

*In a dark time the eye begins to see.*

*- Theodore Roethke*

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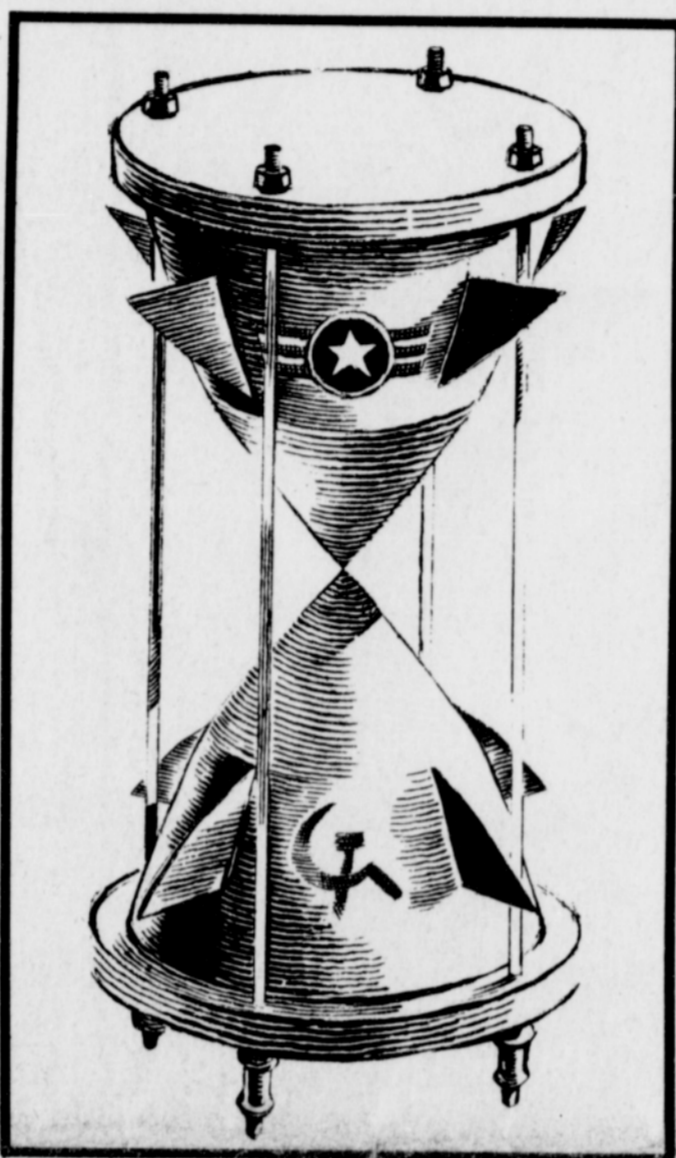
# THE CRIME OF NUCLEAR WAR

by Chuck McLaughlin

"While this law is first applied against German aggressors, if it is to serve any useful purpose it must condemn aggression by any other nations, including these which sit here in judgement." With these words, spoken to the Nuremburg Tribunal by chief United States prosecutor Robert H. Jackson, reference was made to international legal principles used as the basis of and justification for the criminal trials concluded and judgements rendered at Nuremburg, Germany on September 30 and October 1, 1946. What these and other legal principles relevant to this article are, their derivation and application in the nuclear 1980s are questions which will serve to test the writer's thesis that the threatened actual use of nuclear weapons violates the spirit and letter of our Declaration of Independence, the Constitution of the United States, Article II of The Hague Convention of 1907, the Kellogg Peace Pact, The United Nations' Charter, the Universal Declaration of Human Rights of 1948, and The Nuremburg Charter — and thus are crimes punishable by domestic as well as international law.

Initially, any notion that the Nuremburg trials were the original source of the principles of international law with which we are concerned must be corrected; for, in reality, they have their root in antecedent codes, laws, customary usages and beliefs codified from time to time in treaties and conventions adopted by signatories of numerous major and minor nations throughout the world. Early references to such principles may be found among the seventeenth century writings of philosophers and jurists such as Hugo Grotius, the "father" of international law, and in myriad international conferences of the eighteenth and nineteenth centuries, the most significant being held in Geneva in 1864 which gave birth to the International Red Cross and rules of conduct regarding the humane treatment of the sick, the wounded, and prisoners of war. Such conferences held at The Hague in 1899 and 1907 produced a vastly important collection of laws concerned with war, peace and neutrality which were embodied in seventeen "conventions" and subscribed to by most of the forty-four nations which participated, including the United States.

The Covenant of the League of Nations, which followed in 1920, attempted, among other things, to prohibit member nations from engaging in war by requiring them to submit their grievances before its arbitrations court or league council. Between 1928 and 1934, more than sixty nations signed the Kellogg Peace Pact, under which they agreed not to use war to gain their aims; and on October 24, 1945, the United Nations' Charter came into force when



David Sutter

China, France, the Soviet Union, the United Kingdom, the United States, and forty-six other signatories filed their instruments of ratification.

The substance of the principles codified in these treaties, conventions, leagues and the charters was the aspiration of the participating countries to so control conduct among nations as to guarantee extended periods of peaceful coexistence, minimization of destruction of life and property during warfare, mitigation of the ravages of war by prohibition of needless cruelties and other acts that spread death and destruction not reasonably related to the conduct of hostilities, recognition of fundamental rights of the citizens of the world, prosecution of those who violate these rights and justice for those who have been deprived of them. Thus it might be said that the only innovation at Nuremburg was procedural, as by 1945 international public conscience had defined the crimes enumerated in the Nuremburg indictment and they were not, therefore, an application of ex post facto law, as was claimed by some critics. The indictment, then, should be understood as an attempt to apply the principles of international law established by usage and agreement to satisfy the demands of a world aghast at the past and potential use of systems and weapons of mass extermination. And it should be noted as well that although the framers of said indictment and the signatories of earlier treaties and agreements could not envision a situation where just two belligerent nations, through their narrow, ego-centered myopia, could literally destroy other non-belligerent nations as a happenstance to the feuding pair's folly, fortunately the principles they codified and applied at Nuremburg and later in Japan were sufficiently broad and clear to reveal explicit and implicit references to such genocidal action. And lest it be argued that genocide, by definition, constitutes a systematic, purposed extermination of a race or culture, thus precluding criminal culpability of government and military leaders for accidental irradiation or other damage inflicted upon nonparticipating nations, any reasonably prudent man or woman in this day and age would or should know the probable consequences of a nuclear war. In view of such implied knowledge, the act itself would supply the intent and justify criminal prosecution.

That the aforementioned international agreements or indictments for war crimes have not succeeded in accomplishing their ends even among subscribing nations is obvious to all. But the point is that we, the United States, sub-

scribe to the principles embodied within them and have bound ourselves to their promulgation, observance, and enforcement. We are a signatory of the Geneva Convention and both the 1899 and 1907 conferences at The Hague, of the Covenant of the League of Nations, the Kellogg Peace Pact, the United Nations' Charter, the Nuremburg Treaty, the Universal Declaration of Human Rights, and the Organization of American States, among others. We are committed — unequivocally and without doubt. Yet our foreign/military policies call into question whether we are willing to examine our own conduct under the same principles we applied at the Nuremburg trials and under other principles apparently concerned with actions such as those we have undertaken since our acquisition of the ultimate "Big Stick." Are we when entering into such agreements simply performing perfunctorily while secretly harboring intentions to violate them when it seems easier to do so than to honor our word? This is a serious question and one we must answer by viewing our actions in the light of our professed commitments.

Preliminary to the exposition of pertinent passages of international treaties and charters to which we have bound ourselves as a nation, it is important to remind ourselves of the fundamental principles ("truths") upon which the nation was founded. We have declared them to be so basic as to be "self-evident," "endowed by our creator" to all humankind and "inalienable." It is readily seen that from the first of these all others derive their meaning and that any government which fails to "secure" this right "becomes destructive" of the pursuit of the others. It necessarily follows, as put by our forefathers in their inspired declaration, that when our or any other government, through "... a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce (such rights)," it is our additional right, our bounden "duty," to "alter or throw off such government and to provide new guards for their future security" and "in such form as to (us) shall seem most likely to effect (our) safety and happiness." Here, then, was our

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The North Coast Times Eagle will publish only once a month for the next few months as the result of serious financial difficulties. However, plans are to expand into Washington state with this issue, specifically into Port Townsend. Both decline and expansion cost money, and although it is rumored that the economy is booming, the Times Eagle is at the bottom of the trickle. A further obstacle is that only disaster will move the current publisher to take an interest in the business side of the newspaper. Of course the sort of paper that it is, a left-leaning periodical filled with gloom and doom with sometimes a muted cry for some form of political revolution, limits its appeal in reactionary eras such as this one. Yet it is times like these that provide it its life.

— Michael Paul McCusker  
 Editor & Publisher



## INSIDE

In honor of International Women's Day, which was March 8, and National Women's History Week, which is from March 5 to March 11, we devote a section to women's issues which begins on Page 8. And in honor of the impending Vernal Equinox, we celebrate with some poetry.