

OPINION

■ NUREMBERG TRIALS

A turning point in the law

By Harry Reicher SPECIAL TO THE NATIONAL LAW JOURNAL

THERE IS MUCH about international criminal law at the beginning of the 21st century that we take for granted: Slobodan Milosevic dragging out his prosecution at The Hague; tribunals of various sorts springing up as the result of human rights violations in exotic places such as Rwanda and Sierra Leone, and perpetrators of Nazi-era atrocities being hauled before U.S. courts, stripped of their citizenship and deported to facilitate trial overseas. Indeed, when the Iraqi tribunal soon begins its work, the world will witness the spectacle of two of the greatest tyrants of the late 20th century standing at the bar of justice at the same time. Terms such as crimes against humanity, genocide and war crimes have become part of the daily vocabulary. We have, in various ways, become so blasé about

Besides being the first international tribunal in history to try criminal offenses, Nuremberg also established two other precedents: Crimes are committed by individuals, and it is they who are to be charged, not states, which are abstract entities. Additionally, that national leaders can not hide behind claims of immunity before an international tribunal.

At the substantive level with respect to human rights, Nuremberg established the

England to face trial over atrocities committed by his regime. And in Iraq, a modified form of hybrid tribunal has been established, revolving around Iraqi personnel, albeit with provision for international advisers and consultants. In Rome in 1998, the statute of a new international criminal court was adopted, creating a permanent tribunal to try criminal offenses, thus addressing yet another shortcoming of Nuremberg, namely the ephemeral nature of those tribunals.

The evolution of the procedural dimension has been matched at a substantive level. Thus, although

such things that we tend to forget what a relatively recent phenomenon all of this is in Western law and international relations.

Yet barely six decades ago, all of this would have been unthinkable. Nov. 20 will mark 59 years since Sir Geoffrey Lawrence of the British Court of Appeals, who presided over the trial of major war criminals at Nuremberg, intoned: "The trial which is now about to begin is unique in the history of the jurisprudence of the world...." It was unique that the trials began at all. It happened thanks in large measure to President Harry Truman and Justice Robert Jackson, who took leave from the U.S. Supreme Court to be the chief prosecutor; the British view, which favored a "political solution" (translation—just take them out, put guns to their heads and shoot them) did not prevail.

The U.S. rationale for an international tribunal was threefold: precedents had to be established in international law, to take the ad hoc element out of the process and send unequivocal messages to would-be Hitlers and their followers of the fate that awaited them; a high moral plane had to be established, in marked contrast to the wanton brutality practiced by the defendants; and a historical record had to be created for the generations.

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charge of crimes against humanity, meaning extermination, enslavement and other inhumane acts directed against civilian populations.

International law, helped along considerably by Nuremberg, was further advanced in 1948 with the adoption of the Genocide Convention, directed against acts intended to wipe out whole groups of people defined by race, religion or ethnicity. And the precedents created by Nuremberg continue to reverberate today. The tribunals for Rwanda and the former Yugoslavia are the most direct descendants of the Nuremberg tribunals, though they seek to improve on the original model (for instance, by conferring jurisdiction to investigate and prosecute alleged crimes by all sides to the conflict, not just the losers).

In addition, other models have developed. National courts exercise jurisdiction

to try the very same crimes referred to above, most famously the trial of Adolf Eichmann in Jerusalem, over his central role in "the final solution of the Jewish problem." In Sierra Leone, a hybrid tribunal, combining national as well as international elements, is operating in the "Pinochet model," a Spanish magistrate judge almost succeeded in having a former Chilean dictator extradited from

crimes against humanity and genocide lie at the heart of prosecutions of large-scale human rights violations, both have evolved over the decades. For instance, the modern definition of crimes against humanity expressly includes rape. And rape may also constitute genocide, where it takes place across ethnic lines, with the aim of producing offspring which take on the father's ethnicity and prevent the mother's group from reproducing itself.

A growing momentum

The Nuremberg model lay largely dormant for some 45 years, while the Cold War simmered. In the last decade, however, prosecution of international crimes has gained considerable momentum, to the extent that the world has become a small and distinctly uncomfortable place for tyrants.

This week, as the world ushers in a year of commemorations which will culminate in the 60th anniversary of the commencement of the Nuremberg trials, it is appropriate to reflect on the profound meaning that has been breathed into Lawrence's remarks which followed his oft-quoted opening mentioned above: "...and it is of supreme importance to millions of people all over the globe." The revolution wrought by Nuremberg, and its abiding legacy are indeed that. **RM**

