WAGING PEACE SERIES

As far as is known, the term "Waging Peace" originated with Warren Wells, late husband of Ethel Wells of Santa Barbara, in a letter to President Eisenhower. It was a longstanding practice of Mr. Wells to keep in close touch with key national figures and give them his views on peace issues as well as other vital matters. This series is dedicated both as a memorial to him and in gratitude to Mrs. Wells for her continued efforts in this cause.

Just as peace is more than the absence of war, waging peace is more than supporting arms reductions. In addition, it embraces positive steps toward genuine harmony. In this series the Foundation publishes and distributes short booklets stressing ideas for attaining peace. Concepts expressed will include views of many authorities, and will not necessarily be those of the Foundation.

Suggestions for topics and your reactions to this issue are welcome. Booklets in this series are available from the Nuclear Age Peace Foundation.

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WAGING PEACE BOOKLETS

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INTRODUCTION

The 1990s have been designated by the United Nations as the Decade of International Law. The purposes of the Decade, as described in U.N. General Assembly Resolution 44/23, are:

1. To promote acceptance and respect for the principles of international law;
2. To promote means and methods for the peaceful settlement of disputes between States, including resort to, and full respect for the International Court of Justice;
3. To encourage the progressive development of international law and codification;
4. To encourage the teaching, study, dissemination and wider appreciation of international law.

The Magna Carta for the Nuclear Age, the subject of this issue of Waging Peace, is a joint contribution to the Decade of International Law by the Nuclear Age Peace Foundation and the Foundation for the Establishment of an International Criminal Court. The Magna Carta calls for individual accountability for crimes committed under international law and for the establishment of an International Criminal Court. The principle of individual accountability could take us a long way toward bringing Heads of State and other government officials in all nations under the rule of law.

The Magna Carta for the Nuclear Age is rooted in the belief that all individuals deserve and require equal treatment under the law. It is perhaps idealistic to suggest that all individuals, even the most powerful leaders, should be subject to the same rules of law. I am convinced, however, that this idealism has become a necessity in the Nuclear Age, an age in which the scientifically-based potential for mass destruction creates constant pressure to devalue life.

If civilization has taught us anything, it is that life is sacred, wisdom is scarce, and diversity is to be valued. Law may be conceived of as a set of rules, enforced by a polity, to protect the values of a society. As yet, there is no society of the World, and international law remains that which is agreed to by nations. Nor are there yet effective mechanisms of enforcement of international law. There can be no doubt, however, that international law
is needed to prevent, at a minimum, the crimes enunciated at Nuremberg—crimes against peace, war crimes, and crimes against humanity. And new crimes are evolving such as crimes against the environment and economic crimes.

In putting forward the Magna Carta, it is our hope to stimulate thinking about the development and implementation of international law in our evolving global civilization.

It is my sad duty to report that my friend, colleague and co-author, Robert Woetzel, died in September 1991. He was a man of great vision, intellect and dedication who worked tirelessly in pursuit of the codification of international criminal law and the establishment of an International Criminal Court. Robert was a man who gave fully of himself to make this a better, fairer and more equitable world. Although he accomplished much, he left behind much remaining to be done.

It is left in our hands to breathe life into the principles of the Magna Carta.

David Krieger
President
Nuclear Age Peace Foundation

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"The cause to which Professor Woetzel devoted his life will not be defeated nor will his great life's work be in vain. His superior intellect, his deep insights, his prodigious energies, his uncanny foresight and his humanitarian concern have bequeathed a legacy for all time and to all peoples everywhere."

— Prime Minister A.N.R. Robinson
Republic of Trinidad and Tobago

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MAGNA CARTA FOR THE NUCLEAR AGE

Universal Declaration of Individual Accountability

Preamble

Affirming that all people of the World are entitled to life, liberty and other basic human rights;

Believing that all individuals, states and international organizations share in the responsibility to ensure peace, protect human rights and sustain the common heritage of the planet;

Acknowledging the significant efforts of the United Nations and other international organizations toward these ends;

Committed to the United Nations Charter, the Universal Declaration of Human Rights, and the Nuremberg Principles;

Convinced that nuclear, chemical and biological weapons have no place in a civilized World order;

Further convinced that survival in the nuclear age requires adherence to principles of justice and the World rule of law;

Determined to establish a just, peaceful and civilized World order in the twenty-first century,

We proclaim this Magna Carta for the Nuclear Age.

Article I

All individuals, including Heads of State, Ministers of Government, industrial, scientific and military leaders, shall be held personally accountable under international law for planning, preparing, initiating or committing the following acts:

- Crimes against peace, including waging a war of aggression or a war in violation of international treaties.
- War crimes, including deliberate attacks against civilian populations, the use of nuclear, chemical or biological weapons, and other grave breaches of humanitarian law.
- Crimes against humanity, including genocide, torture, and other serious mass violations of civil, political, economic, social and cultural rights.
• Crimes against the environment, including intentional spoliation of living habitats.
• Economic crimes against a people or nation, including slavery in all forms.
• Terrorism, piracy, kidnapping, hostage taking, and the training, support or sheltering of persons engaged in such crimes.
• Illicit trafficking in arms or narcotics, and all acts in furtherance of such crimes.
• Covert acts to overthrow or destabilize a legitimate foreign government, including assassination.
• Deliberate persecution or denial of civil rights on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, property, birth, or other status.
• Complicity in committing or attempts to commit any of the aforementioned acts.

Article II

The World Community shall ensure the further codification of these provisions through the continuing activities of the United Nations and other international organizations, and shall ensure compliance with them by establishing and maintaining the following institutions:

• An International Commission of Inquiry to engage in fact finding and certification of cases for trial;
• An International Criminal Court, composed of distinguished jurists, to try cases certified by the International Commission of Inquiry;
• International Police Forces to enforce the orders of the International Criminal Court;
• An International Criminal Penitentiary for confinement of convicted offenders; and
• A Center for the Advancement of International Criminal Law and Justice, independent of governments, to assist in codification of international criminal law and monitoring the implementation of this Charter.

Article III

These provisions, upon adoption, may be added to, abridged or altered by the common consent of the World Community of nations and peoples, but without amendment they shall be binding in perpetuity.

A MAGNA CARTA FOR THE NUCLEAR AGE

by David Krieger and Robert Woetzel

Sovereignty must not serve as a shield to protect leaders who violate international law. Throughout history the transgressions of leaders have resulted in the death and suffering of hundreds of millions of innocent victims. In the twentieth century alone some 187 million persons have died as a result of purges, genocide and aggressive warfare. These deaths have resulted not from random acts of violence, but from official acts of government leaders.

The Nuclear Age has witnessed the scientific and technological development of weapons capable of “omnicide,” the destruction of all. Such powerful weapons of destruction demand controls on those who control the weapons. Thus, Heads of State and government leaders must be held personally accountable for crimes committed under international law.

The Nuclear Age calls for a new way of viewing the responsibilities of citizenship and leadership. A new social pact is needed between citizens and leaders which balances rights with responsibilities, and holds all individuals, regardless of position or station in life, accountable for criminal transgressions of international law. In this spirit, we call for the adoption of a Magna Carta for the Nuclear Age with a Universal Declaration of Individual Accountability and the establishment of an International Criminal Court.

A Magna Carta is a “great charter.” It provides both a turning point and a definition to a historical period. The original Magna Carta, forced on King John of England by his barons in 1215, placed the king under the rule of law and granted certain rights to the aristocracy. The original Magna Carta did little for the common man, but it foreshadowed constitutional government and democracy by subjecting the sovereign to the law.

Today we are in need of a new Magna Carta, one that is responsive to the conditions of sovereignty in the nuclear age. A Magna Carta for our time must take account of the fact that we now live in an interdependent world in which all borders are permeable. Nuclear weapons and other weapons of mass destruction respect no borders, and threaten the survival of all life. The use of these weapons is prohibited by international law under all
international law. It also calls for the establishment of an International Criminal Court and other institutions necessary to enforce international law. The jurisdiction of the International Court of Justice is limited to disputes between nations and advisory opinions for the United Nations and its specialized agencies. The International Criminal Court, by contrast, would have jurisdiction over all individuals who commit major violations of international law as defined in Article I of the Universal Declaration of Individual Accountability and its eventual supporting codification.

THE UNIVERSAL DECLARATION OF INDIVIDUAL ACCOUNTABILITY

The Universal Declaration of Individual Accountability has been the critical missing element in the creation of a Magna Carta for the Nuclear Age. It replaces the guiding principle of State sovereignty, which has provided the foundation for international order for over four centuries, with an emphasis on the individual as the subject as well as the object of international law. The individual is seen as the holder of rights to be enforced against all violators of those rights; the individual is also conceived as responsible when his or her actions violate international law, and consequently accountable under international law.

Under the Universal Declaration of Individual Accountability, leader and follower, rich and poor, are forewarned that certain rules apply to all alike and that no one, however powerful, shall escape the consequences of his or her actions. In the Nuclear Age we are all citizens of the world, regardless of our national affiliations, and must accept the rights and responsibilities which are attached. As the original Magna Carta expanded the rights of the aristocracy and increased the accountability of the king, the Magna Carta for the Nuclear Age expands the rights and responsibilities of all individuals and provides that all individuals—including those acting in official governmental capacities—shall be held accountable for criminal violations of international law.

Without the Universal Declaration of Individual Accountability, there will be no enforcement mechanism to assure that the United Nations Charter, the Universal Declaration of Human Rights and its supporting covenants, and the Nuremberg Principles and other critical standards of international law are upheld. It is thus the key element to completing the Magna Carta for the Nuclear Age, and its implementation by the World Community is urgently needed.

The Universal Declaration of Individual Accountability is divided into four sections: the Preamble provides the basic principles upon which the declaration is based; Article I outlines the international criminal activities for which all individuals will be held accountable; Article II outlines the institutional structure to be established by the World Community to support and
enforce the provisions of Article I; and Article III makes the provisions of the Declaration binding in perpetuity upon adoption. The specific provisions of the document are discussed in the sections which follow.

The Preamble

AFFIRMING THAT ALL PEOPLE OF THE WORLD ARE ENTITLED TO LIFE, LIBERTY AND OTHER BASIC HUMAN RIGHTS;

This basic provision takes its inspiration from the U.S. Declaration of Independence. It has become axiomatic that all individuals are born with certain inalienable rights. The right to "life, liberty and security of person" is confirmed in Article 3 of the Universal Declaration of Human Rights. Other freedoms and liberties found in the Universal Declaration of Human Rights include the right to freedom of movement (Article 13), asylum from persecution (Article 14), right to marry and to found a family (Article 16), right to freedom of thought, conscience and religion (Article 18), right to freedom of opinion and expression (Article 19), and right to peaceful assembly and association (Article 20). The Universal Declaration also prohibits slavery or servitude (Article 4) and torture (Article 5), and provides a "right to a standard of living adequate for the health and well-being" of all individuals (Article 25). In Article 28, the Universal Declaration states that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."

BELIEVING THAT ALL INDIVIDUALS, STATES AND INTERNATIONAL ORGANIZATIONS SHARE IN THE RESPONSIBILITY TO ENSURE PEACE, PROTECT HUMAN RIGHTS AND SUSTAIN THE COMMON HERITAGE OF THE PLANET;

Along with rights come responsibilities. They are two sides of a coin. One cannot exist without the other. The responsibility to ensure peace, protect human rights and sustain the common heritage of the planet resides with each of us. In the Nuclear Age we must act responsibly toward one another as individuals. States must also act responsibly, refraining from policies which threaten peace, violate or undermine human rights, or pollute or destroy the ecology of the planet. A grave violation of human rights and endangerment of the peace is the threat or actual use of nuclear weapons or other weapons of mass destruction.

ACKNOWLEDGING THE SIGNIFICANT EFFORTS OF THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS TOWARD THESE ENDS;

The United Nations and its specialized agencies have been active since the organization's inception in attempting to ensure peace, protect human rights and sustain the common heritage of the planet. The Magna Carta for the Nuclear Age exists against the backdrop of considerable effort by the United Nations and other international organizations to achieve these goals. What has been missing in the structure of the United Nations is the implementation of a system of accountability for individuals who commit crimes under international law. Without accountability, as originally conceived in the Nuremberg Charter for crimes against peace, crimes against humanity and war crimes, individuals acting on their own authority or under State authority will continue to threaten the peace, violate human rights and despoil the planet.

The United Nations Organization is the vehicle for the realization of individual human aspirations. The international community must recognize, however, that if the United Nations is to succeed in its crucial mission of protecting humanity from the great threats which we face, a system of individual accountability under international law must be established. Nothing less will suffice if we are to survive the threats of nuclear "omicide," environmental and human disasters like Chernobyl, and repeated genocidal holocausts from Auschwitz to the Iraqi attacks against the Kurds ordered and directed by unscrupulous leaders from Hitler to Hussein.

COMMITTED TO THE UNITED NATIONS CHARTER, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, AND THE NUREMBERG PRINCIPLES;

As already stated, these are the basic documents which form the foundation of the Magna Carta for the Nuclear Age. They established the framework for individual and State action in the post World War II period, having emerged from the ashes of that war. The potential of these instruments was blunted by the Cold War with its emphasis on threat and counter-threat and its accompanying nuclear arms race. We now stand at a historical juncture where the Cold War has ended, and these instruments may again provide a basis for regulating rights and enforcing responsibilities under international law. Unfortunately, these documents are not widely known or understood. Effective citizenship in the Nuclear Age is dependent upon an understanding of the rights and responsibilities established by these documents. The Universal Declaration of Individual Accountability builds upon and reinforces the principles provided for in these critically important documents.

CONVINCED THAT NUCLEAR, CHEMICAL AND BIOLOGICAL WEAPONS HAVE NO PLACE IN A CIVILIZED WORLD ORDER;

Nuclear, chemical and biological weapons are all weapons of mass destruction. They are weapons of total annihilation, killing indiscriminately soldiers and civilians, men, women and children. They are not weapons of combat, but of cowards. All are outlawed by international treaties and the
law of civilized nations. And yet, nations continue to design, develop, test, manufacture, stockpile, deploy, threaten to use, and use these weapons; and these activities are carried out by individuals within nations. Before greater crimes are committed, these weapons must be dismantled under a well-designed system of international verification. Those nations and individuals refusing to cooperate in the dismantling of these weapons of mass destruction must be brought before an International Criminal Court and tried for the planning and preparation of crimes against humanity.

FURTHER CONVINCED THAT SURVIVAL IN THE NUCLEAR AGE REQUIRES ADHERENCE TO PRINCIPLES OF JUSTICE AND THE WORLD RULE OF LAW;

The predominant characteristic of the Nuclear Age is the threat of mass annihilation in which our "advances" in destructive technology have placed the survival of the human species in jeopardy. For the first time in human evolution it is possible to imagine the annihilation of humankind. Only by applying principles of justice and the rule of law will it be possible to control the omniscient weaponry we have created.

We are aware that the nuclear genie is out of the bottle, and without strict international controls on nuclear materials there will come a day when the have-not nations of the world and terrorist leaders have the capacity to threaten nuclear holocausts. To prevent this day from occurring, we must recognize that peace on our increasingly interdependent globe requires that every individual's needs on the planet be dealt with justly. As Adlai Stevenson pointed out with great eloquence, we cannot continue to exist on "Spaceship Earth" with a small portion of the crew living in abundance while the vast majority live in crushing poverty. Without justice there can be no peace; without peace there can be no assured future for humankind; without adherence to international law both peace and justice stand in jeopardy.

DETERMINED TO ESTABLISH A JUST, PEACEFUL AND CIVILIZED WORLD ORDER IN THE TWENTY-FIRST CENTURY;

As we stand on the brink of a new century and a new millennium, it is appropriate to keep in mind that human existence on earth is but a fraction of a second in geological time. In our short history on earth, our accomplishments as a species have been dramatic. The human genius and capacity for creativity are boundless. We now stand threatened by that very genius and creativity turned to destructive ends. If we are to survive and prosper as a species we must focus our attention on the constructive goal of creating a just and peaceful World order in the twenty-first century.

We have lived long enough under the sword of Damocles. It is time for humanity to emerge from the burden of threat and destruction which has thus far characterized the Nuclear Age, and assert our claim to a just and peaceful World order. The new World order must be one which honors the dignity and worth of every individual, that respects the legacies of all peoples—their identities, ethnicities, cultures and, above all, their diversity. In our diverse human heritage lies the seeds of greatness. If we are to nurture this greatness in future generations, we must provide the soil in which these seeds can take root. We will do this by creating and strengthening the institutions necessary for a just and peaceful world order. Among these institutions, an International Criminal Court will be necessary to hold in check the destructive potential of individual leaders.

The Universal Declaration of Individual Accountability provides a critical new element in the Magna Carta for the Nuclear Age. This element is accountability of all individuals under international law. The document is especially for leaders who would place in jeopardy the survival of our species by criminal acts in violation of international law. The same principles of responsibility and accountability laid down at Nuremberg must now be expanded and implemented on an international and impartial basis to assure a World order in the twenty-first century which values and supports human dignity and defends all life. This is a World order worthy of the promise, intelligence and creativity of humankind.

Article I

ALL INDIVIDUALS, INCLUDING HEADS OF STATE, MINISTERS OF GOVERNMENT, INDUSTRIAL, SCIENTIFIC AND MILITARY LEADERS, SHALL BE HELD PERSONALLY ACCOUNTABLE UNDER INTERNATIONAL LAW FOR PLANNING, PREPARING, INITIATING OR COMMITTING THE FOLLOWING ACTS:

This article sets forth the primary proposition of the Universal Declaration of Individual Accountability: all individuals, regardless of position or station in life, shall be held accountable for criminal acts in violation of international law. This is in keeping with the position taken by U.S. Supreme Court Justice Robert Jackson, the chief Nuremberg prosecutor, who said in his opening statement at Nuremberg that the "principle of personal liability is a necessary and logical one if international law is to render real help in the maintenance of peace." Justice Jackson assured the world "that while this law is first applied against German aggressors, the law includes, and if it is to serve a useful purpose it must condemn aggression by any other nations, including those which sit here now in judgment."

Within all nations, individuals are held accountable for criminal violations of national law. Without such accountability, the law within nations would be ineffectual and unenforceable. A lack of individual accountability currently exists at the international level. If we are to create a just World order ruled by law rather than the force of arms, then the principle of individual accountability must be recognized and applied in international law.
The International Law Commission (ILC), established by the U.N. General Assembly in 1947, was charged with preparation of a Draft Code of Crimes Against the Peace and Security of Mankind ("Draft Code") taking into account the principles of international law recognized in the Charter of the Nuremberg Tribunal and the Judgment of the Tribunal. The Draft Code, provisionally adopted by the ILC on July 12, 1991, states that "an individual who commits a crime against the peace and security of mankind is responsible therefor and liable to punishment." (Article 3(1)) The Draft Code further states that "The official position of an individual who commits a crime against the peace and security of mankind, and particularly the fact that he acts as Head of State or Government, does not relieve him of criminal responsibility." (Article 13)

In discussing specific Article I crimes, we will refer to the applicable provisions of the Draft Code as provisionally adopted by the ILC.

CRIMES AGAINST PEACE, INCLUDING WAGING A WAR OF AGGRESSION OR A WAR IN VIOLATION OF INTERNATIONAL TREATIES.

Article 2(4) of the United Nations Charter provides that "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations."

Crimes against peace were clearly articulated in Nuremberg Principle VI(2)(a) which set out the following acts as punishable under international law:

"(i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;
(ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i)."

On December 14, 1974 the U.N. General Assembly, after many years of work, agreed upon a Definition of Aggression. The definition included the following acts:

"(a) The invasion or attack by the armed forces of a State on the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
(c) The blockade of the ports or coasts of a State by the armed forces of another State;
(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein."

In Article 5 of the Definition of Aggression, the General Assembly stated:

"1. No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.
2. A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.
3. No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful." (Emphasis added.)

The Draft Code of Crimes Against the Peace and Security of Mankind has designated "Aggression" (Article 15) and "Threat of Aggression" (Article 16) as crimes under international law. The Draft Code states in Article 15(2), "Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations." Article 15 gives numerous specific examples of aggressive acts. Article 16(2) defines Threat of Aggression as "declarations, communications, demonstrations of force or any other measures which would give good reason to the Government of a State to believe that aggression is being seriously contemplated against that State."

Elie Wiesel, Nobel Peace Laureate and survivor of World War II concentration camps, has stated before the Senate Foreign Relations Committee:

"Let history record our determination that whenever an aggressor will launch war against defenseless countries, his story will inexorably lead him before an international court of justice. His sentence will almost be irrelevant. His personal future will matter little. What will matter is the exposure of his criminal deeds. What will matter is that he will remain in the annals of history as an example of what human beings, driven by fanaticism or ambition, can do to one another."
WAR CRIMES, INCLUDING DELIBERATE ATTACKS AGAINST CIVILIAN POPULATIONS, THE USE OF NUCLEAR, CHEMICAL OR BIOLOGICAL WEAPONS, AND OTHER GRAVE BREACHES OF HUMANITARIAN LAW.

Modern limitations on conduct in warfare go back to the Declaration of St. Petersburg in which the contracting parties agreed on December 11, 1868 “mutually to renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes, which is either explosive or charged with fulminating or inflammable substances.”

War crimes were elaborated in the Hague Conventions of 1899 and 1907 and the Geneva Conventions of 1949 and the Additional Protocols thereto. The four Geneva Conventions adopted on August 12, 1949 are:

“I. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field;
II. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;
III. Geneva Convention relative to the Treatment of Prisoners of War; and
IV. Geneva Convention relative to the Protection of Civilian Persons in Time of War.”

The Additional Protocols to the Geneva Conventions done on June 10, 1977, provide inter alia the following basic rules:

“1. In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited.
2. It is prohibited to employ weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.
3. It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.” (Article 35)

“In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.” (Article 48)

Nuremberg Principle VI(2)(b) provides for individual accountability for the following war crimes:

“Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.”


Article II of the Convention makes the provisions of the treaty applicable to “representatives of State authority and private individuals who as principals or accomplices, participate in or who directly incite others” to Article I crimes. (Emphasis added.)

The Draft Code of Crimes Against the Peace and Security of Mankind specifies as criminal conduct committing or ordering the commission of an exceptionally serious war crime. (Article 22(1)) Such crimes are defined in Article 22(2) as “exceptionally serious violations of principles and rules of international law applicable in armed conflict consisting of any of the following acts:

“(a) acts of inhumanity, cruelty or barbarity directed against the life, dignity or physical or mental integrity of persons [in particular willful killing, torture, mutilation, taking of hostages, deportation or transfer of civilian population and collective punishment];
(b) use of unlawful weapons;
(c) employing methods or means of warfare which are intended or may be expected to cause widespread, long-term and severe damage to the natural environment;
(d) large-scale destruction of civilian property;
(e) willful attacks on property of exceptional religious, historical or cultural value.”

CRIMES AGAINST HUMANITY, INCLUDING GENOCIDE, TORTURE, AND OTHER SERIOUS MASS VIOLATIONS OF CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS.

Crimes Against Humanity were articulated in Article VI(2)(c) of the Nuremberg Principles to include:
“Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.”

Such crimes have been further developed under international law in the following treaties:

• Convention on the Prevention and Punishment of the Crime of Genocide (December 9, 1948);
• International Covenant on Civil and Political Rights (December 16, 1966);
• International Covenant on Economic, Social and Cultural Rights (December 16, 1966);
• Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (December 10, 1984).

The Genocide Convention states in Article IV that “Persons committing Genocide... shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.” (Emphasis added.)

Crimes Against Humanity, whether committed in time of war or peace, are defined in the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes Against Humanity “as they are defined in the Charter of the International Military Tribunal, Nurnberg, of 8 August 1945 and confirmed by resolutions 3 (II) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, eviction by armed attack or occupation and inhuman acts resulting from the policy of apartheid, and the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, even if such acts do not constitute a violation of the domestic law of the country in which they are committed.” (Emphasis added.)

The Draft Code seeks to hold accountable any individual “who commits or orders the commission by another individual of an act of genocide....” (Article 19(1)) Genocide is defined as “any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such:

(a) killing members of a group;
(b) causing serious bodily or mental harm to members of the group;
(c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) imposing measures intended to prevent births within the group;
(e) forcibly transferring children of the group to another group.” (Article 19(2))

CRIMES AGAINST THE ENVIRONMENT, INCLUDING INTENTIONAL SPOilation OF LIVING HABITATS.

Criminal conduct against the environment is not yet defined in the way that the three main Nuremberg crimes (crimes against peace, war crimes and crimes against humanity) have been. Yet, it is clear that, given modern technological capabilities, conduct that affects the natural and human environment can have far-reaching consequences for humanity for countless generations to follow. Individuals must be held accountable for planning, preparing, initiating or committing acts which would poison or otherwise destroy the earth’s environment.

The United Nations has issued several major statements on the need for environmental protection which provide a basis for developing a code of offenses against the environment. These include:

• Declaration of the United Nations Conference on the Human Environment (June 16, 1972);
• World Charter for Nature (November 9, 1982); and
• Protection of the Global Climate for Present and Future Generations of Mankind (December 21, 1990).


The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, done at Basel on March 22, 1989 categorized the illegal traffic in hazardous wastes or other wastes as “criminal.” (Article IV (3))

The Draft Code calls for criminal accountability of “an individual who wilfully causes or orders another individual to cause widespread, long-term and severe damage to the natural environment....” (Article 26)

ECONOMIC CRIMES AGAINST A PEOPLE OR NATION, INCLUDING SLAVERY IN ALL FORMS.

Economic crimes against a people or nation, with the exception of slavery, remain largely to be defined by the international community. Slavery was made criminal by the Convention on the Prohibition of Slavery (September 7, 1956).

Guidelines for developing a code of offenses for Economic Crimes may be found in the U.N. Declaration on the Right to Development (December 4, 1986) and in a “Magna Carta for International Economic Development, Rights and Responsibilities” published by the Foundation for the Establishment of an International Criminal Court in 1989.

The Draft Code seeks criminal accountability for “an individual who as leader or organizer establishes or maintains by force, colonial domination or
any other form of alien domination contrary to the rights of peoples to self-determination as enshrined in the Charter of the United Nations....” (Article 18)

TERRORISM, PIRACY, KIDNAPPING, HOSTAGE TAKING, AND THE TRAINING, SUPPORT OR SHELTERING OF PERSONS ENGAGED IN SUCH CRIMES.

A series of international conventions prohibit these acts, and provide for criminal sanctions. The common theme of these conventions is to protect innocent persons from attack by those who would use such attacks to send a message or to punish others.

These conventions include:

- Convention on Offenses and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963;
- Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970;
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, concluded at Montreal on September 23, 1971;
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted at New York on December 14, 1973;
- International Convention against the Taking of Hostages, adopted in New York on December 17, 1979;
- Convention on the Physical Protection of Nuclear Material, adopted at Vienna on March 3, 1980;
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on February 24, 1988;
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, signed at Rome on March 10, 1988;

The U.N. General Assembly stated on December 4, 1989 that it “once again unequivocally condemns, as criminal and unjustifiable, all acts, methods and practices of terrorism wherever and by whomever committed...” (Resolution adopted in Report of Sixth Committee 44/29, emphasis added.) International terrorism is defined in the Draft Code as “undertaking, organizing, assisting, financing, encouraging or tolerating acts against another State directed at persons or property and of such a nature as to create a state of terror in the minds of public figures, groups of persons or the general public.” (Article 24)

ILLICIT TRAFFICKING IN ARMS OR NARCOTICS, AND ALL ACTS IN FURTHERANCE OF SUCH CRIMES.

Article 26 of the United Nations Charter provides:

“In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world’s human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.” (Emphasis added.)

As yet, however, a system for the regulation of armaments required by Article 26 has not been developed, and the arms trade continues unchecked. This is an area in great need of regulation with appropriate criminal sanctions, and the United Nations should move rapidly to achieve this end.

A United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was adopted on December 19, 1988. This Convention calls in Article 3 for each Party “to adopt such measures as may be necessary to establish as criminal offenses a wide range of activities connected with drug trafficking including “production, manufacture, extraction, preparation, offering, offering for sale, distribution for sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of such narcotic drug or any psychotropic substance...” (Emphasis added.)

Having recognized these and other activities in furtherance of narcotic trafficking to be criminal acts, the next step is to provide for international jurisdiction over such acts when domestic courts do not assert jurisdiction.

The Draft Code defines as criminal acts the commission or ordering the commission of “undertaking, organizing, facilitating, financing or encouraging of illicit traffic in narcotic drugs on a large scale, whether within the confines of a State or in a transboundary context.” (Article 25(1))

COVERT ACTS TO OVERTHROW OR DESTABILIZE A LEGITIMATE FOREIGN GOVERNMENT, INCLUDING ASSASSINATION.

If the world is to set the rule of law above the rule of force, then covert acts to overthrow or destabilize legitimate foreign governments, including assassination, must not be allowed. This raises the question of whether the international community is helpless in dealing with a tyrant who comes to power by legitimate means. The answer is no. This situation may be dealt with by bringing the tyrant before an International Criminal Court for
whatever offenses have been committed or attempted. If the tyrant will not appear, he could be tried in absentia. Upon conviction by the International Criminal Court, an individual who continues to serve as Head of State or Head of Government would cause the legitimacy of the government to be withdrawn by the World community. The convicted tyrant would be subject to apprehension by the citizens of his nation or by international forces.

The Draft Code provides criminal sanctions for Intervention (“in the internal or external affairs of a State”) which is defined as “fomenting [armed] subversion or terrorist activities or by organizing, assisting or financing such activities, or supplying arms for the purpose of such activities, thereby [seriously] undermining the free exercise by that State of its sovereign rights.” (Article 17(2))

**DELIBERATE PERSECUTION OR DENIAL OF CIVIL RIGHTS ON GROUNDS OF RACE, COLOR, GENDER, LANGUAGE, RELIGION, POLITICAL OR OTHER OPINION, NATIONAL OR SOCIAL ORIGIN, PROPERTY, BIRTH OR OTHER STATUS.**

Article 1 of the Universal Declaration of Human Rights states that “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.”

The following international Conventions pertain to criminal conduct in this area:

- International Covenant on Civil and Political Rights adopted on December 16, 1966;
- International Covenant on Economic, Social and Cultural Rights adopted on December 16, 1966;
- Convention on the Elimination of all forms of Racial Discrimination adopted on December 21, 1965; and

The International Convention on the Suppression and Punishment of the Crime of Apartheid states in Article I(1) that “apartheid is a crime against humanity and that inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination... are crimes violating principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security.” Article I(2) states, “The States Parties to the Present Convention declare criminal those organizations, institutions and individuals committing the crime of apartheid.” (Emphasis added.)

The Convention further provides in Article III that “International criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State...” (Emphasis added.)

It is clear that the World Community intended that criminal responsibility attach to the commission of the crime of apartheid. With criminal responsibility must come accountability under international law for one’s acts.

The Draft Code seeks to hold accountable individuals who commit or order the commission of “Systematic or mass violations of human rights, consisting of:

(a) murder;
(b) torture;
(c) establishing or maintaining over persons a status of slavery, servitude or forced labour;
(d) deportation or forcible transfer of population;
(e) persecution on social, political, racial, religious or cultural grounds.”

(Article 21)

**COMPILCITY IN COMMITTING OR ATTEMPTS TO COMMIT ANY OF THE AFOREMENTIONED ACTS.**

Those who participate in international criminal activities, either directly or indirectly, should be held accountable for their acts. This section allows for the assertion of jurisdiction over individuals who aid or abet in committing the previously discussed crimes.

The Draft Code, in Article 3(2), provides penalties for any “individual who aids, abets or provides the means for the commission of a crime against the peace and security of mankind or conspires in or directly incites the commission of such a crime....”

In Article 3(3) the Draft Code seeks to hold accountable individuals who attempt to commit a crime against the peace and security of mankind. Attempt is defined as “any commencement of execution of a crime that failed or was halted only because of circumstances independent of the perpetrator’s intention.”

**Article II**

THE WORLD COMMUNITY SHALL ENSURE THE FURTHER CODIFICATION OF THESE PROVISIONS THROUGH THE CONTINUING ACTIVITIES OF THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS, AND SHALL ENSURE COMPLIANCE WITH THEM BY ESTABLISHING AND MAINTAINING THE FOLLOWING INSTITUTIONS:
It has been more than four decades since the International Law Commission began its work on preparing a Draft Code of Crimes Against the Peace and Security of Mankind. The necessary steps must now be taken for the World community acting through the United Nations to adopt the Code. While the Code may not be complete or perfect at the outset, it should be adopted and then expanded or amended as appropriate.

If law is to be effective it must have some method of enforcement. This is as true of international law as of national law. The institutions necessary to enforce international law will require some transfer of sovereignty from the national to the international level. This transfer has already taken place in many areas where supranational decision-making is required, including the various organs and specialized agencies of the United Nations. Now it needs to occur in the area of international criminal law.

AN INTERNATIONAL COMMISSION OF INQUIRY TO ENGAGE IN FACT FINDING AND CERTIFICATION OF CASES FOR TRIAL;

The International Commission of Inquiry (ICI) would be similar to a grand jury. It would be composed of an impartial group of jurists who would investigate and evaluate complaints against individuals for violations of Article I provisions. The ICI would be charged with certifying a case for trial, recommending against trial or suggesting an alternate disposition of the case.

AN INTERNATIONAL CRIMINAL COURT, COMPOSED OF DISTINGUISHED JURISTS, TO TRY CASES CERTIFIED BY THE INTERNATIONAL COMMISSION OF INQUIRY;

The International Criminal Court (ICC) would exercise jurisdiction over all cases certified by the ICI. It would be composed of impartial and distinguished jurists, chosen in their expert capacity and representative of the World community. The Court would be responsible for assuring that defendants’ basic rights are protected including, inter alia, the right to be considered innocent until proven guilty beyond a reasonable doubt, the right to competent counsel, the right against self-incrimination.

The Draft Code of Crimes Against the Peace and Security of Mankind provides for “the minimum guarantees due to all human beings with regard to the law and the facts,” including “the right to be presumed innocent until proven guilty.” The following rights are also proposed in the Draft Code:

“(a) in the determination of any charge against him, to have a fair and public hearing by a competent, independent and impartial tribunal duly established by law or by treaty;
(b) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
(c) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
(d) to be tried without undue delay;
(e) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him without payment by him in any such case if he does not have sufficient means to pay for it;
(f) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(g) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;
(h) not to be compelled to testify against himself or to confess guilt.”

(Article 8)

INTERNATIONAL POLICE FORCES TO ENFORCE THE ORDERS OF THE INTERNATIONAL CRIMINAL COURT;

International Police Forces would support the ICC with regard to the control of criminal proceedings and the incarceration of criminals. International Police Forces are not conceived of as invasion forces capable of apprehending non-cooperating defendants. The Court would rely upon national police forces to aid it in this function when necessary.

AN INTERNATIONAL CRIMINAL PENITENTIARY FOR CONFINEMENT OF CONVICTED OFFENDERS;

The function of confining convicted offenders would be fulfilled by an International Criminal Penitentiary. The prison at Spandau which housed German war criminals convicted by the International Military Tribunals following World War II provides an example.

A CENTER FOR THE ADVANCEMENT OF INTERNATIONAL CRIMINAL LAW AND JUSTICE, INDEPENDENT OF GOVERNMENTS, TO ASSIST IN CODIFICATION OF INTERNATIONAL CRIMINAL LAW AND MONITORING THE IMPLEMENTATION OF THIS CHARTER.

The institutions previously discussed would be international organizations composed of international civil servants. These institutions would be official international bodies given legitimacy and supported financially by nations. The Center for the Advancement of International Criminal Law and Justice would, however, be independent of governments. It would be composed of non-governmental representatives, and would serve to support and monitor the implementation of the Universal Declaration of Individual Accountability.
Article III

THESE PROVISIONS UPON ADOPTION, MAY BE ADDED TO, ABRIDGED OR ALTERED BY THE COMMON CONSENT OF THE WORLD COMMUNITY OF NATIONS AND PEOPLES, BUT WITHOUT AMENDMENT THEY SHALL BE BINDING IN PERPETUITY.

This article allows that, upon adoption, the Universal Declaration of Individual Accountability is subject to amendment by the World community. Without amendment, the provisions will bind all signatories in perpetuity.

CONCLUSION

If we are to preserve the human rights achieved so painfully in our century, we must accept responsibility for protecting those rights and impose accountability on all individuals, regardless of their office, who violate those rights guaranteed under international law.

As technological advances have made the world smaller, we can no longer tolerate the exercise of sovereignty in violation of international law. The prerogatives of sovereignty must end where the rights of other nations and peoples begin. No sovereign nation or national leader, acting with or without State authority, can be allowed to trample on the rights of other nations or peoples. Nor can nations and national leaders be allowed to destroy the earth’s common resources or to endanger peace in the name of sovereignty. To prevent such transgressions, it serves the ends of justice to impose individual accountability under international law.

The Magna Carta for the Nuclear Age brings the Nuremberg Principles into the Nuclear Age and places sovereignty into the proper perspective for the twenty-first century by recognizing that:

1. international law is necessary to ensure peace, protect human rights and sustain the common heritage of the planet;
2. no nation or national leader stands above international law; and
3. individual accountability under international law requires an institutional framework to include the establishment of an International Criminal Court.

The twentieth century has been witness to unthinkable brutality and horror. In World War II alone some 50 million persons were killed. Since World War II there have been some 130 wars, killing some 20 million persons. In all, over 100 million persons have died in wars during this century. If the implementation of the Universal Declaration of Individual Accountability were to prevent just one future war or stop one future Hitler, Stalin or Hussein it would justify its establishment.
NOTES


2. The philosopher John Somerville coined the term “omnicide.”


AUTHORS

David Krieger is a founder and president of the Nuclear Age Peace Foundation. He is an attorney, political scientist and author. Dr. Krieger recently represented the Foundation at an International Congress of Scientists and Engineers in Berlin where he advocated individual accountability under international law for scientists and engineers who participate in research and development of nuclear weapons and other weapons of mass destruction.

Robert K. Woetzel (1930-1991) was founder and president of the Foundation for the Establishment of an International Criminal Court. Dr. Woetzel, a distinguished professor of international law, was a recipient of the Peace Medal of the former German Democratic Republic. He was the author of several books on international law, including The Nuremberg Trials in International Law.