

the Kellogg-Briand Pact of 1927 that is referred to in the Judgment. Today the UN Charter requires members (Art. 2(4)) to 'refrain in their international relations from the threat or use of force' against other states, while providing (Art. 51) that nothing shall impair 'the inherent right of individual or collective self-defence if an armed attack occurs against a Member ...' When viewed in conjunction with the Nuremberg Charter, those provisions suggest the contemporary effort to distinguish not between 'just' and 'unjust' wars but between the permitted 'self-defence' and the forbidden 'aggression' — the word used in defining 'crimes against peace' in Article 6(a) of that Charter.

Second, Article 6(c) represented an important innovation. There were few precedents for use of the phrase 'crimes against humanity' as part of a description of international law, and its content was correspondingly indeterminate. On its face, paragraph (c) might have been read to include the entire programme of the Nazi government to exterminate Jews and other civilian groups, in and outside Germany, whether 'before or during the war', and thus to include not only the Holocaust but also the planning for and early persecution of Jews and other groups preceding the Holocaust. Moreover, that paragraph appeared to bring within its scope the persecution or annihilation by Germany of Jews who were German nationals as well as those who were aliens. This would represent a great advance on the international law of state responsibility to aliens as described at p. 90, *supra*. Note, however, how the Judgment of the Tribunal interpreted Article 6(c) with respect to these observations.

In other respects as well, the concept of 'crimes against humanity', even in this early formulation, developed the earlier international law. War crimes could cover discrete as well as systematic action by a combatant — an isolated murder of a civilian by a combatant as well as a systematic policy of wanton destruction of towns. Crimes against humanity were directed primarily to planned conduct, to systematic conduct.

In defining the charges against the major Nazi leaders tried at Nuremberg and its successor tribunals, the Allied Powers took care to exclude those types of conduct which had not been understood to violate existing custom or conventions and in which they themselves had engaged — for example, the massive bombing of cities with necessarily high tolls of civilians that was indeed aimed at demoralization of the enemy.

JUDGMENT OF NUREMBERG TRIBUNAL

International Military Tribunal, Nuremberg (1946)

The Law of the Charter

The jurisdiction of the Tribunal is defined in the [London] Agreement and Charter, and the crimes coming within the jurisdiction of the Tribunal, for which there shall be individual responsibility, are set out in Article 6. The law of the Charter is decisive, and binding upon the Tribunal.