International law can be said to have its beginnings in the thoughts and writings of the Dutch 16th century jurist Grotius. Over the centuries it slowly evolved, outlawing slavery, piracy and the use of certain weapons in warfare. But until Nuremberg punishment carried out by an international treaty was not incorporated into any nation’s law. Individual nations could prosecute what they considered an offence, but there it stopped.

Nuremberg changed all that. Nuremberg was the victors’ court, established by the Allies at the end of World War 2 to try leading Nazis for war crimes and crimes against humanity, including the attempted elimination of the Jews. Many of the arraigned were from Hitler’s inner circle.

Immediately at the war’s end Churchill wanted the top 50 Nazi leaders to be summarily shot. He did not believe they were worthy of a trial. Churchill’s foreign secretary, Anthony Eden, observed that “the guilt of such individuals as Himmler is so black that they fall outside and go beyond the scope of any judicial process”. At first the Americans had a similar view. US Secretary of State Cordell Hull declared: “If I had my way I would take Hitler, Mussolini and Tojo and their accomplices and bring them before a drumhead court martial, and at sunrise the following morning there would occur an historic incident.”

Truman and Stalin persuaded Churchill that a public trial with the right of defence was necessary, both to educate public opinion and to make sure revanchist Germans could never use the argument that the Allies did not believe in justice.

US Supreme Court Justice Robert Jackson was nominated by Truman as the chief prosecutor, and two judges were appointed to the bench from each of the four Allied powers. The court was presided over by the English Lord Justice Geoffrey Lawrence.

The trial leapt from one dramatic moment to another with Goebbels, Hitler’s propaganda chief, acting as if he believed he could win against the prosecution. The court was shown newsreels of the concentration camps and the defendants averted their eyes. “Some sobbed, others sweated or put their heads into their hands; they sat in stunned silence until the court rose, their individual and collective guilt and shame brought home to them for ever and beyond rea-
sonable doubt”, wrote Geoffrey Robertson in his book *Crimes Against Humanity*.

Twelve of the defendants were sentenced to be hung, and their bodies were cremated in the ovens of the Dachau concentration camp and their ashes emptied into a nameless fast-flowing river. Goering committed suicide in his cell. Three of the 22 defendants were acquitted and seven spared the death penalty, one of whom was Rudolf Hess, Hitler’s deputy who had broken, he claimed, with Hitler when he fled to Scotland, who was incarcerated for the rest of his life.

After Nuremberg the Germans themselves carried out the prosecution of over 6,000 cases of Nazi war crimes.

In Japan the US set up its own war crimes tribunal to try those responsible for atrocities in many Southeast Asian countries. The bench included judges from India and the Philippines. It lasted for two and a half years as against Nuremberg’s one year. The US did not prosecute itself for the greatest of all war crimes in the history of humanity – the nuclear bombing of Hiroshima and Nagasaki when these large cities and their people were incinerated.

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One of the earliest legal documents on war crimes, if not the earliest, was issued by President Abraham Lincoln, “Instructions for the Government of the United States in the Field”. It was applied during the Civil War of 1861–65. Trials were held at the end of the war, notably a trial prosecuting those who ill-treated prisoners of war. Later in 1902 many cases against rank and file soldiers (officers were not targeted) were brought before US Courts Martial at the end of the armed conflict against insurgents in the Philippines, which Spain had ceded to the US in 1898.

After World War I the Ottomans set out to try persons (the “Young Turks”) responsible for the massacres of the Armenians in the war of 1915–16. But in the end only a few minor characters were prosecuted.

In 1921, following the end of World War I in 1918, German courts brought to trial 12 senior officials and officers but only six were convicted.

In 1920 an “Advisory Committee of Jurists”, appointed by the League of Nations, was summoned to prepare the way for the establishment of an International Court of Justice (the World Court) to arbitrate disputes against nations, and also suggested there should be a “High Court of International Justice”. This “would be competent to try crimes constituting a breach of international public order or against the universal law of nations, referred to it by the Assembly or the Council of the League of Nations”. The Assembly rejected the proposal saying it was “premature”. State sovereignty was considered sacrosanct.

In 1949 the Geneva Conventions were established outlawing a number of practices of war and laying down new categories of war crimes. The conventions to come, however, had no means by which war criminals could be punished in an international court, although domestic courts could do as they pleased with crimes committed on their own soil. That had to wait until the creation of the *ad hoc* court to try crimes committed during the wars in ex-Yugoslavia.