over the heads of the people lying there, to the place to which the SS man directed them. They lay down in front of the dead or injured people; some caressed those who were still alive and spoke to them in a low voice. Then I heard a series of shots. I looked into the pit and saw that the bodies were twitching or the heads lying motionless on top of the bodies which lay before them. . . . I left with my foreman and drove in my car back to Dubno.⁵⁰

In my book, *Tyranny on Trial*, a diagram is displayed containing a report by Stahlecker, the Chief of Einsatz Group A, showing the number of Jews exterminated in the Baltic states, each number encased in the diagram of a coffin.⁵¹ The report stated that, in the first four months of operations, Einsatz Group A had murdered 135,000 Communists and Jews.⁵² Estonia was shown as already Judenfrei—free of Jews.⁵³

This was the work of the Einsatzkommandos—to follow the German Armies as they advanced on the Eastern front, seizing Jews from their homes and taking them and other Nazi undesirables into the fields to be murdered. As the war progressed, however, the Nazis found need for permanent installations to house, exploit for labor, and ultimately murder these victims of Nazi insanity. Concentration camps already existed to imprison perceived enemies of the state. Now something more formidable was required—extermination centers to eradicate those who had not been killed in the fields. The extermination camps were Treblinka, Sobibor, Majdanek, Chelmno, Belzec and Auschwitz. Of them all, Auschwitz murdered the most.

The British Broadcasting Company recently produced a multi-part series on the Auschwitz Concentration Camp.⁵⁴ I appeared in the film for the purpose of describing the Commandant of Auschwitz, Rudolf Hoess, whom I had interviewed at Nuremberg.

Rudolf Hoess was born in Baden Baden and raised in Mannheim. His best friend was a black pony, which his parents gave him on his seventh

⁵⁰ Transcript of Record at 507-09, Int'l Military Trib. at Nuremberg, vol. XIX (Nov. 1945).

⁵¹ WHITNEY R. HARRIS, *TYRANNY ON TRIAL: THE TRIAL OF MAJOR GERMAN WAR CRIMINALS AT THE END OF WORLD WAR II AT NUREMBERG GERMANY, 1945-1946*, 361 (rev. ed. 1999).

⁵² *Id.* at 358.

⁵³ *Id.* at 361.

⁵⁴ *Auschwitz: The Nazis & the 'Final Solution'*, (BBC TWO television broadcast Jan.11, 2005).

birthday. His greatest joy was to take his pony into the forest, and to ride alone for hours on end.

Hoess had two younger sisters, whom he would tease as any boy would. He was a good student and an obedient son. When World War I broke out shortly after the death of his father, Rudolf became interested in a military career rather than the life in religious service his father had planned for him.

Hoess served with distinction in Turkey and the Middle East and he headed a cavalry unit in Damascus when the armistice was declared. His unit refused to surrender and fought its way back to Germany. Hoess then joined the Freikorps Rossbach, an extra-legal military unit. In 1922 he was involved in the murder of a suspected Communist spy and was sentenced to ten years in prison. He ultimately was released under the Amnesty Act of 1928.

Hoess decided to become a farmer and joined an austere agricultural community known as the *Artamanen*. He married a woman of similar interests. They had five children.

Hoess had joined the Nazi Party in 1922. Shortly after Adolf Hitler was named Chancellor of Germany in 1933, Hoess applied for membership in the SS under Heinrich Himmler, and was accepted as a member in 1934. Himmler, who had likewise joined the *Artamanen* organization, urged Hoess to apply for a leadership role in the administration of concentration camps.

Hoess was intrigued and accepted the offer. He was assigned to Dachau in 1935 and to Sachsenhausen in 1938. He was selected to open a new camp at Oswiecim, Poland in the summer of 1940. The German name of the camp was Auschwitz. He had no idea that it was destined to become a site for exterminations.

In the summer of 1941 Heinrich Himmler called Hoess to Berlin where he told Hoess that he was to convert Auschwitz into a facility for the destruction of Jews who would be sent there by Adolf Eichmann, head of the Jewish section of the Gestapo. Himmler explained to Hoess that if the Germans did not destroy the Jews in the course of the war, the Jews would destroy Germany. Hoess actually believed this nonsense. He returned to Auschwitz. The thought of ignoring the draconian order never occurred to him. He built Auschwitz into the foremost extermination plan in history, in which, as he told me, two and a half million human beings had been exterminated. How was this done?

Picture this tragedy of murder by the millions.

A train pulls into the siding at Birkenau, the primary Auschwitz extermination center; an engine and thirty cattle cars, jammed with Jews. It is met by SS officers and guard dogs. The doors are opened, and exhausted men, women and children stumble out. They are told to leave their belongings behind. Able-bodied men and women without small children are di-

rected to line up to the right—all others, women and children, aged and infirm, stand to the left. The latter are to be taken directly, as they are informed, to the showers.

When they arrive at the assigned building and enter, they are told to remove their shoes and clothing, carefully hanging their clothing on numbered pegs. The door to the communal shower room opens. Apprehensively, they enter, mothers holding their children's hands. For a moment they are frightened, but are reassured when they observe the showerheads in the ceiling of the room, and the men of the Sonderkommando who accompany them. The latter soon leave, however, sealing the door behind them. Fear returns. In a moment the showerheads activate. They reach out for the water only to realize to their horror that gas is spewing out. Children cry out and fall to the ground to be trampled by their gasping mothers.

After a few minutes the room is a macabre assembly of dead and dying victims, faces distorted in pain, the eyes of little children frozen in fright. Screams of terror give way to the silence of death. Soon all is quiet and the men of the Sonderkommando open the door. They pull out the bodies and trudge them to the elevators which take them to the furnaces above, where gold rings are removed and gold teeth are pulled out. Corpses are burned in the furnaces and ashes scattered upon the ground or dumped in a stream to be carried to the sea.

This was not the crime of the Sonderkommandos, who were themselves Jewish and would take their turn, in time, in the gas chambers. Nor was this the crime of Rudolf Hoess alone, he was the follower of the orders of Himmler and the policy of Adolf Hitler. This was the crime of Twentieth Century Man, under whose rule this incredible crime was committed.

Blame not others, whose hands committed these crimes, blame thyself, Man of the twentieth century, in whose time on earth these dreadful deeds were committed.

How many innocents died at Auschwitz? Was it four million, as the Soviets claimed, three million, two, or one? Does it matter? A mother weeps equally for the loss of each child as we weep for the Auschwitz victims of Hitler's Holocaust.

A thousand years have passed.

What was the number killed at Auschwitz?

It matters not. 'Twas but a trifle in the history

Of the massacre of man by man.