"That four great nations, flushed with victory and stung with injury stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to reason." (Robert H. Jackson, Chief of Counsel for the United States, Nuremberg, Germany, 21st November 1945)

The International Criminal Tribunal ("the Tribunal"), which was conducted at Nuremberg in the immediate aftermath of the Second World War, occupies a special place in the history of international relations. Within the context of 1945, its establishment reflected and contributed to the restoration of order in Europe following the havoc generated by so many years of warfare. In the memorable words of Telford Taylor, a US prosecutor there, the Tribunal and, furthermore, the United Nations Organisation "were virtually twin offspring" of the Allied negotiations and agreements intended to secure peace. To that extent, the Tribunal represented one of the last major episodes of co-operation between the western powers and the Soviet Union before the acrimonious demise of their wartime marriage of convenience.

By the same token, the Tribunal stands as a significant milestone in the development of international law. As Richard Overy writes in a book published in 2003: "For all its evident drawbacks, the trial [at Nuremberg] proved to be the foundation of what has now become a permanent feature of modern international justice." More to the point, the Tribunal can be viewed as critical to the evolution of genocide as a legal concept. In contrast to the expression "crimes against humanity", the word "genocide" did not appear...
in the Nuremberg Charter. Even so, it was included within the indictment laid before the defendants at Nuremberg. This was unprecedented, for never before had the word appeared within the context of legal proceedings. Indeed, the word had just been coined in 1944 by Dr Raphael Lemkin, who then served from 1945 to 1946 as an adviser to the US legal team at the Tribunal.

Born at the turn of the twentieth century, Lemkin was of Polish Jewish origin. During the early part of his life, which was spent in Poland, he held a number of academic and other posts, including one as a professor of law. Then, in 1934, he entered private practice as a lawyer. The various atrocities carried out during the early part of the twentieth century, including those by the Turks against the Armenians, aroused his interest in protecting peoples from persecution and barbarity. This interest was reinforced by his analysis of history and, more specifically, by reading about the suffering endured by, amongst others, Native American Indians. But it was after Lemkin arrived in the US in 1941, following an invitation to lecture at Duke University, North Carolina, that he truly honed his thoughts on the matter. The fruit of his thinking appeared, most famously, in 1944 within the context of a book entitled “Axis Rule in Occupied Europe”. Lemkin wrote the following:

“By “genocide” we mean the destruction of a nation or of an ethnic group. This new word, coined by the author to denote an old practice in its modern development, is made from the ancient Greek word genos (race, tribe) and the Latin cide (killing)…. Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group”.

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3 The indictment provided inter alia that: ‘They (the defendants) conducted deliberate and systematic genocide – viz., the extermination of racial and national groups – against the civilian populations of certain occupied territories in order to destroy particular races and classes of people, and national, racial or religious groups, particularly Jews, Poles, Gypsies and others.’

4 Interestingly enough, Taylor relates that “we used the word “genocide” in the indictment over the “objections” of a British prosecutor, Geoffrey Dorling “Khaki” Roberts, KC Telford Taylor, The Anatomy of the Nuremberg Trials: A Personal Memoir, (Bloomsbury Publishing Limited, London, 1993), p.103. Taylor served as a US prosecutor at the first Nuremberg trial and was subsequently promoted to Chief Prosecutor for the subsequent trials.