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### The Nuremberg Symposium, Transcript of the Proceedings

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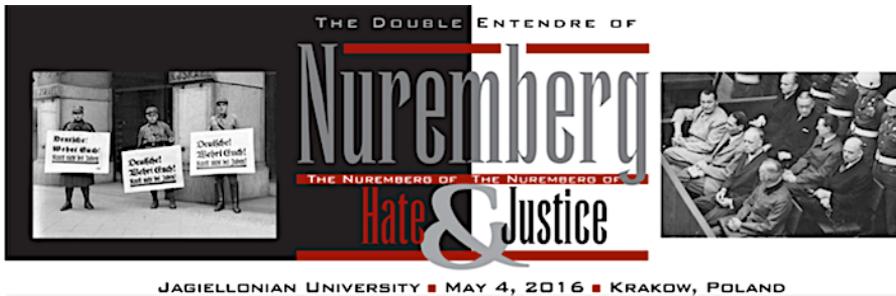
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The Nuremberg Symposium  
An International Legal Symposium  
on  
The Nuremberg Laws  
&  
The Nuremberg Trials

PRESENTED BY THE INTERNATIONAL MARCH OF THE LIVING,  
JAGIELLONIAN UNIVERSITY IN KRAKOW, POLAND,  
AND THE RAOUL WALLENBERG CENTRE FOR HUMAN RIGHTS\*

*In Memoriam*

Professor Elie Wiesel, Nobel Laureate and esteemed survivor of the Holocaust, served as Honorary Chairman for The Nuremberg Symposium. His recent passing has left an irreplaceable void. His vision, wisdom, and voice were indeed the moral compass of the world. May his memory serve as a blessing.

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\* Note: Submission Taken from Oral Presentations Delivered During The Nuremberg Symposium, Some of Which Have Been Reviewed, Modified and Edited by Various Speakers

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## WELCOME, INTRODUCTIONS AND OVERVIEW

*Professor Wojciech Nowak, His Magnificence Rector of the  
Jagiellonian University*

*Richard D. Heideman, Esq., Nuremberg Symposium Program Chair  
and Moderator*

*Dr. Shmuel Rosenman, Chairman, International March of the Living*

Richard D. Heideman: The room is indeed full of dignitaries, and honored guests, each and every one of you, and therefore we announce each of you, we thank each of you for taking your time to be here, and we welcome you here to Krakow in the name of the March of the Living and the cosponsors of this Nuremberg Symposium. We will address the issue of, “from hate to justice,” the Nuremberg Laws, the Nuremberg Trials. It is my honor to first introduce and welcome Professor Wojciech Nowak, His Magnificence Rector of the Jagiellonian University. Rector, please.

Professor Wojciech Nowak, His Magnificence Rector of the Jagiellonian University: Good morning everybody. Welcome to Poland. Welcome to Poland. Welcome to the university. For the official part, I speak Polish in honor of this place.

Professor Wojciech Nowak (translated from Polish): I welcome you in Poland, at the Jagiellonian University, in Krakow, my city. Please allow me to greet the Voivode of Małopolska, Mr. Józef Pilch, who represents the Government of the Republic of Poland.

We meet today in a very special place, the Aula of the Collegium Novum, the heart of the Jagiellonian University, where everything is history, where history looks at us, where we can touch history and feel it in our souls. Where our greatest founders, like King Casimir the Great, and our most renowned alumni, like Nicolas Copernicus and John Paul II, gaze at us [from paintings]. We look towards the future exactly from this place. While looking towards the future, we do not forget history, as dramatic and unimaginable as it can oftentimes be. For 652 years, the motto of our University has been *Plus ratio quam vis*—Let Reason prevail over Force. Unfortunately, both in the past and today, this motto does not always appear to hold. The tragedy of the Holocaust is not only unthinkable to ordinary people now, but it is also difficult to imagine and comprehend for myself—and I am a member of the post-war generation, and a surgeon. The question always arises: how could such a thing happen in the very center of Europe? And then a sad reflection sets in. Having already experienced so many dramatic and traumatic events, how is it possible that now, in 21st century, we observe what

happens across our Eastern border and in the Arab countries, and we are silent. We are powerless. The March of the Living, the memory of the Holocaust, serves as a reminder. Your presence here is our hope that the motto *Plus ratio quam vis* will prevail, because we remember the dramatic history, we remember Europe at its worst. Despite everything, we look towards the future with hope and optimism. By your very presence, you convey that in spite of the horror and tragedy you share the optimism, and that you uphold our motto *Plus ratio quam vis*. I thank you for being here.

Dr. Shmuel Rosenman: Dear distinguished Guests, as the Chairman of the March of the Living, I am here representing 220,000 young people from around the world, who have participated in this sacred journey, marching the 3.5-kilometers between Auschwitz and Birkenau.

Ladies and Gentlemen, on behalf of the March of the Living—and our cosponsors, Jagiellonian University, and the Raoul Wallenberg Centre for Human Rights—I want to thank you for gathering here today, to participate in this historic legal conference.

In Jewish tradition, the pursuit of justice is among the most lofty of goals. We read in the book of Genesis, about an argument between our forefather Abraham and God that took place over 3,500 years ago. When hearing that God wanted to destroy the cities of Sodom and Gomorrah, Abraham challenges God with this argument:

*Shall you sweep away the righteous along with the wicked?  
What if there are righteous individuals among the people of Sodom  
and Gomorrah?  
Shall not the Judge of all the Earth act Justly?*

Even the Master of the Universe is subject to the rule of law, to the principle of justice. Later, in the Torah, we are warned about the perversion of Justice and commanded to follow this uplifting ideal:

We say, “*Justice, Justice shall you pursue,*” the Torah tells us.

The rabbis explained this verse teaches us that justice belongs to all people—Jew and Gentile; to all areas—word and deed; and in all circumstances—both the means and the end.

The Nazi’s perversion of justice, symbolized by the Nuremberg Laws, and the attempt by the world to address Nazi atrocities, symbolized by the Nuremberg Trials, will be the focus of today’s symposium. They will serve both as a reminder of the injustice that humanity can inflict on one another, but also of the most idealistic impulse in the human spirit, that drives us to seek justice for all.

Let me close by thanking our partners, as I mentioned in the

beginning, the Jagiellonian University, and the Raoul Wallenberg Centre for Human Rights, for joining with the March of the Living to sponsor this Symposium, and for helping ensure these two significant anniversaries are both long remembered and deeply reflected upon.

I would like to give a special thanks to the Magnificence Rector of the University of Jagiellonian. I would like to thank the Dean of the Faculty of Political Studies, Mr. Szlachta, and the UNESCO Chair for Education for the Holocaust, Professor Mach, and of course, Dr. Jolanta Ambrosewicz-Jacobs, the Director of the Holocaust Studies Centre. Thank you very much, and I am sure we are going to have an excellent day.

Thank You.

## **THE DOUBLE ENTENDRE OF NUREMBERG: THE NUREMBERG OF HATE & THE NUREMBERG OF JUSTICE**

### INTRODUCTION

*Professor Irwin Cotler, Nuremberg Symposium Co-Chair*

Richard D. Heideman: We want to express our appreciation to each of the leaders from the university, and also from the March of the Living, and the Raoul Wallenberg Centre for Human Rights who have participated in the excellent preparation of today's symposium. Not only the logistical thinking, but the deep thinking that went into preparing this excellent program to focus in on eighty years since the institution of the Nuremberg Laws, seventy years since the Nuremberg Trials, during that span of history, those ten years, the destruction of human life, the destruction and fabric of the family, the destruction of civilization as we knew it, and as we know it. There is indeed a "double entendre"—hate and justice. To address those issues today, we invite two of our esteemed colleagues Professor Irwin Cotler and Professor Alan Dershowitz.

Professor Irwin Cotler: Thank you Richard. As you put it, we meet at an important moment of remembrance and reminder—of the eightieth anniversary of the Nuremberg Race Laws, which became prologue and precursor to the Holocaust, of the seventieth anniversary of the Nuremberg Trials which became metaphor and message for the emergence of international humanitarian, and international criminal law. And so, at this historic juncture, we have to ask ourselves, "What is it

that we have learned?” And, no less important, “What is it that we must do?” May I summarize several historical lessons to be learned and acted upon so that ‘Never Again’ does not become “again, and again, and again,” so that it is not a slogan, but a responsibility to act.

First, is the importance of remembrance—*le devoir de mémoire*—of the remembrance of horrors too terrible to be believed, but not too terrible to have happened, of six million Jews and millions of non-Jews murdered. And, this is not just a question of abstract statistics, but as one says at such moments of remembrance, “Unto each person, there is a name. Each person is an identity. Each person is a universe.” Reminding us of the words of our sages, “If you save a single person, it is as if you have saved an entire universe. Just as if you kill a single person, it is as if you have killed an entire universe.” And so, the abiding imperative: that we are each, wherever we are, the guarantors of each other’s destiny.

The second lesson is that the Holocaust, and the genocides that followed, occurred not simply because of the machinery of death, but because of state sanctioned ideologies of hate and incitement. It is this teaching of contempt, this demonizing of the other—this is where it all begins. As the Supreme Court of Canada put it so well, “The Holocaust did not begin in the gas chambers,” said the court, “it began with words.” And, so too here: the abiding imperative that must be acted upon, that incitement to genocide is a crime in and of itself, whether or not acts of genocide follow, itself another important principle and precedent of the Canadian Supreme Court and international jurisprudence.

A third lesson is the centrality of anti-Semitism, the oldest and most enduring of hatreds, and indeed, the most lethal. One million three hundred thousand people were murdered at Auschwitz. One million one hundred thousand of them were Jews. Here, again, let there be no mistake about it: Jews were murdered at Auschwitz because of anti-Semitism, but anti-Semitism did not die at Auschwitz. And, as we have learned only too tragically, and too well, that while it begins with Jews, it doesn’t end with Jews.

A fourth lesson is the danger of indifference and inaction in the face of genocide, and mass atrocity. What makes the Holocaust and the genocide in Rwanda—and we are commemorating also the twenty second anniversary of the mass murder in Rwanda—what makes these genocides so unspeakable is not only the horror of the genocides itself, but that these genocides were preventable. Nobody could say that we did not know. We knew, but we did not act. Just as in the case of

Darfur, nobody can say we did not know. We knew, but we did not act. And so, the responsibility to protect individually and collectively as a compelling normative and juridical precedent.

Fifth, is the whole question of the imperative of bringing war criminals to justice. If the twentieth century was the age of atrocity, it was also the age of impunity. Few of the perpetrators were brought to justice. And so, just as there can be no base or sanctuary for racism and hate, so there can be no base or sanctuary for these *hostis humanis generis*, these enemies of humankind. Again, let there be no mistake about it, the culture of impunity emboldens the war criminal, and encourages crimes against humanity.

The sixth lesson is that the Holocaust was made possible not only because of the “bureaucratization of genocide,” as Robert Lifton put it—and as the Nazi desk murderer Adolf Eichmann personified—but because of the *trahison des clercs*, the complicity of the elites, including physicians, church leaders, judges, lawyers, engineers, architects, and educators. Holocaust crimes, then, were also the crimes of the Nuremberg elites. It is our responsibility, then to speak truth to power, to hold power accountable to truth. The double entendre of Nuremberg – of Nuremberg racism and the Nuremberg principles—must be part of our learning as it is part of our legacy.

The seventh lesson concerns the vulnerability of the powerless and the powerlessness of the vulnerable, as dramatized so painfully at Auschwitz by the remnants of shoes and suitcases, crutches and hair of the murdered. Indeed, it is revealing, as Prof. Henry Friedlander points out in his work titled, *The Origins of Nazi Genocide*, that the first group targeted for killing were the Jewish disabled. It is our responsibility to give voice to the voiceless and to empower the powerless, be they the disabled, poor, elderly, women victimized by violence, or vulnerable children—the most vulnerable of the vulnerable.

The Eighth lesson is that the Holocaust—and the genocides since—have included horrific crimes against women. Moreover, these crimes have not only attended the genocide or been in consequence of it, but have in fact been in pursuit of it. Yet they remain the still unarticulated horror of the genocide of European Jewry. Seventy years later, that lesson remains to be learned—and acted upon—whether we speak of the horrific crimes against women in the Congo or in Syria. Significant numbers of the world’s population are routinely subject to rape, assault, torture, starvation, humiliation, mutilation and even murder simply because they are female.

The ninth lesson is the horror of mass atrocities against children. If

there is an atrocity that belies understanding—it is the willful exploitation, maiming and killing of a child—the most vulnerable of the vulnerable. Indeed, the Nazi genocide was the genocide of millions of children, and 1.5 million children perished in the Holocaust of European Jewry. But we have yet to learn from this most horrific of horrors, let alone act upon it—millions of children the world over are subjected to arbitrary detention, torture, cruel, inhuman and degrading treatment, slavery, execution, and recruitment as “child soldiers” incited to terrorize and kill others. We must ensure that protecting children’s rights is at the core of whatever we do —and therefore, of who we are.

The tenth lesson is the tribute that must be paid to the rescuers, the righteous among the nations, of whom Raoul Wallenberg is metaphor and message. Wallenberg, a Swedish non-Jew, saved more Jews in six months in Hungary in 1944 than almost any single government or organization. Tragically, the man who saved so many was not himself saved by so many who could have. As parliamentarians—particularly from countries such as Canada, the United States, Australia, and Israel, where Raoul Wallenberg is an honorary citizen—we have a responsibility to help discover the fate of this great hero of the Holocaust, whom the United Nations called the greatest humanitarian of the twentieth century.

And finally, let us always remember and honor the survivors amongst us. For, they endured the worst of man’s inhumanity to man, but somehow they’ve found in the resources of their own humanity, the will and the capacity to go on, to build their societies, to build their families anew, to make enduring contribution wherever they are amongst us. And so, we remember, and in concert with you, pay tribute to them.

*Professor Alan Dershowitz, Nuremberg Symposium Co-Chair*

Professor Alan Dershowitz: What an amazing gathering of minds, hearts and souls in an amazing setting, just miles away from where my own grandparents lived, and where so many members of my own family perished. This is a conference about the future, not about the past. We will build on the past, but we are talking about the future. We are talking about how to prevent recurring genocides.

Any conference about Nuremberg is a conference that raises more questions than it will provide answers. Not questions about the Nuremberg Laws. Those have very few questions that have to be raised about them. As Justice Jackson said at Nuremberg, “The worst and the most odious of all oppressions are those that mask as justice.” And the

Nuremberg Laws masked as justice. But the questions we will be addressing today are profound. They range from some which seem simple to us in retrospect. When the war was over, many among the victors said “Let’s not have trials. Let’s just shoot the perpetrators.” And no, the decision was made to put the perpetrators, at least the leaders on trial. Was that the right decision?

Was Secretary Morgenthau correct when he said that the response to Germany should be to relegate them to agrarian society for half a century? Or was Secretary of State Marshall correct when he said, “Let’s rebuild Germany. Let’s reward them in effect?” Hitler said, “If we kill the Jews, we will be wealthier.” The Marshall Plan made that tragic prediction come true—for good reasons, because we were fighting the Cold War—but the moral issues raised by our macro response to Germany are worthy of consideration.

Was the Nuremberg Trial an example of victor’s justice or could objective justice be rendered by victors, and by judges selected by the victors themselves? What were the sources of laws on which the Nuremberg defendants were placed on trials? Were they *ex post facto* laws? Did they result from a consensus about what the law should have been, or might have been, or actually was at the time the crimes were perpetrated? Was it correct to limit the trials to, initially, a few handfuls of leaders, and later perhaps a few hundreds of secondary leaders, or should there have been an attempt to apply the Nuremberg principles more broadly to every hands-on perpetrator, many of whom lived happy lives and died in their beds surrounded by loving children and grandchildren? Was the United States correct when, through John McCloy, it pardoned so many of the convicted Nuremberg criminals in the name of fighting the future Cold War?

Did the Nuremberg Trials do more good on balance or more harm? Why have so many genocides been permitted to go on after the Nuremberg Trials were over? And, is the ICC, the International Criminal Court—whose distinguished initial prosecutor sits among us today—is the ICC the legacy of the Nuremberg Trials? And, can the ICC—unlike the International Court of Justice, which is neither international nor a court nor renders justice—can the ICC actually administer justice? Will it apply the principle of “the worst first” which is the central mantra of any human rights program—you must prosecute the worst first—which is why the BDS movement is so antagonistic to human rights because its focus is on only one country, only on the nation state of the Jewish people, and doesn’t try to apply principles across the board based on “the worst first.” Has the United Nations

unbalance done more harm than good in genocide prevention? Surely, the Council on Human Rights has done more harm than good in the way they have reward bigotry, and rewarded racism, and rewarded sexism, and punished justice.

The one commitment that we know we must have based on the Holocaust is a commitment to truth, and the commitment to truth requires that we honor the research of people like Jan Gross, and not condemn them for telling the truth about the mixed legacy of Poland. But, it also requires that we remember Jan Karski, one of the great heroes, a man that has been a hero to me, a man who I had the opportunity to meet when he was an older professor at Georgetown University, a man who sacrificed everything, a non-Jew. Or Raoul Wallenberg. We have to remember [inaudible]. But, we have to remember as well the families, the Polish families who sacrificed themselves to save Jews. And, we have to remember Cardinal Glemp who only recently died and was the Primate of Poland to this century, an overt anti-Semite and bigot, who tried as hard as he could to repeat the legacy that led us to the Holocaust.

Truth requires that we tell painful truths, even to people who are our hosts, even to people who are here, and trying to be helpful to us. And, we must recall that the newest form of Holocaust denial, and the most vicious form of contemporary Holocaust denial is the attempt by some to equate what the Nazis did to the Jews with what the nation state of the Jewish people today is doing to the Palestinian people. To even suggest that equation—which is rampant throughout Europe, even among the face of Holocaust denial laws—to even suggest that analogy is to say there were no gas chambers in Germany, or in Poland, or in the Ukraine, or anywhere else in occupied Germany. There were no gas chambers, because there are no gas chambers now. There were no attempts to ingather people to kill them the way the Jewish were ingathered from places as far as Rhodes or Salonica, to bring them to Auschwitz to kill them. There was no targeting of babies. There were no actions against children to try to destroy the genetic core of the Jewish people, and that the Nazis must have acted in self-defense, because that's what the nation state of the Jewish people is doing.

And, we must focus on the continued victimization of civilians today. Every evil takes a new form, but today, there are genocides again. What is going on in Syria, what has gone on in Rwanda and Darfur and Cambodia were nothing short of genocides. Today, rape—rape has become a weapon of war. We saw it in the former Yugoslavia. We see it among ISIS today. And today, another form of victimization

of civilians is the deliberate use of civilians as human shields in an effort to target other civilians. That is an abuse of civilians, and an abuse of human rights. And it must be taken into account by the International Criminal Court, and by other institutions.

So the future—the future is what we are going to be talking about today. And the future is in our hands, and we will have no excuse if we do not protect it. Thank you.

Richard D. Heideman: And now you can hear, can see, can feel, not only the importance of today, but the honored presence we have of both Irwin Cotler and Alan Dershowitz on the same podium addressing the Nuremberg of Hate and the Nuremberg of Justice. Please join me in honoring our Symposium co-chairs, Alan Dershowitz and Irwin Cotler.

#### THE NUREMBERG LAWS: VIDEO PRESENTATION

Richard D. Heideman: I invite back to the microphone his Magnificence the Director of the Jagiellonian University, Professor Wojciech Nowak.

Wojciech Nowak: Ladies and gentlemen, now is a very special moment. Welcome to Poland, welcome to Krakow, welcome to Jagiellonian University.

Richard D. Heideman: And in the spirit madam justice of Tzedek Tzedek Tirdof, “justice, justice thou shalt pursue;” we welcome you as the Minister of Justice of the state of Israel for joining us today and to participating with the discussions that we will have today. You deal with justice, the meeting of justice, the sense of justice, the giving of justice, a commitment to justice, every single day. Not only on behalf of the state of Israel but on behalf of the Jewish people and all humanity who care deeply about justice, we honor you and thank you for joining us.

The Nuremberg laws, too voluminous to discuss, but perhaps can best be presented by this video.

Narrator: Germany, 1933. The Nazi party, led by Adolf Hitler, seizes control of the democratic Weimar Republic. The country is transformed overnight into a police state. Basic rights and freedoms are revoked.

The first concentration camps are established, imprisoning political opponents, homosexuals, and Jehovah’s Witnesses. Hitler creates a propaganda campaign based on the purity and superiority of the Aryan race. His racist ideology infiltrated every level of society.

Jews are labeled as impure and are excluded from mainstream German society. They are randomly attacked in the streets. The Nazi

party calls for a boycott of Jewish stores and businesses.

On September 15, 1935, the German parliament passed the Nuremberg Race Laws. The Nuremberg Laws makes racism, and in particular, anti-Semitism, legal in Germany. German Jews are stripped of their citizenship. Relations between Jews and non-Jews are forbidden. Jews cannot employ non-Jews.

Professor Robert Jan Van Pelt, Architectural Historian, University of Waterloo & University of Toronto: Before the Nazis came to power, there was really no Jewish problem. If you're looking at a Jewish world in 1933, if you look at Britain, you look at France, you look at Germany, and you ask what would be the best place to live as a Jew? You would say Germany.

Professor Sharon Kangisser Cohen, Academic Director, Oral History Division, Hebrew University of Jerusalem: What we understand in the thirties is this split between the German and the Jewish society hadn't begun in terms of a psyche of "us and them."

Professor David Silberklang, Senior Historian, Yad Vashem, Adjunct Professor, Hebrew University: Following World War One, a democratic regime was instituted in Germany, the Weimar Republic, which had perhaps, the most liberal democratic constitution in the world.

Professor Steven T. Katz, Alvin J. and Shirely Slater Chair, Jewish Holocaust Studies Boston University: Germany had given Jews political rights as citizens and the Jews had jumped into that with both feet. They became very active politically. They joined political parties. Jews became disproportionately influential in the professions. They had more doctors. They had more lawyers. They had more judges. They had more journalists. They had more university professors than their one percent of their population would have suggested.

Professor David Silberklang, Senior Historian, Yad Vashem, Adjunct Professor, Hebrew University: But the Weimar Republic, and the constitution that created it, were extremely unpopular in Germany. In the elections that brought the Nazis to power, these were the elections of November 1932, fifty-eight percent of the German electorate, people of their own free will, voted against democracy in the last—more or less—free election in Germany.

Narrator: Immediately after Hitler came to power in January 1933, the Enabling Act was passed which gave the right to Hitler's cabinet to enact laws without the consent of parliament. This gave Hitler dictatorial powers over the entire country.

Professor David Silberklang, Senior Historian, Yad Vashem,

Adjunct Professor, Hebrew University: By the time that the laws were passed, Germany was no longer even remotely resembling a democratic society.

Professor Robert Jan Van Pelt, Architectural Historian, University of Waterloo & University of Toronto: What happened in '35 was that there were many so-called spontaneous violent acts against Jews.

Professor Steven T. Katz, Alvin J. and Shirely Slater Chair, Jewish Holocaust Studies Boston University: Hitler allowed the Brownshirts, which was his thuggery, his militia, to go out into the streets and cause street violence. They would beat up Jews. They would rob Jews. They would stand in the front of shops owned by Jews. They would break those windows. They would rape young Jewish girls.

Professor Robert Jan Van Pelt, Architectural Historian, University of Waterloo & University of Toronto: The country was drifting into anarchy.

Professor Sharon Kangisser Cohen, Academic Director, Oral History Division, Hebrew University of Jerusalem: Nazis realized that, in order to create a new reality for the Jews in Germany, it would have to be through legislation.

Narrator: The Nuremberg Laws were drafted in a matter of hours and they were presented the next day at the 1935 annual Nazi Rally in Nuremberg.

Professor David Silberklang, Senior Historian, Yad Vashem, Adjunct Professor, Hebrew University: In a sense, these laws came as a calming moment of that violence against the Jews and pressure on the Jews. And ostensibly came to organize society so that Jews and everyone else in Germany knows who everybody is and how they belong. There are the Aryans, all those people in Germany who are citizens of Germany. And there are the Jews, who are not citizens but have a right to live in Germany under certain, circumscribed circumstances.

Professor Sharon Kangisser Cohen, Academic Director, Oral History Division, Hebrew University of Jerusalem: One of the geniuses of this policy, because it's actually fusing something that's rational—legislation—with something irrational—xenophobia.

Professor David Silberklang, Senior Historian, Yad Vashem, Adjunct Professor, Hebrew University: These laws set out to deny Jews in Germany their citizenship, regardless of how long a particular Jew had been living in Germany or that person's family. And the laws ultimately defined citizenship in Germany based upon who a person's grandparents were by race. And therefore, anybody who had even one

Jewish grandparent could, no longer be a citizen of Germany.

Professor Steven T. Katz, Alvin J. and Shirely Slater Chair, Jewish Holocaust Studies Boston University: Sexual relations between Jews and Aryans was considered a crime, because sexual relations between Jews and Aryans obviously violated racial principles, and would produce children who would be in some ways, carriers of the Jewish gene.

Professor Sharon Kangisser Cohen, Academic Director, Oral History Division, Hebrew University of Jerusalem: The Nuremberg Laws separate the Jews out of Germany society, and with that, a sense of indifference is engendered, which ultimately would lead to a sense of indifference towards the Jewish fate at later stages of Nazi policy.

Professor David Silberklang, Senior Historian, Yad Vashem, Adjunct Professor, Hebrew University: The idea that Jews are not equal to the rest of the German people. The idea that Jews should not be equal citizens. The idea that there should be a social separation legislated in Germany seemed to be at least unobjectionable to almost everybody else in Germany, and no one spoke out.

Professor Robert Jan Van Pelt, Architectural Historian, University of Waterloo & University of Toronto: A very famous case is of a lawyer who, one of his clients, was a Jewish owner of a department store. And this lawyer goes to the police office where his client is held and he protests. And immediately, he is beaten up by S.S. men, and then he is paraded through the streets. He is carrying a big sign that says, "I am a lawyer and I will never complain to the police again." No other lawyer went then to the police to basically argue on his behalf and he didn't do it after that anymore.

The Honourable Irwin Cotler, Former Minister of Justice and Attorney General of Canada: The Nuremberg crimes were really the crimes of the Nuremberg elites—judges, and lawyers, and faith leaders, and educators—the society that should have been engaged in protesting against Nuremberg racism were the elites and the society that in effect, were promulgating this hate, and promulgating these laws.

Professor David Silberklang, Senior Historian, Yad Vashem, Adjunct Professor, Hebrew University: When the Nuremberg Laws were passed in 1935, they were not passed as far as—almost all historians now agree—with any intention or any vision of the future that there would be a murder of all the Jews, an attempt at what the Nazis later called a "final solution to the Jewish question." However, these laws ultimately served as the foundation for determining all policies against Jews, and that included, as time went on, also killing the Jews.

Narrator: The rise of Nazi Germany and the Nuremberg Laws are a stark reminder of how marginalization and the denial of basic human rights led to Auschwitz and the murder of millions of innocent people. It is a reminder we fail to heed at our own peril.

Executive Producer: Eli Rubenstein, March of the Living

Producer: Naomi Wise, Garrison Creek Media

#### THE NUREMBERG TRIALS: A SUMMARY INTRODUCTION

*Professor John Q. Barrett, Board Member, Robert H. Jackson Center,  
Professor of Law, St. John's University\**

In the broad landscape of post-World War II Europe, there were thousands of trials of war criminals. Most were national trials, often military trials, focused on crimes perpetrated in particular locations.

The Nuremberg trials, a small set, were trials of Nazis who were regarded as arch-criminals, whose crimes were major and transcended any particular location.

There were thirteen Nuremberg trials. They occurred in the German city of *Nürnberg* (Nuremberg), which in the years following Nazi Germany's surrender was in the United States zone of military occupation.

One and only one Nuremberg trial was an international trial—conducted by the U.S., the U.S.S.R., the U.K. and France, it occurred in late 1945 and much of 1946.<sup>1</sup>

The international Nuremberg trial was followed, between late 1946 and spring 1949, by twelve subsequent trials in Nuremberg that the U.S. conducted by itself.<sup>2</sup>

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\* Professor of Law, St. John's University School of Law, New York City, and Elizabeth S. Lenna Fellow, Robert H. Jackson Center, Jamestown, New York ([www.roberthjackson.org](http://www.roberthjackson.org)). Copyright © 2016 by John Q. Barrett. All rights reserved.

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1. A leading, scholarly primer is MICHAEL R. MARRUS, *THE NUREMBERG WAR CRIMES TRIAL OF 1945-46: A DOCUMENTARY HISTORY* (Boston & New York: Bedford/St. Martin's, 1997). An excellent participant's account is TELFORD TAYLOR, *THE ANATOMY OF THE NUREMBERG TRIALS: A PERSONAL MEMOIR* (1993).

2. Two leading books on these Nuremberg "subsequent proceedings" are KEVIN JON HELLER, *THE NUREMBERG MILITARY TRIBUNALS AND THE ORIGINS OF INTERNATIONAL CRIMINAL LAW* (Oxford Univ. Press, 2011), and REASSESSING THE NUREMBERG MILITARY

I will, in this introduction, touch upon ten topics:

- first, the predicate behavior, which is the human practice of making war;
- second, international law's progress, before World War II, in addressing that behavior;
- third, Nazism as human and national regression;
- fourth, World War II;
- fifth, legal analysis and war condemnation during the World War II years;
- sixth, the Allies' military defeat of the Nazis;
- seventh, the Allies' international Nuremberg trial of 1945-1946;
- eighth, the twelve subsequent American trials in Nuremberg;
- ninth, the legal legacy of the Nuremberg trials; and
- tenth, the human rights legacy, including the Holocaust knowledge legacy, of the Nuremberg trials.

## 1. War

First, as a matter of background, is war. It is a reality of human behavior across millennia. And for much of history, war was viewed as a matter of power, a matter of sovereignty, and a matter of legality—war-makers existed and, if they were lucky in war, they lived on in a realm of impunity. This was the human reality up through and including the 19th century.

## 2. Nations Renounce War as a Sovereign Prerogative

The view that war was a matter of power, sovereignty, and impunity began to give way, late in the 19th century, to views of legalism and constraint. The Hague conventions began to define war crimes—rules of behavior for civilized nations to follow when they engaged in the war endeavor. After the Great War (1914–1918), a European continental calamity that later was renamed World War I, leaders contemplated prescribing war itself. They also considered holding perpetrators, even up to the level of national leaders, responsible for the evils of war. Nations began to make commitments,

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TRIBUNALS (Kim C. Priemel & Alexa Stiller, eds., New York & Oxford: Berghahn Books 2012).

An online, recent bibliography that lists and also describes in narrative, in fifteen concise pages, leading book-length publications (i.e., books and long articles) on all thirteen Nuremberg trials—both the International Military Tribunal (the IMT) and the subsequent U.S. Nuremberg Military Tribunals (the NMTs)—is Kevin Jon Heller & Catherine E. Gascoigne, *Nuremberg Trials*, in OXFORD BIBLIOGRAPHIES (2015), [www.oxfordbibliographies.com](http://www.oxfordbibliographies.com).

both in bilateral and in multinational treaties, forswearing those activities of such destructiveness. In 1928, for example, President Calvin Coolidge signed the Kellogg-Briand treaty on behalf of the U.S. It was one of dozens of nations, including Germany, that renounced war as an instrument of national policy.

### 3. Nazism

But Nazism soon ruled Germany. Dachau, the first of the German concentration camps, a place to confine enemies of the state, was created in 1933. The Nazis began to use Nuremberg, a city of beauty and history connecting back to the Holy Roman Empire, as the site of fervent, frenzied Nazi Party Rallies. In 1935, the Nuremberg Laws were announced, subjugating Jews and others whom the Nazis regarded, often based in mad eugenic theories, as inferiors and enemies.



Adolf Hitler, Hermann Goering (a future Nuremberg defendant) and others, saluting in front of the *Frauenkirche* in Nuremberg's main market square.

#### 4. World War II

By the end of the decade, the Nazis brought war again—and the number, World War II. We today cannot truly comprehend its enormity and horror. The war, the Nazi aggression and atrocities, became the framework for the Holocaust that was perpetrated in Poland and

throughout the European continent. German troops and tanks conquered Poland in September 1939. Captives became slaves and victims of planned extermination.

### 5. Legal Condemnation of Nazi Aggression

In this period, legal thinking began to analyze and condemn Nazi aggression as criminal. This thinking generally had begun, as noted, during World War I and its aftermath. But in the Allied nations, particularly as Nazi Germany went on the march in the later 1930s and continuing into 1940 and 1941, legal thinking about war as crime occurred at the highest levels.

In the United States, President Roosevelt in 1940 appointed Robert H. Jackson to serve as Attorney General. In that position, Jackson's primary work was legal issues connected to war preparation. He, working with brilliant colleagues, analyzed how the isolationist, ocean-protected United States, with neutrality laws keeping it from involvement in the European conflict, could provide military assistance to the U.K., which by late June 1940 stood alone against the Nazis. The new Prime Minister, Winston Churchill, implored Roosevelt to provide WW I-era destroyers. Jackson's August 1940 legal opinion authorized his client, President Roosevelt, to provide that assistance,<sup>3</sup> which played a role in securing the North Atlantic and British survival. That opinion, plus subsequent U.S. legal analyses of Lend-Lease legislation and prominent public speeches by Jackson and others, advanced the view that Nazi aggression violated international law.<sup>4</sup> Jackson's thinking in this regard was advanced by University of Cambridge legal theorist Hersch Lauterpacht, who later became a member of the British prosecution team at Nuremberg.

In November 1943, Allied nation foreign ministers met in Moscow. By this point, although brutal fighting stretched ahead, it had become clear that the Allies would prevail—they would win the war. Their thinking thus included what they would do with the vanquished. At a high level of generality, they committed, in the names of Churchill, Roosevelt and Stalin, that “the major criminals whose offences have no particular geographical location . . . will be punished by a joint decision of the Governments of the Allies.” At Yalta in February 1945, the final “Big Three” meeting, the leaders reiterated that their foreign ministers would continue to work together on how they would handle “major war

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3. 39 Op. Att'y Gen. 484 (1940).

4. See ROBERT H. JACKSON, *THAT MAN: AN INSIDER'S PORTRAIT OF FRANKLIN D. ROOSEVELT* 103 (2003) (John Q. Barrett, ed.).

criminals” following war victory and dismemberment and occupation of Germany.

#### 6. Allied Victory

That process of legal accountability and condemnation could not, of course, get ahead of the war reality. Nazism first had to be defeated militarily, and it was. On May 7, 1945, at Reims, Nazi Germany surrendered. Germany as a sovereign state ceased to exist and the Allies occupied its former territory. Then legal thinking and plans could begin to become operational.

#### 7. The International Military Tribunal (“IMT”)

By spring 1945, Robert H. Jackson, age fifty-three, had been a U.S. Supreme Court justice for almost four years. President Harry S. Truman, then two weeks in office, decided to deliver on the Roosevelt commitment, made with Churchill and Stalin, to hold the leading Nazi perpetrators legally accountable. President Truman recruited Justice Jackson, whom he knew and admired, and whom Truman, his advisers, and the country regarded as a leading U.S. legal talent and figure of public stature, to head the American process of delivering on the Allied commitment. Truman, by picking Jackson, hoped to, and in the end he did, influence the British, Soviets, and French to implement and staff this commitment comparably.



May 2, 1945: Justice Robert H. Jackson, at the Supreme Court of the United States.

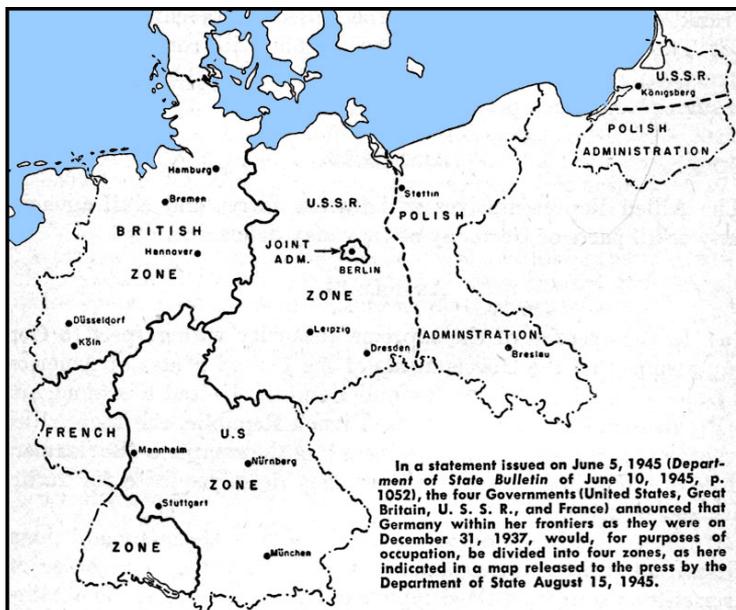
In late April 1945, Jackson was led to believe that this assignment would be something of a turnkey endeavor—that the evidence was assembled, that the international trial plan was in place, that trials were ready to go, and that this would be the trial of Adolf Hitler and the core of his inner circle. Of course none of that materialized.

What was required first, and what occurred during summer 1945 in London, was difficult multinational negotiation. It occurred in Church House at Westminster Abbey. The four national delegation leaders met in conference, working to harmonize their disparate legal systems and their very different views of what it meant to be committed to trying their principal Nazi prisoners as war criminals.



July 1945: A London Conference session, at Church House, Westminster Abbey.

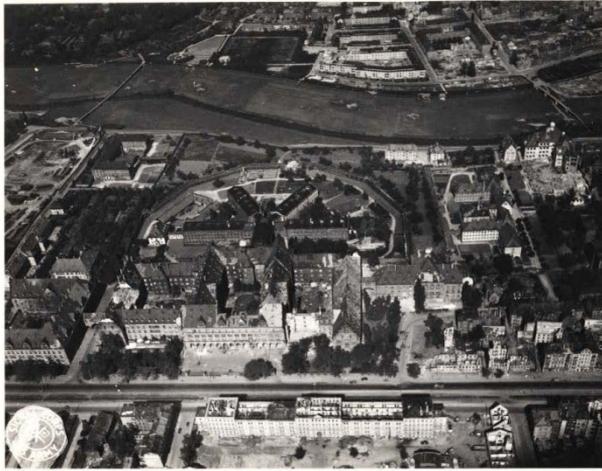
In this time period, there was no longer a sovereign Germany. It had surrendered unconditionally to the Allied nations, which jointly oversaw military occupation zones controlled by each of the four powers.



1945 Allied zones of occupation, following Nazi Germany's surrender  
 (www.ibiblio.org/hyperwar/Dip/AxisInDefeat/Defeat-3.html.)

The American zone, formerly southeastern Germany, included the city of *Nürnberg*. It had been bombed heavily by British and Americans forces during the war.<sup>5</sup> But outside Nuremberg's old city, on the *Fürtherstraße* (i.e., toward the neighboring city, *Fürth*), was a largely intact courthouse, the Palace of Justice, connected to a large prison. At U.S. Army urging, Justice Jackson plus his British and French counterparts agreed that it should be the trial site.

5. For a recent account of the March 30, 1944, U.K. bombing raid on Nuremberg, portraying air crew members' and their families' experiences during World War II and some survivors in old age, see JOHN NICHOL, *THE RED LINE: THE GRIPPING STORY OF THE RAF'S BLOODIEST RAID ON HITLER'S GERMANY* (London: Harper Collins, 2013).



1945: The Palace of Justice, Nuremberg.

The U.S.S.R. was the final nation to join the Allied trial plan. At the July 1945 “Big Three” conference in Potsdam, the leaders—now Stalin, Truman, and newly-elected U.K. Prime Minister Clement Attlee—again considered war criminals among many other topics. The leaders agreed that “[w]ar criminals and those who have participated in planning or carrying out Nazi enterprises involving or resulting in atrocities or war crimes shall be arrested and brought to judgment.”

The reaffirmation that the U.S.S.R. would remain in the project carried the London Conference to its successful conclusion. On August 8, 1945, Jackson and his Allied counterparts signed the London Agreement and Charter. The Agreement created the world’s first international criminal court, the International Military Tribunal (“IMT”)—so named because it was an institution of military occupation government in the land that had been Germany. The IMT had jurisdiction over four crimes: (1) conspiracy, common plan, and agreement; (2) the waging of aggression war, or breach of the peace; (3) war crimes, and (4) crimes against humanity. The London Agreement defined a system of due process. The defendants would receive written charges, defense counsel of choice, time to prepare for trial, discovery of prosecution evidence, and compulsory process to assemble defense witnesses. The IMT, an independent judiciary, would conduct a public trial. It would admit relevant evidence, broadly construed. It would hold the prosecutors to a burden of proof beyond a reasonable doubt.

The London Agreement also defined limits on the trial and on defendants’ rights. Defense arguments of *tu quoque*—“you too”; no

clean hands—were ruled out of bounds. Head of state immunity, a historical prerogative, was declared null and void. Following orders was declared inadmissible as a defense, although it could be relevant in mitigation of punishment.



August 8, 1945: Justice Jackson, for the U.S., signs the London Agreement.

Following the London Conference, prosecutors drafted a comprehensive indictment. On October 18, 1945, the IMT convened in Berlin to receive it. The Indictment charged twenty-four individuals and six Nazi organizations with various crimes. One defendant was Hans Frank, the former Gauleiter of Poland and the Nazi-occupied General Government. Frank had presided in Krakow, in the Wawel castle near Jagielloinian University; he was, as Justice Jackson stated the next month in his opening statement at Nuremberg, “a lawyer by profession I say with shame.” The Indictment contained the word “genocide,” coined by Polish lawyer Raphael Lemkin, a consultant and advisor to the Jackson staff, who fought hard for his word to be used.<sup>6</sup> In one particular, the Indictment charged that Nazis in September 1941 had killed “11,000 Polish officers who were prisoners of war . . . in the Katyn Forest near Smolensk.”

The international trial opened on November 20,

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6. See John Q. Barrett, Raphael Lemkin and ‘Genocide’ at Nuremberg, 1945-1946, in *THE GENOCIDE CONVENTION SIXTY YEARS AFTER ITS ADOPTION* (Christoph Safferling & Eckart Conze, eds.) (The Hague: T.M.C. Asser Press, 2010).

1945. Interestingly, what had been by then Jagiellonian University's motto for over six hundred years, *plus ratio quam vis*—"more reason than power," or "mind over power"—was echoed in the first paragraph of Robert Jackson's opening statement at Nuremberg. In that opening, perhaps the most eloquent, powerful courtroom address the world has ever heard, Jackson described the trial as "one of the most significant tributes that power ever has paid to reason." He was stating candidly that in that moment, Allied power was the power to finish brutally, to execute, to exterminate, whatever quantity of Nazis the Allies wished to dispatch. He was noting that the Allies were restraining themselves in the name of rule of law, with the procedures and commitments outlined in the London Agreement.

The international Nuremberg trial proceeded over the course of the next year with each nation presenting part of the case, then with defense cases, and then with cases against and defending the Nazi organizations. It was largely a documentary trial, including film evidence of concentration camps as they were liberated and film evidence of the Nazis in power. The trial also included powerful testimony from victims. Each defendant had a full chance to defend himself.

At the end of September 1946, the Nuremberg tribunal delivered its judgments. As to legality, international law prescribed the conduct charged—these were crimes against the international order. As to individuals, nineteen were convicted and three were acquitted. Twelve of the guilty were sentenced to death and seven were sentenced to terms of years. Three organizations were convicted and three were found to be noncriminal. The Katyn Forest particular was not mentioned—it formed no part of the Nuremberg judgment.

#### 8. The U.S. Nuremberg Military Tribunals ("NMTs")

The Cold War, deepening during 1946, insured that there was no second international trial. Instead, following the conclusion of the IMT in October 1946, the Americans, who still occupied Nuremberg, conducted twelve "subsequent proceedings" there between late 1946 and spring 1949. Brigadier General Telford Taylor, previously a senior member of Jackson's U.S. team before the IMT, served as chief prosecutor. He and his teams prosecuted 177 additional individuals. Each case concerned persons who had worked together in an important sector of the Third Reich. These cases thus came to be known by short names of either a leading defendant or the occupational sector: *The Medical Case*; *The Milch Case*; *The Justice Case* (later portrayed in the

film “Judgment at Nuremberg”); *The Pohl Case*; *The Flick Case*; *The I.G. Farben Case*; *The Hostage Case*; *The Reich Main Security Office (RuSHA) Case*; *The Einsatzgruppen Case*; *The Krupp Case*; *The Ministries Case*; and *The High Command Case*.



Circa 1946: General Telford Taylor at the podium, Palace of Justice, Nuremberg. After this relatively small number of persons was prosecuted (and not every defendant was convicted), the Nuremberg Trial process came to an end.

### 9. Legal Legacy

Nuremberg came about through law, yes, and through Allied will, commitment and power. The legal product, the principles enunciated and followed at Nuremberg, became, after a Cold War interregnum of fifty years, the modern fundamentals of international criminal justice and related national justice systems. The International Criminal Court in The Hague is a descendant of the Nuremberg trials. They are precedent. Their legal landscape gives new, positive meaning to the phrase “Nuremberg Laws.”

### 10. Human Rights Legacy

The Nuremberg trials, especially the international trial, were war trials. The principal crime that was prosecuted at Nuremberg was waging aggressive war. The other substantive crimes, both war crimes

and crimes against humanity, occurred, especially as the IMT adjudicated them, in the context of that war framework, and in the time period of Germany's military aggression (1939 and forward).

The Nuremberg trials also were, however, educational enterprises. During these proceedings, the trials created global public knowledge of enormous human rights crimes. The trials produced a vast documentary record that showed—proved—the enormity of the Holocaust.

The trials obtained testimony from Holocaust victims, witnesses, and perpetrators. Rudolf Hoess, for example, was an IMT trial witness. He had been the commandant of Auschwitz. He was called to testify for defendant Ernst Kaltenbrunner, to testify that he (Hoess) had never seen Kaltenbrunner at Auschwitz. On cross-examination, Hoess testified—with, sickly, what history now knows to be exaggeration—that he as Auschwitz commandant supervised the extermination of more than a million people, mostly Jews.



April 15, 1946: Rudolf Hoess testifying at Nuremberg.

The Nuremberg trial transcript and exhibits, published for accountability and for history's continuing study, record the world's dawning comprehension of Nazi concentration camps in the west and, in the east, the Nazis' extermination camp system.

The Nuremberg trials did not commence as a Holocaust project, but they produced, for that time and for us, Holocaust knowledge based

in the factual record.

That knowledge became the basis for human rights consciousness, codification, and enforcement that has followed, including the Geneva Conventions, the Genocide Convention, and the work of international criminal tribunals.

That knowledge became a basis for us to march forward together, as lawyers, as scholars, as teachers, as students, as fellow human beings.

That knowledge became the basis for, annually, in Poland, the March of the Living.

#### VIDEO REMARKS BY AMBASSADOR SAMANTHA POWER

*Remarks by Ambassador Samantha Power, U.S. Permanent Representative to the United Nations, on "Reflections on Nuremberg: Memory, Accountability, and the Consequences of Inaction" Via Video to the Nuremberg Symposium & International March of the Living, May 4, 2016*

Richard D. Heideman: Last year at the March of the Living, we were honored to welcome [the] US Ambassador to the United Nation Human Rights Council, Ambassador Keith Harper the first Native American of ambassadorial rank at the United Nations. And today we are especially honored to receive remarks from Ambassador Samantha Power, the US ambassador to the United Nations. For those of you who were able to join us last evening, we viewed the Watchers of the Sky to which I commend each of you and recommend you use it, learn it, and teach it. Ambassador Power presented, during that movie last evening, a compelling narrative, as did others such as Professor Ocampo who will also be with us today. By video Ambassador Samantha Power.

Ambassador Samantha Power: Let me begin by thanking the March of the Living and the Raoul Wallenberg Centre for Human Rights for giving me the honor of speaking with you today, and—more importantly—for organizing this really important conference and the deeply impactful ritual of the annual March of the Living. I wish I had been able to join you in person. I wish I could have marched by your side.

I would also like to extend my deepest gratitude to the survivors who are present. To simply have survived what you did—as we say around this time of year—would have been enough. Yet to retrace the horrors that you and your loved ones were forced to endure—and to share them with others, so that future generations will be inspired to prevent people from experiencing what you did—it is truly awe-

inspiring, and we are hugely grateful.

On February 27, 1946—the sixty-ninth day of the Nuremberg Tribunal—prosecutors called Abraham Sutzkever to the witness stand. A thirty-three-year-old poet who had lived in Vilna throughout the Nazi occupation, Sutzkever was the first Jew and survivor to testify at Nuremberg.

Twice, the presiding judge asked Sutzkever to sit as he spoke before the tribunal; and twice Sutzkever refused, instead choosing to stand throughout his testimony. As Sutzkever would later write, “I spoke standing up, as if I were reciting the Kaddish for those who had died.” He had many to mourn. In December 1941, only weeks after the Nazi authorities in Vilna had issued orders that, “Jewish women must not bear children,” Sutzkever’s wife had just given birth to a boy. The baby was hidden, along with others, in a side room in a hospital. But when the SS conducted a surprise inspection, the sound of crying led them to the newborns, and they killed the babies on the spot. When Sutzkever arrived at the hospital hours later, he would later tell the judge at Nuremberg, he found the body of his baby boy, “still warm.”

His mother was also killed—but unlike his baby boy, Sutzkever never saw her body. One day when he went to visit her in the ghetto, she was simply gone. He would not learn her fate until the day the Nazis dropped off a carload of old shoes in the ghetto, what they saw as “a present” to the residents. The shoes, they were told, belonged to Jews who had been executed. Sutzkever found his mother’s shoes in that pile.

Of course, it was not only Sutzkever’s family who suffered. In Nuremberg, he told of other horrors he had witnessed, such as the time on July 17, 1941, when he saw the *sonderkommandos* round up a large group of Jewish men, telling them to remove their belts and walk single-file toward the prison, with their hands above their heads. When men went to pull up their pants so that they could walk, the Nazis shot them. He saw at least a hundred bodies along the road that day. “Blood streamed through the street as if a red rain had fallen,” Sutzkever told the tribunal. Of the estimated eighty thousand Jews who had lived in Vilna at the beginning of the occupation, Sutzkever estimated, less than a thousand survived.

As we reflect on the legacy of Nuremberg seventy years after Sutzkever gave his epic testimony, it is as important as ever to recommit ourselves to the lessons learned—both from the historic tribunal itself, and from the hateful ideology and atrocities that made Nuremberg’s creation necessary.

The first lesson is the critical importance of preserving—and

retelling—accounts like Sutskever’s, particularly for younger generations removed from the Holocaust. Individual testimonies like his—and the ones shared every year by the survivors who join the March of the Living—have the power to puncture the layer of abstraction that can surround the Shoah—a crime so massive as to, at times, feel unknowable. By giving us a window into the overwhelming anguish experienced by a single individual, these accounts make more tangible the immeasurable suffering and evil that the Holocaust represents.

The second lesson is the absolute imperative of seeking justice for mass atrocities. The idea behind the Nuremberg Tribunal—that the international community has a stake in holding accountable those who commit such unthinkable crimes—undergirds many of the norms and institutions that we have helped create since the Second World War. But those norms and institutions have value only if they are put into practice—which means continuing to investigate and prosecute the perpetrators of gross violations of human rights. Not only the Radovan Karadzics and Hissene Habres of the world, whose crimes were committed in decades past, crucial as justice is in those instances—but also the Assads and Kim Jong Uns of the world, who are overseeing as we speak the massacring and forced starvation of their own people, in real time.

The third lesson is that we can’t allow ourselves to be bystanders when we see early warning signs of mass atrocities. Genocides don’t arise spontaneously—their masterminds telegraph them, systematically laying the foundation for their murderous ends. That is the lesson of the deplorable race laws adopted in Nuremberg in 1935, of *Kristallnacht* in 1938, and of so many of the other steps the Nazis took that signaled their horrific intent. Yet the world looked on. We must not allow ourselves to do the same. Because we know all too well the consequences of inaction—which Sutskever captured in a haunting poem he wrote in 1942, while living under the Nazi occupation. The poem is about a wagon, as he wrote, “filled with throbbing shoes,” clattering through the streets of the ghetto, not unlike the one that brought Sutskever the devastating news of his mother’s killing. Let me just read a few lines from that poem:

*The shoes—familiar, spreading,  
I recognize them all. . .  
Tell me the truth, oh shoes,  
Where the disappeared feet?  
The feet of pumps so shoddy,  
With buttondrops like dew –*

*Where is the little body?  
Where is the woman, too?  
All children's shoes – but where  
Are the children's feet?*

By hearing the accounts of survivors and retracing their steps—as the March of the Living does—we feel, for just a moment, the infinite loss represented by all of those empty shoes. We, like Suskever, “recognize them all.” We feel what it would be like if those shoes belonged to our own sons and daughters, our sisters and brothers, our mothers and fathers. And we are more determined than ever to helping ensure that no one should have to ask, “Where the disappeared feet?”

I thank you.

VIDEO REMARKS BY THE RIGHT HONOURABLE JUSTIN TRUDEAU, PRIME  
MINISTER OF CANADA

Canadian Prime Minister Justin Trudeau: Hello everyone. *Bonjour tout le monde*. Today we commemorate the eightieth anniversary of the Nuremberg Laws and the seventieth anniversary of the Nuremberg Trials.

The Nuremberg laws removed the citizenship rights of German Jews. Many of them, as well as their families, lived in Germany for decades. These laws were at the base of discrimination and allowed for the massacre of six million Jews in Europe and elsewhere.

Today we recall the world's muted reaction [to] the Nuremberg Laws. We now know that silence is never an option when humanity is threatened. We vow never to forget the Holocaust and its bitter lessons. We will always remember the victims of hate, anti-Semitism, racism, and xenophobia. We will never forget.

We also mark another milestone today—the seventieth anniversary of the Nuremberg Trials of the Nazi leadership. By allowing our century's arch villains to have a fair trial, we exposed their crimes to the world before a court of law and established legal principles that guide us still today.

These are the two memories of Nuremberg—one of hate, one of justice. Let us be guided by the lessons we have learned from both.

Even if I cannot be at the March of the Living in person, please know that I march alongside you down the three-kilometer path from Auschwitz to Birkenau, because we are all witnesses. It is our sacred obligation to remember the past and our eternal duty to ensure the future.

*Merci.*

THE HOLOCAUST, GENOCIDE, AND HUMAN RIGHTS: UNIVERSAL LESSONS  
FOR THE PREVENTING AND COMBATING OF MASS ATROCITY IN OUR TIME

Moderator: Professor Irwin Cotler, Chair of the Raoul Wallenberg  
Centre for Human Rights

*The Honourable Robert Badinter, Former Minister of Justice, France*

Richard D. Heideman: Ambassador Power used the words and I quote “the absolute imperative of seeking justice.” In that spirit, we welcome back to the microphone our co-chair, Professor Irwin Cotler, former Minister of Justice of Canada and the moderator of the panel “The Holocaust, Genocide, and Human Rights: Universal Lessons for the Preventing and Combatting of Mass Atrocity in Our Time.” Professor Cotler.

Professor Cotler: Thank you Richard. I want to join you in commending Ambassador Samantha Power, the U.S. Ambassador to the United Nations for her very moving and compelling message, for her evocative words of remembrance and reflection and for her ongoing commitment in the pursuit of justice.

As Richard mentioned, I want to welcome you to this panel now on “The Holocaust, Genocide, and Human Rights: Universal Lessons for the Prevention and Combatting of Genocide and Mass Atrocity in Our Time.” We have a group of very distinguished panelists. I will introduce each in the order in which they will be speaking. And, our first panelist is Robert Badinter, [inaudible], a member of the French Senate, and a world leader in the struggle for the abolition of the death penalty.

I first met Robert Badinter some thirty-five years ago when we served as co-counsel at The Hague in a mock trial, then with respect to the imprisoned Soviet dissident Anatoly Sharansky. As a result of Robert’s compelling advocacy, Sharansky was acquitted in that mock trial, but Robert’s compelling advocacy has continued to secure freedom and liberation then and since. Robert.

The Honourable Robert Badinter: Thank you Irwin. Yes, we are, as you can see, old friends. It is a little difficult for me—it’s not my natural language, and I miss the fluency and delicacies of the French eloquence. But I shall act as if I were before an American audience somewhere in an American university. What university? You have made a most beautiful speech. Not when you mentioned me—thank you; my mother would have appreciated it, I can tell you that—but when you refer to the importance of the Nuremberg Trial. And, the few

remarks—as the trial itself has been largely treated—I want to make, comes from long, pessimistic view of the human beings in international politics.

We speak about Nuremberg and we speak about Nuremberg on both faces, one—the crime, ‘35, and as follows, and at the end, the punishment. “*Crime et Châtiment*,” this is a well-known masterpiece which has come into reality so far as the crime in concerned.

You should remember that the statute of Nuremberg, the first one, written, or at least corrected by Hitler himself, has been taken on the general reference, “this is made for the protection of German blood, and the protection of German honour.” (Adolf Hitler, ‘35). Anti-Semitism was not new. We Jews, all our history long, have been a suffering people; even before the catastrophe of Titus taking the Temple occurs, even before. When you look at history, I would summarize it in three words, though maybe a fourth one should be added. You have had the religious anti-Semitism, which has lasted for centuries because Jews were considered by Christians as being Jesus Christ’s murderer. We are the deicidal people. We were accused of killing through the son, also the Father. I don’t have to remind you what price has been suffered by Jews for that extravagant accusation for centuries.

Then came a second time of anti-Semitism when “*La raison*” took the rights, power. At that time, when the concept of nation arose after in Europe, the conflicts drew to the French Revolution, Napoleonic enterprise, when the nation really built as such in Europe, what happened? The Jews were considered as belonging not to one nation but to all nations, or at least to most of the nations in Europe. And, therefore, they were evidently not citizens; they were evidently, they belonged to one spread nation which name was not pronounced at that time, but that meant that they were foreigners everywhere. They belonged to a strange people coming from Asia—which they said afterwards—a strange people with branches everywhere, and that’s where the myth came of the Jewish international power, and the Jewish plot against the whole world to control it. I don’t have to remind you what were the results of that approach, but it took the end of the nineteenth century to come to the third, and the worst form of anti-Semitism. The one that you cannot escape, and the one which inspires these two sentences by Hitler, “racial anti-Semitism.”

From religious anti-Semitism, you have passed to national anti-Semitism, Jews being foreigners everywhere, to the third, racial anti-Semitism. Jews belong to a different race, a different species, and therefore, coming from a race which has all of the genetic characters of

“*dégénérescence*” (degeneracy), one should take measures to protect its people against this racial threat. That is where this delirium which took off the Nazis starts, and you know they have been searching from the beginning to Mengele to find out what would be the characteristics of this race. It’s not enough to say that it is a race. Why? They searched and couldn’t find.

And the Nuremberg Statute is so interesting in many ways. I am speaking there of the intellectual not the emotional aspect. Why? Because in order to qualify the Jews, as you cannot find any signs of specificity in the Jewish people or persons, in the very end they take to the religion. You are a Jew because your grandfather was Jewish. You are a Jew because your grandmother was Jewish, and furthermore, you have married a Jew, or you are practicing a Jewish religion. So, at the very end, it’s the religion which comes back and makes the circle perfect. There were, or there is, I shall not say, I belong to the generation which has lived through the Holocaust. To me, it’s no teaching from the age of twelve to the age of sixteen and you become very, very quickly a man through circumstances. I have lived in France occupied by the Nazis. So I know all about the evilness of Nazism, and when I go to Auschwitz, it is a family grave. So many of my parents are there. Not my father. He was sent to Sobibor. So this is only a remembrance I make. Why? I have always thought. Why?

Fortunately, I obtained a fellowship to go to Columbia University where I learned there in 1949, and then I had the privilege of being taught about Nazism in a closed seminar held by Professor Lazarsfeld, who was very famous in sociology at that time, coming from the Berlin University, and obviously Jewish. And, in that seminar—the war had just finished, it was three years afterwards—he explained to us all the mechanisms of the German Nazi control of Germany. And what is unforgettable for me—and it’s not clearly perceived now—is that the extraordinary thing about the Holocaust, it’s not the fact that Jews were killed according to modern techniques. Jews have been massacred all throughout Europe in history. They have been burned. They have been put in jail. They have been tortured. They have been raped. They have been threatened if they didn’t change religion to die, and their children. We have a long relationship with suffering in the worst ways.

But what makes the Holocaust special is the fact that, among all nations, Germany in the [nineteen] twenties was in Europe probably the most cultured, the most educated, the winner of the greatest number of Nobel prizes—among there quite a few Jews—but so was Germany. The children were raised in a lot of art and music. What remained of

that when Hitler appeared?

What remained of the greatest philosopher of Europe, if not the world, who was the Rector of Heidelberg University, and turned out to be a Nazi very quickly? What happened with the greatest jurist—probably the most important philosopher of law of the early twentieth century—Carl Schmitt? He became the head of the Nazi jurists. Which proves, as I always say to my students, it is not enough to be a good jurist, you still, you know the Rabbi's words, "it is not enough to be a learner. You have to be a *mensch*"—in Yiddish. You have to be a *mensch*. Schmidt was indeed a great thinker, but he was no man because he didn't belong to all mankind. But his word was "*oui*" to Jews. We are not human beings as the other.

And, from the teaching of the great Schmitt to the Nuremberg Statute by Hitler, continuity more than breakdown. For that, and that cannot be denied—I remember discussing this matter in UNESCO—from that comes for us, not only for Jews but for all mankind, a permanent question, "What can stop racial hate and Anti-Semitism, racism, when you look at what happened to the most educated Western people in the civilization of the time?" which means clearly and it's terrible to say, but I saw it, my own professor, who was before the tribunal in Savoie, was immediately, after the liberation, sentenced to death. He was a professor of philosophy and he was a fascist, an active fascist. So teaching, thinking, learning, thinking, writing, composing, yes, but when comes the time, when there is the call for mass murder, how many resist? And that is where, as Lazarsfeld explained it, Hitler brought his finesse in the German people.

The fact is that it happened, and it lasted until the end, and they fought for him until the end and then they realized but too late. Too late for the world. Too late for the Germans. Too late, much too late, for the Jews. So that lesson should be kept in mind because it's a very pessimistic lesson that means that even education at the highest level, culturally at the highest level, music at its best, art, are not protections sufficient to fight against, or victoriously, against racism and anti-Semitism. That is the first personal pessimistic remark that I hope you will think about it, and I wanted to make the second one. It is not optimistic either.

Don't think that I am a pessimistic person. No, no no no. When I was at Columbia, in those young days, my fellow students used to call me, "ah Bob, *joie de vivre*." It was nice coming from where I was coming. But as such, the second remark is this. We speak after the crime, punishment of justice. First of all, there have always been

questions about the Nuremberg Trials. For Stalin, it was simple, “What the hell”—right words for him—“what the hell do we want to do? We just draft a list of the criminals, and just shoot them as we arrest them. Why waste our time if they don’t confess their crimes? And I don’t hope,” said Stalin, “that they will do so. The best thing is to shoot them, once they are identified.”

Churchill, [a] great statesman, and certainly the best writer of the group, was not too keen either on the trials, because he said, “Well, lawyers will exploit the situation. It will become a tribute; many things we have heard about international tribunals.” But Roosevelt, and behind Roosevelt, not only Jackson, but the great Frankfurter wanted a trial. They wanted a trial not only because they trusted the strength of law, but because, rightly, they say, we must take the evidence, control them, discuss them, publish them so that they remain in history. Otherwise, in twenty years from now, all the crooks, intellectual crooks will come and explain that is not how it happened. So, it’s the search and the control of the judiciary on the truth and the evidence collected which we are considered as a major aim, and thanks to them, this has been the most positive result of the Nuremberg.

The usual statement, “you cannot be the winner and judge with objectivity, the loser. This is a comedy of justice.” On one point, it’s true, we should always remember that the Katyn, the Polish officers shot by the Russians on the special orders of Stalin, the Katyn Massacre was imputed to the Germans. It was, in fact, a crime committed by the Soviets, but there was a Soviet judge and Stalin was one of the winners of the greatest size. So we still have that in the Nuremberg Trial, but all together it remains. It remains. But afterwards friends, afterwards, did international justice blossom? We lawyers, professors, judges, constitutional court members, did we have the time of happiness where we saw everybody saying “ah, this crime, major genocide, crime against humanity, war etc., justice, international justice now rises and sentences?” Pure dream.

What about thirty years? So many of us have spent in, I must say, very scientific confrontational views of what would be the best proceedings, and best ways of making up international justice. Intellectually it was superb, but politically what happened? Nothing, nothing, until the Cold War ended. If it were not for the Cold War, I’m very dubious about the coming up, the “*cour penal internationale*,” (International Criminal Court) and of the two other special tribunals, for the Rwanda and Yugoslavia which came out at that time. If I say that, it’s because I have been profoundly involved in that period.

And I can tell you that in Rome, when the Treaty of Rome was prepared, discussed, the American representative at that time, a charming fellow, told us, “fellows, it’s most interesting, but the United States will never, never sign the Treaty of Rome. Don’t have any illusion. We like the idea that it can be used by the sole Security Council. But we shall never sign it. The Senate will never sign the Treaty of Rome.” And, I raise a question. Was he wrong? Was his prediction false? Did the United States sign—the greatest power in the world—the Treaty of Rome, building the court? Instead, what the United States Congress, Senate has made is the famous “Hague Act” by which the president can or should order the American military forces to free any American citizen who would be brought by the International tribunal in the jails of The Hague. The Hague, may I say, is not exactly Dachau nor Auschwitz, The Hague is the capital of international law. It’s amazing. Why, it’s another question.

But the fact is and that’s why, let’s not be exhilarated by the progress that’s made. Why? Not only the United States, but Russia, but India, but China, I take the largest power in the world have never signed. They don’t belong to the international tribunal. Why do we celebrate so much the International Criminal Court instead of giving to the International Criminal Court or any other international jurisdiction the legal or the material means it needs so badly? That day I shall believe in the word “international justice.”

Irwin Cotler: [TRANSLATED FROM FRENCH] Robert, my dear friend, I thank you for your testimony.

I want to commend Robert Badinter for his eloquent testimony, delivered not in his native tongue—because, had you heard it in French, it would have resonated with the cultural music as he speaks. But a wonderful testimony. Robert, you reminded us of two things. First, the betrayal of the elites in the Nazi Holocaust. The betrayal in particular of the legal elites, of the roles of judges and lawyers in the perpetration of injustice. The second thing, you reminded us, is the importance of the search for truth as the path towards the pursuit of justice. *Merçi*, Robert.

*The Honourable Luis Moreno-Ocampo, Former Chief Prosecutor,  
International Criminal Court*

Irwin Cotler: It’s my pleasure now to introduce a second panelist, also a good friend, Luis Moreno-Ocampo, a hero in the struggle against impunity in Argentina. The first Chief Prosecutor of the International Criminal Court, involved in the great trials of the twenty first century; a person who is the embodiment of integrity and excellence in the pursuit

of international criminal justice; the only person that I know who has been named as amongst the bravest and the best of global thinkers in the twenty first century. Luis.

The Honourable Luis Moreno-Ocampo: It's a real pleasure for me to join you on this march. I feel honored to be here with you.

Let me quote Robert Badinter reminding us: "education at the highest level, culturally at the highest level, music at its best, art, are not protections sufficient to fight against, or victoriously, against racism and anti-Semitism." He is also alerting us of the obstacles that the International Criminal Court is facing. As Robert Badinter said, he is not pessimistic, but he is showing us reality.

I very much like your comment, Robert, but I would also like to show how much progress has been achieved.

My first point is that: There has been progress, but it has been slower than we expect. My second point is that the future progress depends on us.

I have a PowerPoint to share some facts illustrating the progress.

This graph, created by Professor Kathryn Sikkink shows the "Justice Cascade." Prof. Sikkink identified a global trend that started at Nuremberg to make leaders who commit massive atrocities accountable.

Nuremberg was a landmark. Not just because of international justice but because the leaders were accountable for their decisions as national leaders, decisions to commit massive atrocities, genocides, for exterminating millions of people, for trying to exterminate Jews.

Before Nuremberg, it was considered that national leaders had the sovereign right to kill people in their own countries. After Nuremberg a new norm emerged: no leader has the right to commit massive atrocities to obtain or to retain power.

Professor Sikkink identified this trend starting in Nuremberg, followed it during the 70s, in Portugal and Greece, and after, in 1985 in my country, Argentina, where I had the honor of being one of the prosecutors in the Junta Trials. And, then as Robert Badinter said, after the end of the Cold War with the International Criminal Tribunals for the former Yugoslavia and Rwanda, and then the International Criminal Court. This is progress.

The world is progressing but we are not sure how to keep progressing. That is a challenge for us. I want to show a few videos showing the connections.

Clip 1: Nuremberg Opening, Robert Jackson, USA Chief Prosecutor

Narrator: "The Chief Prosecutor for the United States of America."

Moreno-Ocampo: “This is the beginning of the first Nuremberg Trials, Robert Jackson’s opening statement.”

Jackson: “The privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility. The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating that civilization cannot tolerate their being ignored, because it cannot survive their being repeated.”

Moreno-Ocampo: “Civilization cannot survive their being repeated.” Robert Jackson, a former Attorney General and a Supreme Court justice is not making just a moral point he is rather presenting a practical issue about survival. That is what Robert Jackson is talking about at the opening statement of the first Nuremberg Trial.

As Professor Barrett said, after the first Nuremberg, there were twelve American trials at Nuremberg, and I would like to show one of them, the “*Einsatzgruppen* Case.”

Clip 2: Ben Ferencz “*Einsatzgruppen* Trial,” excerpts from “Watchers of the Sky.”

Ferencz: “I became the Chief Prosecutor for the United States in what was certainly the biggest murder trial in human history.”

Ferencz, Nuremberg, 1946: “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.”

“Where did group *D* operate?” [Group *D* operated in Southern Ukraine German response by defendant Otto Ohlendorf.]

“Do you know how many persons were liquidated by *Einsatzgruppen D*?” [Between xx and xx German response by defendant Otto Ohlendorf.]

The Honourable Luis Moreno-Ocampo: This is a man who is confessing to killing seventy thousand people in one year.

One of the important points of the trial is to document precisely what happened. As a consequence of the trial this man is confessing seventy thousand killings.

Ben Ferencz, the man you saw, showed leadership when he was twenty-seven years old. In fact, his role at Nuremberg was initially just to conduct investigations. Then he requested a meeting with Telford Taylor, then Chief Prosecutor and explained: “Look, I found all this information. I have all these documents showing that the Nazis killed one million people, most of them Jewish, some anarchists, some

gypsies.” But Taylor told him, “We cannot do it. We are closing. We have no more lawyers to do the case.” Ben said, “But I have a case with one million victims documented.” So Taylor told him, “Can you do it? Can you do it yourself? Can you be the lawyer?” Ben said, “I’ve never done a trial in my life.” Taylor said. “Ok, this is your first trial.” It was his first trial and he delivered. In fact, he rested his case in two days because he had all the documents in evidence.

Professor Sikkink found that Nuremberg Trials were the beginning of a Justice Cascade followed by some national cases. I am proud, because when I was thirty-two years old I was involved in one of those trials, in Argentina, in 1985. Can you show me the video?

### Clip 3: Junta Trial 1985

Moreno-Ocampo: “I think the Junta Trials was the first time that I had to face people that were against me. The elite in my country was in favor of the military dictatorship so I had to face my family.”

Jorge Rafael Videla, President of Argentina, 1976–1981: “We have promised the nation that we will fight subversion until it is destroyed.”

Moreno-Ocampo as Deputy Prosecutor to Jorge Rafael Videla and the other eight top commanders [in Spanish]: “Ferocity and lying are two elements in the system of repression. That’s is why today it is necessary to find out the truth and prosecute all who have violated the law. In particular, the powerful, the most responsible.”

The Honourable Luis Moreno-Ocampo: I spent all my life thinking that the Junta Trial was my biggest achievement, that I could not do something bigger. But then in 2003, seventy-eight countries offered me the opportunity to become the Chief Prosecutor of the International Criminal Court. As Robert Badinter said, the International Criminal Court turned Nuremberg into a permanent institution. To show this connection, I invited Ben Ferencz to help me in my closing argument of my first trial.

### Clip 4: ICC Nuremberg Legacy

Narrator: “Ferencz is sworn in as an honorary prosecutor of the ICC.”

Ferencz: “They don’t give you much room for a signature.”

Ocampo: “Mr. Ferencz, you are part of this office now. We are honored; we are really honored to have you as our special counsel.”

Closing Statement, Lubanga Case, August 25, 2011:

May it please your Honors. This is a historic moment. I am now in

my ninety-second year, having spent a lifetime striving for a more humane world, governed by the rule of law. I am honored to represent the prosecutor regarding the significance of this trial. In Rome, over one hundred sovereign statements decided that child recruitment were, and according now from the statute, among the most serious crimes for the international community as a whole. Vengeance begets vengeance. Seizing and training young people to hate and kill undermines the legal and moral firmament of human society. Let the voice and verdict of this esteemed global court now speak for the awakened conscience of the world. Thank you.

The Honourable Luis Moreno-Ocampo: So I would suggest that the International Criminal Court is consolidated. We saw a picture of the new building. It is a permanent building. It cost 400 million euros. It will stay there. When I took office, the issue was existence. The United States, the Bush Administration, was trying to destroy the institution. Now the existence of the Court is no longer challenged, it is consolidated. The issue is relevance, but the Court's relevance will depend on each of us.

I have a map showing the state parties and the non-state parties to the Rome Statute. As Robert Badinter said, the biggest countries are not there, but that's normal. The most powerful do not like legal restrictions at the international level. They have power. So, using law is an idea of the smaller or the medium sized countries trying to establish a different standard. As a consequence there are two coexisting and interrelated international peace and security systems: first a system led by the UN Security Council with five permanent members with veto power which can make binding decisions for the UN states members and secondly, a sub system established by the Rome Statute integrated by the countries in blue in the map which are State parties with similar rights and obligations. The Security Council has the authority and can refer these countries in white in the map to the International Criminal Court but they are not members.

The real issue is not about the court activities. Legal scholars focused on courtroom activities, but the real issue is the shadow of the court. A professor from Harvard, Robert Mnookin, explains this concept as such: couples and their lawyers in divorces cases are resolving their conflicts taking into consideration the decisions made by judges in other cases, they are acting under the shadow of the court. The crucial issue is how to expand the shadow of the Rome Statute. And the shadow is not about judges and prosecutors. Shadow is about other actors.

I learned today from Professor Barrett how Robert Jackson before Nuremberg, as a US Attorney General issued a crucial decision to stop

Nazis crimes. He considered that it was legal to send munitions on ships to the UK. Such a legal decision was crucial to stop the crimes committed by the Nazis, and he was Attorney General. He was not a prosecutor or a judge. Robert Badinter was the Minister of Justice in France. He was critically important to the adoption of the ICC. So it is not just about judges and prosecutors but also about other actors.

I know that the Minister of Justice of Israel who is present, is probably not happy with the ICC's existence and Palestine accession to the Rome Statute, but it is a reality. And for me, you could be one of the champions of the future if you can see Palestine's move to join the ICC as an opportunity to end the commission of any new crimes thereby increasing the Palestinians' and Israelis' security. That is your challenge. We would be happy to support you in doing so, but that is your challenge.

I was thinking about how to present today an example of what kind of a leadership we need, what kind of diplomats we need, and the answer is Raoul Wallenberg. No example could be better than Raoul Wallenberg to explain how a diplomat can save lives. As you know, Raoul Wallenberg went to Hungary with an impossible mission: to stop the extermination of the Hungarian Jewish community. He was giving provisional passports to thousands of Jews who became Swedish, saving their lives.

We need diplomats today with a similar commitment to do Justice for the Yazidi genocide. It is an ongoing genocide, women are still raped, still detained and sold as sexual slaves by the Islamic state. Yazidi kids are forced to be soldiers. The US Congress, the US State Department, the European Parliament decided that this is a genocide and we are not doing justice for them. We have to find a way to promote a UN Security Council resolution referring the Yazidi case to the ICC because Iraq as a "white country"—a non-state party on the map, is not under the Court's jurisdiction.

We need diplomats following Wallenberg's example. Wallenberg was not just providing passports. Let me read these lines to explain what he did. From the Kati Marton's book, "Wallenberg, the incredible true story of the man who saved thousands of Jews": "On November, 1944, the world was ending. The Soviet Army was just miles from Budapest. However, SS Lieutenant Colonel Adolf Eichmann was still insisting to exterminate all the Hungarian Jews—the third largest and last surviving Jewish community in Europe. He was no longer able to use trains to send Jews to the camps, but he had a new idea: to force thousands of Jews to walk. To walk in the cold and the rain of late fall. They were

guarded by the Hungarian gendarmerie. Eichmann was waiting for them on the Hungarian-Austrian border and when this column of Jewish people were walking towards the Austrian border, suddenly a young man arrived in a black car followed by Red Cross trucks. "I am Wallenberg, Swedish delegation," he said, "In the name of the Hungarian government, I demand those with Swedish passports to raise them high. Immediately, he pointed to an astonished man waiting for his turn to be handed over to his executioners. Wallenberg said, "I recognize you. I gave you a passport, and then you right behind him." He was taking driver's license or birth certificates as passports so fast that the Nazis did not check them. Eichmann did not enjoy public confrontations and he preferred to say and do nothing and then when the Red Cross trucks were full, Wallenberg jumped into his own car and the humanitarian convoy left. Wallenberg was whispering "I am sorry," to the thousands that he was leaving behind."

That is what we need today, more Wallenbergs. Thank you very much for this invitation.

Professor Cotler: Thank you Louis for reminding us of the important legacy of Nuremberg, of the principal of individual criminal accountability. Of evoking Benjamin Ferencz, of his plea of humanity to law. And joining with you in the call of humanity to respect the rule of law and for your closing reference to RW.

You know, Adolf Eichmann referred to Raoul Wallenberg as the Judenhund Wallenberg, Wallenberg the Jewish Dog. But to the people who Wallenberg saved, he was regarded as the Guardian Angel, and there is an important message in all this, Louis, as you concluded. That one person, like Raoul Wallenberg demonstrated, how one person with the compassion to care and the courage to act, can confront evil, can resist, and can transform history. There is a message in that for all of us.

*The Honourable Ayelet Shaked, Minister of Justice, Israel*

Professor Cotler: Pleasure now, to introduce our third panelist. The Israeli Minister of Justice, Ayelet Shaked.

First elected to the Israeli Parliament in 2013. And if I can speak as a fellow Parliamentarian in Canada, I was able to witness her involvement in the Israeli Knesset, the Israeli Parliament, in the struggle for equality, for women's rights, for rights of Israeli parents. Becoming Minister of Justice in 2015, she has earned the respect, as I know from my own conversations, the respect of bench and bar alike in Israel for her commitment to *Tzedek Tzedek Tirdof*, the pursuit of justice.

Ayelet Shaked: Distinguished guests, ladies and gentlemen. On

April 11, 1961, a remarkable trial begins in Jerusalem. Adolf Eichmann, a major organizer of the mass killing of Jews was brought to justice in Jerusalem. Prosecutor Gideon Hausner said, "When I stand before you here, judges of Israel, to lead the prosecution of Adolf Eichmann, I am not standing alone. With me are six million accusers, but they cannot rise to their feet and point an accusing finger toward him who sits in the dark and cries. I accuse for their ashes all piled up on the hills of Auschwitz and the fields of Treblinka and are strewn in the forests of Poland. Their graves are scattered through the lengths and breath of Europe. Their blood cries out but their voice is not heard, Therefore I will be the spokesman and in their name; I will uphold the awesome indictment." The Israeli prosecutor's opening statement instills in me a sense of duty and responsibility as I exercise the office of Justice Minister of the Jewish State.

The Eichmann trial was a historic reminder of the tragedy that befell the Jewish people but also a powerful statement of Jewish revival. Everyday Jews are reminded of Auschwitz, everyday Jews say "never again." We all gather here to mark eighty years to the enactment of the Nuremberg Laws, Nazi Germany's legal framework of dehumanizing its Jewish citizens. And I can tell that I'm here with my husband and his father and my husband and I learned today that his grandfather learned here in this University law until 1936. In 1936 he did a clever thing and went to Israel, his family thought he was a lunatic, but he did it and he was the only survivor of his family. And we also mark today, seventy years of the Nuremberg trials, when the Allies in the name of the international community brought Nazi criminals to justice.

The judges in the Nuremberg trials asked how could such horror take place. The more they looked into the question, the more they were puzzled. What answer would be truly phraseable? Yet historians tell us that the German legal system was central to Nazi extermination machine. Today we know more about the gradual process in which a nation under the rule of law turned its laws into a weapon against its own citizens. Let me quote the Justice Minister of the Reich, who wrote in 1942 in a letter to the President of the People's Court, "The proceeding against Jews is their Jewishness, not the culpability." Or consider the Reich main secretary office, which issued an order in 1943, "the Jews who have been charged but have already served their time shall be sent to the concentration camp in Auschwitz and Lublin for a life sentence regardless of the original sentence."

The 1961 American movie "Judgment at Nuremberg" tells the story of a Nazi judge that sentenced a Jewish citizen to death for playing

with a German girl. The Nuremberg trials raised the question, was the capital punishment decided after the proceeding or before the trial had begun. The judge admitted the judgment was already decided. And of course you know in the Nuremberg Trials, as you saw, there were hundreds of Nazis that got punishment there, but in reality millions of Germans, women and men, should have been on trial, to give an example of the *Einsatzgruppen*. You know the *Einsatzgruppen*, thousands of people were part of the murder shooting of a million and a half Jews, but of course not all of them were in the trials.

Indeed, sixty Nazi judges were brought to justice in Nuremberg. And ten were convicted, nine were sentenced to death. Of those who served time in prison, several were released after a short period. But very many were not held accountable at all. Indeed, it's especially infuriating that many Nazi judges and other officials became the pillar to the post-war German legal establishment. In the beginning of the 1960s, eighty percent of the federal judges in Germany were former judges under the Nazis. The German legal establishment deterred regarding the personal culpability of those who assisted the extermination operation. The German legal system failed in the denazification process that the Allies demanded after the war. I want to praise the German Federal Minister of Justice and Consumer Protection for the Rosenberg Project and the important official initiative to investigate how the ministry itself dealt with the Nazi past. My German colleague justice minister Heiko Maas said, "that fact demonstrates the failure of the German justice system" and I'm glad that my colleague Heiko Maas wants to come to Israel in order to present the results of the Rosenberg Project. Minister Maas referring to war criminals also said, "Their conviction will be important for Germany, the survivors, and the victims, it's never too late to bring to justice." And he's right; justice should not only be a German duty, but a duty for all of us. We all must learn from history. The history of the justice system provides lessons that can help us prevent future horrors. We learn that even a government of flock can turn into a government of monsters. And we learn that the law can be transformed into instruments of injustice, for the Nuremberg Laws were drafted not by laymen, and not even by politicians, but by jurists: legal experts designed a system that legitimized Jewish dehumanization. Yet we must also remember that legal experts also designed the mechanism of the Nuremberg Trials.

The line connecting the Nuremberg Laws and the Nuremberg Trials indicates that the law must be just and moral. It can lead to the abyss but also make amendments, and history suggests a moral

imperative. We must defend the integrity of democratic justice systems. Cherished guests, this duty is the duty of all of us, the memory of the Holocaust obligates us to unite in condemning anti-Semitism and any kind of hatred. We must not tolerate the voice of the objecting Jewish people's faith and right of self-defense. The English poet John Donne wrote, "No man is an island entire of itself." He meant that it's more than an individual, but by virtue of one's humanity he or she is a part of a community. In his words, "any man's death diminishes me, because I am involved in mankind." He ends his poem with a memorable line, "and therefore, never send to know for whom the bell tolls. It tolls for thee." Ladies and gentlemen, Donne wrote this poem more than three centuries before the war, but his words could express the idea that the Holocaust was not only Jewish tragedy, but a crime against humanity and the entire international community. And his poem could also express another idea that the bell tolls for us today. We must not tolerate the voice calling to harm Jews and seeking to undermine the security of Israel. I regret that too many are yet to wake to those dangers.

Indeed, it's an uncomfortable truth that anti-Semitism had not abated at the end of the war. We can witness anti-Semitism today; in fact, an anti-Semitic voice appears to get louder and stronger still. There are Holocaust deniers and others wish to slander Israel and blame it for all the world's troubles. Organizations and movement such as the Boycott, Divestment and Sanctions Campaign which targets Israel, targets anti-Semitic imagery and ideas. We witness anti-Semitic attacks in the heart of Europe, we hear anti-Semitic slanders in European media, we feel anti-Semitic hate in the continent that should have learned the lesson. Has Europe really learned the lesson?

Only recently we heard parliament members in European states blame Israel for forging the stabbing incidents that are taking place in our street in which men, women, and children were murdered. And just a few days ago we heard Ken Livingstone, the former mayor of London, suggesting that Hitler was a Zionist and the member of the House of Commons said that Israel should relocate to the United States. She apologized, but Mr. Livingstone has not retracted his comments. I called the United Kingdom Labour leader Jeremy Corbyn to state clearly the Labour Party's commitment to fighting anti-Semitism—Mr. Corbyn must clarify that anti-Semitic comments are not within legitimized political debate and that anti-Semitic views should end a politician's career and should disqualify them for any further political office. Make no mistake: the Israeli government shares a strong and warm relationship with friendly nations. Israel is proud to be part of the

international community and is committed to the success of the international institutions. But we will not compromise our sovereignty; we will maintain our might, defend our borders, and secure our citizens, Jewish and non-Jewish. We are also committed to the defense and security of the Jewish people; Israel was founded on the premise of offering a safe haven for Jews.

We shall never depend on others for survival; we will determine our own destiny. We must defend ourselves because others failed to help us. I still cannot comprehend why the Allies didn't take action to stop the massacre, how come the Allies didn't bomb Auschwitz. One B-17 flight could have saved so many, even hundreds of thousands of lives. I never got an answer on that.

Ours is an era of Jewish power, but some of our detractors find that notion offensive. But like other nations, Jews now exercise power; yes, we exercise power, ethically yet resolutely. On Holocaust memorial here in Poland, "Our tragedy shall be a warning to you." The Holocaust harbors lessons, but not only lessons for Israel, not only for the Jews, but for every nation and the international community. We all must resist racism.

Esteemed guests, more than seven decades after the horror ended, what else should be learned? This is a time of transition, as the number of Holocaust survivors decreases every day. But there are still many survivors with us and we must spend resources on documenting their experience and publicizing their stories. And though many Nazis and their collaborators are dead by now, some are still alive and they should be brought to justice, even in an advanced age. That's our commitment to our six million brothers and sisters whose [inaudible] for justice shapes our nation. The prophet Jeremiah said, [in Hebrew], "the prophet promised that mourning would turn into joy;" indeed, our darkest hours turned into joy three years after the Shoah we redeemed Israel and established an independent and thriving state under the rule of law. We are proud that our nation is governed by law and committed to justice. The Israeli commitment to justice is yet another expression of Jewish values. Our national life is a memorial to the six million that were murdered and we are committed to their memory. I thank you all, and remind you today that [in Hebrew] "the Jewish people is alive and thriving," and thank you all for coming here. This is very important.

#### THE AFTERMATH OF THE HOLOCAUST IN EUROPE

*Professor Zdzisław Mach, Rector's Proxy for International Relations,  
Head of Institute of European Studies, UNESCO Chair for Education*

*about the Holocaust, Jagiellonian University*

Richard D. Heideman: I would now like to invite three esteemed people to come forth. Professors Zdzisław Mach, the Rector's proxy for international relations and head of the Center for Eastern Studies for the UNESCO Chair in Education about the Holocaust at Jagiellonian University who will address the aftermath of the Holocaust in Europe, followed by Professor Michael Berenbaum who will also come forward, the director of the Zigi Ziering Institute and professor of Jewish Studies at the American Jewish University to address the Holocaust in context, and then a special honor to receive remarks and then an address from Edward Mosberg, a Holocaust survivor who's one of our honored guests here at The March of the Living, please come forward Edward Mosberg. And so we turn first to Professor Zdzisław Mach who contributed tremendously to this symposium and we extend our appreciation.

Professor Zdzisław Mach: Well thank you very much. It's not easy to speak after so many great speakers who addressed such central issues, and also it's not so easy to speak so near to lunchtime. So, I will be brief. I am not a historian, and I am not a lawyer. I am sociologist, and a European Studies specialist, if I may say so. So, for me, the Holocaust is primarily a European matter, and primarily a matter of the present. So, I will be sharing with you a few brief thoughts concerning the aftermath of the Holocaust within the European context.

At present, European integration creates a new common European frame of reference in which memory and identity are constructed and reconstructed. Nations must rethink their past and their memory in this new frame, taking into account other interpretations, other voices, other memories, the memories and interpretations of other nations, other people. The Holocaust is, without any doubt, of course, as we all know, the most tragic experience in European history. It belongs to Europe as a whole; this has always been my—I mean I've always been convinced that this is the way that we should approach the Holocaust. This is why, in my modest way, I place Holocaust Studies at this university institutionally in the context of European studies, because I think that we can only understand the Holocaust as part of—paradoxically as it sounds—as part of European civilization, the darkest moments of it.

The Holocaust belongs to Europe as a whole, as memory, and as a warning so that it will never happen again. It changed, I believe forever, European views of otherness, prejudices, intolerance, establishing new cultural and moral standards. But this does not unfortunately mean that all that was dangerous that led to the Holocaust has disappeared. The

monsters of prejudices, nationalism, racial hatred, religious intolerance, still do appear in Europe. Frustration generated by fear, unfulfilled expectations, enemies, inadequate education for tolerance and pluralism leads to nationalism, radicalism and hatred, also in this country. But, also elsewhere in Europe as we all know. This is also why education about the Holocaust is so much needed, and for this I am very glad that UNESCO decided to establish a Chair of Education about the Holocaust here in Poland at this university, to show that this is an essential issue and a central endeavor.

But, everywhere in Europe it is, we have been witnessing different actions, different initiatives to rethink our memories, difficult memories, to confront tragic memories, and to put it in the context of European dialogue, European frame of reference. I remember the famous French philosopher, Jacques Derrida, who had been travelling all across Europe talking about the need to rethink the role of France and French politics during the Second World War in the context of the Holocaust.

Two coinciding processes are developing in Europe at present. On one hand, national memories and interpretations are struggling for recognition in the European frame of reference. Nations, mainly, are trying to have their voices heard in Europe, to have their historical experience, their memory recognized. Poland is one of those that, since we became a member of the European Union, there have been a lot of initiatives to not only communicate our historical memories to the rest of Europe, but also to convince Europe that our experience is not only important to us, but it may enrich Europe. But at the same time, nations must adjust their memories to the common European frame of reference and European narrative.

The Holocaust is now a challenge for collective memories, also for those nations and those countries which previously did not really identify with the lesson of the Holocaust and did not accept its responsibility. If you want to be European, you have to accept it. It's over, and I used to be proud of the great achievements of European civilization, but it also means that you have to accept the dark side of it, the dark side of it—the dark part of European history such as colonialism, and especially the Holocaust.

This country Poland is a good example of that. Well here I can speak, both as a scholar, but also as a Pole. In its own Polish mythologized history, the Polish nation likes, especially in a more nationalistic version, likes to present itself as a great, ultimate sufferer, as a victim of oppression; we like to think of us, ourselves as sufferers, as the greatest sufferers. We are known how to be able, and then to be

willing and good at celebrating different tragedies, perhaps better than victories or successes. That's part of our national identity—one version of it, but quite popular. In some extreme version, Poles even think of themselves, or used to, as some Jesus Christ of nations.

This is why Poles find it very difficult to accept any guilt, any responsibility, any blame, any responsibility for people's suffering, or even to recognize that others suffered more. After all, Jesus Christ bears no blame, and he is the ultimate sufferer. So it is hard, looking at it from this point of view, to cope with the truth of collaboration, even if it was, only some members of the Polish nation who collaborated with the Nazis. Or, it is difficult to cope with the truth as revealed by Jan Tomasz Gross or others, about Jedwabne and other atrocities.

In recent decades, the Polish nation has been confronted with its own memory, its own identity in relation to other people's memories in the European frame of reference. We had to rebuild our collective memory and our collective identity, not only after 1989, because of freedom, because of openness, but also because we had to learn, what other nations, what other people think about us, about our history. And, in this new dialogue, in the new European frame of reference, new understanding, new interpretations, are being created. But, of course, we have to understand that, unfortunately, freedom does not necessarily mean that people move in the direction of more openness and more tolerance. They may use their freedom in order to be more radical in a direction which we may not necessarily like them to go. And, in this country as well, many people use their freedom in order to express extreme views of a nationalistic type which I hope this nation would be strong enough to call by name and stop before it's too late.

European integration requires that the memory is Europeanized. Meaning that it is adjusted to the European frame of reference and to European standards and values. To be truly European means to feel proud of Europe's achievements, but also to accept responsibility for the dark moments. It is then, and only then, we can build integrated Europe as something more than a common market, and only then, we can collectively hope that we can fight against what we all identify as the dangers of today. Thank you.

#### THE HOLOCAUST IN CONTEXT

*Professor Michael Berenbaum, Director, Sigi Ziering Institute,  
Professor of Jewish Studies, American Jewish University*

Professor Michael Berenbaum: First of all, it's a privilege being at

Jagiellonian. I have the privilege of every summer of the last ten years of teaching at Jagiellonian University and teaching Polish teachers about the history of the Holocaust. Therefore, I feel very at home in this distinguished university. Having just survived the Passover Seder, my daughter who did her doctoral thesis in part on the Haggadah, always used to joke that the Seder in our home takes a little bit longer than the Exodus, and that the fifth question is “When shall we eat?” So I am standing between you and eating, and therefore, I will have to be cautious and careful.

I’ve been asked to address the question of “the Holocaust in context.” Let me put it in a couple of contexts for you very quickly. First of all, the Holocaust scholarship is thriving in ways that we never imagined before. The Holocaust used to be a footnote to the study of World War Two, and now, it has taken center stage, and works appears in a variety of formats from a variety of perspectives in all sorts of ways, which shed brand new light on the Holocaust. Let me only touch on four very briefly.

One is Tim Snyder’s new work “The Black Earth.” And, Snyder takes a very bold stand that forces us to rethink a number of things. The first is, he asks the questions, “Why were the Jews targeted in Hitler’s universe?” and precisely speaks, I think, of Hitler as engaged in a world in which he saw the Jews as anti-natural, because they restricted and restrained the exercise of might; and if we live in an extreme form of social Darwinism in which it is survival of the fittest, the Jews by virtue of their very basic morality, and indirectly Christianity which adopted that morality, had to be eliminated because they restrained by moral considerations the exercise of power. He focuses in a radically different way about the nature of Jews as a target, and sees it with a worldview that looks at Hitler aiming not only at *Lebensraum*—living space—but also space to live well. And, for him, that was power and domination.

Snyder also does a very important thing which we have to consider especially in this region of the world, which is he focuses on the role of statelessness, and that is that Jews were most vulnerable . . . were not only in this challenges some of the considerations that have been offered. Not only the role of law, but the problem was that in areas where there was no law, statelessness proved a unique vulnerability, and he shows that even the promise of the realization of state became instrumental for the use of a series of forces to assist the German *Einsatzgruppen* in murder and in areas such as Latvia, Lithuania, and Estonia—the dramatic role and transformation in the killing process that was done by locals, and also the dramatic change that was done in the

period where there was statelessness between Soviet and German occupation.

Ironically, he suggests that we consider, in a very interesting way, that one of the strongest assertions of Jewish rights in this land, in Poland, was where the one area where the state did not disintegrate, and that was with the government of exile. And, that is that we have to consider them as the only group within Poland willing to defend the Jews, because they still saw Jews as citizens of the state. That underscores also the question of the role of 1935 in depriving the Jews of the right of citizenship which forces them into statelessness, and also interestingly enough, underscores the natural inclination of Jews in the aftermath of the Holocaust—when we learn the consequences of statelessness and powerlessness—to make one of the primary items of the agenda, the achievement of a Jewish state, and the achievement of adequate Jewish power to sustain that state and the like.

Second example which I want to touch upon are people going from different areas of inquiry. One of the most interesting books that has come out is a role called “The Holocaust vs. the Wehrmacht” [by Yaron Pasher]. It’s written by a logistics expert, a military logistics expert, who looks at a very basic issue, which is how were the Germans going to supply their troops. [He] looks particularly at the attack on the Soviet Union, figures out how many trains were needed to bring six hundred thousand horses to the front, and to bring the food that was responsible for feeding six hundred thousand horses in the front—something I never thought of once in my life—comes then to the broad conclusion that if Germany had really concentrated on winning the war, then the two times in which it had the greatest acts against the Jews—1942 and 1944—were the two times that its own supply lines were most vulnerable, and the two times in which there was a battle and then a struggle—which he then finds in documents between the SS and the Wehrmacht—about what was going to be the national priority.

Nineteen-forty-two is clear, because the basic way of looking at Wannsee is that at the time of the Wannsee Conference between 75 and 80 percent of the Jews who were to be murdered in the Holocaust were alive. Sixteen months later, eighty percent of them were dead. Nineteen-forty-four is clearer because, again, between the fifteenth of May and the eighth of July 437,000 Jews were deported on 147 trains, destination primarily Auschwitz, and that was the period of time in which the Soviet Union was invading from the East, the United States and the Allies had begun D-Day. Hitler’s supply lines were stretched to the extreme and what Pasher shows with that—which is extraordinary—is

the fact is that the war against the Jews took primacy. Now he can show it not as an ideological thing, but can now through documents, show it train by train, battle by battle.

There is a new book for an example on the relationship between the Polish resistance and the Jews which now no longer goes into polemics, but goes into detail after detail about it. There is also a collection of very interesting documents that will soon be published, which is a republication of the Polish underground press and what it reported about the Jews, so we will know precisely what happened in this land, and when, and what could have been known, and what was revealed to the general population.

Let me touch on one area that is of particular interest to me, which is a magnificent new book called “They Kept Us Alive” on the role of humor in the Holocaust. And the role of humor in the Holocaust is important, because it shows the capacity of human beings to confront their reality, and live even in the shadow with the overwhelming shadow of death, and it gathers all of the ways in which Jews used humor, and then all the instrumentalities in which life was celebrated amidst destruction—shows you precisely the inner nature, shows you precisely the inner nature of what was happening within the community. Let me use the occasion to just tell two parts of the story.

“Three guys are sitting down and talking. One says “*oy*.” The other says, “*oy, oy*.” And the other says, “*Oy, yoy, yoy*. So much for politics, gentlemen, now let’s talk about something else.”

“A child is asked in the Warsaw Ghetto, ‘What would you like most of all?’ [Yiddish response.] ‘I’d like to be an orphan.’ And thus he uses his imagination, his imagination very clearly to slaughter the one who put him in the ghetto.”

Archives are going to open up. One of the very interesting archives that will soon have to open, and one that we should use the incredible papacy of Pope Francis to open, is the Vatican archives. Because the Vatican archives—and we don’t think about it—but the Vatican had the largest intelligence network in all of Europe, had people on the ground everywhere, had chaplains in each of the armies. You cannot reveal the content of confession, but you can reveal that which you learn by virtue of confession, not about the individual, but about the circumstances. And that will finally be able to answer for us: What did they know, and when did they know, and then what did they do with it?

We have a wonderful book by Susan Zuccotti of about a decade ago who came to the radical conclusion—by showing the letters that were sent to the Vatican, and letters that came back from the Vatican—

came to the radical conclusion that local Catholics did far better than the Roman Catholic Vatican and its hierarchy, and showed the degree to which they operated against instructions, and without instructions to save out of humanitarian levels.

One of the archives that will shortly open—I'm sorry the Minister of Justice is not here—is a very important archive which is going to tell us how the victims felt about each other at the very beginning of the early years after the Holocaust, and that is the trials that took place, the Honor Courts that took place in Israel both pre-state and immediately after the state dealing with Jewish behavior towards Jews, and that will provide us very interesting insights in what happened at the time, and also what happens over time.

We even discovered a very important document that I've known about for about three years, but Elie Wiesel had a Hebrew version of "Night" that is far more critical of God, far more critical of the Jews, than what he allowed to be published even in Argentina in Yiddish, and then what he allowed to be published in the United States in the two versions of "Night." It's going to be essential for scholars in the future to understand Wiesel's—and you can read the Yiddish, the Hebrew, and the French side by side to understand Wiesel—what Wiesel really wanted to tell the Jews, about his experience. And, then the more he became a public figure, the more he was restrained in that.

I am sorry that the Justice Minister is not here, because we can also answer directly—I mean we wrote a book on this—about the question why Auschwitz wasn't bombed. And if you want to deal with the non-bombing of Auschwitz, you have to deal with the very fact that, as late as June 11, 1944, David Ben Gurion, meeting with the cabinet of the Jewish Agency, voted not to request bombing, and that [on] July 7, 1944 Chaim Weizmann and Moshe Sharett, meeting with Anthony Eden requested that Auschwitz be bombed, Eden got an approval from Winston Churchill who said "Get anything you can out of the RAF and invoke my name if necessary." And, you have to ask the question then—presuming for a moment that Ben Gurion is not an anti-Semite—you have to ask the question, "What is the difference between June 11th and July 7th, twenty-six days? What is the difference between the one decision and the other?" And, the answer, in all probability, is the emergence of the Vrba-Wetzler Report out of Slovakia which gave a detailed manner of what was happening at Auschwitz. Which leads us to the conclusion that in order to bomb Auschwitz, you had to have not information but knowledge.

Clear knowledge was required; so too the capacity to bomb. The

United States only had the capacity to bomb in the spring of 1944 when it had bases in Italy that were 528 miles away from Auschwitz so that a plane had to travel 1,056 miles, going out heavy—with fuel and bombs—and coming back light, the bombs dropped and the fuel tank running toward empty. Most importantly, you have to have the commitment, and the best example of the lack of commitment was the statement by John J. McCloy, “Such an operation could be executed only by the diversion of considerable air support essential to the success of our forces now engaged in decisive operations elsewhere and would in any case be of such doubtful efficacy that it would not warrant the use of our resources. There has been considerable opinion to the effect that such an effort, even if practicable, might provoke a more vindictive action by the Germans.” So we know that, we know that from archives, we know that from studying and the like.

Teaching is going in two directions. Teaching is going in a direction in which some people learn from the Holocaust that the world is against the Jews—not a lesson that is untrue and not a lesson that is unreinforced elsewhere. And, others teach the very same experience for pluralism, tolerance, democracy, and mutual acceptance.

We have learned how to teach with a sense of failure of the world, but the most important element, and this is a suggestion to Poland, at a time of extreme nationalism. You can learn from your failures if you begin to understand what the nature of repair that is required in the future. Yet, if your last word is failure, it leads you to impotence. If your last word is repair, it empowers you to transform it in a variety of different ways. We have learned positive models. We have learned to teach of the upstander. I don’t use the term “Righteous Among the Nations” because I don’t think my students aspire to be righteous. I think they do aspire to the word that was used before. They aspire to be “*menschen*,” they aspire to be decent human beings. If we put in “righteous,” we put them out of reach. If we speak about the courage to do something, to stand up and the like, the courage to be a human being in a world that lacks them, then we can give them something that they can understand and aspire to emulate and act upon.

And, we’ve also understood the role of messenger. And the role of messenger is not a one-time thing. I taught with Jan Karski, I preached at his funeral, I even said Kaddish as he was buried with a Jewish star on his lapel. And Karski spoke 226 times in 1944 and 1945 to tell the world what was happening. He spoke. We did not listen, and unfortunately one goes through the world today with a sense of *deja vu* all over again. We have a problem to our teaching, which is our students

see it happening not “never again” but again—and to use Professor Cotler’s remarks—”again and again and again”.

They also see a world in which anti-Semitism has taken on different forms, but it is a world in which anti-Semitism has to be seen in the context of all sorts of permissibility for the expression of hatred where we lived in a world of my generation where there was a restraint on the expression of hatred. There is less anti-Semitism now, at least in the United States, on demographic information, than there was when I was growing up, but there was a restraint on the expression of anti-Semitism which led us to believe that there was less. We live in a world in which there is a combination of Holocaust fatigue—we know it all, we’ve seen it all—versus extraordinary interest in the Holocaust.

I want to point out for those in problem about denial is that denial, the self-defeat of David Irving, and I’m very meticulous in this. Deborah Irving is a friend of mine. Her victory was unimportant; the defeat of David Irving was all-important. It is now going to be made a movie entitled “Denial” and it is going to have the capacity to influence millions of people.

We also see the power that, when you focus on an event, we see the power of its capacity. Again, Holocaust fatigue; you can’t get a bloody Holocaust film made, but I know of about twenty that are in process. “The Son of Saul” won an academy award. We are also going to have a film on Emmanuel Rigelblumand on the nature of how you write a history from the inside. And, we are also going to have a new film. We just finished a film on the last survivor of Treblinka that is going to be broadcast tonight on PBS. When we started we had five survivors of Treblinka. We finished the film and only one was alive, and the last survivor of Treblinka died within three months of that.

Finally, let me conclude by saying we need to pursue the truth, and we need to pursue the truth in such a way that we can accept responsibility for where the truth takes us. We cannot undo the past, but we can transform the future. And, the Holocaust unfortunately touches some of the largest issues that are contemporary to our society. There is no more important issue to the future of our collective humanity than whether, for example, a religion can adhere to its own principles with passion and with fundamentalism, with intensity and total commitment, and yet make room in the world for religions with a view that differs. We have a wonderful example of a religion that did transform its teaching to make room for that in Roman Catholicism. The role of [Pope] John XXIII in undoing the charge of deicide. And, even last month, the incredible statement by the Roman Catholic Church which

says there is no need to convert the Jews, because the covenant and the original covenant between God and Israel remains in effect.

The Holocaust has transformed our legal situation. You are going to talk about it. It's transformed medical ethics. Let me give you one example of legal. I had the opportunity to be the Executive Editor for the second Encyclopedia Judaica. We looked at the legal consideration of the first Encyclopedia Judaica, and we had to throw out virtually all of the essays, because all of the essays were trying to tell us that the degree to which the Nazis violated the codes of law. The new approach was to say how was the instrumentality of law used to identify, segregate, isolate, deny citizenship, and ultimately murder the people.

And, we also have the question of religious ethics, of medical ethics and also the question of governmental ethics, because the people who perpetrated the Holocaust were government officials, but also the people who fought the Holocaust were government officials. We have heard the example of Wallenberg. You can use the example of De Sousa Mendes who essentially paid with his career for the work that he did in admitting people into Portugal. We can look at the heroic work of John Pehle, Josiah Dubois, Randolph Paul.

Last point and all, I wish that our field were irrelevant. The scandal of our world, the tragedy of our world is that, unfortunately, we are relevant. Thank you.

ADDRESS BY EDWARD MOSBERG

*Edward Mosberg, Holocaust Survivor*

Richard D. Heideman: It is a privilege to have with us Edward Mosberg. He tells from his heart, from his eyes, from his inners. Please rise to welcome and honor survivor Edward Mosberg.

Edward Mosberg: Good morning ladies and gentlemen and distinguished guests. First of all, I would like to say thanks to Dr. Rosenman, and Professor David Machlis for inviting me here that I could speak to you about the Holocaust. I wish that I would have to stay here and talk to you about the Holocaust and tell you that the Holocaust never happened. But it happened, and I have to tell you about the atrocities and murders that were committed on our family and the six million Jews. I have to tell you also about the collaborators that were working together with the Nazis.

In 1941, in a small town, the local people gathered several hundred Jews, and they pushed them into the barn, and they burned them alive. But also we have to talk about somebody else. The family of Jozef and

Wiktoría Ulma, from Markowa. In 1942, they took into their house, eight Jews and they tried to hide them. In 1944, somebody denounced them, and the Germans came in. They murdered the eight Jews and they took out Jozef and Wiktoría Ulma outside, in front of the people, and they shot them. They had six children—from one year and a half to eight years old—and then, when the children were crying, they shot them also. We ought not to forget these types of people.

We also have to remember Jan Karski, who was one man who said that he wanted to stop the Holocaust, but he did not succeed. He talked to many politicians, but it didn't help.

There was once here a family, right here in Krakow, by the name of Krulekophski [inaudible]. In 1942, my wife and her younger brother, seven years old, they could not get into the ghetto so they came down to their house, and they, the Krulekophski [inaudible] family, knowing that they were endangering their life, they hid them for several weeks, knowing that in the same building the Gestapo was living.

Ten years ago, my wife and I, one of our daughters, her husband, and two of our grandchildren participated in the March of the Living. On Yom HaShoah, seven thousand children plus hundreds of others marched from Auschwitz to Birkenau. My daughter and I have participated in March of the Living before. For my wife, this was her first March of the Living. In 1944, my wife went on a march of death but Dr. Mengele selected her to live. I strongly encourage everyone to make that March of the Living.

I would like to read you an excerpt from the Holocaust Museum bulletin. "On January 1945, Soviet army unit in southern Poland advanced on the little town of Oświęcim. What they have found shocked even the battle hardened Russian troops. Outside the Polish hamlet was a waste complex of camps, covering hundreds of acres surrounded by fences. Pulling up to the open gates in tanks, they found some six thousand prisoners, many of whom were sick and dying. "What is this place?" they asked. "Auschwitz," they were told. What they had stumbled upon was the Nazis' largest and most lethal death camp. Only a week before, ahead of the approaching Soviet troops, the Germans began the hasty evacuation of Auschwitz, of nearly sixty thousand prisoners. All those well enough to walk had been led on a death march through [the] snow of Austria and Germany. Between nine and fifteen thousand who were unable to make the march were murdered on route, turning the evacuation into a true march of death. The snowy landscape soon turned red with the victims' blood. We ran in the snow like madmen without knowing where we were going. It was

a true death march. Hell on earth. My wife went on her second death march at that time.

While we were in Poland, we went to the concentration camps—Majdanek, Treblinka, Stutthof, Auschwitz, Birkenau, Plaszow, and Belzec. I have to tell you about Belzec. From March 1942 to December '42, the Nazis brought Jews from Poland and other countries, until they came to Belzec. Arriving prisoners were pushed into the gas chambers where they were suffocated from the engine murder fumes [and] their bodies were burned on the stockpile.

The victims of genocides were adults, men, women, children, and infants. Can anyone imagine the horror that a mother experiences when the gas starts to consume her baby? What the terror her baby is living, gasping his last few breaths? Can anyone imagine the painful price and prayers as a survivor? I cannot understand this. No one, no one can understand this.

Belzec has become one of the largest cemeteries of the twentieth century in Europe. Belzec only had fifteen acres of land unlike Auschwitz and Birkenau which had hundreds of acres of land. Belzec was not a concentration camp. Belzec was an extermination camp. It is located in the eastern part of Poland, close to the Russian border. Because of its location it is now visited by many tourists or people from the March of the Living.

In Belzec, in 1942, the Nazis murdered six hundred thousand Jews; 550,000 from Poland, and the rest from Austria, Belgium, Germany, Czechoslovakia, Denmark, Holland, Norway, Romania, Hungary, and Russia. My grandparents and cousin were killed. I lost sixteen members of my family. When I walked there, through that now quiet place, I could hear the cries of my family and the rest of the six hundred thousand Jews. "Don't forget us." How can we forget and forgive the barbaric murder of our brothers and sisters in the gas chambers of Auschwitz, Birkenau, Majdanek, Treblinka, or Belzec?

To forget and to forgive means to kill the victims a second time. We could not prevent their first death, but we must not allow them to be killed again. We have no rights to forgive. Only the dead can forgive. How can we forget or forgive the burning of synagogues, or the holy books or Torah scrolls? And we should remember that the parchment of the Torah will burn, but their letters are indestructible. They exist forever and ever.

I was born in Krakow, Poland. When the war started, I was thirteen years old. My family and I were thrown out of our house and put in the Krakow Ghetto. During the liquidation of the ghetto in March

13, 1943, I witnessed people being killed for absolutely no reason, only for being Jewish. I saw their bodies all around when the Germans brought all the sick and infirm people to the gathering square. Their crutches and canes and so forth were taken away. The Nazis told them to cross the square, and whoever could make it to the other side would be permitted to survive.

Those poor people were crawling on their hands and knees. Nonetheless, they were shooting people who were attempting to cross over. Also, when a mother was holding a small child in their arms, the Nazis would rip the child out of the mother's arms, and smash the child's head against the wall, killing them instantly. Or, if a child was hidden in a knapsack, the Nazis would shoot straight into the sack, killing them.

Following the Krakow ghetto, I went to Plaszow concentration camp where I worked in the offices of Commandant Amon Goeth. I saw with my own eyes how that brutal savage killed people for no reason other than for pleasure. I saw when he ordered the hanging of a young girl whose name was Weitz. The rope broke twice while they were trying to hang her. By the third time they succeeded. To be a witness, I testify to it. I saw people being shot for no reason. The pile of burning bodies like dogs that you saw in the movie *Schindler's list*, some have a life never let my mind. The smell never left me. I always smell it.

I came from an intact family—a set of parents, two sisters, grandparents, aunts, uncle, and cousin. I am the only survivor. Don't worry, I'm okay. I lost my whole family. The Germans deprived me of my youth. My children do not know what it is like to have an aunt, uncle, cousin, and grandmother. For this, I will never forgive, I will never forget. My father was killed by the Nazis in the beginning of the war. My mother was taken on a transport from Plaszow in 1944. It is seventy-two years since the S.S. took her to her death. I can still see my mother waving, her hands towards me. It seems like yesterday.

If you saw "*Schindler's List*," my mother was in the first selection. My wife and her nine-year-old brother were also taken then. They were both taken to Auschwitz, where they were gassed and they were burned in the oven. That one day before it, I found some place a piece of meat, and I gave it to my mother. She was so skinny. She was in her forties, hungry. I put it in her mouth and she spit it out. And she said, "This is *treif* [non-kosher]. I cannot swallow this," in memory of her father. My wife's mother was killed with a benzene injection to her heart, and my wife saw when they were dragging her mother's body by the leg and throwing her into the fire to burn her.

In 1944, my two sisters and one sister from my wife, along with thousands of others, were transported to Auschwitz, and in 1945 they were transported to Stutthof concentration camp. They were led on a death march to the Baltic Sea. An estimated seven thousand prisoners were lined up along the beach and shot. The next morning was liberation.

As a young child, my wife was also taken in seven concentration camps and ghettos. She was in Bielitska, Lublin, Dubianka, Krakow Ghetto, then Plaszow, Auschwitz, Birkenau, Bergen Belsen, plus [inaudible]. Her last transport was to Mauthausen from where she was liberated.

In the movie “Schindler’s List,” the people in the selection running naked in the circles in front of the S.S. were actors. When people do not eat for months, they look like skeletons, skin and bones. It is something one cannot imagine. It is beyond belief, and I am a witness to this horror and I testify to it.

When I was transported from Plaszow to Mauthausen, we were in enclosed cattle cars without windows or facilities for hygiene. It was hot. It was August ‘44, and the people were dying from the heat. If you have seen “Schindler’s List” movie, I was on that train, and was hosed down with water.

In Mauthausen, where I worked in the stone mine, I carried boulders up and down 186 steps. If you stopped for a moment, the S.S. would beat you with their whips, shoot you, or push you right off the mountain to your death. I was there and I testify to those atrocities.

From Mauthausen, I was transported to Linsk concentration camp. On May 5, 1945, the day of liberation, the S.S. told the many prisoners that the Americans were going to bomb the city, and that the S.S. wanted to save us. They marched us to the caves that had been set up with dynamite to blow us up. The dynamite did not go off. They did not succeed. This is why I am here today. I can attest to those atrocities. In another ten to fifteen years, there will be no more survivors. So you will be able to tell your children and grandchildren of the atrocities of which I speak today.

Mauthausen was the main concentration camp. It had forty-seven sub-camps. One of them was Edenzen and in my own opinion it was one of the worst camps, because it was where they were starving people to death and cannibalism happened there.

You see this whip, I was beaten by four men with this kind of a whip. You don’t understand what it is to be beaten with this kind of whip. It is seventy-two years and I have never forgotten this. I wished at

that time I would be dead so that I could not feel this anymore. But, I still today have never forgotten that pain. I feel today what happened to me at that time. At the end of it, they had a bottle of water and they wanted to stick my head to drown me in it, but they did not succeed. This is why I am here, and I can tell you about all the atrocities. You don't understand how many times I faced death, but I am here to talk about it.

I believe if the State of Israel had existed seventy-five years ago, they would have bombed the crematorium and the gas chambers, and the Holocaust would never have happened. So, long live the State of Israel.

The rest of my days are not enough to cry for this tragedy. As long as I live, it is my obligation, and duty to tell about the atrocities that were committed on my family, and the six million Jews. And now, I would you to stand up for a moment in silence in the memory of those who were murdered.

Thank you, very much. Once more I want to thank you for inviting me, and Professor, for inviting me so I could talk about this. Thank you, and God bless you all.

Richard D. Heideman: Edward Mosberg, we honor you. We thank you for sharing with us from your heart, from your knowledge. What you've said here must ring out. "I was a witness to this horror," you said. "And I testify to it." We thank you for sharing with us your knowledge, your facts that you witnessed, your truth. We all pay honor to you, and to your dear departed, and to your life. And we thank you.

Edward Mosberg: I want to say one more thing. I am sorry that my wife, whom I met during the concentration camps, that she could not be here, because she's sick. She's in a wheelchair. But my wife never spoke. She is afraid to talk. Many times in the night she wakes up, and she is calling her mother or she is calling to me, "Hold me under water; drown me," the way that they drowned her sister. This is terrible, the way that we have lived all these years. Ok, thank you.

#### THE NUREMBERG TRIALS: VIDEO PRESENTATION

Narrator: During World War II, six million Jews and millions of other innocent civilians were murdered at the hands of the Nazis. After the war ended in Europe in May of 1945, some of the leading Nazi figures were apprehended and put on trial.

The International Military Tribunal, known as the infamous Nuremberg Trial, set a historic precedent for the world's prosecution of war criminals. It changed the course of international law for future

generations.

Justice Robert H. Jackson: The privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility. The wrongs which we seek to condemn and punish, have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated.

The Honourable Irwin Cotler, Former Minister of Justice and Attorney General of Canada: The Nuremberg Trials were clearly a landmark event in the development of international law.

Professor Steven T. Katz, Alvin J. and Shirely Slater Chair, Jewish Holocaust Studies Boston University: There had never been anything quite like putting on trial the people who had made a war, and then had in the course of that war, persecuted all sorts of people and killing tens of millions.

Professor John Q. Barrett, Professor of Law, St. John's University: It's the bedrock on which generations down, people like us study and teach, and try and build on some of these legacies of the Nuremberg Trials.

Narrator: The International Military Tribunal was formed by the four allies—the United States, Great Britain, France, and the Soviet Union. American Justice Robert H. Jackson led the charge to indict the German leaders under the rule of law.

Professor John Q. Barrett, Professor of Law, St. John's University: In June of 1945, Robert Jackson wrote a report to Harry Truman, but really a public document and it was released and published in every newspaper in the United States and around the world. And in a little passage, Jackson contemplated the three options: let the perpetrators go because a war is about winning and losing and we've conquered the land and they slink away; or line them up and shoot them; or pursue the rule of law. And Jackson said, "I'm a rule of law person. I'm a jurist. I'm a prosecutor. That's what I'm here to do. That's what I propose to do."

Professor David Silberklang, Senior Historian, Yad Vashem, Adjunct Professor, Hebrew University: Twenty-two people were put on trial. And they were meant to represent the remaining senior leadership of Nazi Germany.

Professor Sharon Kangisser Cohen, Academic Director, Oral History Division, Hebrew University of Jerusalem: The Nuremberg Trial brings together so much of this evidence in order to make a case, to present a story of what happened, and what did the Nazis do?

Professor David Silberklang, Senior Historian, Yad Vashem, Adjunct Professor, Hebrew University: We're talking about millions and millions of pages of documentation, and that documentation is one of the most important collections of documentations about World War II, and especially about the Holocaust in existence.

Professor John Q. Barrett, Professor of Law, St. John's University: When those films were played of concentration camps survivors, emaciated people, striped uniforms, terrible squalor, some of the defendants were visibly affected. Some averted their gazes, some looked blasé, but some facing the atrocity that flowed from what they'd been part of, did seem to understand in a new and deeper way.

Narrator: The International Military Tribunal of 1945 lasted for almost one year. On October 1, 1946, the Tribunal handed down its verdicts. Eleven were given the death penalty, three were acquitted, three were given life imprisonment, and four were given imprisonment ranging from ten to twenty years.

Professor David Silberklang, Senior Historian, Yad Vashem, Adjunct Professor, Hebrew University: The trial set a precedent of an international tribunal that can try people for crimes not committed in the country of the precursors or in the country of the judges.

Professor John Q. Barrett, Professor of Law, St. John's University: The idea that perpetrating crimes in war against opponents, against occupied populations, brutality, extermination, imprisonment, torture, is somehow defensible as a use of power was not true.

The Honourable Irwin Cotler, Former Minister of Justice and Attorney General of Canada: The Nuremberg Trial had an influence and impact on the development of the International Criminal Tribunals for Former Yugoslavia, the International Criminal Tribunal for Rwanda, and intentional criminal law, human rights law, and humanitarian law in particular.

Show on Screen: Between 1946 and 1949 there were twelve additional American-led Nuremberg Military Tribunals (NMT), which saw the prosecution of close to two hundred formerly high-ranking German defendants.

Professor John Q. Barrett, Professor of Law, St. John's University: There are people and the law embodies what they are, but if their best faculties are being used, it embodies the best of what they are and then that pulls the people forward and they can build on that in positive ways. Law is just us. But our better laws make for better us. And I think Nuremberg deserves some of that credit.

Narrator: The Nuremberg Trials set a precedent concerning the

creation of international laws for the prosecution of war criminals, genocide, and crimes against humanity:

Shown on Screen:

International Military Tribunal for the Far East (1948)

The United Nations Genocide Convention (1948)

The Universal Declaration of Human Rights (1948)

The Geneva Convention (1949)

The Adolf Eichmann Trial (1961)

International Criminal Tribunal for Yugoslavia (1993)

International Criminal Tribunal for Rwanda (1994)

Justice Robert H. Jackson: That four great nations, flushed with victory and stung with injury stay the hand of vengeance, and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason. [Opening Statement, Nuremberg Trials, November 21, 1941].

Executive Producer: Eli Rubenstein, March of the Living

Producer: Naomi Wise, Garrison Creek Media

### **JUSTICE AFTER NUREMBERG: WHAT HAVE WE LEARNED?**

#### SUPREME COURT JUSTICES REFLECTIONS

Moderator: Professor Alan Dershowitz, Felix Frankfurter Professor of Law (Emeritus), Harvard Law School

*The Right Honourable Lord John Dyson, Master of the Rolls and Head of Civil Justice of England and Wales*

Richard D. Heideman: It's my honor to recall to the microphone Professor Alan Dershowitz, the Felix Frankfurter professor of law, emeritus at Harvard Law School, as the moderator for the panel "Justice After Nuremberg: What have we learned," the Supreme Court justices' reflections.

Professor Alan Dershowitz: Thank you. I hope you all have learned as much as I learned listening to the morning session, not only intellectually, but obviously emotionally, listening to the accounts of a survivor and listening to the academic statements by so many brilliant people.

I feel myself a close connection to human rights and the Nuremberg Trials. My favorite professor, my mentor at Yale Law School, was Telford Taylor. He was the Chief Prosecutor at Nuremberg

following the major trials of Justice Jackson, and when I was a second year student at Yale, Telford Taylor invited me to come with him to Israel where he was going to be commentating for radio on the Eichmann Trials, and fortunately or unfortunately, I had just been elected Editor-in-Chief of the Yale Law Journal, and I couldn't do it. And, I missed an opportunity to be at the Eichmann Trial with Telford Taylor.

I did ultimately attend the trial of John Demjanjuk in Israel, which showed the Israeli legal system at its best. Even though everybody knew that John Demjanjuk—if not Ivan the Terrible was another Terrible Ivan who had been a hands on perpetrator of the Holocaust—the Israeli Supreme Court, as you know, reversed his conviction. And, the decision written by the President of the Supreme Court Aharon Barak—who himself was a victim of the Holocaust, had hidden in a wall during the Shoah in Lithuania and Latvia in those areas—and the ability of the Israeli legal system to do justice to somebody who had such blood on his hands, because he had been charged with the wrong offence is really remarkable, a remarkable tribute.

And then of course, I am so proud of Samantha Power, who was my student, and I was one of her mentors, and I have to tell you she missed a lot of classes during the year she was with me. She was writing this book on genocide, and going off to all parts of the world, but those are the best kinds of students. There is a Hebrew expression, *medora medora*, from generation to generation, and as teachers I think we experience that. So here we have my teacher, Telford Taylor, my student, my friend Ben Ferencz, who I have known for years and years and years and I still, actively speaking up at the age of ninety-three, or I think he's ninety-six now perhaps. Amazing, amazing generational issues to these matters.

So now we are going to have a very, very interesting session that involves some of the greatest jurists in the world today—jurists who have sat in courts ranging from Great Britain to Canada to Israel to Rwanda, and they are going to share with us their experiences in dealing with human rights issues, and we are going to try very hard in this program to stick to our time limits, and to provide for at least enough time for some discussion. And so, each of the Justices will make an opening statement, and then we'll have an opportunity to question each other, and for me to question them and to have a conversation. And, we are going to go a little bit out of order from what is on the program.

We are going to start with one of the greatest jurists in the world today, the Honourable Lord John Dyson who is Master of the Rolls and

Head of Civil Justice in Great Britain, he is the second ranking jurist in Great Britain today. He has had extraordinary experience at the Bar, and the Bench, and will share with us some of his experiences. And so, it is my great honor to introduce Lord John Dyson.

Lord John Dyson: Good afternoon everybody. I just want to make a few preliminary remarks. I'm truly privileged to be here for this event, this remarkable event in this beautiful city and in this beautiful university. I have not been to the city or university before; it's almost as beautiful as Oxford and I do want to pay tribute to the organizers for putting on a fantastic event and the speakers that we've heard this morning. I think they've all in their different ways been brilliant, the range of their contributions has been astounding and who will ever forget the finale just before lunch from Edward Mossberg. That man shaking with intense anger and describing his experiences with remarkable articulacy for a man of his age. I don't know how old he is but it's obviously pretty old.

As a British Jew, I have to confess I've led a very charmed life and I'm very conscious having heard all the contributions this morning, a lot of them searing contributions delivered with great intensity that I'm almost apologetic for the fact that I come from a jurisdiction, from the city London, and an environment which, on the whole, is polite, is measured, and where temperatures do not tend to rise. I say I feel slightly apologetic about that, not apologetic in the sense that I think it's a bad thing because I think that that is the right way in which justice should be delivered, but for the fact that in the UK we are and have been blessed to have avoided direct contact with the terrible things that have been described and which have given rise to this event.

So far in my life, the UK has been very tolerant of minorities and even though one sense and I've often sensed that there is a certain amount of anti-Semitism just bubbling, gently bubbling, beneath the surface, but it really, at least in my experience, it rarely actually surfaces itself. There have been some recent departures from that, which some of you may have read about, which I find deeply troubling, deeply troubling developments. In the Labour Party, it's not for me as a serving judge to make political speeches and I have no intention of doing so. I think one of the excellent things is that the government has always been a very strong opponent of anti-Semitism and a strong supporter of Israel and I think that's really what I want to say about what's happening in the UK

Out there are deeply worrying developments in France and other countries in Europe, extremely worrying. The revival of anti-Semitism,

upsurge of nationalism, and one has an awful feeling that we've been here before and that's why so many French Jews are now to be found in London. I understand there are now so many French Jews now to be found in growing numbers in Israel. And this is all terribly worrying and that is why it is so important that the flame, that the people like the people that have been speaking to us this morning, are guarding that should be kept burning very brightly indeed. And that's why it's so important to encourage as many as possible, especially young people, to do things like going to visit Auschwitz and why the work done by the Centers for Holocaust studies all of the word is so important, and why the March of the Living itself in my view is so important.

Although I've said that I've led a charmed life, and I really have, I am a first-generation Jew on my mother's side and a second-generation Jew on my father's side, but there is no Jew and I'm certainly not one of them, who has not been touched by the Holocaust. My grandmother on my mother's side spent six months in Bergen-Belsen, she was in one sense fortunate in that she was living in Budapest in 1944 and was able to get onto the Kastner train but instead of going straight to Switzerland she went to Bergen Belsen and spent six terrible months there. A great uncle of mine and his wife were deported from Berlin to Auschwitz in 1943 and perished there almost immediately and that was the same year in which a great uncle of my wife, who is here today. He was living in Marseille and he too was deported from Marseille to Auschwitz and he perished there within days of his arrival. And that is a microcosmic example of the terrible things that happened. With Jews being transported from all over Europe, focusing on these terrible extermination centers like Auschwitz. And so for me, going to Auschwitz tomorrow will be a very moving thing; I have to confess I do have a slight sense of foreboding about it, but I'm sure I shall be extremely moved by the experience. On my father's side, his parents came when they were nineteen from Lithuania, they clearly survived in England but I have no idea how many members of his family perished, I'm sure many did.

So all of this is the background to why I think that the Nuremberg Trial was so important. And you've heard so much about it already that I'm not going to cover ground that's already been covered by others this morning and which I suspect we may touch upon in discussions in a few minutes. I just say this: I think it is remarkable that instead of shooting these appalling people as Churchill wanted to do and the Russians and the Soviets wanted to do, they faced a trial with due process, legal representation, and so on. Of course there were many legal problems

involved in setting up this international tribunal, something which had not been done before and things like that how you define the crimes, problem of creating crimes with retroactive effect, who to choose to prosecute, all manner of problems and it's very easy for purist lawyers to have a sense of unease about the way things being done perhaps not fitting with a curious idea of the rule of law and it's certainly not something that certainly in a domestic context, in a more conventional context, any of us would contemplate as being acceptable, it wouldn't be. But this was a completely unique situation and there were problems because of the extreme acts and the horrendous atrocities that had been committed on an unprecedented scale by under and under the authority of Nazi leaders.

These acts called for innovative and unprecedented measure and I think that what happened in 1945 was a truly remarkable achievement. It was as somebody said a landmark. It was the product of remarkable jurists; you've heard me mention some of them. It was also, I think, we shouldn't underestimate the fact that it was a remarkable political achievement on the part of the victorious allies to get the Soviets and the U.S., UK, and France, all of them, to reach the degree of agreement they did was remarkable. Of course, there were political compromises had to be made in order to ensure that the Soviets in particular were on board and I think the U.S. too. And again, it's easy to be critical in a purist sense, but the fact is that what was achieved, I think, was unquestionably far better than just putting these people up against a wall and shooting them. Far better in the sense that it appealed very much more to our sense of justice than anything like that could possibly do, but also on a different level very important because it enabled the world to be told and 1945 the world didn't know very much about what had been going on. It's very easy for us to forget that now in the early part in the twenty-first century where now so much is known. But it was very important that these stories were told and that the full horror was deployed so far as it was possible to do in the light of the information that was then available to the world at large.

And as you've heard, the Nuremberg Tribunal was the forerunner of a number of tribunals which followed. I think it was to some extent part of the inspiration for the European Convention on Human Rights, which I'm very much more familiar with than with war crimes trials. The situation we now have with the International Criminal Court, again we'll touch on this no doubt, is far from perfect as you've heard this morning. But in my view, it is far, far better than not having it at all. That doesn't mean to say we should be complacent; there is much more

work to be done, in particular to persuade the big hitters like the States and China, and so on to come on board. But a remarkable journey has been undertaken, it started with Nuremberg but I think we should, without being complacent; we should celebrate what has already been achieved. Thank you very much.

*The Honourable Dorit Beinisch, Former President of the Supreme Court of Israel*

Professor Alan Dershowitz: I want to now move to President Dorit Beinisch, the Former President of the Israeli Supreme Court. Somebody I've known now for more years than either of us would like to admit. I remember this very young—I hope you don't mind me saying this—very beautiful young woman who was the State Prosecutor, and regarded as among the most brilliant young lawyers in Israel at the time we first met. And then she was appointed to the Supreme Court of Israel where she served as an Associate Justice with great distinction for many years, and then became the first woman President of the Supreme Court of Israel.

I have a trivial pursuit question for any of you in the audience here. You know Israel has been accused by the Council on Human Rights as being the most sexist country in the world; can anybody here name the first Prime Minister of any country who was made Prime Minister without having been related to a previous political leader either through marriage or through birth? [Someone calls from the audience.] Golda Meir, of course. And there haven't been too many countries, there have been some since, obviously, Margaret Thatcher, and Angela Merkel but that is still a pretty good distinction, and there haven't been too many countries in the world who have had a distinguished leading prosecutors and distinguished presidents of the Supreme Court that have been women.

But, I have to mention that, Dorit Beinisch will go down in history, not as the first woman President of the Supreme Court, but as one of the greatest Presidents and Justices of the Israeli Supreme Court at a time when the Israeli Supreme Court was under extreme pressure, both external and internal. So, it is my personal pleasure and honor to introduce President Dorit Beinisch.

President Dorit Beinisch: We are gathered here today jurists, academics, judges and distinguished members of the legal community in the Jagiellonian University with its great historical significance and reputation. We are here to discuss the influence and ramification of the Nuremberg Trials and its influence on our generation and the

generations to come. It is not just another academic symposium that we are having when we refer to principles of criminal international law while we are sitting so close to Auschwitz, the site where the most horrific events that history has witnessed have occurred. So many of us were influenced by those events in the personal, national and global spheres. For me personally, Poland is the land where my ancestors lived, where my mother was born. My grandfather, my grandmother and my aunt managed to send their last postcard from the Ghetto to congratulate my parents on my birth, right before they were murdered by the Nazis. Countries around the world chose to ignore the horrible atrocities and to shut their eyes to the fact of the systematic murder of millions of Jews and hundred thousands of other victims. Only after the Holocaust and in light of the horrific events the international community truly understood the meaning and the lessons derived from those events. The most important lesson was the perception that democracy is not only the rule of the majority, but that democracy in its essence is as much the rule of law as its guarding fundamental values of the democratic system: all men created in God's image, human dignity is the value of the highest importance and so is equality among human beings, regardless of their ethnicity, race or gender. It is still hard to grasp the deep meanings, the results and the influence of these dark days. We sit here, in this panel, judges from different systems of law. We all have to overcome our emotions and our personal pain for our professional and moral common goal and commitment to protect human rights in order to prevent future crimes against humanity. There is no doubt that the Nuremberg trials were the first and maybe the most important steps taken against the war criminals that were responsible for the terrible crimes, but we have to acknowledge that the trials were a reaction led by the nations of the free world who fought against the Nazis immediately after the events took place at an early stage before the principles of international criminal law were shaped and legislated.

In my view, after the next steps taken by the UN declaration of Human Rights and the Genocide resolution adopted by the UN, then a young and optimistic institution, the next milestone was the Eichmann trial that took place in Israel. The Eichmann trial was not only an important development for international law; it was historic and social change for the young state of Israel only fifteen years after the war had ended. For the first time, the people in Israel and in the world could learn about what really happened there in the hell of concentration and death camps. More than hundred witnesses told their personal horrifying stories. For the society in Israel this was an earthquake. The

survivors never spoke before about their personal tragedies that were hidden in their broken souls and bodies. Unlike the Nuremberg trials, which were based on accusatory documents, the Eichmann trial exposed the events from the human perspective. A lot has been written by academics and experts on the various aspects and influence of the trials that changed the views and the beliefs of the Israelis on what it meant to be a victim of the Nazi cruelty. The judges, in the trial court headed by Justice Landau, coped with the professional aspects of the trial. They showed greatness in their ability to listen to the witnesses, to understand their pain and at the same time to be very professional in analyzing the legal problems and take important decisions interpreting the laws and norms of the international society. In the brilliant judgment of the Appeal Court, Justice Agranat relied on the principles developed in the Nuremberg trials. He saw the Nuremberg trials as the legal precedent for the international customary law. He emphasized that at this early stage of development of international customary law, he had to follow the principles from the Nuremberg trial. In his opinion, he stated that when crimes against humanity and crimes of genocide are perpetrated, according to the principle of universality, every state should act as the organ of the international community, because the perpetrators that injure the basic rules of international society and its security, and violated the moral universal values and humanitarian principles which are the basis of every criminal law system. The judgment was the most significant decision given by a national court judging international crimes. We have to ask the question what was the follow up? Did other courts follow the duty to judge international crimes, to punish for those crimes, and the most important part of the role- to protect human rights against those violations?

The next steps that were taken by the international community with the significant legal developments that were already discussed here today were the conventions and the establishment of the Criminal International Courts. These are very important, but we should be asking the question, do these formal legal steps taken really express the response to the great concern we share today on the infringements of human rights around the world. We live in a world where we still see communities and individuals exposed to cruel atrocities where the violation of human rights and human dignity are still part of our reality. It is true that nothing could be compared to the systematic efforts of the Nazi machine to perform the final solution. Yet, this is not enough to lay a sound basis for optimism. We still witness hatred, racism, religious intolerance, and anti-Semitism that raises its head now in

different corners of the world. We may say that today we do have the legal tools, the machinery, to enforce nations to comply with the norms of civilized society. However, the international community fails because of the involvement of political considerations within the power of those institutions. One of the serious problems of international legal institutions today is the interference of political considerations in the legal aspects of their role and functioning. Israel is one of the countries that suffers most injustice because of political interests. As we wish to live in a better world, we have to formulate more and more the legal aspects and the legal consensus as to the need to separate the professional international law from political interferences in the functioning of the international institutions. Our lessons as judges that it is our role to protect human rights, equality, and human dignity and we are not allowed to close our eyes even for a moment because unfortunately the dangers already exist. An independent, apolitical judiciary, both on international and national levels is one of the most important guarantees for the protection of human rights and the prevention of future crimes against humanity.

*The Honourable Chief Justice Sam Rugege, Chief Justice of Rwanda*

Professor Alan Dershowitz: It gives me great pleasure now to introduce a fellow alum of Yale Law School. We didn't go there at the same time. But Professor Sam Rugege—I hope I have your name correctly—is an extremely distinguished jurist, and did, among other places, graduate [of] Yale Law School and Oxford University—and he was a professor before he ascended the bench, was himself a victim of great repression and discrimination in Idi Amin's Uganda and is now serving as the Chief Justice of the Republic of Rwanda—a country which obviously has experiences that are worth sharing in any conference on genocide. So, it is my great pleasure to introduce the Chief Justice, Professor Sam Rugege.\*

*Introduction*

Since those Trials by the Nuremberg Military Tribunal that tried some of those most responsible for the horrendous crimes committed during the Nazi regime in Germany and elsewhere, international criminal law has been developed enabling other international tribunals

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\* I was privileged to participate in the very important, high-level symposium marking [the] eightieth anniversary of the Nuremberg Laws and the seventieth anniversary of the Nuremberg Trials that took place at the Jagiellonian University in Krakow, Poland in May 2016. This piece is a revised version of my presentation at the symposium.

to prosecute and punish persons responsible for serious breaches of international humanitarian law and human rights around the world. It is fitting that we assess the progress that has been made in international human rights and humanitarian law to protect human kind and to bring to justice perpetrators, especially of mass atrocities. It is also another occasion to acknowledge the failures of the international system to prevent genocide and other atrocities that have taken place since Nuremberg and to lament what is happening in Syria and other countries experiencing violent conflict.

This year also marks the twenty-second anniversary of the genocide against the Tutsi in Rwanda. As we remember the horrendous atrocities that characterized the genocide, we reflect on the legacy of Nuremberg in bringing some of those most responsible to justice. Some of the principles initiated or confirmed as being part of international law that I find most useful to future courts and tribunals are: (1) personal responsibility and punishment of individuals as opposed to states for acts constituting crimes under international law;<sup>1</sup> (2) the fact that a person can be liable for crimes under international law although such crimes are not recognized in domestic law of the country of which the perpetrator is a national;<sup>2</sup> and (3) the non-applicability of immunity for high officials who commit acts that constitute crimes under international law;<sup>3</sup> (4) responsibility for failure to stop or punish criminal conduct of subordinates when in a position to do so,<sup>4</sup> as well as the fact that acting

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1. *Charter of the International Military Tribunal art. 6*, I TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, NUREMBERG, 14 NOVEMBER 1945–1 OCTOBER 1946, at 11 (Nuremberg, 1947) (“Countries shall have the power to try and punish persons who, acting in the interests of the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.” The Charter establishes personal responsibility for 1) crimes against peace, 2) war crimes, and 3) crimes against humanity) [hereinafter Nuremberg Charter].

2. *Id.* art. 6(c) (defines Crimes Against Humanity as being crimes committed “in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of domestic law of the country where perpetrated”).

3. *Id.* art. 7 (“The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.”).

4. *See, e.g., Judgment*, I TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, NUREMBERG, 14 NOVEMBER 1945–1 OCTOBER 1946, at 296 (Nuremberg, 1947) (The court, in finding Rosenberg guilty of war crimes and crimes against humanity noted that “[u]pon occasion Rosenberg objected to the excesses and atrocities committed by his subordinates . . . but these excesses continued and he stayed in office until the end”); *Id.* at 310–11 (In finding Frick guilty of war crimes and crimes against humanity, the court emphasized that he signed decrees with the knowledge of the policies being carried out. “Complaints of murders taking place in nursing homes, hospitals, and asylums under his control reached Frick, “but he did nothing to stop them.”).

under the orders of a superior does not relieve the person of responsibility under international law provided a moral choice was in fact possible.<sup>1</sup>

These principles enabled the international community to pursue those responsible for planning, organizing and directing mass atrocities in the former Yugoslavia, Rwanda, [and] Sierra Leone and informed the provisions of statutes of other tribunals including the International Criminal Court. The International Criminal Tribunals of Yugoslavia,<sup>2</sup> Rwanda,<sup>3</sup> and Sierra Leone<sup>4</sup> all held individuals, as opposed to states, personally accountable for crimes that violated international law, regardless of official capacity. The International Criminal Tribunal of Yugoslavia has indicted 161 individuals, of Rwanda, ninety-three individuals, and of Sierra Leone, thirteen individuals under violations of the Geneva Conventions, laws or customs of war, genocide, crimes against humanity, or violations under domestic law.<sup>5</sup> Adopting principles of the Nuremberg Charter, the Rome Statute of the International Criminal Court also establishes individual criminal responsibility<sup>6</sup> and irrelevance of official capacity,<sup>7</sup> even specifying that immunities that attach to official capacity, whether under national or

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1. Nuremberg Charter, *supra* note 1, art. 8 (“The fact that the defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment.”); *Judgment*, *supra* note 4, at 223 (“the very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual state. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the state if the state in authorizing action moves outside its competence under international law.”).

2. Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, Article 7, (United Nations Security Council Resolution 1877, 7 July 2009), at 6, [http://www.icty.org/x/file/Legal%20Library/Statute/statute\\_sept09\\_en.pdf](http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf). [Hereinafter ICTY Statute];

3. Statute of the International Criminal Tribunal for Rwanda, Article 6 (United Nations Security Council resolution 955, 8 November 1994), at 5, [http://www.icls.de/dokumente/ict\\_r\\_statute.pdf](http://www.icls.de/dokumente/ict_r_statute.pdf). [Hereinafter ICTR Statute].

4. Statute of the Special Court for Sierra Leone, Article 6 (Security Council Resolution 1315, 14 August 2000), <http://www.rscsl.org/Documents/scsl-statute.pdf>. [Hereinafter Special Court for Sierra Leone].

5. *See* ICTY Statute, *supra* note 7, arts. 2–5; ICTR Statute, *supra* note 8, arts. 2–5; Special Court for Sierra Leone, *supra* note 9, arts. 2–6.

6. Rome Statute of the International Criminal Court, Article 25 ¶1-2 (A/CONF.183/9, 1 July 2002), [https://www.icc-cpi.int/nr/rdonlyres/ea9aef77-5752-4f84-be94-0a655eb30e16/0/rome\\_statute\\_english.pdf](https://www.icc-cpi.int/nr/rdonlyres/ea9aef77-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf). [Hereinafter Rome Statute] (“The Court shall have jurisdiction over natural persons pursuant to this Statute. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute”).

7. Rome Statute, Article 27 ¶1 (“official capacity . . . shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence”).

international law, do not prevent the ICC from exercising jurisdiction.<sup>1</sup> It also establishes responsibility of commanders and other supervisors for crimes committed by forces under “his or her effective command and control,” where he or she knew or should have known that their forces were committing crimes, and did not take all measures possible within his or her power to prevent their commission.<sup>2</sup> And lastly, it adopted from the Nuremberg Trials the position that a crime committed pursuant to an order of the superior does not relieve the person of criminal responsibility.<sup>3</sup> With these principles, the ICC has indicted thirty-nine individuals, and convicted three: Jean-Pierre Bemba Gombo for war crimes and crimes against humanity,<sup>4</sup> Germain Katanga for crimes against humanity (murder) and war crimes (murder, attacking a civilian population, destruction of property and pillaging),<sup>5</sup> and Thomas Lubanga Dyilo, for war crimes of enlisting and conscripting children under the age of fifteen years and using them to participate actively in hostilities.<sup>6</sup>

The Genocide Convention of 1948 that followed the Nuremberg Trials called on member states of the United Nations to do all in their power to enact legislation giving effect to the provisions of the Convention and in particular to provide effective penalties for persons guilty of genocide and other acts enumerated in article 3 of the Convention. Disappointingly, and despite the constant proclamation of “Never Again”, the commitment to the Convention did not prevent the occurrence of other genocides. The genocide against the Tutsi in 1994, took place over a period of one hundred days taking with it over one million lives under the watchful eyes of the signatories to the Genocide Convention especially the so-called big powers responsible for enforcing human rights and protecting the vulnerable.

### *The Contribution of the International Criminal Tribunal for Rwanda*

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1. Rome Statute, Article 27 ¶2

2. Rome Statute, Article 28(a)

3. Rome Statute, Article 33 ¶1-¶2 (Providing exceptions to criminal liability where the person was under a legal obligation to obey the superior, did not know the order was unlawful, and the order was not manifestly unlawful, with genocide and crimes against humanity always being manifestly unlawful).

4. See *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08-3343, Judgment (21 March 2016), <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/05-01/08-3343&ln=en>.

5. See *The Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Judgment (7 March 2014), <https://www.icc-cpi.int/drc/katanga>.

6. See *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, Judgment (14 March 2012), <https://www.icc-cpi.int/drc/lubanga>.

## (ICTR)

Despite dismal failure of the international community to protect the Tutsi from the Genocide orchestrated by a murderous regime, its armed forces and civilian militia, in November 1994 the Security Council authorized the creation of the International Criminal Tribunal for Rwanda to prosecute and punish those most responsible for the genocide and other violations of international humanitarian law committed during the Genocide.<sup>1</sup> The resolution stated that the creation of the Tribunal was based on to the need to “put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them” and that prosecutions “would contribute to the process of national reconciliation and to the restoration and maintenance of peace.”<sup>2</sup> However, some analysts have argued that the creation of the ICTR was motivated more by guilt than any concern for justice and reconciliation in Rwanda. The ICTR achieved a fair amount in the twenty years that it operated.

This is largely in terms of continuing the message of Nuremberg that no matter how high or powerful, the long hand of the law will catch up with you if you commit crimes against humanity or other crimes recognized under international law. The ICTR was able to prosecute and convict high ranking officials of the Rwandan government at the time of the Genocide against the Tutsi, including ministers,<sup>3</sup> local mayors,<sup>4</sup> a number of generals in the military,<sup>5</sup> religious leaders,<sup>1</sup> business leaders<sup>2</sup>

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1. See generally United Nations Security Council Resolution 955 Establishing the International Tribunal for Rwanda, S.C. res. 955, 49 U.N. SCOR at, U.N. Doc. S/RES/955 (1994), <http://hrlibrary.umn.edu/peace/docs/scres955.html>.

2. *Id.*

3. See generally *The Prosecutor v. Kalimanzira*, ICTR-05088, Appeals Chamber Judgment (Int'l Crim. Trib. Rwanda, 20 October, 2008), <http://unictr.unmict.org/en/cases/ictr-05-88> (Callixte Kalimanzira was the Interior Minister of the interim government of Rwanda, and sentenced to 25 years); *The Prosecutor v. Kamuhanda*, ICTR-99-54A, Appeals Chamber Judgment (Int'l Crim. Trib. Rwanda, 19 September 2005), <http://unictr.unmict.org/en/cases/ictr-99-54a> (Jean de Dieu Kamuhanda was the Minister of Higher Education and Scientific Research in the interim government of Rwanda, and was sentenced to life imprisonment).

4. See, e.g., *Prosecutor v. Gacumbitsi*, ICTR-01-64, Judgment (Int'l Crim. Trib. Rwanda, 7 July 2006), <http://unictr.unmict.org/en/cases/ictr-01-64>; *Prosecutor v. Bisengimana*, ICTR-00-60 (Int'l Crim. Trib. Rwanda, 20 April 2006), <http://unictr.unmict.org/en/cases/ictr-00-60>; *Prosecutor v. Kajelijeli*, ICTR-98-44A, Judgment (Int'l Crim. Trib. Rwanda, 23 May 2005), <http://unictr.unmict.org/en/cases/ictr-98-44a>.

5. See generally, *The Prosecutor v. Bagosora et al. (Military I)*, ICTR-98-41, Judgment of the Trial Court, at 568 (Int'l Crim. Trib. Rwanda, 8 May 2012), <http://unictr.unmict.org/en/cases/ictr-98-41> (finding Colonel Theoneste Bagosora, the *directeur de cabinet* of the Ministry of Defence, Major Aloys Ntabakuze, the commander of the Para Commando Battalion, and Colonel Anatole Nsengiyumva, the commander of the Gisenyi operational sector, guilty of Genocide, Crimes Against Humanity, and violations of the Geneva

and those at the helm of the hate media.<sup>3</sup> In particular, it prosecuted former Prime Minister, Jean Kambanda, who became the first head of state to ever be convicted by an international court of genocide or other crimes against humanity.<sup>4</sup> Two-thirds of the individuals indicted by the court were sentenced, and about 3,400 witnesses were able to appear in the Tribunal to give their personal accounts of the crimes that occurred.<sup>5</sup> Thus the trials at ICTR contributed significantly to the fight against impunity for gross violations of human rights and humanitarian law.

The ICTR has also contributed to the further development and elaboration of international humanitarian law. Of particular significance was the recognition that rape can be an act of genocide as was decided in the *Jean Paul Akayesu* case,<sup>6</sup> as well as the articulation of the insidious role of the media, in the so-called Media case of Ferdinand

Conventions).

1. *See generally The Prosecutor v. Ntakirutimana et al.*, ICTR-96-17 and ICTR-96-17-A, Appeals Chamber Judgment (Int'l Crim. Trib. Rwanda, 13 December 2004), <http://unictr.unmict.org/en/cases/ictr-96-17> (Seventh Day Adventist pastor Elizaphan Ntakirutimana was convicted of genocide for his role in massacres of Tutsis at the Adventist complex in Mugonero along with his doctor son Gérard Ntakirutimana, who aided and abetted in killing Tutsi victims in Bisesero); *The Prosecutor v. Seromba*, ICTR-01-66, Appeals Chamber Judgment, at 72 (Int'l Crim. Trib. Rwanda, 12 March 2008), <http://unictr.unmict.org/en/cases/ictr-01-66> (Father Athanase Seromba is a catholic priest sentenced to life imprisonment for his role in directing the bulldozing of his church in Nyange, and causing the deaths of the approximately 1,500 Tutsi refugees inside); *The Prosecutor v. Rukundo*, ICTR-01-70, Judgment, at 176 (Int'l Crim. Trib. Rwanda, 27 February 2009), <http://unictr.unmict.org/en/cases/ictr-01-70> (Father Emmanuel Rukundo, a military priest, was found guilty of genocide, murder as a crime against humanity, and extermination as a crime against humanity for working with Interahamwe militia to kill Tutsis who had taken refuge in the Saint Léon seminary in Kabgayi).

2. *See generally The Prosecutor v. Kanyarukiga*, ICTR-99-54A, Appeals Chamber Judgment (Int'l Crim. Trib. Rwanda, 19 September 2005), <http://unictr.unmict.org/en/cases/ictr-99-54a> (Finding Gaspard Kanyarukiga, a powerful businessman, guilty of crimes of genocide and extermination as a crime against humanity, and sentencing him to life imprisonment); *The Prosecutor v. Felicien Kabuga*, ICTR-99-44B, Amended Indictment (Int'l Crim. Trib. Rwanda, 1 October 2004) (concerning wealthy businessman who was the President of the National Defence Fund and the *Comité d'Initiative of Radio Television Libre des Mille* was indicted under the charges of conspiracy to commit genocide, genocide, incitement to commit genocide, and crimes against humanity, but remains a fugitive).

3. *See generally The Prosecutor v. Nahimana et al. (Media Case)*, ICTR-99-52, Appeals Chamber Judgment (Int'l Crim. Trib. Rwanda, 28 November 2007), <http://unictr.unmict.org/en/cases/ictr-99-52>.

4. *See generally The Prosecutor v. Kambanda*, Case No. ICTR 97-23-A, Judgment (Int'l Crim. Trib. Rwanda, October 2000), <http://unictr.unmict.org/en/cases/ictr-97-23>.

5. United Nations Mechanism for International Criminal Tribunals, <http://www.unmict.org/en/about/witnesses>.

6. *See generally The Prosecution v. Jean Paul Akayesu*, ICTR-96-4, Judgment (Int'l Crim. Trib. Rwanda, 1 June 2001), <http://unictr.unmict.org/en/cases/ictr-96-4>.

Nahimana, Hassan Ngeze and Jean Bosco Barayagwiza.<sup>1</sup> In the latter case, the defendants were convicted of direct and public incitement to genocide through radio broadcasts of *Radio Television Libre des Mille Collines (RTLM)* and articles of *Kangura* newspaper that called upon the Hutu to kill Tutsi, working up the Hutu population into a killing frenzy. This case has some similarities with that of the Nazi propagandist Julius Streicher, who was convicted of “incitement to murder and exterminate” and hanged because of his role in poisoning the minds of Germans with his anti-Semitic publications and speeches, calling on them to annihilate the Jews. Streicher’s incitement to murder was not merely an expression of speech, but an organized campaign through which he called German people to active persecution, in *Der Sturmer*, which at one point reached a circulation of six hundred thousand.<sup>2</sup> The court found he had knowledge of the extermination of Jews in the East, and with this knowledge, continued to explicitly call for the persecution of Jews, an action that constituted persecution on political and racial grounds in connection with crimes against humanity.<sup>3</sup> In the cases of *Nahimana et al.*, the appellate court clarified that it is not necessary to show that an individual or group killed someone in response to the defendant’s speech.<sup>4</sup> Rather, the defendant is guilty if he or she makes a public call for a direct action, and he or she has the intent to incite others to commit genocide.<sup>5</sup> It is this direct and specific call to action combined with a genocidal intent that puts this type of speech far outside that which is protected by freedom of expression.

### *Domestic Prosecutions*

Despite the commendable work of the ICTR, it was always clear that it could not handle the prosecution of all the perpetrators of the genocide. Indeed, like all other international judicial bodies, it could only handle a handful of those who were most responsible for the

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1. See generally *The Prosecutor v. Nahimana et al. (Media Case)*, ICTR-99-52, Appeals Chamber Judgment (Int’l Crim. Trib. Rwanda, 28 November 2007) <http://unictr.unmict.org/en/cases/ictr-99-52>. (Ferdinand Nahimana and Jean Bosco Barayagwiza, heads of the radio station Radio Télévision Libre des Mille Collines, were sentenced to 30 and 32 years, and Hassan Ngeze, director and editor of the *Kangura* newspaper, were sentenced to 35 years after being found guilty of genocide, incitement to genocide, and crimes against humanity.)

2. See *Judgment*, *supra* note 5, at 301–03.

3. See generally *The Prosecutor v. Nahimana et al. (Media Case)*, ICTR-99-52, Appeals Chamber Judgment (Int’l Crim. Trib. Rwanda, 28 November 2007), <http://unictr.unmict.org/en/cases/ictr-99-52>.

4. *Id.* at 215.

5. *Id.* at 214.

genocide: those in high leadership positions in government, the military and others responsible for the planning and organization of the atrocities. In the case of the ICTR, there were ninety-five high profile persons indicted, of whom seventy-five were prosecuted and sixty-one eventually convicted. However, hundreds of thousands of ordinary people were involved in the commission of horrendous crimes during the genocide. Given the fact that for decades, people had committed atrocities against the Tutsi and not held accountable but rather granted official amnesty, there was a conscious decision to put an end to the culture of impunity and to prosecute all those suspected to have had a role in the genocide. Domestic prosecutions were attempted initially through conventional courts with what remained of qualified judges, prosecutors and defense lawyers as well as what we can call paralegals. However, predictably, the process was very slow with only six thousand cases completed in five years. Another way had to be found. The solution was found in neo-traditional courts called Gacaca.

### *Gacaca Courts*

Gacaca courts<sup>1</sup> were set up by law in January 2001 after a series of consultative meetings to decide how best to deal with the large amount of pending cases arising out of the genocide.<sup>2</sup> They were presided over by lay persons elected from amongst members of the community chosen for their reputation for integrity and honesty (known as *Inyangamugayo* in Kinyarwanda), trusted by the community to find the truth and determine guilt or innocence of those accused of crimes. Although genocide and crimes against humanity are serious crimes which should ordinarily be handled by lawyers, in Rwanda, given the hundreds of thousands of cases to be tried, it was decided to go back to Rwandan traditions and trust the adjudication of these cases to elected members of the community assisted by other members of the community through their testimonies. What was important was to try and arrive at the truth by listening to testimonies of those who had witnessed the atrocities, which in most cases were committed in full public view. Over a

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1. For detailed analyses of Gacaca courts, among others, see generally PHIL CLERKE, *THE GACACA COURTS, POST-GENOCIDE JUSTICE AND RECONCILIATION IN RWANDA: JUSTICE WITHOUT LAWYERS* (Cambridge Univ. Press 2010); NICHOLAS A. JONES, *THE COURTS OF GENOCIDE: POLITICS AND THE RULE OF LAW IN RWANDA AND ARUSHA* (Routledge-Cavendish 2009).

2. See generally *Organic Law No.40/2000 of 2 January, 2001 setting up Gacaca Jurisdictions and organising prosecutions of offences constituting the crime of genocide or crimes against humanity committed between 1 October 1990 and 31 December, 1994. Official gazette No. 6 of 15 March, 2001.*

thousand courts were set up all over the country and as many members of the community as possible participated in the proceedings narrating to the courts what they saw.<sup>1</sup> The proceedings were as simplified as possible to put participants at ease and to elicit as much information as possible so as to arrive at the truth. Sentences ranged from a few years in prison to life imprisonment, depending on the nature of the crime and the brutality with which the crime was committed.

As part of the joint objectives of pursuing justice and reconciliation, there was also provision for the reduction of sentence for those who confessed, told the truth and sought forgiveness. Their sentences could be reduced up to half of the sentence provided in the law. There was also the possibility of a combined sentence of imprisonment and community service whereby after serving half of the sentence in prison, the convict could be released to continue his sentence doing community work (called TIG or *Travaux d'interet General*) such as working on building hospitals, schools, bridges etc. This way, they participated in rebuilding what they destroyed. Rather than isolating perpetrators of crimes in jail, and separating the victims from the perpetrators, the perpetrators that qualified for TIG could re-enter the community to work side by side with victims of the genocide. Perpetrators were thereby able to gain professional skills that allowed them to become productive members of Rwandan society. By building homes and hospitals for vulnerable victims, perpetrators of the genocide could take an active role in rebuilding Rwanda, bringing them to invest their own labor in a vision of a new, unified Rwanda. In this way, community work was not only a way to draw upon the capacity of Rwandans to solve problems in the aftermath of the genocide, but also helped to strengthen unity and reconciliation among Rwandans.

Gacaca were not only intended to determine guilt and punish the guilty, but the process was also intended to foster reconciliation. Perpetrators and survivors came face to face during the hearings, which typically took place in the locality where the crimes were committed. During proceedings, there was opportunity for the accused to tell the truth as to how the crime was committed, who else was involved, where the bodies of the dead were dumped and to seek forgiveness from the victim or relative of the victims if so inclined. That done, there was a chance for the victim or relative of the victim to grant forgiveness or at least think about it until a future occasion. This enabled the victim to try

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1. In the Preamble to the Gacaca law, it was stated that since genocide crimes were committed publicly, the population had a moral obligation to tell the truth about what happened, whether as witnesses, perpetrators or survivors or victims. *Id.*

and come to terms with what happened and to move on, but also eventually to lead to reconciliation. In the end, Gacaca courts disposed of 1,958,634 cases involving genocide charges as well as destruction of property and looting.<sup>1</sup> Although the idea of community-based justice in the form of Gacaca courts was heavily criticized by human rights activists and scholars,<sup>2</sup> and although there were problems in the course of some of the proceedings, on the whole Gacaca courts achieved their objectives of justice and reconciliation.

### *Post-Gacaca: Transferred Cases*

The eradication of impunity requires maximum accountability. However, many of the masterminds of genocide are still at large. Victims are still waiting to see hosting countries activate their universal jurisdiction to try genocide fugitives. Although there are a number of national foreign courts that have tried suspects of genocide against the Tutsi two decades have now elapsed without witnessing any genocide trials in some countries with a substantial number of indicted fugitives.

Some countries have exercised their universal jurisdiction to prosecute perpetrators of the Genocide against the Tutsi. These include Belgium, which successfully prosecuted eight fugitives; Canada, where one was sentenced to life imprisonment and another acquitted; Sweden; The Netherlands; Finland; Norway; and Germany. Although France probably has the largest number of persons suspected of having committed genocide, it has been very slow in prosecuting suspects accused of their role in the genocide against Tutsi. In 2015, after twenty years of apparent investigations, a French court acquitted Father Wenceslas Munyeshyaka who had been indicted by ICTR and then transferred to France for trial, to the shock and disappointment of survivors who testified on his role. However, in 2014, a French court convicted and sentenced Pascal Simbikangwa to twenty-five years, while more recently in July 2016, two former mayors, Tito Barahira and Octavian Ngenzi, were sentenced to life imprisonment by a Paris court for genocide and crimes against humanity. Although, there is optimism that France has turned around in terms of willingness to prosecute genocide suspects, there is also the fact that all the prosecutions resulting in conviction have been at the initiative of the French-based *Collectif des Parties Civiles pour le Rwanda*, an organization that

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1. Republic of Rwanda National Service of Gacaca Courts, Summary of the report presented at the closing of Gacaca Courts activities, Kigali, June 2012, at 34.

2. For instance, *see generally* Amnesty International, *The Troubled Course of Justice*, 25 April 2000 AI Index AFR47/10/00, at 41–45.

supports survivors.<sup>1</sup> The United Kingdom has five indicted fugitives, which it is reluctant to prosecute, while attempts to extradite have also been turned down by UK courts.<sup>2</sup>

When it became clear that the ICTR was going to close before trying all the cases, Rwanda set up a special chamber within the High Court to try cases transferred from the ICTR. However, these are less than ten, plus a few from countries like Canada, Netherlands, United States, Norway and Denmark. It is therefore imperative that national jurisdictions hosting genocide suspects ensure their prosecution. It is important that governments with legislation relating to genocide and crimes against humanity take up their responsibility to prosecute genocide suspects or extradite them to countries where they may be prosecuted under Article 5 and 7 of the Genocide Convention. Those without such legislation should also enact the same to enable them to prosecute.

#### *Lack of Reparations and Insufficient Material Support for Survivors*

One particular failure of post-genocide justice has been the lack of reparations. Most survivors lost family and all the property they owned, in the genocide. Many have not got any form of reparation even when the perpetrators have been found and convicted. Court decisions awarding compensation in Rwandan courts have been difficult to enforce because most perpetrators inside the country are poor and unable to pay while most of those who had the ability to pay were able to hide their properties before they were arrested and convicted or left the country and are still at large. Yet, reparation is important not only for realization of justice but also to help the process of healing and reconciliation. Full reconciliation is difficult when victims see some of the perpetrators out of jail and back in society living comfortably why the survivors struggle to make ends meet.

Although the state acknowledges the need for reparation to survivors, it has so far only been able to help those who are destitute or very poor through a state fund, *The Fund for the Support of Genocide Survivors* popularly known as *FARG* (from its French name). The state contributes six percent of the budget to this fund, which provides

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1. James Karuhanga, *France Sentences Two Former Rwandan Mayors to Life for Genocide*, THE NEW TIMES, July 7, 2016, <http://www.newtimes.co.rw/section/article/2016-07-07/201486/>.

2. Cahal Milmo, *Five Rwandans Arrested by Met Police over 1994 Genocide*, THE INDEPENDENT, May 30, 2013, <http://www.independent.co.uk/news/uk/crime/five-rwandans-arrested-by-met-police-over-1994-genocide-8638120.html>.

assistance for housing and health of most needy survivors as well as education for their children and orphans. The fund also assists needy survivors to engage in beneficial self-help economic and social programs.

As far as the international community is concerned, there has not been much in terms of assistance to survivors. Having abandoned the Tutsi to be slaughtered in 1994, it seems only to have been interested in setting up the ICTR to prosecute a few leaders of the Genocide but have resisted any attempts at ensuring compensation or reparations for those who lost their loved ones and their property. There is no provision in the ICTR Statute for reparations upon conviction for the loss or injury caused. Yet it is those leaders and other high profile convicts of the ICTR, who are likely to have the means to pay compensation. Although the right to compensation is now recognized under the ICC Statute, that is no comfort to the Rwandese survivors. It is recognized that in the case of large-scale atrocities like in the Genocide, it is almost impossible to assess the extent of loss and the appropriate compensation especially for the loss of family. However, some financial compensation would be better than nothing at all.

### *Genocide Ideology and Denial*

From time of colonialism up until the genocide, Rwanda was characterized by discrimination against the Tutsi, their exclusion from political power and limited access to schools and jobs. The Tutsi were harassed and periodically killed and plundered. All this was fed by an ideology of ethnic divisionism and hate, depicting the group as the enemy, as exploiter, as evil and therefore justifying its exclusion and ultimate elimination. The genocide against the Tutsi has been labeled the “popular genocide” because large masses of people participated in the genocide. They had been fed with this ideology for decades so that when it came to committing the horrendous crimes, the perpetrators believed they were indeed doing the right thing—eliminating the source of all their problems, getting rid of evil from their midst. Those familiar with the case of Leon Mugesera in the Canadian courts will remember that in his 1992 speech in Rwanda he called the Tutsi “cockroaches,” “rabble,” “snakes” and called for their extermination. Similar language was used by the *RTL*M radio and the newspaper *Kangura*. These media had a profound effect on the ordinary citizens in encouraging them to commit atrocities against the Tutsi.

It is for this reason Rwanda has embarked on multi-faceted efforts to change the minds and hearts of all Rwandans to think in terms of the

unity of Rwandese people, the fact that there is more that unites them as a people—language, culture, traditions—than what divides them. The focus is on cooperative efforts for development towards a society in which all persons benefit and have equal access to public resources such as education, employment, and health, as well as assistance to create their own wealth. This is supported by teaching genocide studies in schools to ensure young people understand the origins of genocide and the need to avoid anything that might take the country back.

In addition to genocide studies in schools, there are other efforts at unity and reconciliation for instance through the work of the Unity and Reconciliation Commission, the reconciliation clubs in schools, associations of genocide widows and spouses of genocide perpetrators who are in jail and through the community work of some religious organizations. The *Ndi Umunyarwanda* campaign which emphasizes the values of being Rwandan as opposed to seeing oneself in terms of ethnicity or other division is also having a positive impact on unity and focusing on development for all.

Unfortunately, despite all the efforts, there are still people who deny the genocide against the Tutsi or minimize it, and who continue to harass survivors, reminding them of the horrors they went through during the genocide and threatening to kill them. This is happening both inside the country and outside the country. Those who deny or minimize the genocide against the Tutsi are mostly those who committed genocide but fled the country, have not been caught to answer for their crimes, and are happily living abroad; but also their non-Rwandan supporters, mostly intellectuals. They use books, audio-visual broadcasts, the internet, and social media to deny the genocide and to propagate hate.

It is therefore important that negative elements are not allowed to roll back the achievements of the past twenty-two years in terms of unity, reconciliation and socio-economic development as well as respect for the rule of law and human rights. This is why there is legislation against propagating genocide ideology, denial of the Genocide against the Tutsi or its minimization under the title: *Law No. 84/2013 on the crime of Genocide Ideology and other related offences*, which defines the crimes of genocide ideology, negation of genocide, minimization of genocide, justifying genocide, and related offences. There are also provisions of the Penal Code which provide penalties for these crimes. Such laws, of course, are not unique to Rwanda. Many countries such as France, Germany, Israel, Spain, Czech Republic and Switzerland have laws against genocide ideology, and the denial and minimization

of genocide, although they do not specifically mention the genocide against the Tutsi.

### *Conclusion*

In conclusion, we must appreciate the contribution of Nuremberg to the understanding of international criminal law, its formalization, and domestication in many countries. However, we must recognize the limitations of international tribunals in that they cannot prosecute all those who have committed atrocities in flagrant breach of international law but rather deal with leaders and other high profile personalities. There is need for political will to prosecute those responsible for genocide and other gross violations of human rights and international humanitarian law wherever they might be and for enabling national jurisdictions to undertake such prosecutions. Most of all there is the need to be more proactive in preventing future genocides through education, sensitization and suppression of genocide ideology.

### *The Honourable Justice Rosalie Silberman Abella, Supreme Court of Canada*

Professor Alan Dershowitz: As our final Justice today, we have the opportunity to listen to Justice Rosalie Silberman Abella. In addition to being a great jurist, Justice Abella started her life as a great pianist, and probably would have been playing in Carnegie Hall had she practiced piano instead of practicing law. But, she practiced law and she became a child judge at the age of twenty-nine, she was appointed to the bench where she served with great, great distinction until she was appointed to the Supreme Court, the first Jewish woman ever to be appointed to the Supreme Court of Canada. I am sure you will not be the last, because your contributions have been so distinguished. And so, it is my great personal pleasure to introduce my friend, and somebody who I have tremendous admiration for - Justice Rosalie Abella.

The Honourable Justice Rosalie Silberman Abella: Well, first of all, I want to say what a privilege it is to be here, and what an honor to have been included. Irwin Cotler and Alan Dershowitz have organized an extraordinary conference, and to be able to participate with my friends Dorit Beinisch and John Dyson, and my new friend Sam Rugege, my new "BFF," is really something I will never forget. But I have also been given the honor of being able to close the conference, and so, to the extent to which I have personal remarks will remark, I hope you will forgive me. I want to speak to you as judge and leave the personal to the end, except for this:

This is a particularly meaningful opportunity for me to be able to speak to you at the Jagiellonian University, because it is the university my father graduated from in 1934. So, to be here speaking as a judge of the Supreme Court of Canada in this university is something I could never have imagined.

Secondly, Nuremberg and I were born in the same year, and in the same country. So, I have an intense interest in what happens to both of them. And, in looking at the theme of this conference from the perspective of a Canadian judge who has the great good luck to live in a vibrant democracy with a robust system of rights, [and] a strong independent judiciary, there are certain themes that emerge from the discussions that we've heard this morning, and, even this afternoon I want to touch on from ten thousand feet.

And, I use the Cotlerian device of first, second, third, fourth, fifth. If you know Irwin, that's what happens, it's a list. And I thought, well, you know, that works and what does it come to about half a dozen concepts that I think really play a prominent role in what we're thinking about today. And what's the summary that I want you to think about as you listen? I took seriously the "double entendre" message of this conference. And I thought "double entendre" is not unlike the story I heard many years ago, about the journalist who was in Israel and was doing interviews with people in the street, and came to somebody and said, "I am doing an interview about the situation in Israel. I only have time on the tape for one word. Can you tell me about what you think about what's going on in Israel in one word?" And the person said, "That's ridiculous. I can't answer any question in one word." He said, "I'm sorry that's all the time I have on my tape." "Fine." So, the tape starts rolling, and the journalist says, "So how would you describe conditions in Israel today?" And he said, "Good," and then the camera stopped, and the journalist said, "So if we'd had time for two words what would you have said?" And he said "Not good." So, my themes are "good, not good." There's "Nuremberg is good; I'm not sure about what we've done since."

But let's go with the first one, and that is, "the rule of law." I confess to being someone who has a certain amount of skepticism about the use of the words "rule of law," and it comes from a Holocaust background. The Holocaust was not illegal, as you saw this morning, under German law. So, the rule of law can be immoral. Segregation was under the rule of law. Apartheid was under the rule of law. So, why do we keep using a term very few people understand except in its aspirational sense? We want a certain kind of rule of law. So, let's talk

about what we deeply aspire to in a rule of law. We want freedom from arbitrary government. We want an independent press. We want an independent bar and judiciary. We want protection for minorities. We want the things that democracy protects. So why don't we just stop using phrases people have difficulty understanding, and just say "We need to protect democracy and all of the things that are intended with it?" Which brings me to democracy.

So democracy I have seen. Democracy is what I thought emerged triumphant, the vindication of morality, democracy—the role of a just rule of law. Democracy is not just about majorities. We learned that, as Dorit Beinisch said, democracy is the right sometimes to be free from what the majority wants. Democracy is not just about elections. That's the beginning of the conversation. It's the door that lets you in. But democracy can't grow up except in a proper home, and that home needs due process, independent judges, independent lawyers, a good, healthy, free press. So that's two.

What's the state of democracy? Well, I think anybody reading a newspaper would say this is something about which we need to be continually vigilant, because democracy is increasingly being equated with elections. So, I mean, this worries me because it means that you can have the kind of arbitrariness we were trying to deal with at Nuremberg—not to the same extent, but we made a commitment then to the contextual part of the democracy, and we need to make sure we keep that.

And, if we are talking about the role of democracy, then we need to talk about the role of the judiciary in the democracy. This was one of the most difficult things for me to read about, and that is the role of judges during the Third Reich. Ingo Müller wrote an excellent book called "Hitler's Justice, The Courts of the Third Reich," and the judges were complicit with their technical interpretations in imposing the laws without any sense of the morality of the laws. So, it was something for me that made me realize—the whole debate about "judges should not make law, they should only interpret law"—anybody who is familiar with how the judges in the Third Reich interpreted the laws, Hitler's laws and enforced them, understands how important it is to have an independent judiciary.

Then bring that forward. So now we have a view that judges shouldn't be too independent. There are those that say well, if you are too independent, then you're activists, and if you're activists then you are trespassing on legislative territory, instead of understanding that independent judges are supposed to hold government to account for

breaches of rights, and they can't do that unless they are independent. "Activism" is a term that tends to be used by those who disagree with a decision, but it is not a concept. It is not a legal concept, but it is being conveniently used, and I find it very, very troubling.

Role of the media, the Streicher trial, the role of *Der Sturmer*, taught us the power of words, and how, incitement can cause hatred. And so, we moved away from thinking there was war and there was words. Words can lead to destruction. But, you know, it has come to where we have seen freedom of expression so flexibly, that we don't understand—we have forgotten, in a way—the harm that can be caused by some words, and the collision between freedom of expression and freedom from discrimination isn't something we've yet worked out. And in Canada, we have a commitment to preventing hate speech on the theory that there is a difference between yelling "fire" in a crowded theatre and yelling "theatre" in a crowded fire hall. So, the importance of the media, importance of the media being able to call to account governments who trespass on democratic rights which brings us to the role of international law.

One of the most intriguing things about the development of international law, it was fascinating to read about the way that international law was almost in a state of stagnation when the allies were trying to figure out what to do when the war ended with the perpetrators of the war. Was there such a thing as a war of aggression, a war against peace? Could we really prosecute for war crimes? We've never done anything like holding a state accountable for crimes it commits against its own citizens, and it was the kind of discussion that I think is the biggest problem for international law. Nobody seems to know what it was.

You had, on the one hand, people like Hersch Lauterpacht, Telford Taylor, Robert Jackson, Murray Bernays—the man who came up with the idea of these trials—who said "we have to have some accountability whether international law said it before, it certainly said there shouldn't be crimes and it's outrageous not to prosecute people for these crimes." They won the day at Nuremberg. And that's how international law develops, so it was the flowering of international law, because it had been so unclear, what does customary international law mean? What is *jus cogens*, what is peremptory norm, something no one can derogate from? But here we are, all these years later, seventy years later, and what are we listening to? Debates about whether certain crimes, certain events, certain behaviors, violates the rules of customary international law, instead of appreciating that it is like the common law—it grows,

and the judiciary has to do its part to bring international law in line with current and modern realities.

Which brings me to the role of enforcement. One of the major problems with international law is the lack of enforcement. An American scholar once said that the road to hell has been paved with good conventions. We have all kinds of rhetoric. We have all kinds of laws. We have no enforcement mechanisms. If you take a moment to compare international law, human rights law with international trade law, it's quite breathtaking. In 1994, the Marrakesh Agreement set up the World Trade Organization. It has an enforcement mechanism. It's very hard to join WTO. There is compliance with international trade law. Compare that—and that's something that just took place twenty-one years ago—compare that with international human rights law, which is still struggling for enforcement mechanisms from the global community.

So, where does all of this take us, rule of law, role of democracy, role of independent media, role of the judiciary, role of an international law, role of enforcement? It means we have to go back to what we started with and the commitment we made at Nuremberg. We understood then that justice is the application of law to life. And that means, democracy, without democracy there aren't any rights. Without any rights there's no justice and without justice there's no hope. Thank you.

#### Supreme Court Justices Panel Q&A

Professor Alan Dershowitz: We really only have time for one question, but I think it's a very important one, and I want to put it to all the Justices. And it's based on something that Lord Dyson said in his talk. He talked about purist lawyers and a purist view of law, and he said that under a purist view of law, purist justices in a domestic context could probably not have done what was done at Nuremberg.

So I want to put to you, to each of you—whoever wants to answer—one particular problem that grew out of Nuremberg. So the indictment at Nuremberg included the killings at the Katyn Forest, and the people who were charged with doing it were the Nazis. The Nazis' defense was very simple. "We didn't do it; you did," pointing to the Russian judge. He was one hundred percent right. The Russians did it, and they planted evidence to make it seem as if the Nazis did it. And the judges got together, with the prosecutors and they all agreed to quietly let the matter drop so that the Nazis were no longer being charged with a crime that the Soviet Union had committed. But, the Soviet Judges

were sitting in judgment.

So my question, I'd like to put it to Lord Dyson first, because he raised the question of the purist. If you were a judge at Nuremberg, would you have allowed the matter to rest there? Would you have allowed the implication to remain that, although the Nazis didn't perpetrate that horrible massacre, that maybe we don't know who did it, when you fully knew that the government represented among the four powers that were in the court, was responsible for that very crime in the indictment?

Lord John Dyson: Well, if I knew, then I don't see how I could. But I'm not sure that on the facts that it was known at the time when the Nazis denied responsibility for the Katyn Massacre. And I think they did, as you say, they pointed the finger of blame at the Soviets. But that wasn't known, and it may have been—is it your point that the Soviet judge knew?

Professor Dershowitz: I'm a law professor, so I'm allowed to give you hypotheticals. Hypothetically, what if Roman Rudenko, the prosecutor, or Smirnov the Judge, were aware that this was a Stalin inspired murder and cover up and you knew that they knew. But, because you wanted to achieve imperfect justice, rather than perfect injustice, you might have to continue to allow that false charge to remain in the air. Could you as a judge could you have remained silent?

Lord Dyson: Well, that's a very personal question. And I, personally, couldn't have allowed that to happen because I don't know what oath a judge on that court takes. But, I am assuming that some sort of oath would be taken, and it would be something similar to the sort of judicial oath that I take—have taken—took a long time ago, as a judge in my country. And, I couldn't have contemplated doing that, consistent with my oath.

Professor Alan Dershowitz: Well, I think that's a great answer, and I'd be interested in any of the other Justices, and we can expand it a little bit. Even assuming that you didn't know about the Katyn Massacres, certainly everybody knew at that point that Stalin and the government represented at the court had perpetrated massacres in the Ukraine, the Ukraine starvation and the court agreed not to allow a defense of "dirty hands." Now, "dirty hands" is not generally an offense allowable in any event. If a person is being prosecuted for a serious crime, and he has evidence that the prosecutor has committed serious crimes, that's not a defense. You might seek to recuse the prosecutor or something of that kind.

But how, generally, Justice Beinisch for example would you deal

with the question of imperfect justice? And, let me put the question more directly to you as an Israeli. Israel has been subject to imperfect justice, to the kind of argument that says, “Well, you know, sure there are other governments that engage in these other kinds of horrible crimes, but we are going to sit in selective judgment on Israel. Better to do imperfect justice against Israel for example,” [inaudible] by condemning it for building a security barrier by a Judge.

The Chief Justice of the International Criminal Court who condemned Israel for creating that security barrier was involved in the Chinese Communist Party’s decision to build a hundred or so fences much like that in Tibet. And so you have the claim of utter hypocrisy and double standard, and the Justice might respond by saying, “Look, we’re not talking about China here. We’re talking about Israel. We’re sitting in justice on Israel; that’s good enough.” Would you accept that?

Justice Beinisch: Nope. What I tried to say—and this is one of the reasons I think we need a judge to have one commitment—to the truth, to moral values, and this is the flaw of international law when you have judges that are really involved. I mean if they have their own [inaudible]. They are not a prosecutor. They’re a judge, and they can’t say anything that would be in contrast to their commitment as judges.

You mentioned before, and I think this is what is so great about our system, that people like our President Barak, a survivor, could sit in Demjanjuk’s trial and acquit him, not because he is such a right person but because we have our rules of law, we have due process. He wasn’t indicted on the same crime, so he couldn’t be convicted. Knowing this, we released a criminal. So this is part of the way judges should think. That is why I don’t know how—I don’t have the solution—but this is why I think courts should be independent, not dependent in countries, in politics, in the political background. And this is the flaw in the Nuremberg Trials after all, it wasn’t a regular trial, it was the first time and it was by the people who really won the war, which is a good idea to have the trial. But yet, it’s not a perfect trial from the point of view of the jurists.

Professor Dershowitz: Justice Rugege, obviously in the trials that you talked about, you mentioned that you didn’t think it was victor’s justice. But nonetheless, isn’t there the risk, when you permit for imperfect justice, when you permit for compromises, that you might get a politicization? And from your experience, in Rwanda, and in Africa in general, do you think it’s possible to apply the kind of single standard of justice that both Lord Dyson and Justice Beinisch we were just hearing about now? Do you think that’s possible, based on your experience?

Justice Sam Rugege: I think that, as you say, there might have to be compromises. In the specific case of Rwanda, with a respect to Gacaca, they said, “Oh, you are using lay people.” We didn’t use lawyers, either judges, prosecutors, or anything like that. We had a million people to prosecute, and over a million people to give justice to. You can’t do that through the normal, conventional judicial system with all of the safeguards of due process. So, you have to choose either to let them go and have impunity on a large scale, or you make some compromise of having the people themselves decide whether the truth has been told, and therefore they convict somebody and they punish him. And, that’s precisely what we did. It may not be possible as you said to have justice in the purest sense, as we know it in the Western tradition. But we used this before European, Western standards came to us, and we think we are still doing justice, fair justice to the majority of cases.

Professor Dershowitz: Justice Abella, you have been an outstanding advocate for women—among others—in your court, as of course has Justice Beinisch, and some of the men on this panel as well. There are people who believe that we are compromising justice now, in domestic courts, in Canada or the United States, on behalf of, for example, women who have alleged that they are victims of rape, or African Americans, who have alleged that they are victims of bias and discrimination. Is there any room, in your view, for imperfect justice as reparation and affirmative action for groups that have been victimized and discriminated against in the past, even if it means less justice for those accused, for example, of sexual assaults against women on college campuses or harassment of people based on race? Or, is there one standard of justice for all that should never be compromised if we have at least the ability not to compromise? Is there a room for affirmative action in the justice system?

Justice Abella: That’s a two-part question. Let me answer the first one first. I am a believer in the Canadian notion of equality, which means, unlike the American notion of equality, it is not a Diceyan model where everyone is treated the same. We acknowledge people’s differences, because we accept that sometimes those differences can be exclusionary. And so, the goal is to ensure that people, notwithstanding differences, are included, get the same benefits, are entitled; so that’s my view, first of all, about whether I think something like affirmative measures may be necessary when you’ve had historic disadvantage. I don’t think there’s any controversy in Canada about that as a concept.

Your second question is, “How does that play out in a courtroom?”

Well the idea that a person would win a case because he or she is a representative of a particular minority group is so antithetical to what justice is all about that I don't think you'll find a western judge who would agree that that plays at all into the analysis. The reason we have due process, as we did at Nuremberg, is that, notwithstanding the most serious of crimes and allegations, the person charged is entitled to make full answer and defense. That's not a question about women's rights, minority rights, it's a question of a fair trial, I mean putting them together, essentially, assumes something about the global judiciary that I know that I haven't seen so [inaudible].

Professor Dershowitz: Well, we don't have time for a debate on this subject. I wish we did because I think I would be able to persuade you that—at least on American college campuses today—that rule of a singular standard is not being complied with in many contexts. Indeed, under American law, a university can be punished if it applies due process standards in sexual assault cases. For example, if a university says that it wants to have a requirement of proof beyond a reasonable doubt, rather than a proof by a preponderance of the evidence, the university will lose federal funding.

Justice Abella: It may surprise you how often some of the other countries in the world don't follow what the Americans do.

Professor Dershowitz: Thankfully!

#### REFLECTIONS ON THE GENOCIDE IN RWANDA

*The Honourable Marie Thérèse Mukamulisa, Supreme Court Justice,  
Rwanda*

Richard D. Heideman: When planning today we focused in on how we could put in context the horrific deeds that were committed against humanity and how we can learn and take action for the future. Our next speaker is a bridge; she's a justice of the Supreme Court of Rwanda, a victim of the Rwandan genocide, who will share with us her reflections on the genocide in Rwanda. Please welcome the Honourable Marie Therese Mukamulisa.

Marie Therese Mukamulisa: Thank you so much. Good afternoon. It's not very easy to speak after the pristine presentation, especially talking about genocide in Rwanda after my chief justice in front of me. What I'm going to focus on is just a kind of response which is in my view, should be considered as a shot right to the question asked by my nephew when we commemorated the tenth anniversary of the genocide. He asked me why genocide took place in Rwanda. I was so

embarrassed, how to explain to a child of five years, how to explain to young generation that more than millions of Tutsi were massacred by the neighbors, friends, their husbands, their relatives of yesterday. Then it is somehow different Jews because genocide of Tutsi was committed by Rwandans themselves and Tutsi and Hutu share the same village. We speak the same language; we have the same culture, so it is how to find a response to what happened. I tried in an attempt to better understand what happened in Rwanda as a response to that question, to focus just on a few elements that can be as explanation of the genocide in Rwanda.

First of all, I already mentioned that even though the community and international community when it talks about genocide in Rwanda, it focused on 1994, but what we have to learn is that Tutsi members, members of Tutsi ethnic group have been oppressed, discriminated, years before 1994. As example, since 1959 there were massacres of large numbers of Tutsi, most of them were forced to exile in neighboring countries like Uganda, Burundi, Congo, Tanzania, and those who remained in the country were just considered as not human beings. This morning someone was talking about demonization of victims, that's what happened in Rwanda. The genocide took place because people considered Tutsi as not human beings. All names were allowed, procreate, vermin, death to mention this.

So, [ ] the problem began during the pre-colonial period. Just to help us understand the context of Rwanda I really quote some documents from colonial period. In 1959 there was a publication of a [ ] Catholic missionary in Rwanda saying that, I'm quoting, "Tutsi came from Asia through Egypt, Abyssinia, to the Great Lakes. Before they become so Negro brown, this people were bronzed. It is also that Greeks found them in [inaudible] or met them along the Mediterranean coastline in Jerusalem as well as in Alexandria and were impressed by their dark color and then called them burnt faces." This is to show that even before the colonial, before the independence, Tutsi were considered as strangers, they were not native. Why they were as the members of the Rwandan population on the same level as Hutu and Twa but just because they were Tutsi.

When every crisis arises in Rwanda, Tutsi became scapegoats and that explained why the genocide was committed in a way that can be explained because as has been said, after the crash of President Juvénal Habyarimana's plane it was said that it was Tutsi who were responsible for that. And then began a long campaign of hate speeches and incitement and all the context was, how to say, it was like killing Tutsi

was, what we call in French [French spoken], because all Tutsi without discrimination were enemy of the nation, enemy of the country, enemy of Hutu, and most of all they wanted to restore the monarchy system.

Now what I can say is that even before 1995, as I mentioned, the context was that Tutsi were deeply oppressed and excluded from all kinds of life. The system of education was perceived accordingly, school, army, and so on. And when, by miracle, if you found a lot of Tutsi for example in public administration it was a problem because during that period there was a restoration of quota that reserved to Tutsi because they are minority ethnic group. And then in this climate, separation and discrimination goes on and just before the independence it continues. And in 1994 after the attack of Rwigyema in 1990, it was very easy given the propaganda, given the law of excitement that took place before, to consider them as enemy of the country in general but specifically enemy of Hutu. That is why, if I can try to find a solution or a response to my nephew, that explains why genocide in Rwanda happened.

Another element that I could mention is that according to some documents of the period, Tutsi were considered as many predator, oppressor, why Hutu are in the eyes of colonialists good, humble, hardworking, and so on. So all elements were there to permit the commission of the genocide. Now that the genocide has been committed, I jump up to the execution. There was a close collaboration between the army and the militia, armament of ordinary citizens, especially Hutu into militia, and the massacres of Tutsi inside houses, stadiums, shopping places, administrative offices, bushes, and so on. And then during the period of one hundred days repeated genocide, destroyed lives and properties and all kinds of identity of Tutsi ethnic group. Some victims who could escape the duress were surprised during night patrols, mounted by soldiers, militiamen, and local population—they were immediately killed.

And after the genocide, fortunately, I want to focus on this. All that period, from pre-independence period through the first and second regime, the division of Rwandan population is over. And I take this opportunity to repeat what I said yesterday to one of the participants who asked me how is Rwanda now, water, the climate inside Rwanda. I say actually, there is no Hutu, no Tutsi; there is no Twa in such a way of division among population. We are all Rwandans, it is a big campaign called, I don't know how to translate it, [Kinyarwanda spoken]: "I am Rwandan." That is our vision, that is our strategy to reconstruct that our nation that has been destroyed and between unite and reconsolidate

members of different groups in Rwanda.

To end my short presentation, I can say that one day a wise-man in Rwanda say we can't change the history or restore all that had been destroyed, but we can shape a better future and the best vision for our generation. And another one says, strength grows in the moment when you think you can't go on, but you keep going anyway. As Rwandan, we are still growing anyway and we think that keeping in mind that we are one people, we are one population of Rwanda, this will help to go forward. Thank you.

HOLOCAUST REMEMBRANCE, HOLOCAUST DENIAL, HOLOCAUST  
INVERSION

*Malcolm Hoenlein, Executive Vice Chairman, Conference of Presidents  
of Major American Jewish Organizations*

Richard D. Heideman: We must reflect at least for a moment in this busy day, I suggest, on the people of Syria. Some of us were giving speeches years ago about twenty thousand to fifty thousand people of Syria massacred and hundreds of thousands displaced.

Ambassador Ron Prosor at the United Nations on behalf of the State of Israel spoke out clearly. These numbers today are in excess of 250,000 killed, millions displaced. The world has stood silent. To the two justices from Rwanda, we especially thank you for joining us for this Nuremberg Symposium, and sharing with us the tragic truth of a modern genocide so when we said "never again" and we all meant it, as we've heard today, where are we for tomorrow?

In transitioning therefore to tomorrow, we have three activists who have made clear to the world: they will not be silent when there are wrongs. They will stand up. They will lead. They will speak. They will do. And they will make people listen.

Malcolm Hoenlein, the Executive Vice Chairman of the Conference of Presidents of Major American Jewish Organizations—in my biased view—has provided the most profound leadership in American Jewish life and every person who is an activist or an in-activist in the American Jewish community, and for that matter in the world Jewish community owes an immense debt of gratitude to the moderator for our "Scholars Panel." Please welcome Malcolm Hoenlein.

Malcolm Hoenlein: It was worth coming just for that introduction. You know, I feel like what Dorothy Parker once said. "Everything has been said, just not everybody has said it." When you're number

nineteen or twenty on the program, and such experts discussed aspects of this issue. But I have the privilege of moderating this session with two people I greatly respect, and have had the privilege to work with for many years.

The question is asked “Why remember?” Do we want to dwell on the sorrows, on the tragedies of the past? There are those who accuse us of enjoying that, who accuse us of wanting to revel and to exploit these tragedies. Why do we ask a Holocaust survivor to come here and have to relive the pain and the experience? And, why do we gather from all over the world, and come here to remember and to march tomorrow—to remember an event of such horrific and terrifying magnitude? So for us, I don’t believe that this is an option. Forgetting is not an option. This is a sacred event and a sacred responsibility.

The one theme that runs through all of the Jewish holidays, in fact most of Jewish life, is embodied in one word “*zahor*,” “remember.” The word chosen to symbolize the Holocaust was not revenge—*Naqama*—it was “*zahor*,” “remember.” When we remembered the Exodus last week as we sat at the Seder around the world, the main purpose is to remember. Remembrance is not history. There is no Hebrew word for history because history is static. Remembrance is dynamic.

Remembrance means that you have to understand the causes, and you have to understand what flows from the events. You have to understand the whole dynamic of the process, because if you want to recognize it in the future, you have to understand what led to it. If you want to understand how to deal with it, you have to know what flows from it.

So remembrance is at the core. It’s not just ritual observances that are the essence of our holidays are meant to be—experiential—we learn from what previous generations went through in order to learn the lessons of the past, in order to prepare for the future.

For us, this is a personal and a collective responsibility, just as this event is very personal for me. I am the grandson of Herman and Sophie Hoenlein—then Hönlein—who came from a small community near Nuremberg and were deported to Nuremberg, and from Nuremberg to their deaths. I am the nephew of Jacob Hoenlein who was the kosher butcher in Nuremberg. I am the nephew of Frieda and Walter Dachauer and the cousin of five-year-old Daniel who were all deported from Nuremberg to their deaths. So for me, this commemoration of the Nuremberg is, in essence, a very personal experience. But, it’s also a reminder of who I am and why I do what I do.

Rabbi Samson Rapheal Hersel, the great German scholar, wrote

more than a hundred years ago that we are not judged by our children, we are judged by our grandchildren. You cannot judge the results until you see the ultimate outcome in their grandchildren. What are their commitments? What are the values that they have? What traditions do they continue? I am here because of my parents but also who my grandparents were, though I never got to meet them and I owe it to them and to countless others to make sure that we remember.

When I visited Nuremberg for the first time and met the late Senator Hamburger who was head of the Jewish community in Nuremberg after the war. And he offered to show the Holocaust Era records of the community. He took out a volume, one of many—at random—and he opened it, and on that very page were the names of my grandparents, my uncles, my aunts who were deported from Nuremberg to concentration camps. It was the first time I ever saw their names in writing, and it was a reminder to me that it wasn't just happenstance, that it was a message to me about my responsibility to them and their grandparents to ensure that my grandchildren will carry on in their traditions and beliefs. They were all victims of the Nuremberg Laws, which codified evil into law, legitimizing the ultimate genocidal design. They lived in the Nuremberg area for hundreds of years, longer than most of those who killed them. They had a greater claim certainly to being loyal German citizens. My uncle Mauritz died in World War One, fighting for the German state, as did many Jews, in fact to their percentage of the population. Jews served disproportionately in the German army in World War One. I am who I am because of my grandparents as well as my parents, and I never forget them. I think of my responsibility to them as I do to my children and my grandchildren.

We speak of a collective responsibility, and personal responsibility. But, I believe it's true of the victims as well as the perpetrators. We are told that the secrets of the past are the key to the future. As Winston Churchill once said, "The further back you look, the further ahead you will see." Our sages said it a thousand years earlier. And they taught us the importance of history is not just about the past, but it is about the future. We look back to look forward. We learn the lessons to spare future generations those trials and tribulations. We look back not to exploit the tragedies, but to make sure they don't happen again.

We go back as far as the Exodus, as we did last week on Passover, to look at events three thousand years ago, not just seventy years ago, to be reminded of the lessons, what we learned from our ancestors, the good and the bad, to protect our grandchildren and theirs. We don't get

lost in history like the fundamentalists. But we look back to arm ourselves to meet the challenges of today, and of the future, to prepare the next generation for their responsibility. It charges us with universal and particular responsibility and obligations. Seventy years ago, people, including in America, said they didn't know. It was a lie. They didn't want to know.

We know from the archives that are being opened how much the Allies knew every day that Jews were being killed. They were described as marauders and plunderers. But every day the Nazis gave the reports, but the Allies didn't want to release the information because they were afraid that the Nazis would know they had broken the codes. And when I asked one of the key foreign ministers, "Why didn't you release it at the Nuremberg Trials? Why did you wait six decades for the information to come out?" The answer was clear, though he didn't give it, that they wanted to protect the lie. It wasn't that they didn't know. They didn't want to know.

Today we have no cloak of ignorance to hide our shame because we do know. We also know that we have to take the words of dictators seriously. Hitler told us everything he would do in *Mein Kampf*. But the world didn't pay attention. Stalin told us everything he was going to do, but the world didn't pay attention. Khomeini today tells us exactly what he wants to do today to wipe Israel off the map, destroy the Jewish people. We must take him seriously. We have learned that lesson. We owe this obligation to us and to future generations.

How much has the world learned in the seventy years since the end of the war? Is it a more caring place? Is there more sensitivity? More responsiveness? Look at the Yazidis, the Christians, the Muslims, who are being killed in unprecedented numbers in many countries. Tens of thousands of Christians, and hardly an outcry. Beheading has become a major recruitment tool among young

Moslems—Europeans and others who rally to the call of an extremist group motivated somehow by the horrific scene of a person being brutally beheaded.

I had the privilege to speak ten days ago at the UN session commemorating the twenty-second anniversary of the genocide of Tutsis in Rwanda. And, as I read about it, and thought about it as I prepared and then saw the thousand people sitting in the general assembly hall, sitting in the same room of the United Nations that has seen so many horrific resolutions passed, I wonder what we have learned. Now we see the rise of anti-Semitism in Europe, and the United States, and elsewhere, the resurrection of '-isms' that we thought has

been long lost in the dustbin of history. We see ancient hatreds coming back under twenty-first century guises. All the world sees it. What do they do about it?

When we see circumcision and kosher slaughter coming under attack, these are the first indicators, the early warning indicators. We learn it from history, although they often do it under the guise of other concerns, like humane considerations. In every generation, enemies arise to destroy us, we are warned in the Passover Seder. It uses the present tense to remind us of the enemies that repeatedly arise, from within and without against us and others, underscoring our responsibility to learn from the past.

What is our response when we see a UNESCO meeting taking away 3,800 years of Jewish heritage and thousands of years of the Judeo-Christian history regarding the holy sites in Jerusalem, removing every vestige of our connection to the Western Wall, Temple Mount, Rachel's Tomb and the Cave of the Patriarchs? What purpose does it serve? Because they want to take away our past to take away our future. We cannot be silent in the face of it.

If we, and all those who condemn the events of seventy years ago, but do not speak up now against the rise of physical and virulent anti-Semitism in Europe, the United States, and the rest of the world—if we do not assert Israel's right to defend itself, and its citizens, and if we don't stand up against the rise of bigotry and prejudice, then I fear those tears and pleas at Holocaust memorials are meaningless. We have to assert the obligation of every country to be responsible and that their sympathetic words have to be followed by sincere and sustained action.

We cannot allow Jews or Israel to be the scapegoats again for society's problems, economic and political dislocations, to be a diversion. The media, which was co-opted and used by the Nazis—we see again how much of the media can be used to spread prejudicial propaganda, lies, and even hate mongering. We thought the big lie died seventy years ago. It's still true when it comes to Jews and Israel.

We see a country whose credentials are challenged at the United Nations every year. Just one country. The country that has the most sacred and the fullest claim to legitimacy, sanctified by three thousand years of blood, of sweat, of tears. Only its credentials are challenged. Only it is the subject of five or more resolutions at the Human Rights Council, twenty in the General Assembly, the only one with special item in the Human Rights Council, the only one condemned by the Commission on the Status of Women and the World Health Organization. We know this history all too well, and if those charged in

the Human Rights Council, those great defenders of human rights like Iran and Syria and Libya can sit in judgment of a democracy like Israel, it is a warning to us. Don't dismiss these things. They can all have real consequences and lead to outcomes we will later regret.

The Boycott, Divestment, Sanctions movement is another manifestation of this. It's not about 1967 and the "Occupation". It's not about the particular policies of an Israeli government. It's about 1947. It's about Israel's right to exist. They are against Jews, the Jewish people, and the Jewish state. And if we fail to learn, and to teach the lessons, then indeed we are doomed to repeat the dark chapters of the past. It's not a question of a particular policy, but the right of a Jewish state to be and the right of the Jews to a state. This symposium, and the March of the Living, and similar events, should give us the mandate to be assertive, the confidence in the necessity of our mission, the courage to challenge the forces we see rising once again. The '-isms' that we thought disappeared, that we had hoped disappeared. We can never take our rights and freedoms for granted.

"Never Again" is a pledge that each generation, Jew and non-Jew alike, has to take anew. We have to educate our young. We have to mobilize them, and teach them that they can be efficacious. I am tired of our being the canaries in a mine of the consciousness of mankind. I am tired of being the barometer for human degradation and deprivation. I'm tired of the memorials to dead Jews, and want to see a world that will stand up for living Jews and a vibrant living Jewish state. That will give true meaning to "Never Again." The Holocaust memorials and events should echo with the words, "*Chazak, Chazak, V'Nitzchazeik*" that we say at the conclusion of reading each book of the Bible. That we will be strong—we will be strong and strengthen one another. No matter where we are from, no matter our faith, we have a common future to worry about. If we stand up in strength, and speak out with courage then we will strengthen one another. And then, our grandchildren can look back and thank us for making it a better world for them.

*Professor Alan Dershowitz, Felix Frankfurter Professor of Law  
(Emeritus), Harvard Law School*

Malcolm Hoenlein: I think all of us are deeply in his debt, and I have to say, to thank Professor Cotler as well, for their leadership in this effort, and the Heidemans, and the March of the Living, and everybody else who made this possible. But, Alan has been a courageous voice—and we don't get to say it often—but standing up when it isn't convenient, and not comfortable on television and other places,

defending Israel in the right way with the right words. And we are really indebted for all that you have done. And it is my pleasure to present to you Professor Dershowitz.

Professor Alan Dershowitz: Thank you. After listening to Ron Prozor's wonderful speech—and he's absolutely right, sarcasm and humor is the only way to deal with this—it sounded very familiar to me, and I am not at the UN I'm in academia; and that is the other institution that, in many ways, is comparable to the United Nations in the manner by which it manages to invert good to bad, bad to good, rights to wrongs.

One of the things we've learned at today's conference, and we must never forget, is that central to the Holocaust were students, young people, professors, and other professionals. They provided the academic and intellectual basis for the worst evil in the history of the world. Now, I've been in academia for sixty years, and I have to tell you, I know academia. I know professors. I know students. And there are no group of people that have a greater ability to invert, and to justify anything by the use of magical thinking and magical words.

Now, I have to say, great stuff gets done in academic institutions. This institution provides enormous research. My university, Harvard, has contributed an enormous amount to the world. I'm privileged to have honorary degrees from several Israeli and other universities that have contributed a great deal, so I don't want to paint with a broad brush. On balance, academia has contributed an enormous amount. But, the fact that a person is a professor, or the fact that a person is a young student should not exculpate them from responsibility for bigotry.

Young people make as many mistakes and are as bigoted as old people. Youth is not a prescription for correctness. When I hear people say "I'm young." Yes, yes, that's a two-edged sword. You are young, and that cuts both ways. One thing—that means you are going to be in positions of responsibility for a long, long, long time, so you better be right about what you're saying. And, it's remarkable to me how much falsity is presented on university campuses. Now, I think it's only by a minority of professors and students. It's a very vocal minority, but it is a minority.

If you look at European campuses, you look at American campuses—the loudest voices are the voices of bigotry, the voices of inversion, the voices which present wrongs as rights. American, European—and here I am going to say something that will surprise you—American, European, and Israeli academics, Israeli academics, are at the forefront of the new anti-Semitism disguised as anti-Zionism.

That is a serious accusation, and I mean to back it up. I have to tell you, it's an accusation that gets you into a lot of trouble.

About five years ago, I got an honorary doctorate at Tel Aviv University, and I was honored by being asked to make a speech on behalf of the people receiving the honorary doctorate, and I divided my speech in half. The first half of my speech was in defense of the right of Israeli academics to spew forth the anti-Zionism and the bigotry that one hears at Ben Gurion University, at Tel Aviv University, at Haifa University, at Hebrew University, at virtually every university. The first half of my speech was devoted to defending the rights of those people, because there were people on the extreme right that wanted to ban them, that wanted to deny them tenure, to deny them academic positions. And, I made a strong defense of their right to speak.

The second half of my speech was a rebuttal to what they were saying, a condemnation of what they were spewing. And Haaretz had a big editorial accusing me of McCarthyism—McCarthyism because I dared to criticize academics while defending their rights. So, it is a hard balance to strike.

One does not want to, in any way, deny foolish people and bigots the right to express their views. One can talk about whether they have the right to express their views to captive audiences, in a classroom of students they will be grading, and recommending, and evaluating, but certainly, they have a right to express their views outside of the classroom. And the views they are expressing are the views that we are talking about at this conference: inversion. It is a common statement on college and university campuses today, from Oxford to Cambridge to other universities in England, to the University of Paris, to the Sorbonne, to Harvard, to Yale, to Princeton, you name it—that what Israel is doing to the Palestinians is equivalent to what the Nazis did to the Jews. That is acceptable rhetoric on university campuses today. If you want to say maybe that isn't completely acceptable, certainly the apartheid analogy is acceptable.

I fought for years against apartheid. Irwin Cotler and I helped to represent Nelson Mandela. We tried to arrange a spy trade with him, the one that ultimately resulted in the release of Natan Sharansky. And we worked with the ANC, and the ANC refused to include, and rightfully so, Mandela. We understand what apartheid is. I edited the first law review article in 1960 on the legal structure of apartheid. I was banned from speaking in South Africa because of my editing of that article. I know what apartheid is, and to analogize Israel at its worst with apartheid is to diminish the suffering of Africans, of black Africans

under apartheid, just as equating Israel to Nazism is to—as I said before—to say there were no gas chambers, there were no killing of children, there was no ingathering. It's all a myth, because obviously Israel is not doing that to the Palestinians.

Today, on college campus, Zionism is equated with hate speech. That is, you have university campuses that have platforms against Zionism. It started in England with Leeds University, which fifteen years ago, after the Resolution by the General Assembly equating Zionism with racism, banned Zionist speakers on the ground that Zionism was a form of racism, and Zionist speech was hate speech.

The claim that Israel is the worst human rights offender is something one hears on university campuses from the mouths of tenured professors. The BDS movement, being subjected only to Israel—only Israel is being subjected to the BDS movement—what does that convey to college students and college professors? That only one country in the world should be subject to this capital punishment of economic, cultural, and academic sanction?

Jews are regarded on college campuses today as a privileged group, not entitled to the safe spaces that other students are entitled to. Let me tell you, being a Jewish Zionist on a university campus, in Europe, in the United States today is not a privilege. It is a responsibility, and it is one that is borne heavily on the shoulders of many, many of the young men and women.

And then, this new concept of intersectionality, which is a phony, sociological concept constructed by the hard left to exclude Jews from being protected, and exclude Israel from being included among anybody who deserves to be protected. The theory of intersectionality is there are the oppressors and there are the oppressed. And all of the oppressors have to join in legion. So, if you are a black person who has been discriminated against in Ferguson, you must stand together with Palestinians in Hamas and in the Gaza. And you cannot be a true gay activist if you are not prepared to support rockets being sent from Gaza to Israel and human shields being used. If you don't believe in that, you can't be a true gay activist.

After all, gay activists tried to get together in Chicago earlier this year with gay activists from Israel, and gay activists from around the world, and that was disrupted by an organization called Black Lives Matter. Now black lives matter, and I support the goals of this organization. But today, many within Black Lives Matter believe that you can't say black lives matter unless you say Palestinian lives matter more than Jewish lives. Jewish lives can't matter. If you say that, you

are engaging in a kind of equivalency which connotes a kind of racism.

And so, intersectionality today says that the Jewish nation and its supporters are primary among the oppressors of women, of gays, of people of colors, of immigrants, of the poor, of the victims of colonialism. Jews are, therefore, undeserving of safe spaces, undeserving of the right to speak.

It is a right today, on college campuses, to disrupt pro-Israel speakers, whether the pro-Israel speaker be Moshe Halbertal—who is a strong advocate for peace and a two-state solution, whose speech was not allowed to go forward—or other pro-peace [inaudible] Tzipi Livni at Harvard University, is accused of smelling bad, and Jewish students who believe in intersectionality come to the defense of the bigot and the racist who use that trope of smelly Jews at Harvard. Now, the school condemned that of course, and it should condemn it. And when people go too far, condemnations are to be heard. But, the right to speak, even the right to be treated respectfully, that is today, a right that has come into question.

Radical leftists have talked about respectability as a class based privileged, and therefore, Jewish students and Zionists have no right to be treated with respect. Does that sound familiar? Does that sound like something that could come out of a German university in the 1930s? Now, all analogies are imperfect and I am not here suggesting that what is going on in American University campuses is equivalent to what's going on and what went on in Germany, but I am saying that the roots of hatred grow deep in academia.

And, let me tell you who really are culpable as well, and that is, pro-Israel Jewish professors on university campuses who don't have the courage to speak out, and express what they believe to be true. Now, there are some who do speak out, but on average on every college and university campus that I visit—and I visit a hundred a year—on every university campus I am told about pro-Israel professors who go to the synagogue and talk about Israel, who go to Hillel and talk about Israel, but will not make a public statement either supporting Israel or condemning those who express hate.

I'm not talking about supporting all of Israel's points of view. Many of you know my views. I'm very much a dissenter in terms of current Israeli policy. Since 1973, I've been a strong opponent of Israeli settlement policy. I've been a strong opponent of many things that Israel does. If I were Israeli, I'd be active in civil liberties and civil rights and critical of the Israeli government. I'm not talking about that.

Criticism of Israel is fair; it's good. I'm talking about

demonization of Israel, delegitimization of Israel, applying this triple and double standard to Israel. And what one hears today are the loud voices of hate on college campuses. Maybe only ten or twenty percent, but the thirty or forty percent who believe that the ten to twenty percent are wrong don't have the courage of their convictions. They are afraid that they will become less popular with students. And they will. They are afraid that their student evaluations will go down. And they will. They are afraid that they will be kept out of honor societies. And they will. And young ones are afraid that they won't get tenure. And all of that is true. All of that is true. But, courage requires standing up to this kind of bigotry.

It was Heinrich Heiner who said, and was later quoted by Robert Jackson at Nuremberg, that those who start by burning books, end by burning people. We haven't yet seen the burning of books on university campuses, but we have been seeing, over the past few years the suppression of free speech. We have seen the stopping of speakers. We have seen this double standard. We have seen this acceptance of inversion. We've seen the acceptance of intersectionality.

So, I am here today to point the finger of accusation at academia, and at students, and to say that deserves a high place on the agenda of combating hate and combatting the kind of bigotry that can lead to actions that are much worse. I am here in the presence of this great university, to say, that being a professor, being a student, being an academic does not immunize you from legitimate criticism for the substance of your views. Thank you very much.

*Ambassador Ron Prosor, Abba Eban Chair of International Diplomacy,  
Lauder School of Government, Diplomacy and Strategy  
Interdisciplinary Center (IDC) Herzliya, Israel*

Malcolm Hoenlein: And now it is my distinct pleasure and privilege to introduce a good friend, somebody who I've watched up close for many years, especially as Director General of Foreign Ministry, Ambassador in England, and many other positions, but, most importantly, as the courageous spokesman at the United Nations. Not an easy job to be the Israeli Ambassador, but he did it with great ability, great distinction, and it is my privilege to introduce Ambassador Ron Prosor.

Ambassador Ron Prosor: First of all, it's much nicer to address this crowd than the one at the United Nations. And, especially with so many judges here, I would like to start by saying the following: that in the United Nations, there are not really double standards towards Israel or

the Jewish people. But, there are triple standards. There is the standard for democracies. There is the standard for dictatorships. And there's a special standard for Israel. Now, I would have to substantiate it, right?

So, until the year 2000, very few people know, Israel is not part of any regional group with the United Nations until the year 2000. What does it mean? It means that Israel cannot participate in any committee, cannot be elected to any position. Israel, basically, is part of the family of nations, maybe second or third class. Interesting. Africa didn't want us. Asia didn't want us. And then, there is a surprise, a good man, Richard Holbrooke, who basically, in the year 2000 says, "Hey guys! You want to enter our country club, which is the West-European-and-others group?" That's very nice. He pushes it forward. And it is a very nice country club, all the Western European countries—Canada, the United States, Australia, New Zealand, and the other is, Israel. But there is a small thing, a small caveat there. "You guys want to enter our country club? Wonderful tennis clubs and a swimming pool? Well, you'll have to tell us, conditionally, that for three consecutive years you are not allowed to bid on any position or any committee, because you know, we might lose our cycle here."

There's a big discussion in Israel about that. I am, you know, one of those aggressive young diplomats who says, "We should not agree to that. This is absolutely a humiliation." David Levy was then Israel's Foreign Secretary and I can tell you that he said "if we don't get this today, we won't get it tomorrow." And Israel, since 2000 basically, 2003 is eligible to even submit to committees and other stuff.

And, then in the presence of lawyers and judges, there's the Council on Human Rights. Now the Council on Human Rights is like having Jack the Ripper run Scotland Yard. It's having Syria and Libya chair this organization, as we speak, Venezuela and Saudi Arabia, and, but that's nothing. In the Council on Human Rights there's an Agenda Item Four that deals with human rights violations all over the world—for security Ocampo—and there's a Special Article Seven that singles only one country in the world, and that is Israel. Don't be shocked. It's all those triple standards.

Article Four for human rights violations all over the world. Seven, singles out only Israel. So I go to my good colleague, the representative of her Queen Elizabeth II. And I say, "Sir Mark"—I love British Ambassadors, they always have the "Sir." You know, I was thinking always "Sir Ronald Prosser of Tzur Hadassah"—you need a place. And I say, "Hey Mark. Why are you singling me out? Am I not good enough at least to be with the crowd with North Korea, Libya, and Syria? I can

up my game a bit.” There’s no real answer.

Now, when you take all this, and you sit and you say, “I represent the State of Israel and the Jewish people” with people, with a judiciary system led by a courageous judge, Chief Justice Dorit Beinisch. I have to be ashamed? On the contrary: I am proud of who we are and what we are. Under the circumstances that we live in, in the environment that we live in that doesn’t really—correct me if I’m wrong, I missed maybe something—countries like Liechtenstein and Luxembourg in our region. And, when I look at that, and I see under all these circumstances how, still, with all the pressures, Israeli society, how we work—and yes, we do mistakes—but how delicately we try to deal with the situation around us. Where there’s always the cry for quick responses and how mature we are trying to behave in the region.

And I, for me, I was born in the State of Israel. It wasn’t a dream for me. It wasn’t something that I looked for. My father, Olish Poskower, was born in Berlin, came to Israel in 1936. For him, this was, you know, was a dream. And I can tell you that when I look at the way he taught me—and I taught my children in a sense—I taught them not just not to forget, but to act in a way that people can relate to and respect, even at the toughest times. And when I tell you that I talk about triple standards, you see the demonization and the delegitimization that is done towards the State of Israel, and it’s slow. It’s like Chinese torture. It’s drop, drop, drop, which then accumulates, and creates a situation where lies and half-truths become reality. If you don’t challenge them. You have to challenge them again, and again, and again because people don’t know.

And when I sit in the Security Council, and I hear the stuff that is said about the State of Israel, the only way you can really try and fend it off is to use either humor or sarcasm to try and relate to try and tell people. “Hey! Those are really triple standards.” So it can begin with something. You know, a committee that sits, headed formerly by Chavez, and, after a year of deliberations, come to the Security Council and present their conclusions. And they say, and I nearly quote, “After one year of deliberations, we could not conclude why the Palestinians built the tunnels.” So I stood up and I said, “Well I have an idea. Maybe they wanted to build a new metro system in Gaza. And as the former Ambassador to the United Kingdom, all I can say is, ‘mind the gap.’” But the issue here is to basically look and say, “Here guys, this is ridiculous. Look at yourself.”

And Malcolm talked about it, and I’m sitting and hearing this. First, the Saudis chair the Conference on the Status of Women, that’s

interesting. I'm telling you, I'm making it funny, but guys this is the truth. And then they decide to condemn one country in its attitudes towards women. Is it Iran? No. Afghanistan? No. Saudi Arabia? No. It's Israel. And I look at this, and I look at stuff where in the year 2012, Iran chairs the Non-Proliferation Committee. The World Health Organization decides in a vote of 107 against four that Israel creates a health hazard in the Middle East, while everything around us is going on, with Israel having an amazing medical system.

And then it's hard for Israelis—Ocampo—to really look, and see, and say, "Hey. We're not getting fair treatment here." And how do I connect it to today? Because, being the former Ambassador to the United Kingdom, and seeing the elements today in the Labour Party—in your face and blatant anti-Semitism. It's not under the carpet. It shows that people are crossing the red lines, vocally. And the answer to them is to invite them all to be with us today here. To invite them for the March tomorrow. Because only through education, only through seeing exactly what happened, only through education, will we be able to see a situation where children and grandchildren will be able to be tolerant to others, to other religions, other minorities, and this is how we live in Israel. And how we want our children, at least me, to live with our neighbors in the future. Thank you very, very much.

#### VOICES OF THE NEXT GENERATION

*Elisabeth Buettner, Polish Doctoral Student, Jagiellonian University*

Elisabeth Buettner: Dear honorable guests, ladies and gentlemen. It's hard for me to do this speech after the speech we just heard beforehand, but I'm going to try my best. While I was introduced as the person that would speak about the future and also this legacy, that's what I want to dedicate my short speech to. While we've come together here in Krakow, Poland, a place which is very, very close to Auschwitz and you guests from all over the world in many cases with a Jewish background or an African background and with also the experience of a genocide and myself am a Ph.D. student here at Jagiellonian University dealing with the Holocaust, dealing with Auschwitz as well, especially, and I'm a German native and this gives also, let's say, a personal reason to engage in this whole discourse to come to conferences like this, to dedicate my time to work on Holocaust education for the future. And this legacy, this responsibility in my opinion obliges myself and the whole young generation to be courageous.

I think that we have to try to link the past with the future. We have

to listen to the survivors but we also have to try to not so much think about guilt but rather about responsibility. To replace the word shock or lack of possibility to believe what we see and what we hear about Auschwitz with hope and with responsibility especially. This is not easy, especially after a visit in Auschwitz or when you're going to be there tomorrow for the first time. Anyway, I consider it to be important and this is our duty as well so I want to dedicate the rest of my speech to Holocaust education and to the future of it and for this purpose I would like to share my own experiences with you as a volunteer translator of youth meetings at the Galicia Jewish Museum here in Krakow.

Well I'm translating meetings of people of young people from all over the world from all continents with Holocaust survivors, with Polish concentration camp survivors, and also with gentle Polish writers to some of the nations and I'm doing this work for over four years now and I'm just convinced of its importance for these young people who have come to the museum and join us. The majority are very young and the meeting of a survivor, a real Holocaust survivor is one of the highlights of the trips. No matter if they're Jews, Christians, Muslims, atheist, or worshipers of other religions, during the time we spent together at the museum this difference ceased to matter. There's just tears, there's just questions, there's just gratefulness no matter where our audience comes from. However, we and especially when I say "we" I say me, myself, as a moderator and translator, but also for the survivors, we never end our meetings with history and the horrors which are discussed, of course, but with messages—with personal messages of our survivors to our audience. I would just like to quote the final messages of our three survivors that I'm currently translating to share them with you.

The first person that I would like to quote is Mrs. Lidia Maksymowicz who is a Russian child survivor of Auschwitz Birkenau where she spent over fourteen months at the age of four years and she always ends her speech with the—as I feel—very powerful appeal to her audience. I quote her, "I want you to know that the shape of the future is up to you. Peace is nothing that you can ever take for granted. In a couple of years your generation will be responsible for how our world will look like and I want you to remember what you've seen at the Auschwitz museum and also what you have heard from me today about my life. I want you to assume responsibility and to stand up whenever it is necessary so that a tragedy like the Holocaust will never ever happen again."

And we have a second lady that is coming to the museum: a Mrs.

Monika Goldwasser, a Jewish survivor from the vicinity of Krakow who was rescued by Polish people during the war and adopted and grew up in a Polish family. Let me also quote her and appeal to the audience, “the most important thing in life is to be a good and decent people. Without good people I wouldn’t have survived, a baby is completely helpless. It needs decent, courageous people to have a chance to live and grow up. Please learn this lesson and be good to each other and support others whenever they may need your help. Accept each other; do not bully other people for who they are or where they come from.”

And the last lady I would like to honor by quoting her here is Mirosława Gruszczyńska, a Polish gentile living in Krakow for all her life who was awarded a medal [inaudible] some combinations among the nations some twenty-five years ago because together with her family, her parents, and her sister they hid a thirteen-year-old Jewish girl for over two years and saved her life. That Jewish lady is still alive in Israel and living there with her big family. She always ends her story with the following sentences. I quote, “My family and I always knew one thing. If somebody’s who needs around you, you have the sacred duty to help. There is no question about this. And this is also what our Christian faith was about. And please believe me, me and my family never regretted our decision.”

In times of uncounted monuments, commemoration celebrations, and a rising number of Holocaust history museums, also here in Poland, I think we have to make sure to communicate to the young generation that all this attempts to commemorate that they have a sense and they have a message for the future which never ever becomes outdated. And even if the last voices of survivors fall silent, we must ensure that message to be transmitted to the following generation. Zero tolerance for discrimination, their readiness to stand up against injustice, and a one hundred percent awareness of potential dangers for peace just as we discussed for a whole day today. Just like the old German proverb says [German] which means beware of the beginning. And I think now that in 2016 this message is ever so timely and relevant. In Poland, but all around Europe and probably also all around the rest of the world.

Thank you very much for inviting me, a member of the younger generation in Europe, to address this esteemed audience and thank you for your efforts to learn and to teach the lessons of the two Nuremberg(s) so that my generation and also the generation of my children may be spared the repetition of what happened in the past. And I promise it’s the only thing that I can do that I will do whatever I can even if it’s not much to do that to accomplish this goal. Thank you.

*Brooke Goldstein, March of the Living Alumna, Executive Director of  
The Lawfare Project*

Brooke Goldstein: Good afternoon, I am extremely humbled to have been asked to speak today along with the distinguished speakers that we heard. Incredibly thankful to Richard Heideman, to David Machlis, to Professor Dershowitz, and Professor Cotler for organizing this important conference, for inviting me, and especially thankful to Edward Mosberg who gave us his moving testimony. It takes a lot of courage to speak today and I do so to honor my great-grandmother and my great-aunts who were gassed to death in concentration camps, my great-grandfather who was worked to death in a Nazi slave labor camp in Poland, my grandmother who survived slave labor and concentration camps, and my grandfather who was a commander of a Polish partisan unit. I draw courage and strength from their memory.

We are taught that God commands every Jew, in every generation, to speak about the presence of evil, what we call *Amalek*. Why? Because no matter how much we would like to deny it, evil is always present; there is, as Hannah Arendt told us, a banality of evil and we are commanded to speak about it every day, in every generation, because *Amalek*—or evil—exists in every instance where man turns a good person into a monster and a monster into what is generally accepted.

The Pharaoh we study every Passover was a monster who literally bathed himself in the blood of Jewish babies, who ordered the murder of every Jewish first-born child, and who condemned the Jews to torturous slavery. If *Amalek* told the story of Passover, however, it would sound something like this: “Look how nice Pharaoh was to the Jews. He took a starving nation, he welcomed them into Egypt, he clothed them, he fed them, and only after a hundred years did the Pharaoh ask the Jewish people, ‘Pay your share, pay some taxes,’ but the Jews refused. So Pharaoh asked them, ‘At least work hard for this state, build some infrastructure, do some community service,’ but the Jews again refused. So Pharaoh had to hire staff to force the Jews to work. He made them build and contribute to the city that they lived in. He had no choice; he had to pay thousands of guards to make sure the Jews paid their taxes. And sure it’s possible that some guards abused the Jews—you can’t control everyone. But Pharaoh had to take care of his country and his citizens. And Moses the magician destroyed the whole economy; he sent frogs, he sent blood, he destroyed the vegetation, he made magic, and he killed all the Egyptian babies. Then, in the darkness, the Jews went into the Egyptian coffers and took the treasures and stole all the coins, and they ran away. And after three days waiting for them to

return, and after the Jews didn't come back, Pharaoh had to spend more money; he had to mobilize the army and chase the Jews until Moses dried out the ocean, killed all of Pharaoh's men, and left all of the women and children of Egypt to starve." Well, if you put it that way, maybe Pharaoh wasn't so bad after all.

Hitler was a monster. The Jews were good for Germany. The Jews brought prosperity and innovation to every single nation that accepted them. The Jews were incredible doctors; they were amazing economists and scientists. As Malcolm Hoenlein said earlier, a higher percentage of German Jews fought in World War I than any other ethnic, religious, or political group in Germany. And what was the story the Nazis ended up telling? They told the story of *Amalek*, the story of the destructive Jew. And, using this twisted story, Hitler and the Germans and their collaborators tried to destroy our eternal nation.

The same thing is happening today with Israel. Instead of appreciating the genuine good the Jewish people and the Israeli nation contribute to the world, the innovation that they contribute to the world, the media and student groups and politicians are spreading dangerously false narratives. Writing articles, twisting the truth: Jewish homes in Judea and Samaria are illegal, the Jewish state is illegal, the Israel Defense Force is immoral, terrorists are called "freedom fighters," Jews are called Nazis, and calls for Israel's destruction are disguised as pro-Palestinian "human rights" advocacy. The media is turning the truth on its head and rationalizing anti-Semitism. All you have to do is go to your hotel rooms tonight, turn on Al Jazeera English, and see how Qatar—a state sponsor of terrorism, the second largest state sponsor of terrorism besides Iran—is feeding through a news outlet propaganda that humanizes and creates sympathy for terrorism. And, frankly, even Jews are being fooled.

I look around at what's happening today, the promotion by the EU of a targeted racist boycott movement—the *chutzpah* of Europe, still fresh from the Holocaust, not just to label Jewish goods from Judea and Samaria, but to all-out ban them! We see targeted violent attacks on Jewish synagogues in the UK, and on kosher supermarkets in France. I know that the peace that we, as western Jews, have had the privilege to enjoy since World War II is a historical anomaly. It's a temporary respite from violent anti-Semitic hatred, a hiatus from *Amalek's* reach. Because "never again" does not mean that never again will we experience anti-Semitism. We see how Imams from Gaza, to Egypt, to Lebanon, to Saudi Arabia preach death to the Jews and all infidels. And how the Islamists teach their children, their future generations, to

engage in violent *jihad*. “Never again” doesn’t just mean that we must never forget the past; it means that we must not ignore the present. At Northeastern University in Boston, four hundred students gathered and chanted Hamas’s genocidal chant: “From the river to the sea, Palestine will be free.” Free of Jews is what they mean. At Temple University, a Jewish student was punched in the face by so-called pro-Palestinian activists. At Rutgers University, Islamist students threatened to beat Jewish students with crowbars and forcefully segregated Jewish students at a University event. At Berkeley, a Jewish girl was sent to the hospital after being rammed in the back with a shopping cart while she was holding a sign that said “Israel wants peace.” And if you raise the issue of anti-Semitism with some in my generation, if you talk about Islamo-facism and the roots of Islamo-facism within Nazi ideology, you are called an Islamophobe, you are called a fear monger, you are accused of exaggerating, you are told pure evil is no longer present in the world. We are told that if we subscribe to the appeasement narrative, if we only give land back, if we stop building houses, if we end the “occupation,” if we end Western colonialization, those who are evil won’t hate us anymore.

And the greatest lie that has been repeated since the Holocaust to marginalize the Jewish people is the myth of the “Palestinian refugee.” The myth of a Palestinian “right of return,” and the false narrative behind the push to create another Islamic state in a sea of failed Islamic dictatorships by carving out the Jewish homeland and reducing it to what can only be described as foolishly indefensible borders. The story of a Palestinian people as distinct from other Arab nations is revisionist history: the Palestinian nation was invented by Yasser Arafat and his cohorts in the 1970s solely as a means to claim parity with the Jewish people and challenge our right to self-determination. This is historical fact. This is admitted by the Palestinian Authority. And the PA has been given more money to resettle and aid the so-called Palestinian refugees than the entire amount given to Germany to rebuild after World War II. “Never again” means that you must never ignore the clear and obvious signs of rising hatred. As Professor Dershowitz reminded us recently in an *Algemeiner* article, Arafat’s hero and mentor was the Grand Mufti of Jerusalem, Haj Amin al-Husseini, or Hitler’s Mufti, who entered into a pact with Hitler and promised his assistance if the Nazis massacred the Jews in Judea and Samaria. And when the Palestinian people first greeted Arafat in self-rule areas, granted to the PA by the Israelis, they offered Arafat the infamous Nazi salute.

Today, Hitler’s *Mein Kampf* currently reigns sixth on the best-

seller list among so-called Palestinian Arabs. In May of 1943, the Nazis declared Germany *Judenrein*. Let us not be fooled: anyone who says the Jewish homes in Judea and Samaria are an obstacle to peace, anyone who says that we must remove Jews from Judea and Samaria in order to have peace, anyone who today calls for the establishment of a Palestinian state under the current Arab leadership, what they are really calling for is a *Judenrein* West Bank. My friends, when Jewish lives are on the line, when the security of the State of Israel is on the line, we must tell the truth no matter how politically incorrect the truth has become, no matter how fashionable revisionist history has become.

The two greatest honors that we can give the memories of those who perished in the Holocaust are, first, making sure we teach the next generation the truth. As Professor Berenbaum said earlier today, the pursuit of truth is what we must engage in. Truth education, no matter how painful that truth is. And the second thing that we must do is empower our community to use every tool at its disposal to proudly declare and enforce our civil and human rights.

We are commanded by the Torah, "*Tzedek Tzedek Tirdof*"—justice shall we pursue so we may live. And it's ironic we're here to commemorate the use of the legal system via the Nuremberg Trials to achieve some measure of justice for the victims of the Holocaust. But if we fast-forward seventy years, we are seeing the legal system inspired by Nuremberg perverted by lawfare. The international legal system is not used to pursue justice, it is used to compliment terrorism and to demonize the Jewish state. When the International Court of Justice releases an advisory opinion that declares Israel's security fence—brick, mortar, and wire—a violation of international law and, at the same time, refuses to enter into evidence the very relevant fact that the fence contributed to a sharp decline in the loss of human lives, refuses to enter into evidence testimony of terror victims, that's not due process, that's not justice—that's lawfare. When there are over one hundred UN resolutions condemning Israel, more than any other nation, more than the resolutions condemning Saudi Arabia, Syria, and Iran combined, that's not justice. When there are war crimes charges against Israeli officials and dozens of nations including the UK, Spain, Brussels, Switzerland, Canada, and yet members of Hamas and Hezbollah cross European borders with impunity, that's not justice. That's the betrayal of justice.

So I'll conclude with this. As the founder and director of The Lawfare Project—a not-for-profit legal advocacy group in New York with a network of over 250 lawyers worldwide, who have dedicated

their services to our community to work pro bono—we are engaged now in the pursuit of justice. We are filing war crimes charges in Canada against the leaders of the Palestinian Authority, Hamas, and Iran for their support of terror. We are currently taking legal actions against universities that failed to protect the civil rights of their Jewish students on campus. We have brought hate speech charges in Europe against professors that deny the Holocaust. We have enabled the criminal prosecution of terror-connected media outlets that illegally broadcast Hamas and Hezbollah TV and incite violence and genocide against the Jewish people. We stopped the provision of funding to pro-terror groups at Rutgers University and, just recently, in a major victory against the Arab League, The Lawfare Project shut down all inter-European flights of Kuwait Airways, the state airline of Kuwait, which is engaged in the Arab League Boycott. We shut down all the inter-European flights of Kuwait Airways in addition to their JFK–London leg for their unlawful discrimination against and refusal to fly Israeli nationals.

I want to make special mention of the attorney Nathan Gelbart, who is German counsel to The Lawfare Project, who was instrumental in this victory. And we will continue to use the courts and other tools available to us to secure the rights of the Jewish people to the land of Israel, and to live in safety and security while enjoying equal protection under the law. Because if we allow our basic civil and human rights to be violated, our lives will be next. So, let it be known today that those who would demonize the Jewish people, those who engage in unlawful racist commercial boycotts, those who penetrate college campuses to harass and assault Jewish students: let it be known today that you will fail. Because we are fortunate to live in a time and a place where the truth and the law are on our side, and we have the power, and we have the will, and we have the ability to defeat you.

The Lord said to Moses, “Why do you cry to me? Tell the people of Israel to go forward.”

Thank you.

#### HISTORY, ACCOUNTABILITY & RESPONSIBILITY

*Video Remarks by Ambassador Stuart E. Eizenstat, Former US  
Ambassador to the European Union*

Richard D. Heideman: And now we will receive the remarks from Ambassador Eizenstat.

Ambassador Stuart Eizenstat: I’m Stu Eizenstat. I’m Honorary

Chairman of the March of the Living. I very much wish I could be with you in person, but appreciate the privilege of addressing you in this way at this very important symposium, which occurs on the eightieth anniversary of the adoption of the infamous Nuremberg Laws, and the seventieth anniversary of the famous Nuremberg Trials.

This symposium is particularly important now, because it comes at a time of Holocaust denial by some, Holocaust minimization by others, and Holocaust ignorance by still more who simply don't know the history. I am very pleased that my dear friend and inspiration Elie Wiesel is the Honorary Chair of this symposium. That my dear friend, former Canadian Justice Minister Irwin Cotler, and my former Harvard Law School professor and longtime friend Alan Dershowitz are chairs of this symposium. I also would like to thank Richard D. Heideman who is the overall program Chair, Shmuel Rosenman who is Chairman of the Board of the March of the Living, and Phyllis G. Heideman who is the President of the March of the Living.

There are a number of important ways in which we can honor the six million who died in the Holocaust, and the five hundred thousand survivors who are still thankfully with us. The first is to assure that in their declining years, survivors are treated with dignity. And this is a real problem, because over eighty percent of survivors in Central or Eastern Europe or in the former Soviet Union live in or near poverty, some thirty percent in the Jewish State of Israel, some twenty-five percent in the United States, and according to a very recent survey by the UJA Federation of New York, of the sixty thousand survivors in New York City, fully half are either in poverty or within fifty percent of the federal poverty level. These figures are just unacceptable for people who suffered so greatly in their youth.

I have devoted a substantial part of my career, both in the Clinton Administration, as Special Advisor to the present Secretary of State in negotiating some \$1 billion of recovery from Swiss banks, German and Austrian slave labor companies, European insurers, return property and art, and, now, as Special Advisor to Secretary of State Clinton, and most recently to Secretary of State Kerry in negotiating agreements with Lithuania and France, and as the head of the negotiating team for the Jewish Claims Conference, where we negotiated over a billion and a half dollars of new payments since 2009, when I began heading the negotiating team with Germany, primarily for home care so that those, particularly in Central and Eastern Europe, and the former Soviet Union, but also in the United States can avoid being put into old age homes, and can get home care workers who can provide socialization

services, help them with medications and food, and transportation to physicians.

A second way in which we can honor those who survive, and those who perished is to combat modern day anti-Semitism. It is clearly on the rise in significant countries in Europe. In its rawest form, it is seen in things like the attack on the Jewish Museum in Brussels and the attack on the Kosher Mart in Paris. In the 2012 terrorist attack in Toulouse against the Jewish Day School, and it's more broadly seen in the terrorist attacks which have hit Brussels, Paris, Malmö, Sweden, and other parts of Europe not just against Jews, but against non-Jews as well.

There is a particularly pernicious aspect of this modern day anti-Semitism which we call BDS, "Boycott, Divestment and Sanction," against companies that do business with Israel, both American and other companies and have any relationship to the West Bank. There are labeling requirements being put on West Bank products by the European Union. The European Union's own massive R&D program, for which Israel is the third largest recipient, and the largest outside of the EU was restricted so that any institution which has any connection with the Palestinian Territories does not qualify. The BDS movement is also seen on college campuses in virulent form, and it really is nothing more or less than an effort to delegitimize Israel as the state of the Jewish people. It would be so tragic and ironic that, seventy years after the liberation of the death camps, to see this crime of new Anti-Semitism rear its ugly head.

Another way of ensuring that we honor the memory of those who died, and of those who are still living, is to ensure that in our own diaspora communities that we fight assimilation and disappearance, a lack of identification at the very time when we have the full opportunity of integrating into our western societies. Yet again, another way of honoring the memory of those who died and those who survived and making sure that those who survived know that we are thinking of them, is to strengthen the State of Israel itself against external attacks. We see the knifings that are occurring. We know the potential of nuclear threat from Iran. And, thankfully the United States is a key ally of the State of Israel in protecting itself against threats from Hezbollah, from Iran, from Hamas, and from other radicals.

But I'd like to suggest to you—and this ties in directly, to the seminar that's occurring now—how important this seminar is, and I want to congratulate and underscore the importance of the co-sponsorship of Jagiellonian University in Krakow. It is a tremendously

important thing to have this important university as a co-sponsor with the March of the Living. And I want to congratulate the faculty, and the President, and others from Jagiellonian University for their sponsorship of this symposium.

Now, the March of the Living fulfills what I consider perhaps the penultimate way of honoring the memory of the survivors and those who perished. And, that is, through memory, through education, through bringing the lessons of the Holocaust to us today. Not only looking back, but also looking forward at what lessons it provides. The March of the Living will, the day after this symposium, be bringing another twelve thousand young people from forty countries. Over the last twenty-some years over two hundred thousand young people from forty countries have gone on the March of the Living from Auschwitz to Birkenau, that 3.2-kilometer death march. This is tremendously important in reinforcing for a younger generation what happened in the Holocaust, why it's important to remember—embedding it into their collective memories as they're young people so that it stays with them throughout their lives.

The March of the Living, I'm proud to say, not only sponsors the March and is sponsoring this symposium, but also provides other conferences, symposiums, and forums to teach the world the lessons of the Holocaust. This symposium today on Nuremberg, "From Hate to Justice," is another example of what the March of the Living is doing.

I want to congratulate again the March of the Living, and Jagiellonian University, to thank Alan Dershowitz, and Irwin Cotler, and Elie Wiesel—Richard, Shmuel, and Phyllis for their work. I know this will be a very important symposium. Again, I regret not being with you personally but believe me, I feel that more than virtually, I am with you. This has been a very important part of my entire life, and I look forward to getting a full report of what I know will be an exceptionally rich and important conference. As much again as I have tried to provide compensation to survivors, the most important thing is for there to be in the long run, not money which is ephemeral, but memory which is eternal. And that is what this symposium is going to do today. Thank you for permitting me to address you in this way.

PRESENTATION IN MEMORY OF JUSTICE ROBERT H. JACKSON

*Phyllis Greenberg Heideman,  
President, International March of the Living*

Richard D. Heideman: For a brief presentation, let me call forward

Phyllis D. Heideman, the president of International March of the Living, and David Machlis, the vice president of International March of the Living, and also Greg Peterson for his response, he's the cofounder of the Robert H. Jackson Center.

Phyllis G. Heideman: I'm not going to keep you any longer than absolutely necessary. I want to tell you two things. We at the March of the Living—I think you've gleaned today, those of you who are first time visitors and participants—we are dedicated to memory: to the memory of our ancestors, to the memory of our past, to the memory of the acts against us, and for us on a positive note. We educate our students, as you have heard, to accept the future, to take their social responsibility, and to make sure that such a horrendous act never again occurs in history.

I have a whole wonderful applauding speech about the March of the Living which I am not going to share with you today, because you've heard everything that you need to hear. It is our responsibility, it is the legacy to our ancestors—those who perished and those who had the blessing to survive—that we take a stand, we never remain silent, we never forget, and we commit ourselves to always remember.

We at the March of the Living are very grateful for the friends, the personal, individual, communal, and institutional friends that we have gathered and we have made around the world. The Robert H. Jackson Center founded by Greg Peterson has become a partner with the March of the Living. They carry our message, they believe in our mission, and I believe they will continue to make great inroads in the future.

Greg, most of us in the room are very aware that the shofar is a call to action. Throughout history, the Jewish people have used the shofar not only to welcome in the Rosh Hashanah, the New Year, but also to call the people to action. We present you—with love, and thank you, gratefulness and a great hope for the future—a shofar from International March of the Living.

*Dr. David Machlis,*

*Vice Chairman, International March of the Living*

David Machlis: Because of the lateness of the hour and my terrible voice—I have laryngitis—I have been asked to speak briefly and quickly. I will do my best. My intention was to speak about the March of the Living and its link to Robert H. Jackson and the Robert Jackson Center that was established in 2001 to honor and continue to legacy of Justice Robert H. Jackson.

We heard before the wrongs which we seek to condemn and

punish have been so calculated and so devastating that civilization cannot tolerate them being ignored, because it cannot survive them being repeated. They indeed, have been repeated, but also have been ignored in greater and greater numbers. The ADL 2014 100 Study, surveying people from one hundred countries around the world, only fifty-four percent of those people polled globally have ever heard of the Shoah. But, it gets even worse than that. Among those who have heard of the Shoah, thirty-two percent believe it is either a myth or has been greatly exaggerated. Being ignored assures their being repeated, and that is why the March of the Living exists: to ensure that they are not ignored for the betterment of humankind.

Justice Jackson indeed recognized that the Holocaust is not a Jewish issue, but it is a universal issue. We must learn from the past so that a more tolerant and just society will evolve for all humankind. Less than eight months after Justice Jackson returned from Nuremberg, he was the guest of honor at a UJA in New York dinner held at the Waldorf Astoria. And, I'll tell you there couldn't be a better fundraiser to help generate funds for the relief, rehabilitation, and resettlement of Jewish survivors. The goal for UJA in New York was to raise sixty-five million dollars as part of a national campaign of raising \$170 million. Here is Justice Robert H. Jackson at the fundraiser, "They are hated aliens in the land where we now find them, and they have become unwelcome aliens in the lands from which they were taken. And there they are huddled into camps where they cannot stay permanently, with no means to go elsewhere and no place open to them. If they had the means to go elsewhere. Adequate justice to these surviving people can never be done, but to give them existing in suspense, is a form of mental torture, almost as harrowing as that which the Nazis inflicted."

Just a moment regarding this \$170 million. One hundred-seventy million dollars in 1946 at an average inflation rate of 3.54 percent over this period of seventy years was a nice sum of money, was actually \$1.9 billion, rounded to the nearest million.

A major objective of the March is to pay tribute to the courage of those who survived the Holocaust and who rebuilt their lives despite the haunting memories of the past. March of the Living, since its inception, has considered the survivors the most important element of the education program. And, we indeed do speak, of the 220,000 alumni as being witnesses of the witnesses.

Continued briefly at this dinner and this fundraising event, Justice Jackson said, "The record of their persecution, enslavement, murder, and extermination is the blackest chapter in modern times. You know

that anti-Semitism did not surrender in Germany. It is still virulent, and ready when it dares to pursue the remnants of Jewry left there. You know too that anti-Semitism is not confined to the German side of the line, and that it afflicts those who live elsewhere in the world.” Could that not be said today? Could that not be said today?

Professor Elie Wiesel, as a keynote speaker at the March of the Living, made this profound statement, “We were convinced that anti-Semitism perished here. Anti-Semitism did not perish here. Its victims perished here.”

That same ADL study indicated, two years ago, that study, twenty-six percent of the world’s population indeed harbors anti-Semitic attitudes. The March of Living strives to inspire our participants to commit to building a world free of oppression and intolerance. A world of freedom, democracy, and justice for all members of the human family. It is indeed most appropriate that we honor today the Robert H. Jackson Center, for perpetuating the memory and legacy of Justice Robert H. Jackson for his legendary work in implementing justice with fairness and decency. That is the magnificent “double entendre” of Justice Jackson. Thank you.

*Greg Peterson,  
Co-Founder, Robert H. Jackson Center*

Greg Peterson: To Mrs. Heideman, Dr. Machlis, and all the representatives of the Raoul Wallenberg Centre for Human Rights, and the university officials who hosted this amazing event, good news: Dr. Machlis called me a week ago, and he said, “Greg, I’ve got to remind you that the mind can absorb only what the rear can endure. So, you have all of five minutes or less.” So, I am going to take that to heart. I really am just so thrilled to accept this extreme honor on behalf of the Robert H. Jackson Center, which includes fellow board member, Professor Barrett whom you heard earlier today.

We have been so welcomed among all of these organizations. And especially to Eli, and to Dr. Machlis who have extended themselves tremendously as well as everybody else on so many fronts.

The mission of the Robert H. Jackson Center is to advance public awareness and appreciation of the principles of justice and rule of law as embodied in the achievement and legacy of Robert Jackson. A legacy which is manifested in his life story recently portrayed in a PBS documentary, hopefully you will have a chance to see at some point entitled “Liberty Under Law,” “Liberty Under Law: The Robert H. Jackson Story,” which highlights the fact that he is the answer for folks

in America to the Jeopardy question: “Name the only person in the United States to be Solicitor General, Attorney General, and a Justice of the Supreme Court.” Amazing for a guy who never went to college, never graduated from law school, but he pulled himself up by the bootstraps and you heard much about that today from Professor Barrett.

But, most importantly, his greatest achievement as he wrote to several correspondents, was his time as the Chief American Prosecutor at the Nuremberg Trials. Though I know it has been repeated several times—it’s in the program—but let me repeat it again, because it is so important. “That four great nations, flushed with victory and stung with injury stayed the hand of vengeance, and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that power has ever paid to reason.” [Opening Statement, Nuremberg Trials, November 21, 1941].

When it came to crimes against the Jews, he was the first to go out of his way to—and I highlight this—and he said, “Let there be no misunderstanding about the charge of persecuting Jews. What we charge against these defendants is not those arrogance’s and pretenses that frequently accompany the intermingling of different peoples, and which are likely, despite the honest efforts of government, to produce regrettable crimes and convulsions. It is my purpose to show a plan and a design to which all Nazis were fanatically committed to annihilate all Jewish people. These crimes were organized and promoted by the party leadership, executed and protected by the Nazi officials as we shall convince you, by written orders of the secret state police itself. The persecution of the Jews was a continuous and a deliberate policy.” This speech, followed up by the evidence that was presented at the Nuremberg Trial, certainly lays hollow any effects and opportunity of a Holocaust denier.

Robert Jackson lived a life. Robert Jackson’s rule of his life was that the rule of law is one he practiced in speech, and in his activities. Dr. Michael Berenbaum who was here earlier—and it was a thrill for me to catch up with him—gave pause to our [inaudible]. When we began in 2001, he came to the Jackson Center and said, he sat down and gave us fifteen bullet points that we need to accomplish to make the Robert Jackson Center be effective. Foremost was the fact, “you have to underscore the message of the Nuremberg Trial to its relevance today.” We’ve attempted to do that on many fronts. But I see Prosecutor Ocampo here, and he joined us at our first International Humanitarian Law Dialogues. And, the Robert H. Jackson Center has supported, and continues to support ten of those International Humanitarian Law

Dialogues with this year's being in Nuremberg where we will pause and reflect on the Nuremberg Trial and its rule of law. And thank you Professor Ocampo of all of that encouragement.

We look forward to enhancing the mission of the Robert H. Jackson Center by collaboration with many of the organizations which I've had the opportunity to meet—to help them in fighting indifference, racism, injustice, and advancing the high standard of recognition of the rule of law. As Justice Abella said, "It's the just rule of law." The Robert H. Jackson Center envisions a global society where the universal principles of equality, fairness, and justice prevail. On behalf of the Robert H. Jackson Center, I want to thank you. I want to thank the March of the Living, and all the related entities for all that they have accomplished, and providing us with this extraordinary award. And, we look forward to living up to the high mission and standards of everyone here. Thank you very much.

**POLAND AND HOLOCAUST LEGACY**

## SHORT FILM HIGHLIGHTS ON "THE LEGACY OF JAN KARSKI"

*Remarks by Dr. Aleksandra Gliszczynska-Grabias, Senior Researcher,  
Poznań Human Rights Centre, Institute of Law Studies of the Polish  
Academy of Sciences*

Video, "Karski & the Lords of Humanity": First he had an air of moral aristocracy about him and his narrative had all the appeal of the adventures of James Bond. His dream was to become a diplomat, he was smart, handsome, studied foreign languages, he was working for the Polish underground. "One of the leaders in Krakow gave me a [inaudible], they could prove you are a spy. On May 3, 1943, a secret telegram from Poland's foreign ministry reached the Embassy in the United States. Karski was on his way to Washington with a very special mission to inform President Roosevelt personally of what was going on in Poland. When you describe to them what is happening to the Jews they will not believe you, what would help our cause is if you with your own eyes see the situation in the Warsaw Ghetto. I couldn't take anymore but I had a report. We have a choice, we can choose to be a bad guy, we can choose to be good. Now I go back [inaudible], no I don't go back." If you find yourself in a circumstance, whatever it is, you can do something to make a difference. Let Karski's story be one of those that inspires you to try.

Richard D. Heideman: It is my pleasure to invite Dr. Aleksandra Gliszczynska-Grabias, the senior researcher of Poznan Human Rights Centre, Institute of Law Studies of the Polish Academy of Science to share remarks on Poland and Holocaust legacy.

Dr Aleksandra Gliszczyńska-Grabias: "Watch everything, remember, and tell the world the truth about it:" this was the mission given to, and accepted by, Jan Karski. He fulfilled it in a manner which can only be described as the highest order of the humankind.

Jan Karski's heroism has not stopped the Holocaust. But because of his heroism, the masters and rulers of the world, in that time, could no longer claim ignorance as an excuse for their omissions and failures. It also proved that a disinterested action even at the peril of one's life, for the sake of another's, in the darkest hour, is still possible.

In various documented interviews with Jan Karski there are the moments, when remembering "the people who did not resemble humans" in Warsaw ghetto, when remembering starvation and the

unspeakable human despair, Karski breaks into tears and cannot go on talking. His tears are perhaps the most moving testimony about the Holocaust that I have ever seen.

In these moments, I join Karski in crying, because I cannot imagine what it is for a man, after he has done a superhuman effort in order to get across to the outside world with the information about the ongoing genocide, to realize that his message is silenced by so-called “common sense,” disbelief, political calculus, or simply indifference or bad faith.

What is then the legacy of Jan Karski?

It is a duty not to look the other way when the weakest are being harmed. It is a duty of compassion. This legacy imposes on us an obligation which is extremely demanding: it requires from us to act based on the concern for the interests and well-being of the Other—the Other who is a stranger, usually a humiliated, dirty, sick one—above our own. It calls for empathy replacing egoism. It demands courage rather than fear.

The legacy of Jan Karski is also expressed in the obligation for lawyers, for human rights defenders, to always firmly stand for the law which protects the most vulnerable against violations of human rights and freedoms, the law which prohibits genocide, war crimes and crimes against humanity.

The legacy of Jan Karski is also reflected in the Jan Karski Educational Foundation; in conferences, lectures and exhibitions all over the world which clarify to young people what the mission of Jan Karski was and what is the testimony he created. It is also the “talking bench” in Warsaw near the POLIN Museum of the History of Polish Jews which has a special button: after you press it, a short talk from Karski himself can be heard. His voice, literally speaking, conveys his legacy to us.

Finally, the legacy of Jan Karski is *me* and thousands of other Poles fighting against anti-Semitism, acting to commemorate the victims of Holocaust, and pursuing the truth about the Polish-Jewish past by giving an account of both the brightest and the bleakest moments of our common history.

In 1960, Tadeusz Mazowiecki—who was later to become the first Prime Minister of democratic Poland after the fall of Communism—wrote movingly in an essay entitled *Anti-Semitism of good and gentle people*:

It is not an achievement to fight antisemitism, nor is it a humanitarian gesture of mercy; it is a struggle for the dignity of Jews

but it is also a struggle for our own dignity. It is a struggle for the dignity of all.<sup>1</sup>

Jan Karski won this struggle, and he won it for all of us.

### CONCLUDING REMARKS

*The Honourable Justice Rosalie Silberman Abella, Supreme Court of Canada*

Some concluding thoughts on a day when so many important thoughts have been expressed. Elie Wiesel said Nuremberg is the story of those who did the killing. Nuremberg is also the story of those who did nothing. Quite a story, a story about inhumanity, about immorality, about indifference, a story with many lessons to teach. But the past seven decades have shown how few of them the world has wanted to learn. The lawyer in me, the judge in me, the child in me, the mother in me, the Jew in me, each part of me reacted differently to different parts of the Nuremberg story. To me, the issue was about justice itself and, in the end, thinking about this talk, what troubled me most was how little justice there had been. The lawyer in me was offended and so was the judge, but no part of me resonated more as I learned the Nuremberg story; no part despaired more than the Jew in me.

My justice journey, in fact my life's journey, started with the injustices revealed at Nuremberg. Who I am, what I am, what I believe in, and what I hope for all started with the Holocaust. Two hundred thousand European Jews survived the Holocaust; three of them were my parents and grandmother. I'm proud of many things in my life, but nothing makes me prouder than to be the child of Holocaust survivors. And one of them was a graduate of this historic University. My father came to the Jagiellonian University in Krakow to study law in 1930, because there was a *numerus clausus*, a quota on the number of Jews admitted to the law school; he was one of very few Jews admitted in a class of over 100. Rather than sit in the seats reserved for Jewish students in the lectures, he told me he stood through most of his first year in the University. He graduated in 1934. After he finished his eight years of legal training he married my mother on September 3, 1939. He never got to practice law in Poland, as he and my mother spent four years in concentration camps. Their two-and-a-half-year-old son, and my father's parents, and three younger parents, died at Treblinka. My

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<sup>1</sup> Tadeusz Mazowiecki, *Antysemityzm ludzi łagodnych i dobrych*, in *WIĘŹ* 5, at 25 (1960).

father was the only person in his family to survive the war. He was thirty-five when the war ended; my mother was twenty-eight. As I reached each of those ages I tried to imagine how they faced an unknown future as survivors of an unimaginable past and as each of my two sons reached the age my brother had been when he was killed, I tried to imagine the pain my parents had felt at losing a two-year-old, and I couldn't.

After the war, my parents went to Germany where the Americans hired my father, who had taught himself English, as a defense counsel for displaced persons in the allied zone in South West Germany and was made head of the Jewish community in Stuttgart. In an act that seems to me almost incomprehensible in its breathtaking optimism, my parents and thousands of other survivors transcended the inhumanity they had experienced and decided to have more children. I was born in 1946 and my sister in 1948. I think it was a way to fix their hearts and to prove to themselves and the world that their spirits were not broken.

My father applied to immigrate to Canada but was refused because his European legal training wasn't considered a useful skill. When we were finally given permission to go to Canada in 1950, he applied to practice law. He was told by the law society that he couldn't be admitted to the bar because he wasn't a Canadian citizen. That would've taken five years, so he became an insurance agent to support his family. I never heard him complain about not being able to practice his profession, but the moment I heard the story about his being denied the ability to be a lawyer was the moment I decided to become one. I was four years old. The lack of lament or complaint in my home growing up was, as I look back on it, extraordinary. No bitterness or anger; no fear, only hope. I understood none of this of course until I became a parent myself.

In fact, I simply didn't appreciate growing up the full horror of what had happened to my parents during World War II. All I knew was how incredibly lucky I was to have such wonderful loving and positive people as parents. They told me whenever I asked, and never with tears, what it'd been like in concentration camp, what I felt like when their two-year-old son had been killed at Treblinka, and what it meant to lose everything and almost every one and start all over again.

But while my parents never forgot how lucky they were to be able to restart their lives in a vibrant democracy, neither did they ever forget why they had to, nor should we. They had to because the rule of law turned into the law of injustice.

The world was supposed to have learned three indelible lessons

from the concentration camps of Europe. One: indifference is injustice's incubator. Two: it's not just what you stand for; it's what you stand up for. Three: we must never forget how the world looks to those who are vulnerable. Those were the lessons the Nuremberg trial exposed.

My formative years were spent in the shadow of Nuremberg. I was born in Germany at the beginning of the Trials, surrounded by the survivors for whom it was created, nurtured by parents who had somehow escaped the final Nazi verdict, and watched a father help try to create a system of justice for people who didn't know such a thing could exist in Germany for Jews. I grew up with a passion for justice and democracy, but I have also, now that I'm grown up, developed sadness for what has become of them despite Nuremberg. I never asked my parents if they took any comfort from the Nuremberg trials, which were going on for four of the five years we were in Germany. I have no idea if they got any consolation from convictions of dozens of the worst offenders.

But of this I am very sure: they would have preferred by far that the sense of outrage that inspired the Allies to establish the military tribunal of Nuremberg had been aroused many years earlier, before the events that led to Nuremberg ever took place. They would have preferred, I'm sure, that world reaction to the 1933 Reichstag Fire Decree suspending whole portions of the Weimar Constitution to the expulsion of Jewish lawyers and judges from their professions that same year to the 1935 Nuremberg laws prohibiting social contact with Jews, or to the brutal rampage of *Kristallnacht* in 1938. They would have preferred, I'm sure, that world reaction to any of these, let alone all of them would have been at the very least public censure, but there was no such world reaction.

By the time WWII officially started on September 3, 1939, the day my parents got married, it was too late. And so the vitriolic language and venal rights abuses, unrestrained by anyone, turned into the ultimate rights abuse: genocide. Millions of lives were lost because no one was offended enough by the systematic destruction of every conceivable right for Jews in Germany that they felt the need for any form of response. And so the vitriolic language and venal rights abuse turned into the ultimate rights abuse, genocide.

Consider some of the events that have occurred around the world since then. Notwithstanding the most sophisticated development of international laws, treaties, and conventions the international community has ever known, all stating that rights abuses will not be tolerated. We had the genocide in Rwanda, the massacres in Bosnia and

the Congo, the violent expropriations and sheer immorality in Zimbabwe, the slaughter, rape, and child soldiers in Sudan. The annihilation of the rights of women by the Taliban, the attempted genocide of the Kurds in Iraq, the rampant racism tolerated at the UN World Congress Against Racism and Intolerance in Durban. China, Myanmar, Pakistan, Darfur, the nuclear roguery of North Korea and the roguery period in Iran. And now our latest disgraceful chapter in global insensitivity as the world formulates a strategy of astonishingly glacial and anemic proportions in Syria. Clearly what remains elusive is their willingness as an international community to protect humanity from injustice. We clearly still have not learned the most important lesson we were supposed to learn from the Holocaust, to try to prevent the abuses in the first place. All over the world in the name of religion, national interest, economic exigency, or sheer arrogance, men, women, and children are being murdered, abused, imprisoned, terrorized, and exploited with impunity.

I think lawyers like me have the tendency to take comfort, properly so, in the possibility of subsequent judicial reckoning, such as the court at Nuremberg, but is subsequent justice really and adequate substitute for justice? I don't for one moment want to suggest the Nuremberg trials weren't important—of course they were. They were a crucial and heroic attempt to hold the unimaginably guilty to judicial account. And they showed the world the banality of evil and the evil of indifference. But although Nuremberg represented a sincere commitment to justice, it was a commitment all too fleeting. Not for long did the prosecution of war crimes remain a magnetic national preoccupation for the Western Allies who created it in the intimidating shadow of the Holocaust. By 1948, Britain issued a communiqué to the Commonwealth countries, putting an end to the attempt to prosecute Nazi war crimes, as a response to recent tripartite talks about political developments in Germany. We are convinced the British communiqué said, "that it is now necessary to dispose of the past." The crisis in Berlin with Russia thereby turned Germany from an enemy to be restrained into a prospective ally to be recruited. By 1949 it was all over. No more Nuremberg trials, no more Nazi war crimes prosecutions anywhere in the western world for over two decades and the early release of many of the convicted war criminals who had been sentenced at Nuremberg. The past was tucked away and the moral comfort of the Nuremberg trials gave way to the amoral expedient of the Cold War. With stunning alacrity, the world abandoned what proved to be its temporary pursuit of justice at Nuremberg and reconstituted itself within five years as if

neither Nuremberg nor the Holocaust had ever happened. It was a collective form of repressed memory.

Why hasn't the Holocaust, the single most outrageous crime in civilized history, created a desperate, unquenchable thirst, for enforceable international norms that make human rights abuses intolerable anytime and anywhere? The gap between the values the international community articulates and the values it enforces is so wide that almost any country that wants to can push its abuses through it. No national abuser seems to worry whether there will be a Nuremberg Trial later, because usually there isn't. And in any event, by the time there is, all the damage that was sought to be done has already been done. In too many parts of the world there are no regrets, no tolerance, no justice, and no hope. Those parts of the world are putting the rest of the world in danger because intolerance, the world's fastest growth industry, seeks in its hegemonic insularity to impose its intolerant truth on others. Yet all too often, we appear reluctant as a global community to call to meaningful account the intolerant countries who abuse their citizens and instead hide behind silencing concepts like cultural relativism, domestic sovereignty, or root causes. These are concepts that excuse injustice. Silence in the face of injustice means that injustice wins.

We changed the world's institutions and laws after World War II because they had lost their legitimacy and integrity. Are we there again? Is it time to ask the hard questions about the United Nations as a deliberative body? I think it is.

The UN was the institution the world set up to implement "Never Again." Its historical tutor was the Holocaust, yet it seems hardly to have been an eager pupil. What was supposed to happen never again has, again and again.

The UN had four objectives: to protect future generations from war, to protect human rights, to foster universal justice, and to promote social behavior. Since then, forty million people have died as a result of conflicts in the world. Nations debate, people die. Nations dissemble, people die. Nations defy, people die.

We need more than the words of justice, we need justice. In these frenetically fluid, intellectually sclerotic, economically narcissistic, ideologically polarized, and rhetorically tempestuous times, a world that too often feels like it's spinning out of control, really, really, can't afford to be complacent about the absence of multilateral leadership to make sure the compass stays pointed in the most rights-oriented direction. I think the global community needs to rethink the morality of its almost reflexively protective attitude towards this institutional

behemoth, stop making excuses for its inexcusable and seemingly infinite patience for injustice and start insisting that it do the job it was set up to do.

We're the generation that bares the historical weight of the Holocaust pain, the generation whose commitment to justice was the phoenix that rose from the ashes of Auschwitz. How many more outrages will our generation witness before we lost eh final victim, our humanity.

The arc of the moral universe may be long, but it decidedly and increasingly does not always bend towards justice. Why does that matter? Because it means that too many children will never get to grow up, period. Let alone grow up in a moral universe that bends towards justice. Our outrage over WWII, inspired us to hold the Nuremberg Trials. This memory should be all we need to keep the fire lit under human rights—the memory of the horror when they do not exist.

My life started in the country where there had been no democracy, no rights, no justice; it created an unquenchable thirst in me for all three. My father died a month before I finished law school, but not before he had taught me that democracies and their laws represent the best possibility of justice, and that those of us lucky enough to be alive and free have a particular duty to our children to do everything possible to make the world safer for them than it was for their grandparents, so that all children, regardless of race, religion, or gender can wear their identities with pride, indignity, and in peace.

Thank you, Irwin and Alan for the honor of including me in this historic conference.

## **PRESENTATION AND ADOPTION OF THE NUREMBERG PROCLAMATION**

### **“NEVER AGAIN” DECLARATION**

Richard D. Heideman: We invite Professor Cotler, Professor Dershowitz to present the “Never Again” Resolution for our receipt and adoption.

Professor Dershowitz: It has been a long and very productive day and I am going to keep my remarks very short. I just want to have a personal thank you. I want to thank everybody who put this together - a remarkable group of people - but I want to express a special thanks to my dear friend Irwin Cotler. The highest compliment I'm every paid is when people call Irwin Cotler the Canadian Alan Dershowitz and call

me the American Irwin Cotler. We were joined at the hip at birth. We have known each other since 1965 and we have worked together on everything and the work that he does is just remarkable.

He's going to read to you the proclamation, because he wrote the proclamation. I kibitzed a little, wrote a few notes on the side, but it was really his work that put together this conference, his work that put together this very important declaration. And we hope the declaration will not only be adopted here, but will serve as a model adopted all over the world by legislators, by universities, by other institutions that can turn words into action. Irwin:

Professor Irwin Cotler: Thank you Alan. You've made—from the inception of this international legal symposium this morning to its conclusion now—an enormously important and effective intellectual, juridical, and policy contribution and we are all in your debt today as we are always in your debt every day for standing up for justice and against injustice.

I want to say to Justice Abella—in her usual modest demeanor there—I just want to say what I've said elsewhere: that the best thing I had the privilege to do as Minister of Justice and Attorney General of Canada was to recommend her appointment to the Supreme Court of Canada which was unanimously affirmed by the government of Canada, and I would say by the Parliament and People of Canada. So thank you, Rosie. It was a truly marvelous address that deserves to be read and reread, studied, internalized, and acted upon.

What I'd like to do now, because of constraints of time, is simply just to read excerpts from the declaration. Effectively, this “Never Again” Declaration is a summary, almost a codification of what has been discussed, and represented at this international legal symposium. It reads as follows:

**THE NEVER AGAIN DECLARATION ADOPTED AT THE  
NUREMBERG SYMPOSIUM; SPONSORED BY MARCH OF THE  
LIVING INTERNATIONAL, JAGIELLONIAN UNIVERSITY AND  
THE RAOUL WALLENBERG CENTER FOR HUMAN RIGHTS**

We, Parliamentarians, Political Leaders and Representatives of  
Civil Society from around the world,

RECOGNIZING that genocide is the most insidious and  
destructive threat known to humankind—the ultimate crime against  
humanity—a horrific and unspeakable act whereby state-sanctioned  
incitement transforms hatred into catastrophe;

RECOGNIZING that the Holocaust constitutes genocidal horrors  
too terrible to be believed but not too terrible to have happened;

RECOGNIZING that on December 9, 1948 the world came

together to draft the *Convention on the Prevention and Punishment of the Crime of Genocide* (the “Genocide Convention”) having now the force of customary international law;

RECOGNIZING that while the twentieth century was the century of the *Genocide Convention*—and the *Universal Declaration of Human Rights* adopted on December 10, 1948—it was also the century of multiple preventable genocides and mass atrocities;

RECOGNIZING that inaction and indifference can lead to mass atrocity and genocide;

RECOGNIZING that the dangers of genocide and mass atrocity shall never cease unless the lessons of genocides past are heeded and acted upon;

**WE HEREBY AFFIRM:**

I’m not going to read the text of each of the affirmations. There are some twelve affirmations. I am going to read just one line, the declaration with respect to each affirmation.

Le devoir de mémoire—The imperative of remembrance

The danger of state-sanctioned incitement to hate and genocide - the responsibility to prevent

The danger of anti-Semitism—the responsibility to combat

The danger of Holocaust denial—the responsibility to repudiate false witness

The perils of indifference and inaction in the face of mass atrocity and genocide—the responsibility to protect

The danger of impunity: the responsibility to bring war criminals to justice

The danger of “la trahison des clercs” —The betrayal of the elites: the responsibility to speak truth to power

The threat of assaults on the vulnerable and powerless

The need to prevent targeted violence against women

The need to prevent mass atrocities against children

The responsibility to pay tribute to the rescuers

The imperative to respect the legacy of Holocaust survivors

And it concludes as follows:

**WE REMEMBER, AND PLEDGE:**

Never again will we be indifferent to incitement and hate;

Never again will we be silent in the face of evil;

Never again will we indulge racism and anti-Semitism;

Never again will we ignore the plight of the vulnerable; and

Never again will we be indifferent in the face of mass atrocity and impunity.

**WE WILL SPEAK UP AND ACT** against racism, against hate, against anti-Semitism, against mass atrocity, against injustice, and

against the crime of crimes whose name we should even shudder to mention: genocide.

Declared, and I trust adopted, at the international legal symposium here at Jagiellonian University, in Poland on the “The Double Entendre of Nuremberg: The Nuremberg of Hate and the Nuremberg of Justice,” May 4, 2016. Thank you.

Richard D. Heideman: Thank you very much. All in favor of the resolution please say “aye.”

Those Assembled: “Aye.”

Richard D. Heideman: “Any opposed?” Seeing none, it’s unanimously adopted. We want to express personal thanks to Dr. Shmuel Rosenman, Dr. David Machlis, to Eli Rubenstein, as well as to all of those from the March of the Living, those from Jagiellonian University, and those from the Raoul Wallenberg Centre for Human Rights. We pay special tribute, and express our heartfelt thanks, to the Chairs of The Nuremberg Symposium, Professor Irwin Cotler and Professor Alan Dershowitz.











Special thank you to:

Professor Irwin Cotler, Chair, The Nuremberg Symposium  
Professor Alan Dershowitz, Chair, The Nuremberg Symposium  
Richard D. Heideman, Program Chair, The Nuremberg Symposium

Dr. Shmuel Rosenman, Chairman, International March of the Living  
Phyllis Greenberg Heideman, President,  
International March of the Living  
Aharon Tamir, Vice Chairman  
Dr. David Machlis, Symposium Academic Advisor  
Eli Rubenstein, Educational Director  
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