

**WASHINGTON UNIVERSITY LAW  
WHITNEY R. HARRIS WORLD LAW INSTITUTE**

**CRIMES AGAINST HUMANITY INITIATIVE**

---

**FORGING A CONVENTION ON  
CRIMES AGAINST HUMANITY**

---

Remarks of Mr. Whitney R. Harris

Former Nuremberg Prosecutor

Delivered to the Distinguished Participants Assembled on the Occasion of the

Third Meeting of the Whitney R. Harris World Law Institute

Crimes Against Humanity Initiative

March 11, 2010

The Brookings Institution, Washington, D.C.

---

Dear friends and colleagues,

I am so pleased that you have gathered at this meeting to take up one of the great unfinished projects of the Nuremberg Trial, in which I participated as a member of Justice Robert H. Jackson's prosecution team. I thank each of you for participating in this venture, and I particularly wish to congratulate my dear friend, Cherif Bassiouni, for being awarded the Harris Institute's World Peace Through Law Award this evening. I would also like to thank the members of the Crimes Against Humanity Initiative Steering Committee, chaired by Professor Leila Sadat, for the selfless work they have done to advance the cause of world peace, and for their contribution to this effort.

Friends, I am the last living member of the Nuremberg Prosecution team.

At Nuremberg, we prosecuted the Nazis for crimes against peace, war crimes and crimes against humanity. I personally presented the first case to the Tribunal. It was the case against Ernst Kaltenbrunner, the highest ranking SS officer to be prosecuted and the Chief of the Reich Main Security Office, whose units were responsible for murdering nearly 2,000,000 persons.

I also assisted Justice Jackson with his cross-examination of Herman Goering.

It was a grim time in 1945. Europe lay in ruins. Millions of innocent men, women and children had been slaughtered during the war, either murdered systematically by the Nazis or killed as by-products of war. I was the first to interview Rudolph Hoess, the commandant of Auschwitz concentration camp, during which Hoess told me that two and half million human beings had been exterminated at Auschwitz.

Out of the ashes, however, came a whisper of hope. On November 20, 1945, the rule of law was resuscitated with the opening of trials of 22 leading representatives of the Nazi regime in courtroom 600 in the Palace of Justice at Nuremberg. These men were charged with conspiracy to commit crimes against peace, aggressive war, war crimes and crimes against humanity.

Many of them were convicted and paid the ultimate price. I was the only prosecutor in the Palace of Justice the night of the executions.

Following the trials, the Genocide Convention was adopted in 1948, criminalizing the Nazi's attempt to exterminate European Jewry. The Geneva Conventions were elaborated in 1949, codifying the laws of war. But crimes against humanity – one of the most revolutionary and important elements of the Nuremberg Charter itself – were never set out in a treaty until the adoption of the International Criminal Court Statute in the summer of 1998. Practically speaking, what that means is that the words uttered after Nuremberg “never again” have but a hollow significance. The victims of the killing fields of Cambodia, the massacres in the Former Yugoslavia, and the horrific violence in the Democratic Republic of the Congo and Sierra Leone – all these terrible crimes – that

cannot be considered genocide under the Genocide Convention – never had what happened to them criminalized in an international convention, and States can still, even today, argue that they are not responsible for the perpetration of such crimes and cannot be made answerable for their commission before the International Court of Justice. The International Criminal Court can punish crimes against humanity, but only for cases falling within its jurisdiction, and only for a very small number of high ranking individual defendants.

My friends, this initiative of the Institute that bears my name is the first serious international effort to fill this gap, complete this work, and fulfill the Nuremberg legacy. This summer delegates will struggle in Kampala at the ICC Review Conference with the other remaining unfinished business of Nuremberg – the crime of aggression. I hope they will be successful. But here, today, you are considering the other pillar of the Nuremberg legacy – crimes against humanity.

Civilization can no longer tolerate the commission of crimes against humanity.

Thank you.

Whitney R. Harris  
Former Nuremberg Prosecutor  
February 26, 2010  
Saint Louis, Missouri