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## "You Can Run but You Can't Hide": A Case for Criminal Trial Under International Auspices to Prosecute the Human Right to Personal Security

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**“YOU CAN RUN BUT YOU CAN’T HIDE”\*:  
A CASE FOR CRIMINAL TRIAL UNDER  
INTERNATIONAL AUSPICES TO  
PROSECUTE THE HUMAN  
RIGHT TO PERSONAL SECURITY**

**Keith D. Nunes†**

I.

In this era of the new world order which we began to chart when President Harry S. Truman signed the Charter of the United Nations,<sup>1</sup> and moved the world away from the Westphalian system,<sup>2</sup> I am discomfited when I read the New York Times and find that in the autumn month of October 1993 this great paper of record still speaks of “mankind.” Humankind, to me the inclusive English-language word to embrace men and women, black and white, Native Americans and Latino-Americans, is not just a mere abstraction. It is a code word which represents the whole range of the race that is human.

The human race is a family. This family of the human race is of infinite value. Demands, expectations, and identities flow from this single family. Well-being, wealth, and skill are shaped and shared in security. Affection, respect, rectitude and

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\* President Ronald Regan’s warning to international terrorists following the hijacking of the Achille Lauro. Fred Hiatt and Dale Russakoff, *Four Bunglers Shake the Global Community*, WASH. POST, Oct. 13, 1985, at A1.

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<sup>1</sup> U.N. CHARTER. “That we now have this Charter at all is a great wonder. It is also a cause for profound thanksgiving to almighty God, who has brought us so far in our search for peace through world organization.” HARRY S. TRUMAN, MEMOIRS BY HARRY S. TRUMAN 290 (1955). [Hereinafter Truman].

<sup>2</sup> An outline of this model of the overall international order is given in Alfred P. Rubin, *Enforcement Rules of International Law*, 34 HARV. INT’L L. J. 149, 159-60 (1993).

enlightenment are shaped and shared in sorority and fraternity. Power is shaped and shared widely in the community in democracy. Wealth is shaped and shared in the international market economy. In short, the human race is preoccupied with objects of desire that are not tangible, but rather conditions of life. The prominence and subtlety of these conditions of life are expressed by the short hand term "human dignity."<sup>3</sup>

The human race is not a cold object. Women are sisters and men are brothers. "We are more alike my friends than we are unlike," Maya Angelou attests in her poem "Human Family."<sup>4</sup> We all lose family members when Joelito Filartiga is tortured in Paraguay;<sup>5</sup> when Amy Elizabeth Biehl, the 26-year old Fulbright exchange student from California, is stabbed to death by militant revolutionists in Cape Town;<sup>6</sup> when troops are used in China to massacre demonstrators before the eyes of our television cameras;<sup>7</sup> when the strongest troops in the Arab world aggress against Kuwait;<sup>8</sup> when the Kurds try and fail to win independence following the upheavals caused by war;<sup>9</sup> when a hurricane devastates homes in Florida;<sup>10</sup> when the Mississippi floods towns in the Heartland;<sup>11</sup> and when an earthquake in south-west India kills 30,000 people.<sup>12</sup> All wars are civil wars. All famines are civil famines. All disasters are civil disasters. All disrepair of the environment is civil disrepair. All drug trade is civil drug trade. All plagues are civil plagues.

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<sup>3</sup> For a more detailed empirical reference to human dignity, as well as a comprehensive treatment of what is involved in the achievement of human dignity, see MYRES S. McDOUGAL, HAROLD D. LASSWELL & LUNG-CHU CHEN, *HUMAN RIGHTS AND WORLD PUBLIC ORDER* (1980).

<sup>4</sup> Maya Angelou, *Human Family*, in *I SHALL NOT BE MOVED*, 4, 5 (Random House 1990).

<sup>5</sup> *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980).

<sup>6</sup> David Maharaj & Lily Dizon, *U.S. Student Killed by a Mob in South Africa*, *L.A. TIMES*, Aug. 26, 1993, at A3.

<sup>7</sup> Louise Branson, *Bloodbath in China*, *THE TIMES (LONDON)*, June 4, 1989, at 1.

<sup>8</sup> Kim Murphy, *Arab Leaders Call for Troops to Halt Iraqis*, *L.A. TIMES*, Aug. 11, 1990, at A1.

<sup>9</sup> *Kurd Violence Rages*, *NEWSDAY*, June 27, 1993, at 14.

<sup>10</sup> Michael Hedges, *Andrew Devastates South Florida*, *WASH. TIMES*, Aug. 25, 1992, at A1.

<sup>11</sup> Larry Witham & Joyce Price, *Unrelenting Torrent Floods Worsen in Battered Midwest*, *WASH. TIMES*, July 11, 1993, at A1.

<sup>12</sup> Robie Dutta et al., *Thousands Die in their Beds as the Earth Opens*, *THE TIMES (LONDON)*, Oct. 1, 1993, at 1.

Senator Robert Kennedy told those of us who opposed the indignity of apartheid in 1966, "that those who live with us are our brothers, that they share with us the same short moment of life, that they seek as we do nothing but the chance to live out their lives in purpose and happiness, winning what satisfaction and fulfillment they can."<sup>13</sup>

## II.

Human beings will continue to be affected by each other. This trend toward interdetermination throughout the world community is irreversible, unless catastrophic events introduce barriers between people breaking down global communication and transportation.<sup>14</sup> Local trends making up aspects of the complex phenomenon of isolationism may attempt to parochialize attention. But we must redouble our international cooperation. The family of the human race can be organized to ensure our security and prosperity. This is why, amid the social cataclysm of Hitler's war, the Allies gathered in London;<sup>15</sup> and why they met in San Francisco and Dumbarton Oaks to found the United Nations, the World Bank and the International Monetary Fund.<sup>16</sup>

Organizing the human family for prosperity and security involves building the civil authority and civil effectiveness to embrace the human family in a civil community of global proportions.

Peace-making and peace-keeping functions, as well as economic and social functions, have to be shared in effective social institutions of the world community. Schisms within and between territorial communities can be recast into civil society. Senator Robert Kennedy perceived this when, in 1966, he began

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<sup>13</sup> Senator Robert F. Kennedy, Day of Affirmation Academic and Human Freedom, Address given at University of Cape Town (June 6, 1966), in *RFK: COLLECTED SPEECHES 237* (Edwin O. Guthman & C. Richard Allen eds., 1993) (hereinafter *RFK*). See also, Michael K. Frisby, *Kennedy Family Has Long Ties to the Cause; Mandelas visit U.S.*, *BOSTON GLOBE*, June 23, 1990, (National/ Foreign).

<sup>14</sup> For detailed documentation of the interdetermination on a world-wide scale, see Myres S. McDougal, W. Michael Reisman & Andrew Willard, *The World Community: A Planetary Social Process*, 21 *U.C. DAVIS L. REV.* 807 (1988).

<sup>15</sup> J. HUMPHREY, *HUMAN RIGHTS AND THE UNITED NATIONS*, 10-13 (1984).

<sup>16</sup> Articles of Agreement of the International Monetary Fund, Dec. 27, 1945, 60 stat. 1401, T.I.A.S. No. 1501.

the process of bringing down the juggernaut of apartheid,<sup>17</sup> just as President Kennedy before him had gone to begin the process of razing the Berlin Wall in 1963.<sup>18</sup> Blind self-interest destroys the individual as surely as the blinders of special interests destroy a territorial community. Should exchanges between human beings permit us to capitulate to those who call for breaking our commitments to human values? History has shown from 1914 until 1989<sup>19</sup> that to be committed to human dignity and the human value of rectitude calls for boldly affirming that "I have nothing to offer but blood, toil, tears and sweat."<sup>20</sup> To act morally, for oneself and for those in one's care, has often meant risking torture and death. Margaret Mead testified that a "[c]omparison of different cultures demonstrates that man may set his spiritual goal low or high, that he may cast himself a cheap or a heroic role, and that as he casts himself, so will he live and his children after him."<sup>21</sup> Exchanges between human beings cannot ever permit us to capitulate to those who call for breaking our commitments to human values and the value of rectitude.

### III.

This world is increasingly being made one by technology and science. New communications enable the problem of one individual to become the concern of all human beings. New technology creates equality among human beings. However, avoidable human adversity such as poverty, treatable disease, illiteracy and shortage of meaningful work, as well as specialists in violence, who assess themselves to be the more powerful group in society, are all threatening our world.

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<sup>17</sup> Frisby, *supra* note 13.

<sup>18</sup> Thomas Palmer, *26 Years Later, Another Kennedy Tours Berlin; East Bloc Upheaval*, BOSTON GLOBE, Nov. 29, 1989, (National/Foreign), at 13.

<sup>19</sup> These dates indicate the period of Soviet communism. POLITICAL HANDBOOK OF THE WORLD: 1991 700-703 (Arthur S. Banks, ed. 1991)

<sup>20</sup> Winston Churchill taking office as Prime Minister of a national coalition government to do battle with Hitler and the Nazis, "a monstrous tyranny, never surpassed in the dark, lamentable catalogue of human crime," 360 House of Commons Debates 5th Series column 1501.

<sup>21</sup> "The Comparative Study of Culture and the Purposive Cultivation of Democratic Values," in CONFERENCE ON SCIENCE, PHILOSOPHY AND RELIGION 56, 65 (1942).

In order to address the challenges of avoidable human adversity; promote the sharing of all human values; and to have the means of equalizing the economic burden, the world community needs minimum public order. The world community achieves minimum public order through institutions and processes, such as tribunals and a police force. An organization is needed to oversee these activities. The new world order, so painstakingly begun during World War II and interrupted during the Cold War, allocates civil authority on a world-wide scale to the world community organized in the form of the United Nations. This minimal authority allocated to the United Nations represents the serious purpose of governments to go beyond their national interests. In short, the United Nations is mandated with the subsidiary authority of the world's territorial communities commonly called states.

#### IV.

In affirmation of our solidarity as a human species; that the human race is a family; that dignity and equality shall be the inalienable right of all men and women; the Universal Declaration of Human Rights was charted by the United Nations in 1948.<sup>22</sup> The pursuit of universal human rights was stipulated by the Declaration as a common standard of achievement for *all* members of the human family. The Declaration, an impressive set of legal norms, is the greatest single milestone in human history. Never before has an international forum committed itself to human rights as a precondition to justice and peace. Nor has an organization of governments set forth human rights as a normative goal. Any deprivation of autonomy should not be tolerated since the Universal Declaration requires that dignity and equality shall be the inalienable rights of all men and women.<sup>23</sup>

There are fundamental rights that a national government is unable to safeguard. Certain elementary standards of humanity need to be observed by individual governments in the treatment of human beings who may be strangers or natives. Human experience has shown in dealing with Hitlerism, and

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<sup>22</sup> UNIVERSAL DECLARATION OF HUMAN RIGHTS, G.A. Res. 217, U.N. Doc. A/810 (1948).

<sup>23</sup> *Id.* at art. I.

continues to show in subsequent generations, that human beings commit atrocities against each other ranging from individual acts of cruelty and terror to larger-scale acts of genocide. In Socrates' time, the Tribe had too little authority and control to meet the needs of men and women for minimum public order. Shifting the focus of loyalty beyond the family and the Tribe, caused men and women to demand an area of authority and control called the "City-State."<sup>24</sup> Moats and drawbridges could neither counter the breaches of barbarians in Medieval Times, nor afford extended human operations. During the Cold War a contending totalitarian socialist order sought a *cordon sanitaire*<sup>25</sup> demarcated by Central and Eastern Europe with condemnatory outcomes for human values:

[s]o that the prisons should vanish forever, we built new prisons. So that all frontiers should fall, we surrounded ourselves with a Chinese wall. So that work should become a rest and a pleasure, we introduced forced labor. So that not one drop of blood be shed anymore, we killed and killed and killed."<sup>26</sup>

Just as people in Socrates' day sought to develop complex political organizations by reinterpreting kinship and ethnicity, men and women began to look beyond their local boundaries. In looking beyond these local boundaries, these men and women sought the separate parochial "Nation-States" to promote their individual and group demands for the shaping and sharing of power, wealth, enlightenment and other treasured human values. Human beings were eager to proclaim their authority for a politically effective unit that transcended their immediate loyalties to class, faction, kinship and ethnic groups. The path trod from non-state to state societies was a change *from* kinship structures that fulfill functions of allocating rights, mediating conflicts and enforcing public order in general *to* political structures that subordinate kinship structures and afford shifting loyalties to more inclusive entities. But the Nation-State's au-

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<sup>24</sup> A sovereign state consisting of an independent city and its surrounding territory. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 245 (1981).

<sup>25</sup> A chain of buffer states organized around a nation considered ideologically dangerous or potentially hostile. *Id.* at 296.

<sup>26</sup> ABRAM TERTS [ANDREI SINYAVSKY], *On Socialist Realism, in THE TRIAL BEGINS; AND ON SOCIALIST REALISM* (1960).

thority and control was also pushed to the bounds of its community process. It also reached the same conditions of not being able to fulfill the basic human right to security of the person as was the case with the Tribe and the City-State. The loosely organized confederate Westphalian system<sup>27</sup> comprised of co-equal Nation-States failed abysmally to check deprivations of human rights by limiting state power. Acting with the apparatus of the Nation-State alone could not assure the most basic human value of respect with constituent elements of reciprocal tolerance and mutual forbearance to facilitate the exchange and pursuit of other values. To create a new world order from multiple centers of community process, the subsidiary authorities and control of Nation-States have therefore been allocated to the most inclusive international organization, the United Nations. This organization offers in embryonic form policing functions, world court functions, health, education and labor functions. It organizes on a constitutional basis the universal family of nations.

## V.

The Universal Declaration of Human Rights<sup>28</sup> meets a community-wide demand for adequate personal security through the enjoyment of all human values and respect for the dignity of the human being. It communicates the potent demands which men and women have held about freedom during some two and a half millennia of human history. In the myth, it may be remembered, Hermes asked Zeus how he should distribute the gifts of reverence and justice, Zeus responded that these gifts should go to all, not given to a few.<sup>29</sup> The Universal Declaration, by consolidating trends of verbal and actual commitment with traditional political and civil rights and with the national constitutions and legal systems of territorial communities, embraces a future for the human family where dignity and equality is the inalienable right of all.

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<sup>27</sup> The Westphalian system had a Western European center of gravity as did the Consultations of the Concert of Europe and subsequently as did the League of Nations.

<sup>28</sup> See *supra* at note 22.

<sup>29</sup> See PLATO, PROTAGORAS (W.R.M. Lamb trans., 1882).



The Declaration's goal is the establishment of a universal standard of justice and human dignity.<sup>30</sup> Men, women and children in many territorial communities cannot yet say that their claims have been met. Local conflicts continue to make killing fields of Bosnia-Herzegovina, Haiti, and Somalia. Conflicts influenced by the Cold War continue despite its demise.

The history of human beings' injustice to other humans is pervasive. In this century, for instance, the Jewish people were put to mass death under conditions of utmost humiliation. Their absence, indeed the loss of whole Jewish communities in the cities of Vienna and Berlin, haunts Central and Eastern Europe. "Perhaps, if we don't always have a conscious conscience, we have a subliminal one, from which the memory of past wrongs is not so easily erased."<sup>31</sup> Yet the youthful history of freedom reasserting the immutable value of each and every image of God glints through these folds as "a state of mind, a temper of the will, a quality of . . . imagination, a predominance of courage over timidity, of the appetite for adventure over the love of ease."<sup>32</sup> The Declaration of Human Rights, as much a constitutional document to the United Nations Charter (which is a treaty stipulating rights and duties for the parties) as the Declaration of Independence is to the Constitution of the United States, is a legal basis for individuals to hold their rulers to international human rights standards.<sup>33</sup> The Declaration moves the world community from the Peace of Westphalia and advances the cause of life coupled with respect for the dignity of all human beings. Woefully the United Nations has teeth too soft to implement the international protection of human rights. Nation-States, asserting their sovereignty, often ignore the Universal Declaration.<sup>34</sup> The miscreants, however, are careful to frame their ignorance in terms of claims which excuse themselves from this international law.<sup>35</sup>

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<sup>30</sup> See UNIVERSAL DECLARATION OF HUMAN RIGHTS, *supra* note 22, at Preamble.

<sup>31</sup> EVA HOFFMAN, A JOURNEY THROUGH THE NEW EASTERN EUROPE (1993).

<sup>32</sup> Senator Robert F. Kennedy, RFK *supra* note 13, at 243.

<sup>33</sup> See UNIVERSAL DECLARATION OF HUMAN RIGHTS, *supra* note 22, at Preamble.

<sup>34</sup> PAUL SIEGHART, THE INTERNATIONAL OF HUMAN RIGHTS, 11-12 (1983).

<sup>35</sup> HUMAN RIGHTS IN THE WORLD COMMUNITY ISSUES AND ACTION 27 (Richard Pierre Claude & Burns Weston eds., 1989).

The human rights outlined in the Universal Declaration are needed to ensure minimum world public order. With the firm foundation of such a minimum order, the world can be shaped to achieve the needs and wants of optimum civic order, managing environmental issues, migration and refugees, food and famine.<sup>36</sup> These human rights are a *sine qua non* for men and women to exist with dignity in a group. Their primary goal is to foster the growth and protection of the individual. As President Kennedy asked: "Is not peace, in the final analysis, basically a matter of human rights?"<sup>37</sup>

## VI.

To move beyond the power of positive example, the prosecution of human rights violations is recommended. To do this, the focus must shift from the substance of world public order to the implementation of a procedure which can hold the power elites and the demagogues accountable for qualitative world public order.<sup>38</sup> This enterprise of common responsibility must be undertaken.

What are the criteria for a procedure to prosecute human rights violations? The prospectus for a tribunal to prosecute human rights must demonstrate its facility for authority and effectiveness. Authority is as much an aspect of basic human values formed by evolving international expectations and expressed through legal norms, as is a reflection of sovereignty expressed through the voice of the people. Authority is essential to the functioning of a legal process to prosecute human

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<sup>36</sup> For discussion of the relationship between optimum and minimum order, see Myres S. McDougal, *Law and Peace*, 18 DENVER J. INT'L L. & POL'Y 1 (1989); Myres S. McDougal, *Law and Peace*, in APPROACHES TO PEACE, AN INTELLECTUAL MAP (W. Thompson & Kn. Jensen eds., 1991). See also, Myres S. McDougal & Siegfried Wiessner, *Law and Peace in a Changing World*, 22 CUMB. L. REV. 681 (1992); MYRES S. McDOUGAL & FLORENTINO P. FELICIANO, LAW AND MINIMUM WORLD PUBLIC ORDER: THE LEGAL REGULATION OF INTERNATIONAL COERCION (1961), reprinted as THE INTERNATIONAL LAW OF WAR: TRANSNATIONAL COERCION AND WORLD PUBLIC ORDER (1994).

<sup>37</sup> President John F. Kennedy, Address at American University (June 10, 1963).

<sup>38</sup> How well we are doing involves who is responsible, see Richard C. Snyder, Charles F. Herrmann & Harold D. Lasswell, *A Global Monitoring System: Appraising the Effects of Government on Human Dignity*, 20 INT'L STUD. Q. 221 (1976).

rights. It is the mandate as well as the assurance to the participants and officers that, acting in accordance with these values, will maintain the long-run plans for the institution. For a tribunal to be instituted without community support would deprive it of the power of authoritative decisions, even though it may go through the motions of calling witnesses, holding hearings, and convicting a party of guilt for a violation of law. The rationale of deterrence is mediated by the community's legal expectations. This deterrence goes beyond the effect of the tribunal's decision upon the immediate parties to long-term outcomes for other contemplating human rights deprivations. The community judgment dictates the influence of the tribunal's judgment. In this way the tribunal's decision is translated in consequent impact upon the heads, hearts and hands of potential deprivors.

Effectiveness must be exhibited by the tribunal. Idealism conjoined with practicality renders effective power whereas idealism without control yields a paper tiger. The shared perspectives and resources of the international community are traceable through the General Assembly to the Security Council of the United Nations.<sup>39</sup> The people, to extent the that they cannot be assembled in the United Nations, must shoulder responsibility and consensus, if not unanimity, and garner international resources through public opinion.

An effective judicial structure for an international tribunal to prosecute human rights involves choices between a domestic tribunal, an *ad hoc* special tribunal, a permanent special tribunal, or the World Court itself.<sup>40</sup> The United States, if so inclined, could establish a federal court to do the job. Such a tribunal could have the advantage of the economy of the existing federal system along with national control. The disadvantage of such a tribunal is that it would open up the United States to exorbitant claims of jurisdiction, to lack of trust in the decisions and to aspersions of bias.<sup>41</sup> Impartiality must be visible in the international decision-making. This is indispensable

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<sup>39</sup> U.N. CHARTER art. 2, para. 6.

<sup>40</sup> Claude & Weston, *supra* note 35 at 27.

<sup>41</sup> See *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 798-816 (D.C. Cir. 1984) (Bork, J., concurring).

to the international public acceptance of the envisaged tribunal's decisions.

The World Court could be mandated with a chamber devoted to the category of human rights prosecutions. The Statute of the World Court<sup>42</sup> empowers it to form chambers of three or more judges to hear and decide a particular category of case. The World Court would have the advantage of the economy of its availability and impartiality. But the World Court is disadvantaged by its constitutionally limited power to adjudicate cases. Its jurisdiction as to parties falls short of the competence to consider the conduct of a Nation-State that chooses not to submit itself to the World Court.<sup>43</sup>

It is unlikely that the serviceability of the World Court will improve in the near future. Nation-States depriving people of their human rights will surely not consent to World Court jurisdiction, and the recent process before the World Court concerning parts of the former Yugoslavia does not lead one to be sanguine about power elites being amenable to razing this crippling effect on the World Court. The World Court's experience with respect to complicated matters of proof is not helpful when viewing the claims of wealth processed in the *Barcelona Traction*<sup>44</sup> and *ELSI*<sup>45</sup> cases, even though the latter came before a chamber of the Court. Also, individuals cannot be parties in original proceedings before the World Court or its chambers.<sup>46</sup> Given serious drawbacks relating to the routes of a domestic tribunal and the World Court, it would be more feasible to go down the road of establishing a new and permanent tribunal exclusively devoted to the prosecution of deprivations of human rights. The end should be to effectuate the Universal Declaration of Human Rights.<sup>47</sup> The immediate goal would be to have

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<sup>42</sup> 59 Stat. 10-55, T.I.A.S. No. 993 (1945).

<sup>43</sup> *Id.* at art. 35 (1).

<sup>44</sup> *Barcelona Traction Case*, (Belgium v. Spain), 1970 I.C.J. 4 (Judgment of Feb. 5, 1970). See Francis A. Mann, *The Protection of Shareholder's Interests in the Light of the Barcelona Traction Case*, 67 AM. J. INT'L L. 259 (1973); Francis A. Mann, *Annals of France*, THE NEW YORKER, May 21, 28, 1979.

<sup>45</sup> *Elettronica Sicula S.p.A. (ELSI)*, (United States v. Italy), 1989 I.C.J. 15 (Judgment of July 20, 1989). See Francis A. Mann, *Foreign Investment in the International Court of Justice: The ELSI Case*, 86 AM. J. INT'L L. 92 (1992).

<sup>46</sup> SHABATAI ROSENNE, *THE WORLD COURT: WHAT IT IS AND HOW IT WORKS* (1962).

<sup>47</sup> *Supra* note 22.

the alleged culprit arraigned, with or without his or her consent, before a tribunal that is both impartial and jurisdictionally competent and effective. The better approach would be to establish a permanent criminal tribunal under international auspices and on a regional basis when the exigencies of the situation gives rise to its necessity. The situation in the former Yugoslavia is a case in point. A tribunal under international auspices should be established on a permanent basis for Central Europe. Let it begin to establish a jurisprudence of human rights norms for that region just as the Council of Europe has done for Western Europe at Strasbourg. As and when human rights deprivations develop in another region of the world, a similar tribunal can be established there to safeguard personal security.

The lessons of the social cataclysm of WWII, particularly the atrocities of the Third Reich,<sup>48</sup> brought home the message that large-scale deprivations of human rights *not only* decimate individuals *but also* endanger peace and security (as President Kennedy counselled). The atrocities of the Nazis also brought home<sup>49</sup> that individual decision-makers must not be allowed to hide behind the abstract mantle of the Nation-State to escape their personal responsibility.<sup>50</sup> Atrocities against humanity must not escape prosecution merely because the perpetrators were acting in the name of the state. The international tribunals at Nuremberg and Tokyo imposed direct responsibility on

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<sup>48</sup> J. HUMPHREY, *HUMAN RIGHTS AND THE UNITED NATIONS*, 10-13 (1984).

<sup>49</sup> In the four-hour documentary movie "The Nazi Plan", which is a compilation of German footage of the Nazi Party's genesis, rule in Germany and war up to 1944, there is a remarkably poignant scene of indignity meted out to native adversaries and assailants. The trial before the People's Court of Berlin of those who tried to assassinate Hitler in the bomb plot of 1944 is shown. Cowering men struggled to hold up trousers from which their belts had been seized and vainly tried to contend without the necessities of false teeth and eyeglasses. SS guards dragged them before Judge Freisler. They had no defense counsel. Forlorn attempts to represent themselves drew the acknowledgment of attacks of abuse from the authoritative judicial decision maker of the Nazis.

At Nuremberg, not far from the dreadful ovens of the former concentration camp of Dachau, this film provided a stark contrast to the acceptable minimum standard of criminal procedure for the 22 major Nazi defendants.

<sup>50</sup> *Id.*

individuals and dismissed the defense of superior orders as well as those of acts of state and related claims of immunity.<sup>51</sup>

A feasible program to prosecute human rights violations needs to be developed. Human rights encompass a wide range of values, some justiciable and others aspirational which merge the perspectives of legal and moral orders as both poles to the spectrum. Assertions of certain human rights violations secure comparable rights of others who also suffer similar violations. This helps to establish the process of interdependent public order rights.

As a first step, war crimes and aggressive war, as well as crimes against humanity should be on the prosecution's agenda. The Nuremberg Principles<sup>52</sup> have been put on the back burner for the duration of the Cold War. The Cold War, the non-aligned movement and superpower rivalry all militated for our position on human rights to be equivocal. Let's begin the process of the new world order envisaged by Justice Jackson and President Harry Truman,<sup>53</sup> with the commonly accepted definition of international crimes from Nuremberg to protect the basic right to life and security of the person. Building on this foundation, violations of other human rights as protected by treaty and customary international law can be prosecuted in phase two.

## VII.

These are times of change. A time not just of change but a turning point, a change of direction. The Cold War has ended and communism in the former Soviet Union and its satellites is withering. Socialism in East Germany, Latin America and China is becoming a discredited system. Despite these changes, it seems that even those who keep faith in human dignity appear unenthusiastic about this turning point in human history.

There is no human rights policy in the atlantic world if Mr. Elie Wiesel has to remind us at the Holocaust Memorial, in Washington, D.C., of the killing fields and the torture in the

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<sup>51</sup> Claude & Weston, *supra* note 35 at 46-47 (Nuremberg represents a recognition that individuals, as much as states, are to be responsible members of the international community).

<sup>52</sup> *Id.*

<sup>53</sup> Truman, *supra* note 1 at 271-96.

former Yugoslavia across the road from the vaunted Strasbourg system of European Human Rights.<sup>54</sup> It is smug to believe that there is a Human Rights Law, when Mrs. Margaret Thatcher has to remind one that the atlantic world right now has no leader with lion heart,<sup>55</sup> and Mr. Paddy Ashdown emphasizes that the United Nations policy in the former Yugoslavia is cynical and dishonorable.<sup>56</sup>

In order to negotiate a change of direction, American power must be shown and used as decisively as it was between 1945 when it defeated Hitler.<sup>57</sup> All human beings are created in the image of God. All human beings are endowed with the inalienable dignities of equality and uniqueness which makes each of us precious beyond measure. The way to liberty, equality and happiness must respect the prescriptions of the Universal Declaration of Human Rights and respond to mass death and inflicted degradation through implementation of the Nuremberg Principles.<sup>58</sup> Freedom must be exercised by fully respecting every individual image of God. All human rights must be exercised with full respect not only for one's own but also importantly for one's fellow human being's rights. Human dignity is perverted by unjust and oppressive authority. All forms of systematized degradation are incompatible with full human dignity and the image created in human beings as a family.

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<sup>54</sup> Ellie Wiesel, Speech at the Holocaust Museum (Apr. 1993).

<sup>55</sup> William Drozdiak, *Western Anxiety Deepens Over Bosnian Crisis: Unappealing Options Sense of Helplessness Frustrate U.S., Allied Leaders*, WASH. POST, Apr. 15, 1993, at A20.

<sup>56</sup> Craig R. Whitney, *Despite Activities, Western Europe is Loath to Intervene in Balkans*, CHI. TRIB., Aug. 2, 1992, at 3.

<sup>57</sup> Claude & Weston, *supra* note 35 at 46-47.

<sup>58</sup> *Id.*