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The 1919 Paris Peace Conference and the Allied Commission: Challenging Sovereignty Through Supranational Criminal Jurisdiction

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6.1. Introduction

The first major effort to curb international crimes through international penal process arose after the First World War. In 1914 Europe, divided by competing military alliances, was a powder keg waiting to explode. The fuse was lit when a Serbian nationalist assassinated Austrian Archduke Franz Ferdinand on the bridge at Sarajevo. Lacking any institution with authority to maintain peace, the disputing parties had no choice but to call upon their allies and resort to force. The First World War witnessed one of the largest military mobilisations in history, with the Allied Powers mobilising over 40 million soldiers and the Central Powers mobilising close to 20 million soldiers. Four years later, with the armistice in force, the war came to an abrupt halt. The smoke cleared slowly and the devastation of cities, the loss of life, mangled bodies and scattered families lay revealed. The facts of the death, destruction and the financial cost of the war staggered the 'civilised' world. The total cost in human life was estimated at 22 million dead and eight million casualties. In monetary terms, the war cost US$202 billion, with property destroyed in the war topping US$56 billion.[1]

The end of the First World War marked 300 years since the start of the Thirty Years' War in 1618 that had ended with the Peace of

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1 For war costs at a glance, see Charles Horne (ed.), *The Great Events of the Great War*, vol. II, National Alumni, New York, 1923. A table of the cost in human life and money is reproduced in Harold Elk Straubing (ed.), *The Last Magnificent War: Rare Journalistic and Eyewitness Accounts of World War I*, Paragon House, New York, 1989, pp. 402–3.

Westphalia. The war "to end all wars" was premised on the same general goals as that conflict 300 years earlier – military and political hegemony. In the closing years of the nineteenth century and the opening years of the twentieth century, a number of countries had extended their sovereignty through the acquisition of territories and dominions usually through military conquest but occasionally through treaty. The war afforded other nations the chance to extend their sovereignty through conquest of other countries as well as the opportunity to assert themselves as military and political powers. Essentially then, the war was the result of sovereign excesses, a result of the old 'war system' which the treaties of Versailles and Sèvres sought to transplant with a new democratic order of peace, in which sovereignty of the nation state was abridged. The period after the end of the war had many important repercussions, key among which was a gradual imposition of legal restraints on resort to military force by states, but more significantly, an attempt to devise means of enforcing violations of international obligations. There was a general feeling that the emerging multilateralism would usher in a new political order less dominated by ultranationalism and its pull to unilateralism.

In a dramatic break with the past, and in a bid to build a normative foundation of human dignity, the chaos and destruction of the war gave rise to a yearning for peace and a popular backlash against impunity for atrocity. The devastation of the war provided a catalyst for the first serious attempt to crack the Westphalian notion of sovereignty. This dramatic new attitude was encapsulated in the enthusiasm for extending criminal jurisdiction over sovereign states (Germany and Turkey) with the aim of apprehension, trial and punishment of individuals guilty of committing atrocities under the rubric of 'war crimes' and 'crimes against humanity'.

This chapter focuses on the Commission on the Responsibilities of the Authors of War and on Enforcement of Penalties ('the Commission') through a nuanced consideration of the commission's mandate: the responsibility of the authors of the war; breaches of the laws and customs of war committed by the Central Powers; the degree of responsibility for these offences attaching to particular members and the constitution; and procedure of a tribunal appropriate to the trial of these offences. The underlying central theme of the chapter is an exposition on how the Commission sought to advance international criminal justice through new

elucidations and re-evaluation of principles, doctrines and modes of criminal liability under international law that challenged sovereignty.

6.2. Germany and Turkey: Championing Nationalism Through Destruction

The first major offence that Germany committed, which was to return to haunt it at the end of the war, happened at the very start of the war – the violation of Belgian neutrality of which Germany was one of the guarantors. In the case of the invasion of Belgium, it was felt that the violation of an international obligation by a country that guaranteed it was so flagrant that the conscience of the public would not be satisfied if that act were treated in any other way than as a crime against public law.[2] Germany was to commit further violations of the rights of combatants and civilians. Not even prisoners, or wounded, or women or children were respected by a nation which deliberately sought to strike terror into every heart for the purpose of repressing all resistance. Murders, massacres, tortures, human shields, collective penalties, arrest and execution of hostages formed part of a long list of violations of laws and customs of war exhibiting cruel practices which primitive barbarism, aided by all the resources of modern science, could devise. Concomitantly, the First World War witnessed the first active application of new modes of warfare, notably, submarine naval warfare and aerial bombing. Germany initially required submarine commanders to attempt to identify neutral shipping within the area of war. By January 1917 Germany had declared unrestricted submarine warfare within the war zone.[3] Consequently, all sea traffic (military or non-military) was torpedoed on sight by the German navy without warning. This German strategy of unrestricted submarine warfare saw German U-boats sink tens of thousands of both

[2] The attributes of neutrality were specifically defined by the Hague Convention (V) of 18 October 1907 in Articles 1, 2 and 10. Belgium's neutrality was not the only neutrality that was violated. Germany also violated Luxembourg's neutrality which was guaranteed by Article 2 of the 1867 Treaty of London. For comments by the French and British leaders at the Paris Peace Conference concerning the public outrage at Germany's violation of Belgian neutrality, see Paul Mantoux, "Paris Peace Conference 1919", in Arthur S. Link and Manfred F. Boemeke (eds.), *The Deliberations of the Council of Four, March 24–June 28, 1919*, vol. 1, Princeton University Press, Princeton, 1992, pp. 189–90.

[3] D.P. O'Connell, *The Influence of Law on Sea Power*, Manchester University Press, Manchester, 1975, pp. 46–47.

Allied and neutral shipping.[4] Regarding aerial bombing, the Zeppelin and Gotha offensives by Germany and Allied counteroffensives were largely indiscriminate.[5]

Regarding Turkey, on 16 December 1914, five months after the start of the First World War, an Imperial Rescript by the Ottoman Empire (precursor of Turkey) cancelled the Armenian Reform Agreement of 8 February 1914 containing international stipulations for the respect of the rights of the Armenian minority, which the Turkish Government had undertaken to protect.[6] This reflected a general determination to abrogate the international treaties that had resulted from the application of the principle of 'humanitarian intervention' because the treaties imposed "political shackles" on the Ottoman Empire, which wanted to deal with its "troublesome" Christian minority – a majority of which was opposed to the predatory tendencies of the Ottoman State.[7]

The decisive stage of the process of reducing the Armenian population to helplessness came five months after the 1914 Imperial

4 See for example, W.T. Mallison Jr., *Studies in the Law of Naval Warfare: Submarines in General and Limited Wars*, US Government Printing Office, Washington, DC, 1966, pp. 62–65.

5 See for example, Walter Raleigh and Henry Jones, *The War In The Air: Being The Story Of The Part Played In The Great War By The Royal Air Force*, vol. 1, Clarendon Press, Oxford, 1922; Joseph Morris, *The German Air Raids on Great Britain, 1914–1918*, Sampson Low, Marston and Co., London, 1925; Kenneth Poolman, *Zeppelins Against London*, John Day, New York, 1961; Colin White, *The Gotha Summer: The German Daytime Air Raids on England, May to August 1917*, R. Hale, London, 1986.

6 The Armenian Reform Agreement signed on 8 February 1914 between Turkey and Russia, with the concurrence of the other powers, contained international stipulations with regard to Turkish governmental measures to respect and uphold the rights of the minority Armenians. This agreement was seen by Turkey as placing shackles on the government with regard to exercise of sovereign prerogatives and governmental policy. See Vahakn Dadrian, "Genocide as a Problem of National and International Law: The World War I Armenian Case and Its Contemporary Legal Ramifications", in *Yale Journal of International Law*, 1989, vol. 14, no. 2, p. 263.

7 *Ibid.* Halil departed for Berlin on the same day to seek German support for the annulments. In informing his government of this move in his 5 September 1916 report, the German ambassador Metternich directed attention to the Turkish concern for Article 61 of the Berlin Treaty involving Turkey's "engagements for Armenia", and to Halil's justification of the act on grounds of "the effect of war" (*Kriegszustand*). A.A. Turkei, 183/44, A24061 (Ottoman Archives, Istanbul Research Centre). The full text of the repudiation of the treaties in German is in Friedrich von Kraelitz-Greifenhorst, "Die Ungültigkeitserklärung des Pariser und Berliner Vertrages durch die osmanische Regierung", in *Osterreichische Monatsschrift für den Orient*, 1917, vol. 43, pp. 56–60.

Rescript. In a memorandum dated 26 May 1915, the Interior Minister requested from the Grand Vezir the enactment through the cabinet of a special law authorising deportations. The memorandum was endorsed on 30 May and a new emergency law, the Temporary Law of Deportation, was enacted.[8] Pursuant to this law, alleging treasonable acts, separatism, and other assorted acts by the Armenians as a national minority, the Ottoman authorities ordered, for national security reasons, the wholesale deportation of Armenians, a measure that was later extended to virtually all of the Empire's Armenian population. The execution of this order, ostensibly a wartime emergency measure of relocation, actually masked the execution of the Armenian population. The deportations proved to be a cover for the ensuing destruction. The massive, deliberate and systematic massacres by Turkey of its Christian subjects under the cover of war did not go unnoticed. As early as 24 May 1915, during the course of the war, the Entente Powers solemnly condemned these atrocities.[9]

6.3. The Paris Peace Conference

In settling upon the terms for the Germans, it was not possible wholly to ignore the responsibility of those who were deemed to have first drawn the sword and therefore might be held accountable for the horror that ensued. Nor could the violation of Belgian neutrality in 1914 by a power that had guaranteed it be overlooked. The major Allied Powers were also confronted with Germany's resort to submarine atrocities and to other forms of terror, all in disregard of the restraint theretofore imposed by custom upon the conduct of hostilities by civilised nations. Britain was of the opinion that the ex-Emperor of Germany, Wilhelm II, be brought from his asylum in Holland and arraigned before an inter-Allied tribunal. France and Italy voiced support for this position with the United States agreeing to co-operate. However, European politicians and diplomats raised fundamental questions. Would the Government of the Netherlands give up the German Emperor? If the Allied governments set up a tribunal, would the world at large accept the jurisdiction of such a court to try and

[8] For the English text of the law, see Richard G. Hovannisian, *Armenia on the Road to Independence, 1918*, University of California Press, Berkeley, 1967, p. 51.

[9] France, Great Britain and Russia Joint Declaration, 24 May 1915, cited in Egon Schwelb, "Crimes Against Humanity", in *British Year Book of International Law*, 1946, vol. 23, p. 181; See also Dadrian, 1989, p. 262, *supra* note 6.

to punish seemingly *ex post facto* crimes? Would not lawlessness on the part of the enemy find an excuse in the lawlessness of the victors?[10]

The President of the United States, Woodrow Wilson, representing the major power that was credited through its involvement with hastening the end of the war, suggested that the question of national and individual crimes against decency be settled in the comparative privacy of the Supreme Council – the Paris Conference's highest organ. However, at the insistence of the British Prime Minister, David Lloyd George, it was decided to place the subject on the agenda of a plenary session. As a result, the Peace Conference decided on 25 January 1919 to create a commission – the first international investigative commission – to study the question of penal responsibility.[11] The official intergovernmental commission subsequently established by the Paris Peace Conference was named the Commission on the Responsibilities of the Authors of War and on Enforcement of Penalties.[12] It was composed of delegates of the five great powers and five minor powers – Belgium, Greece, Poland, Romania and Serbia. Its mandate was ambitious for that time. It encompassed**:**

a. The responsibility of the authors of the war;

[10] See for example, David A. Foltz, *The War Crimes Issue at the Paris Peace Conference 1919–1920*, Ph.D. Dissertation, American University, 1978, pp. 49ff.

[11] The Provisional Government of Germany, representing a people told by their rulers that war had been forced on them in 1914 by conspiring enemies, persistently urged the creation of a neutral commission to inquire impartially into the origins of the conflict. The German Foreign Minister, addressing the foreign offices of the major Allies, conjured up the ideals of lasting peace and international confidence. From London and Paris, however, he received blunt rebuffs, asserting that the responsibility of Germany for the war had long ago been incontestably proved. The American State Department, after communicating with the peace mission at Paris, replied in the same tenor. See for example, U.S. Department of State, "Papers Relating to the Foreign Relations of the United States", *Paris Peace Conference – F.R., P.P.C.*, vol. 2, pp. 71–72; Dispatch from Solf to the State Department, forwarded to the House on 11 December 1918, *Yale House Collection and Related Papers* (Manuscripts and Archives Room, Yale University Library, "Y.H.C.").

[12] The Commission comprised two members from each of the five great powers: the United States of America, the British Empire, France, Italy and Japan. The additional states composing the Allied and Associated Powers were Belgium, Bolivia, Brazil, China, Cuba, Czechoslovakia, Ecuador, Greece, Guatemala, Haiti, the Hedjaz, Honduras, Liberia, Nicaragua, Panama, Peru, Poland, Portugal, Romania, the Serb-Croat-Slovene State, Siam and Uruguay. Carnegie Endowment for International Peace, *The Treaties of Peace 1919–1923*, Carnegie Endowment for International Peace, New York, 1924, p. 3. The additional states, having a special interest in the matter, met and decided that Belgium, Greece, Poland, Romania and Serbia should each name a representative to the commission as well, see *Commission Report*, 1919, p. 20.

b. The fact as to breaches of the laws and customs of war committed by the forces of the German Empire and their allies;

c. The degree of responsibility for these offences attaching to particular members of the enemy forces;

d. The constitution and procedure of a tribunal appropriate to the trial of these offences.[13]

6.4. The 1919 Commission on the Responsibilities of the Authors of War and on Enforcement of Penalties

6.4.1. New Understandings: Extending the Frontiers of International Law and Justice Paradigms

The Commission on the Responsibilities of the Authors of War and on Enforcement of Penalties was charged with an onerous responsibility. It held closed meetings for two months and conducted intensive investigations.[14] Its work was to culminate in the charging of named individuals for specific war crimes. Besides German responsibility for the war and its breaches of the laws and customs of war, the Commission also sought to charge Turkish officials and other individuals for "crimes against the laws of humanity"[15] based on the so-called Martens Clause contained in the preamble of the 1907 Hague Convention (IV).[16] That clause states:

> Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted

[13] Arthur Walworth, *Wilson and His Peacemakers: American Diplomacy at the Paris Peace Conference 1919*, vol. 3, Norton, New York, 1986, p. 699; *Violations of the Laws and Customs of War: Report of the Majority and Dissenting Reports of The American and Japanese Members of The Commission on Responsibilities, Conference of Paris, 1919*, no. 32, Carnegie Endowment For International Peace, New York, 1919 ("Report of the Majority and Dissenting Reports"), p. 23.

[14] James F. Willis, *Prologue to Nuremberg: The Politics and Diplomacy of Punishing War Criminals of the First World War*, Greenwood Press, Westport, CT, 1982, p. 68.

[15] Schwelb, 1946, p. 178, see *supra* note 9.

[16] Convention (IV) Respecting the Laws and Customs of War on Land, The Hague, 18 October 1907, 36 Stat 2277, preamble, 2779–80. See also *The Proceedings of The Hague Peace Conferences: Translation of the Original Texts*, Oxford University Press, New York, 1920, p. 548.

> by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.[17]

It was in this context that Nikolaos Politis, a member of the Commission and Foreign Minister of Greece, proposed the adoption of a new category of war crimes meant to cover the massacres against the Armenians, declaring: "Technically these acts [the Armenian massacres] did not come within the provisions of the penal code, but they constituted grave offences against the law of humanity".[18] Despite the objections of American representatives Robert Lansing (the United States Secretary of State and chairman of the Commission) and James Brown Scott (an eminent international jurist), who challenged the *ex post facto* nature of such a law, the majority of the Commission hesitatingly concurred with Politis.[19] On 5 March 1919 the preliminary report by the Commission specified the following violations against civilian populations as falling within the purview of grave offences against the laws of humanity: systematic terror; murders and massacres; dishonouring of women; confiscation of private property; pillage; seizing of goods belonging to communities, educational establishments and charities; arbitrary destruction of public and private goods; deportation and forced labour; execution of civilians under false allegations of war crimes; and violations against civilians as well as military personnel.

The Commission's final Report, dated 29 March 1919, concluded that the war had been premeditated by Austro-Hungary and Germany; that they had deliberately violated the neutrality of Belgium and Luxembourg; and that they had committed massive violations of the laws and customs of war.[20] It determined that "rank, however exalted", including heads of state, should not protect the holder of it from personal responsibility.[21] In addition, the Commission's final Report also spoke of "the clear dictates

[17] Hague Convention (IV), preamble.

[18] Willis, 1982, p. 157, see *supra* note 14.

[19] *Ibid.*

[20] Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, "Report Presented to the Preliminary Peace Conference (29 March 1919)", reprinted in *American Journal of International Law*, 1920, vol. 14, pp. 113–14.

[21] *Ibid.*, pp. 112–17.

of humanity" which were abused "by the Central Empires together with their allies, Turkey and Bulgaria, by barbarous or illegitimate methods" including "the violation of [...] the laws of humanity". The Report concluded that "all persons belonging to enemy countries [...] who have been guilty of offences against the laws and customs of war or the laws of humanity, are liable to criminal prosecution".[22]

Prompted by the Belgian jurist Rolin Jaequemyns, the Commission included, albeit did not sharply highlight, the crimes which Turkey was accused of having perpetrated against her Armenian citizens.[23] The Commission concluded that "[e]very belligerent has, according to international law, the power and authority to try the individuals alleged to be guilty of [war crimes] […] if such persons have been taken prisoners or have otherwise fallen into its power".[24] The Commission recommended that any peace treaty provide for an international tribunal to prosecute war criminals.[25] The Commission proffered a series of acts deemed war crimes and grouped those acts into four categories: (1) offences committed in prison camps against civilians and soldiers of the Allies; (2) offences committed by officials who issued orders in the German campaign against Allied armies; (3) offences committed by all persons of authority, including the German Kaiser, who failed to stop violations of laws and customs of war despite knowledge of those acts; and (4) any other offences committed by the Central Powers that national courts should not be allowed to adjudicate.[26]

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[22] Report of the Majority and Dissenting Reports, see *supra* note 13. The dissenting American members were Robert Lansing and James Scott, who felt that the words "and the laws of humanity" were "improperly added", pp. 64 and 73. In their Memorandum of Reservations, they maintained that the law and principles of humanity were not "a standard certain" to be found in legal treatises of authority and in international law practices. They argued that these laws and principles do vary within different periods of a legal system, between different legal systems, and with different circumstances. In other words, they declared that there is no fixed and universal standard of humanity, and that a judicial organ only relies on existing law when administering it.

[23] See Her Majesty's Stationery Office, British Foreign Office Papers, FO, FO 608/246, Third Session, folio 163, 20 February 1919, p. 20.

[24] Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, 1920, p. 121, see *supra* note 20.

[25] *Ibid.*

[26] *Ibid.*, pp. 121–22. At the end of the First World War in 1919, the major international instruments relating to the laws of war were the two Hague Conventions on the Laws and Customs of War on Land of 1899 and 1907. Willis, 1982, p. 5, see *supra* note 14. Other

6.4.2. Old Understandings: The Lingering Legacy and Tenacity of Classical International Law

The American and Japanese representatives (two of the major powers) on the Commission objected to several key aspects of the Allied Commission's Report. Lansing (chairman of the committee) and Scott, the American members of the Commission on the Responsibilities of the Authors of War and on Enforcement of Penalties, dissented. In view of the vigour of the dissent of the American delegates, it is deemed appropriate to consider the areas of disagreement in some detail.

The Commission proposed the establishment of a high tribunal to try

> all authorities, civil or military, belonging to enemy countries, however high their positions may have been, without distinction of rank, including the heads of state, who ordered, or, with knowledge thereof and with power to intervene, abstained from preventing or taking measures to prevent, putting an end to repressing, violations of the laws or customs of war (it being understood that no such abstention should constitute a defense for the actual perpetrators).[27]

In their reservation to the Commission's Report, the American representatives stated, among other things, that

> there were two classes of responsibilities, those of a legal nature and those of a moral nature, that legal offenses were justiciable and liable to trial and punishment by appropriate tribunals, but that moral offences, however iniquitous and infamous and however terrible in their results, were beyond the reach of judicial procedure, and subject only to moral sanctions.[28]

Concerning crimes against humanity, they said:

> [The Report of the Commission] declares that the facts found and acts committed were in violation of the laws [and customs of war] and of the elementary principles of humanity. The laws and customs of war are a standard

sources of information on the laws of war included national military manuals and Geneva Conferences beginning in 1864.

27 Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, 1920, p. 121, see *supra* note 20.

28 *Ibid.*, p. 128.

> certain to be found in books of authority and in the practice of nations. The laws and principles of humanity vary with the individual, which, if for no other reason, should exclude them from consideration in a court of justice, especially one charged with the administration of criminal law […] The American representatives are unable to agree with this inclusion, in so far as it subjects to criminal, and, therefore, to legal prosecution, persons accused of offences against "the laws of humanity," and in so far as its subjects chiefs of state to a degree of responsibility hitherto unknown to municipal or international law, which no precedents are to be found in the modern practice of nations.[29]

The American representatives, therefore, objected to the references to the laws and principles of humanity, to be found in the Report, in what they believed was meant to be a judicial proceeding. In their opinion, the facts found were to be violations or breaches of the laws and customs of war, and the persons singled out for trial and punishment for acts committed during the war were only to be those persons guilty of acts which should have been committed in violation of the laws and customs of war. The United States (and Japan), opposed 'crimes against humanity' on the grounds that the Commission's mandate was to investigate violations of the laws and customs of war and not the uncodified, so-called 'laws of humanity'.[30]

Concerning the criminal liability of heads of state, they argued:

> This does not mean that the head of state, whether he be called emperor, king, or chief executive, is not responsible for breaches of the law, but that he is responsible not to the judicial but to the political authority of his country. His act may and does bind his country and render it responsible for the acts which he has committed in its name and its behalf, or under cover of its authority; but he is, and it is submitted that he should be, only responsible to his country as otherwise to hold would be to subject to foreign countries, a chief executive, thus withdrawing him from the laws of his country, even its organic laws, to which he owes obedience, and subordinating him to foreign jurisdictions to which

[29] *Ibid.*, pp. 134–35.
[30] *Ibid.*, p. 134.

> neither he nor his country owes allegiance or obedience, thus denying the very conception of sovereignty.[31]

Concerning war crimes trials in general, they said:

> The American representatives know of no international statute or convention making a violation of the laws and customs of war-not to speak of the laws of humanity-an international crime affixing a punishment to it, and declaring the court which has jurisdiction over it.[32]

Finally, concerning the establishment of an international tribunal, Lansing and Scott, representing a nation that had suffered less than the Allies from the misconduct of Germans during the war, were not so ready as their European colleagues to cloak the exercise of power in what they considered to be "dubious" legal form. Lansing and Scott proposed that it "should be formed by the union of existing military tribunals or commissions of admitted competence in the premises".[33] The Japanese delegation shared American opposition to the penal responsibility advocated by the rest of the Commission. However, in the author's opinion, there were two difficulties that the American delegates seemed not to have considered thoroughly. First, which national procedure would the tribunal apply and how would attempts to develop a uniform procedure be addressed by national courts? Confusion was bound to emanate from any attempt to amalgamate or adjust the varying procedures of the different tribunals without careful previous preparation. Second, if the laws and customs of war were to be applied, did such implementation exist in domestic legislation of the Allies and, if not, was it necessary that it did?[34] Lansing and Scott maintained the strong position that to create an international tribunal to try war crimes committed during the First World War "would be extralegal from the viewpoint of international law […] contrary to the spirit both of international law and of the municipal law of civilized states and […] would, in reality, be a political and not a legal creation".[35]

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31 *Ibid.*, pp. 134–35

32 *Ibid.*, p. 146.

33 *Ibid.*, p. 129.

34 Sheldon Glueck, "By What Tribunal Shall War Offenders be Tried?", in *Harvard Law Review*, 1943, vol. 56, pp. 1075–76.

35 Memorandum by Miller and Scott, ca. 18 January 1919, published in David Miller, *My Diary at the Conference of Paris with Documents*, vol. 3, Appeal Printing Company, New

The rest of the Commission rejected the American (and Japanese) opposition, and insisted on the insertion of penal responsibility provisions in the eventual peace treaty. Having overruled its chairman, Lansing, a large majority of the Commission agreed that at the next renewal of the armistice the Germans should be required to deliver certain war criminals and also relevant documents. Furthermore, Allied commanders in occupied territory should be ordered to secure such wanted persons as lived in regions under their control. However, Lansing refused to transmit these suggestions to the Supreme Council, arguing that as appointees of a plenary session the Commission could report only to the full Peace Conference. The Secretary of State preferred that the Conference, instead of trying Germans, issue a severe reprimand. He proposed that a committee of inquiry be appointed to consider the question in the light of documents in the archives of the enemy, and to report to the participating governments.

The work of the Commission was to feature prominently in the subsequent treaties of peace negotiated by the representatives of the Allies and those of Germany and Turkey. In a dramatic break with past precedence, the peace treaties were to contain penal provisions as opposed to blanket amnesties characteristic of past instruments. Much of the debate among the Allies addressed issues concerning the prosecution of Germany's Kaiser Wilhelm II, German war criminals and Turkish officials for "crimes against the laws of humanity".[36]

The majority and minority positions, as noted, were coloured by a tussle between legality and realpolitik. The preliminary reflections by the Supreme Council on 2 April in relation to the Commission's Report encapsulated the quandary in the late-afternoon discussions of the US, French, British and Italian leaders.[37] The British Prime Minister, Lloyd George, castigated the US position which was based on the apprehension

York, 1921, pp. 456–57. It is to be noted that the vigorous dissent of the American and Japanese delegations split the Commission and was later to play itself out amongst the Allies who ultimately pandered towards political expedience by incorporating only limited penal provisions in the peace treaties of Versailles and Sèvres.

[36] For information on the Armenian genocide, see generally, Vahakn N. Dadrian, *The History of the Armenian Genocide: Ethnic Conflict from the Balkans to Anatolia to the Caucasus*, Berghahn Books, Providence, 1995; Dadrian, 1989, p. 35, see *supra* note 6.

[37] Mantoux, 1992, p. 91, see *supra* note 2.

of creating a precedent where one had not existed before.[38] He noted that Britain had assembled a cast of distinguished jurists to debate the legalities and who were of the opinion that there were no insurmountable legal hurdles. President Wilson countered that the German Emperor's guilt was difficult to determine as it was too great.[39] Most significantly in addressing the main legal aspect of establishing a supranational tribunal, Wilson noted:

> It would be creating a dangerous precedent to try our enemies before judges who represent us. Suppose that, in the future, one nation alone should be victorious over another which had attacked it in violation of a rule of law. Would that nation, the victim of a crime against the *droit des gens*, be the only one to judge the guilty?[40]

Lloyd George countered that the League of Nations (a landmark institution which was to mark the move from balance of parochial power military frameworks to a universal collective military framework) would be wounded *ab initio* by appearing "as just a word on a scrap of paper".[41] The French Prime Minister, Georges Clemenceau, was to later intercede assertively siding with Lloyd George by reiterating that trials were essential and that the conscience of people would not simply rest on political condemnation.[42] In his vigorous statement Clemenceau thundered:

> Is there no precedent? There never is a precedent. What is a precedent? I shall tell you. A man comes along; he acts, for good or evil. Out of what is good, we create a precedent. Out of what is evil, the criminals, whether individuals or heads of State, create a precedent of their crimes.[43]

The exchanges between the members of the Supreme Council outlined above aptly sum up the political, legal and philosophical regarding the recommendations of the Commission and reflected the same split between the majority and minority of the Commission. The discussion now turns to the responsibility clauses of the main peace

38 *Ibid.*

39 *Ibid.*

40 *Ibid.*

41 *Ibid.*, p. 92.

42 *Ibid.*, pp. 147–50.

43 *Ibid.*, p. 149.

treaties after the Anglo–French position regarding legality as the sanction rather than political denunciation prevailed.

6.5. The Failure to Establish Prosecutions Pursuant to the Peace Treaty of Versailles

The Commission's final Report came to the Supreme Council (which had the final authority on negotiating the peace treaty) on 29 March 1919. The American members attached a statement to the effect that the views of the majority contravened American principles. Lansing, the Commission's chairman, thought that the British knew the practical impossibility of the action that they were forced by public opinion to advocate and were depending on the US to block it. Lansing found his boss – President Wilson – even more strongly opposed to trying the Kaiser than he was himself. Both feared that physical punishment of Wilhelm II would make him a martyr and would lead to the restoration of the dynasty.[44]

On 8 April the Big Four discussed the question of penal responsibility for wartime atrocities at great length. Wilson, the chairman of the Supreme Council, opined: "I am afraid, it would be difficult to reach the real culprits. I fear that the evidence would be lacking".[45] The President thought that in the violation of Belgium's neutrality a crime had been committed for which eventually the League of Nations would find a remedy. He warned against dignifying a culprit by citing him before a high tribunal, and against stooping to his level by flouting the principles of law that were already accepted. When Lloyd George told the Council of Four that he wanted "the man responsible for the greatest crime in history to receive the punishment for it", Wilson replied: "He will be judged by the contempt of the whole world; isn't that the worst punishment for such a man?" He thought the German militarists doomed to "the execration of history".[46] Although Wilson agreed that the Allied

[44] US Department of State, vol. 11, pp. 93–94; Lansing, "Memorandum of Reservations", 4 April 1919; Lansing to Wilson, in "Wilson Papers", 8 April 1919; Foltz, 1978, pp. 135–74, see *supra* note 10; Letter from Lansing to Polk, 14–15 March 1919, Y.H.C.; Geneviève Tabouis, *The Life of Jules Cambon*, trans. by C.F. Atkinson, Jonathan Cape, London, 1938, pp. 319–20.

[45] Wilson had said on the *George Washington* in December that probably the Kaiser had been "coerced to an extent" by the General Staff, see Swern Book manuscript, chapter 21 at 9, Princeton University Library.

[46] Mantoux, 1992, p. 83, see *supra* note 2.

peoples might not understand if the Kaiser were allowed to go free, he stated: "I can do only what I consider to be just, whether public sentiment be for or against the verdict of my conscience". In the face of a likelihood of political censure rather than criminal prosecutions of the Kaiser and German law of war violations, Clemenceau asserted:

> For me, one law dominates all others, that of responsibility. Civilization is the organization of human responsibilities. Mr. Orlando [the Italian Prime Minister] says: 'Yes, within the nation. I say: In the international domain. I say this with President Wilson who, when he laid the foundations of the League of Nations, had the honour to carry over into international law the essential principles of national law […] We have today a glorious opportunity to bring about the transfer to international law of the principle of responsibility which is at the basis of national law.

Even in the face of the French Prime Minister's impassioned plea, Wilson demurred, mostly in terms of broader realpolitik, pointing out that the legal basis or other means of forcing Holland to give up the Kaiser were tepid.[47] The basis for this was Lord Maurice Hankey's (the *de facto* secretary of the Supreme Council) pointed observation to the political leaders after they had settled on the matter of formal criminal proceedings regarding the breaches of the laws of war, that the standpoint would involve difficult legislation in reconciling the view with the basic tenets of American and British legal frameworks.[48] This observation seemingly reignited Wilson's initial obstinate resistance to the Anglo–French position.[49] Interestingly, Lloyd George disagreed with Hankey (who incidentally was his personal aide as well). He declared that the question of the Kaiser's prosecution before an international tribunal, like that of reparations, interested British opinion "to the highest degree", and this public opinion could not accept a treaty that left it unsolved. Lloyd George noted:

> […] the Kaiser is the arch-criminal of the world, and just as in any other sphere of life when you get hold of a criminal you bring him to justice, so I do not see, because he is an

[47] *Ibid*., p. 193.

[48] Lord [Maurice] Hankey, *The Supreme Control at the Paris Peace Conference 1919: A Commentary*, Allen and Unwin, London, 1963, p. 114.

[49] *Ibid.*

> Emperor and living in exile in another country, why should he be saved from the punishment which is due.[50]

It was in this regard that Lloyd George suggested that they should bring pressure to bear on Holland to deliver Wilhelm II by threatening its exclusion from the League of Nations. This position was also enthusiastically supported by Clemenceau. Under this well-directed attack Wilson, who at this very time was about to go into the final meetings of the Commission on the League of Nations to seek approval of an amendment in respect of the Monroe Doctrine, yielded. The next morning he read to the Supreme Council a draft that he had prepared. It satisfied Clemenceau and Lloyd George, and provided the substance for Articles 227 and 229 of the Peace Treaty of Versailles.[51] In withdrawing from his opposition to the war crime clauses, Wilson recognised that they were too ineffectual to warrant any determined resistance to them.[52] When he was asked by the American ambassador to Paris, John Davis, whether he expected to "catch his rabbit", he replied in the negative, quipping that "was all damned foolishness anyway".[53] Similarly Lloyd George's enthusiasm was to wane after a strong protest from the South African Prime Minister, Louis Botha, in the face of a rapidly subsiding vindictive feeling among the British public.[54]

On 25 June, three days before the conclusion of the Peace Treaty of Versailles, Wilson brought up the matter of the Kaiser's extradition from his refuge in Netherlands where he had fled to at the end of the war. Lansing drafted a note that was sent to the Dutch government requesting compliance with Article 227 of the Peace Treaty of Versailles, under

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50 David Lloyd George, *The Truth About the Peace Treaties*, vol. I, Gollancz, London, 1938, p. 98.

51 Wilson to Lansing, 9 April 1919. Wilson's text with minor changes became Part VII of the Peace Treaty of Versailles. See Foltz, 1978, pp. 201, see *supra* note 10. A diary letter of Edith Benham from 9 April 1919 records that it was at the suggestion of Mrs Wilson that the President prepared his compromise formula and secured the signature of his colleagues.

52 Mantoux, 1992, pp. 151–54, see *supra* note 2.

53 Diary of John W. Davis, 5 June 1919, Y.H.C.

54 On the anniversary of the Treaty of Vereeniging, Botha pointedly reminded the British delegation of the incendiary effect upon the Boers of an English proposal that he and Smuts be tried for the crime of causing the Boer War. Ambassador Davis noticed a marked cooling in the eagerness to try the Kaiser and a growing disinclination to have the trial staged in London, see J.W. Davis to Lansing, 30 July 1919.

which the five great victorious powers were to try Wilhelm II before a 'special tribunal' on the charge of "a supreme offence against international morality and the sanctity of treaties". The response from the Netherlands, whose sitting monarch was the Kaiser's cousin, was not positive. The Dutch insisted that the usage of political asylum should be respected. The Dutch rejected not only the concepts of 'international policy' and 'international morality' upon which the Allies proposed to try and punish the Kaiser, but they also invoked the domestic laws and national traditions of Holland as further justification. The Dutch defined the offence with which the Kaiser was charged as "political" and hence exempt from extradition.[55] As a result, the Allies did not formally request his extradition, and there was no formal judicial or administrative process in which the Kaiser's extradition was denied.[56] No further action was taken, but the British and French leaders could appease their constituencies with evidence that they had tried to satisfy the prevailing demand for retributive 'justice'.[57] Nevertheless, the assertion by the Peace Conference of a right to punish war criminals was a novel departure from tradition, one that set a precedent for action at the end of the next world war.

After much compromise, the Allied representatives finally agreed on the terms of the Treaty of Peace between the Allied and Associated Powers and Germany ('Peace Treaty of Versailles'), concluded at Versailles on 28 June 1919.[58] Besides other important matters including reparations, in Article 227 it provided for the creation of an *ad hoc* international criminal tribunal to prosecute Kaiser Wilhelm II for initiating the war.[59] It further provided in Articles 228 and 229 for the prosecution of German military personnel accused of violating the laws

[55] See Quincy Wright, "The Legal Liability of the Kaiser", in *American Political Science Review*, 1919, vol. 13, p. 120; *New York Times*, 22 January 1920.

[56] See Telford Taylor, *The Anatomy of The Nuremberg Trials: A Personal Memoir*, Knopf, New York, 1992, p. 16. The legal grounds for denying the request were that the "offence charged against the Kaiser was unknown to Dutch law, was not mentioned in any treaties to which Holland was a party, and appeared to be of a political rather than a criminal character". Also Wright, 1919, p. 120, see *supra* note 55. The Netherlands discouraged formal extradition requests because extradition treaties applied only to cases in which a criminal act occurred.

[57] See Mantoux, 1992, vol. 1, pp. 144–51 and vol. 2, pp. 524–25, *supra* note 2.

[58] Peace Treaty of Versailles [1919] UKTS 4 (Cmd. 153).

[59] *Ibid*., Article 227.

and customs of war before Allied Military Tribunals or before the Military Courts of any of the Allies.[60] The limited incorporation of the recommendations of the Allied Commission with regard to penal provisions was to prove fatal because the treaty provisions pertaining to war crimes ultimately proved unworkable in the post-war political context.[61] The attempt to try war criminals failed for a number of reasons, including: the enormity of the undertaking; deficiencies in international law and in the specific provisions of the Peace Treaty of Versailles, which proved to be unworkable owing to the failure of the Allies to present a united front to the Germans by taking strong measures to enforce the treaty.

The victors' lack of control over affairs within Germany ultimately defeated the Allied attempt to bring accused war criminals to justice.[62] The Peace Treaty of Versailles did not link the 1919 Commission to eventual prosecutions recognised under its Articles 228 and 229, resulting in an institutional vacuum between the investigation and prosecution

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[60] Article 228 states:

> The German Government recognizes the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons shall, if found guilty, be sentenced to punishments laid down by law. This provision will apply notwithstanding any proceedings or prosecution before a tribunal in Germany or in the territory of her allies.
>
> The German Government shall hand over to the Allied and Associated Powers, or to such one of them as shall so request, all persons accused of having committed an act in violation of the laws and customs of war, who are specified either by name or by the rank, office, or employment which they held under the German authorities.

Article 229 states:

> Persons guilty of criminal acts against the nationals of one of the Allied and Associated Powers will be brought before the military tribunals of that Power. Persons guilty of criminal acts against the nationals of more than one of the Allied and Associated Powers will be brought before military tribunals composed of members of the military tribunals of the Powers concerned. In every case the accused will be entitled to name his own counsel.

[61] Willis, 1982, pp. 52–62, see *supra* note 14.

[62] See generally Elizabeth L. Pearl, "Punishing Balkan War Criminals: Could the End of Yugoslavia Provide an End to Victors' Justice?", in *American Criminal Law Review*, 1993, vol. 30, no. 4, pp. 1389–90.

stage.[63] Subsequently, the two major provisions of the Peace Treaty of Versailles, Articles 227 and 228, were not implemented as geopolitical considerations dominated the post-First World War era. Regarding prosecution of the Kaiser under Article 227, the Allies blamed the Dutch government for its refusal to extradite him and some saw this as a way to avoid establishing a tribunal pursuant to Article 227. The Allies were not ready to create the precedent of prosecuting a head of state for a new international crime.

By 1920 the Allies had compiled a list of approximately 20,000 Germans who were to be investigated for war crimes.[64] These crimes included torture, use of human shields, rape and the torpedoing of hospital ships by German submarines.[65] However, the Allies were apprehensive of trying so many German officials and personnel, as this posed a political problem since Germany was trying to reconstruct and the extensive trials might jeopardise the stability of an already vulnerable Weimar Republic and, more galling, expose it to revolutionary Bolshevik influence.[66] "Many politicians argued against prosecution, preferring instead to look to the future".[67] However, since many of these crimes were truly heinous, complete freedom from prosecution was also unacceptable. An alternative solution was therefore reached. Instead of setting up an international tribunal, Germany would conduct the prosecutions. An agreement was thus made, allowing the German Government to prosecute a limited number of war criminals before the Supreme Court of Germany (*Reichsgericht*) in Leipzig instead of establishing an Allied tribunal, as provided for in Article 228.

63 See for example, M. Cherif Bassiouni, "From Versailles to Rwanda in Seventy-five Years: The Need to Establish a Permanent International Criminal Court", in *Harvard Human Rights Journal*, 1997, vol. 10, p. 18.

64 M. Cherif Bassiouni, "Former Yugoslavia: Investigating Violations of International Humanitarian Law and Establishing an International Criminal Tribunal", in *Fordham International Law Journal*, 1995, vol. 18, p. 1194.

65 Willis, 1982, pp. 137–39, see *supra* note 14.

66 *Ibid*., p. 113.

67 M. Cherif Bassiouni, "The International Criminal Court in Historical Context", in *St Louis-Warsaw Transatlantic Journal*, 1999, vol. 99, p. 57.

6.6. The Failure to Establish Prosecutions Pursuant to the Peace Treaty of Sèvres

Based on the recommendations of the 1919 Allied Commission on the Responsibilities of the Authors of War and on Enforcement of Penalties, several articles stipulating the trial and punishment of those responsible for the Armenian genocide were incorporated into the Peace Treaty of Sèvres.[68] Under Article 226, "the Turkish government recognized the right of trial and punishment by the Allied Powers, notwithstanding any proceedings or prosecution before a tribunal in Turkey".[69] Moreover, Turkey was obligated to surrender "all persons accused of having committed an act in violation of the laws and customs of war, who are specified either by name or by rank, office or employment which they held under Turkish authorities".[70] Under Article 230 of the Treaty, Turkey was further obligated to hand over to the Allied Powers the persons whose surrender may be required by the latter as being responsible for the massacres committed during the continuance of the state of war on territory which formed part of the Turkish Empire on 1 August 1914. The Allied Powers reserved to themselves the right to designate the tribunal which would try the persons so accused, and the Turkish Government was obligated to recognise such a tribunal.[71] The Peace Treaty of Sèvres, therefore, provided for international adjudication of the crimes perpetrated by the Ottoman Empire against the Armenians during the First World War.

The Allies, pursuant to their earlier warning in May 1915, were committed to prosecutions of Turkish officials and personnel responsible for the Armenian massacres. This initial commitment was reflected in the fact that beginning in January 1919, prior to the conclusion and signing of the Peace Treaty of Sèvres, Turkish authorities, directed and often pressured by Allied authorities in Istanbul, arrested and detained scores of Turks. Those arrested comprised four groups: (1) the members of Ittihat's Central Committee; (2) the two war-time cabinet ministers; (3) a host of provincial governors; and (4) high ranking military officers identified as organisers of wholesale massacres in their zones of authority. The

68 Gr. Brit. T.S. No. 11, 1920.

69 *Ibid.*

70 Willis, 1982, pp. 180–81, see *supra* note 14.

71 Peace Treaty of Sèvres, Article 230, see *supra* note 47.

suspects were first taken to the Military Governor's headquarters and were subsequently transferred to the military prison maintained by the Turkish Defence Ministry. Their custody and the disposal of their case by the Turkish judiciary, however, posed serious problems.[72]

The Turkish response to the demand by the Allies for the surrender of arrested criminal suspects for trial before an international tribunal or inter-Allied tribunal paralleled the German response. Not only did the Government object to surrendering Turkish nationals to the Allies, Mustafa Kemal, the head of the antagonistic Ankara Government, rejected the very idea of "recognizing a kind of right of jurisdiction on the part of a foreign government over the acts of a Turkish subject in the interior of Turkey herself".[73] The claim was that such a surrender of Turkish subjects contradicted the sovereign rights of the Ottoman Empire as recognised in the armistice agreement.[74] Despite this argument, the Commission on Responsibilities and Sanctions of the Paris Peace Conference held that trials by national courts should not bar legal proceedings by an international or an inter-Allied national tribunal.

The Allies began to bicker among themselves. Delays in the final peace settlement with Turkey complicated this volatile situation. France and Italy began to court the Kemalists in secret; the Italians lent the new regime substantial military assistance, and both the French and the Italians sabotaged British efforts to restore and strengthen the authority of

[72] Bilal N. Simsir, *Malta Surgunleri* [The Malta Exiles], Milliyet Yayinlari, Istanbul, 1976, p. 113. Of these, 26 were ordered released by the court martial itself with the assertion, "there is no case against them", in *Spectateur d'orient*, 21 May 1919, Istanbul. Admiral Calthorpe informed London regarding the 41 Turks released from military prison by Ottoman authorities that, "there was every reason to believe, [they] were guilty of the most heinous crimes [...] mainly in connection with massacres", in *British Foreign Office Papers*, 72, FO 371/4174/88761, folio 9, 30 May 1919. Referring to the Malta exiles, the Foreign Office Near East specialist Edmonds declared, "there is probably not one of these prisoners who does not deserve a long term of imprisonment if not capital punishment", FO 371/6509/E8745, folios 23–24.

[73] Speech delivered by Mustafa Kemal in Ataturk in 1927 (Istanbul, 1963). The speech lasted six days, 15–20 October 1927, and was delivered before the Deputies and Representatives of the Republican Party that was founded by him. The volume containing the speech is published under the auspices of the Turkish Ministry of Education.

[74] See for example, British Foreign Office Papers, FO 608/244/3749, folio 315 (Rear Admiral Webb's 19 February 1919 telegram to London, quoting from the Turkish Minister's 16 February note whose original, full text in French is in British Foreign Office Papers, FO 608/247/4222, folio 177).

the Sultan and his Government.[75] In the face of these developments, the resolve to secure justice in accordance with the 24 May 1915 Allied note was progressively attenuated. This was not helped by a defiant Germany. Just as the Netherlands had refused to extradite the Kaiser, a request to Germany to arrest and surrender Talaat Paşa, Grand Vezir and *de facto* head of the Ottoman State who had fled to Germany at the end of the war, was rebuffed by Germany.

Rising political tensions within the Allied Powers and nationalistic passions in Turkey eventually led to the scrapping of the Peace Treaty of Sèvres and its subsequent replacement in 1923 by the Peace Treaty of Lausanne,[76] which wiped out the provisions in the Peace Treaty of Sèvres relating to international penal process. The Peace Treaty of Lausanne did not contain any provisions on prosecutions, but rather had an unpublicised annex granting Turkish officials amnesty.[77] This effectively granted Turkish officials impunity for both war crimes and crimes against humanity, and effectively buried any hope of prosecutions. Although ultimately ineffectual, the attempted prosecution of some of the Turkish leaders implicated in the Armenian genocide before Turkish Courts Martial, which resulted in a series of indictments, verdicts and sentences, was of extraordinary, though unrecognised, significance.

6.7. Conclusion

The policymakers at Paris desired that their deliberations crystallise in policies rooted in the idealism of liberal international relations theory. The problem was not just to build a peace but also to construct a peaceful

[75] David Lloyd George, *Memoirs of the Peace Conference*, vol. 2, H. Fertig, New York, 1972, pp. 871, 878. Willis in *Prologue to Nuremberg* (1982, see *supra* note 14) summed up the situation as follows: "During the two years between the armistice and Mudros and the signing of the treaty of Sèvres, the Turkish nationalist movement grew into a major force, and the Allied coalition virtually dissolved. By 1920 most of the victors no longer included among their aims the punishment of Turkish war criminals. The Italians evaded a British request for the arrest of former Young Turk leaders then reported as meeting within their territory. The French and Italians hoped to secure concessions in Asia Minor and did not want to antagonise powerful factions in Turkey unnecessarily". See also Bassiouni, 1999, p. 63, *supra* note 67.

[76] Treaty with Turkey and Other Instruments (Peace Treaty of Lausanne), 24 July 1923, reprinted in *American Journal of International Law*, 1924, vol. 18, suppl. 18, pp. 92ff.

[77] *Ibid.* See also M. Cherif Bassiouni, "The Time Has Come for an International Criminal Court", in *Indiana International and Comparative Law Review,* 1991, vol. 1, pp. 2–4.

international order that would successfully manage all international conflicts of the future.[78] Peace treaties must be signed, of worldwide range, and affecting an unprecedented number of nations. Before the terms could be determined in detail, the victorious powers would have to reach a general understanding among themselves before they could do so, secret negotiation among the great powers would have to run its course.

Ultimately, the Peace Treaty of Versailles provided for the prosecution of Kaiser Wilhelm II and for an international tribunal to try German war criminals. After the war, the Kaiser fled to the Netherlands where he obtained refuge, but the Allies, who had no genuine interest in prosecuting him, abandoned the idea of an international court. Instead, they allowed the German Supreme Court sitting in Leipzig to prosecute a few German officers. The Germans criticised the proceedings because they were only directed against them and did not apply to Allied personnel who also committed war crimes. More troublesome, however, was the Allies' failure to pursue the killing of a then estimated 600,000 Armenians in Turkey. The 1919 Commission recommended the prosecution of responsible Turkish officials and by doing so, the notion of 'crimes against humanity' became a legal reality. Interestingly, from a contemporary perspective, the US and Japan's vocal opposition to the idea with the technical legal argument that no such crime yet existed under positive international law killed off the idea with the Peace Treaty of Sèvres, which was to serve as a basis for Turkish prosecutions, being replaced by the Peace Treaty of Lausanne which gave the Turks amnesty.

[78] Kalevi Holsti, *Peace and War: Armed Conflicts and International Order, 1648–1989*, Cambridge University Press, Cambridge, 1991, pp. 175–76, 208–9.

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Historical Origins of International Criminal Law: Volume 1

Morten Bergsmo, CHEAH Wui Ling and YI Ping (editors)

The historical origins of international criminal law go beyond the key trials of Nuremberg and Tokyo but remain a topic that has not received comprehensive and systematic treatment. This anthology aims to address this lacuna by examining trials, proceedings, legal instruments and publications that may be said to be the building blocks of contemporary international criminal law. It aspires to generate new knowledge, broaden the common hinterland to international criminal law, and further consolidate this relatively young discipline of international law.

The anthology and research project also seek to question our fundamental assumptions of international criminal law by going beyond the geographical, cultural, and temporal limits set by the traditional narratives of its history, and by questioning the roots of its substance, process, and institutions. Ultimately, the editors hope to raise awareness and generate further discussion about the historical and intellectual origins of international criminal law and its social function.

The contributions to the three volumes of this study bring together experts with different professional and disciplinary expertise, from diverse continents and legal traditions. Volume 1 comprises contributions by prominent international lawyers and researchers including Judge LIU Daqun, Professor David Cohen, Geoffrey Robertson QC, Professor Paulus Mevis and Professor Jan Reijntjes.

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