

**OPENING REMARKS FOR THE SEVENTY-FIFTH
ANNIVERSARY OF THE INTERNATIONAL MILITARY
TRIBUNAL AT NUREMBERG***

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Good morning to our distinguished guests and speakers; members of the 69th Graduate Course and the 212th Officer Basic Course, who are here with us today in the auditorium; our neighbors from the University of Virginia; and our guests who may be participating remotely. I am very excited to welcome you to this historic event as we commemorate the seventy-fifth anniversary of the International Military Tribunal at Nuremberg. Seventy-five years ago, a justice from the highest court in our land took a leave of absence from the United States Supreme Court to prepare the world's case in an international tribunal created by charter to judge twenty-two high-ranking Nazi officials for crimes against peace, waging aggressive war, crimes against humanity, and war crimes. In November 1945, the seminal International Tribunal at Nuremberg commenced in Courtroom 600 of the Nuremberg Palace of Justice, and history was made.

Our commemoration of this event is organized into three distinct phases. We are going to start with the history and background of the

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tribunals, and that will start after I yield the stage to Mr. Fred Borch,¹ who will be followed by Dr. William Meinecke² of the U.S. Holocaust Memorial Museum. We are then going to move to an examination of the impact that the Nuremberg tribunals had on the law of armed conflict in the post-World War II world. To do that, we are going to hear from Professor Geoff Corn³ from the South Texas College of Law and Gary Solis,⁴ most recently of Georgetown University and George Washington University. We are going to conclude our program today with a forward look at what the legacy of Nuremberg means for all of us as individuals, as a military, and as a Nation, with comments from Andrea Harrison,⁵ Chair of the American Society of International Law, Professor Tom Nachbar of the University of Virginia,⁶ and, of course, our very own Lieutenant General Chuck Pede,⁷ the fortieth Judge Advocate General of the United States Army.

As we work through our program today and we go from contemplative reflection to a forward-looking, eyes-ahead focus on a future of violent extremist organizations and a continuing great power competition that demands not only our attention and focus on an adversary, but also continued and deliberate efforts to retain and train the best and brightest—those individuals educated for operational adaptability and an ability to excel at expanding the competitive space in increasingly complex multi-domain operations in a principled way—I want you to think about the context that Nuremberg has provided for us. Not just where we were then but where you are now—and when I say “you,” I am talking specifically to the 69th Graduate Course and the 212th Officer Basic Course—and what that means for all of us as we go forward into the world.

¹ Fred L. Borch III, *The Nuremberg Military Tribunals: A Short History*, 229 MIL. L. REV. 159 (2021).

² William F. Meinecke Jr., *German Justice on Trial: The Justice Case*, 229 MIL. L. REV. 173 (2021).

³ Geoffrey S. Corn, *Individual Criminal Responsibility for War Crimes*, 229 MIL. L. REV. 191 (2021).

⁴ Gary D. Solis, “Smoothing Out” the IMT Judgment: *The Legal Legacy of the Twelve Subsequent Military Tribunals*, 229 MIL. L. REV. 205 (2021).

⁵ Andrea Joy Harrison, *Guidelines on Investigating Violations of International Humanitarian Law and Practical Mechanisms for Accountability—Today and Beyond*, 229 MIL. L. REV. 221 (2021).

⁶ Thomas B. Nachbar, *Nuremberg and the Role(s) of Accountability in the Law of Armed Conflict*, 229 MIL. L. REV. 237 (2021).

⁷ Lieutenant General Charles N. Pede, *The Significance of the Nuremberg International Military Tribunals on the Practice of Military Law*, 229 MIL. L. REV. 253 (2021).

First, I want you to consider the criminal history, or lack thereof, for the individuals who were on trial at that tribunal. Most of those people would have appeared to be lawful, upstanding citizens who happen to manipulate state process and a system of justice to their own ends. But once they were seated in power, they went largely unchallenged, even by those who were educated, trained, and chartered to be protectors of the law (e.g., attorneys). The apparent ease with which that happened is truly a scary thing, and it is something we have to be mindful of in our own practice. We have to remember that we are charged with protecting the process⁸ and we are charged to be practitioners of principled counsel.⁹ The designers of the Nuremberg tribunal did just that. It would have been very easy for them to look at the horrors of any individual charge sheet and let that drive a summary process, but they did not succumb to those baser instincts and yield to the temptation of victors' justice. They provided due process, rules of evidence, and the presumption of innocence,¹⁰ as opposed to a presumption of guilt and a summary execution, which was an option that was debated at that time.¹¹ They did not do that because they were principled counsel.

Second, I would like you to think about the value of public record. This tribunal was not a secret backroom star chamber. It was an open, public, and transparent proceeding. It was held in symbolic location for the Nazi party, and it was recorded with the most cutting-edge technology available at the time to produce a record of the proceeding that was held out to the world.¹² And that record was used to ensure maximum exposure of not just the event and the people being tried, but just as importantly—and maybe more so—it was held out to show that the process that was applied was fair.

⁸ 5 U.S.C. § 3331 (requiring that officers in the Armed Forces of the United States take an oath to “support and defend the Constitution of the United States against all enemies, foreign and domestic” and to “bear true faith and allegiance to the same”).

⁹ U.S. DEP'T OF ARMY, FIELD MANUAL 1-04, LEGAL SUPPORT TO OPERATIONS para. 1-1 (8 June 2020) (“The JAGC provides principled counsel and premier legal services, as committed members and leaders in the legal and Army professions, in support of a ready, globally responsive, and regionally engaged Army.”).

¹⁰ Charter of the International Military Tribunal, *in* Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 280.

¹¹ *E.g.*, Tripartite Dinner Meeting, November 29, 1943, 8:30 P.M., Soviet Embassy, *in* U.S. DEP'T OF STATE, FOREIGN RELATIONS OF THE UNITED STATES: CONFERENCES AT CAIRO AND TEHRAN: 1943, at 552, 553–54 (1961).

¹² See *Collections Search*, U.S. HOLOCAUST MEM'L MUSEUM, https://collections.ushmm.org/search/?f%5Bf_key_event%5D%5B%5D=imt_nuremberg (last visited May 23, 2021), for a collection of video and audio recordings of the International Military Tribunal's proceedings.

It is fairness and the rule of law that continues even today, especially today, as the hallmarks of legitimacy. That is something that we all need to keep in mind as we work through our own practices, whether they are conducting investigations, criminal proceedings, or those targeting decisions of battlefield next.

Third, I would like you to consider that the impact of the historical record. Public accountability for war crimes does not end with judgment and announcement of verdicts and sentences. There is a component of war crimes, distinguished from other types of criminal activity, that deserves preservation of a historical record for historians to scrutinize and the rest of the world and subsequent generations to understand if we are going to have any kind of success at preventing future occurrences.¹³ As judge advocates, we continue to work tirelessly on behalf of our clients, whether they are victims of crimes or we are champions of the institutions we represent.

Today's program is specifically designed to help us recognize the significance of an event that happened seventy-five years ago in Germany, and how it still continues to be relevant today and into the foreseeable future. With that in mind, I now have the privilege of introducing today's first speaker, Mr. Fred Borch. He is the U.S. Army Judge Advocate General Corps's Professor of Legal History and Leadership. He is our second Regimental Historian and Archivist. Mr. Borch has distinguished himself as the first Chief Prosecutor for the Department of Defense Office of Military Commissions for the U.S. Military Commissions at Guantanamo Bay. He is a Fulbright Scholar. He has three times distinguished himself as a Professor at the Naval War College, the Center for Terrorism and Counter-terrorism at the University of Leiden and here at The Judge Advocate General's Legal Center and School. He is a prolific writer and an always-entertaining speaker. He is an accomplished author; he has written extensively on the lore of the U.S. Army Judge Advocate General's Corps and judge advocates in combat. He is the author of *Military Trials of War Criminals in the Netherlands East Indies*, and he has even consulted on a major motion picture, *The Conspirator*.

Without further ado, let me welcome Mr. Borch. Sir, the floor is yours.

¹³ Rome Statute of the International Criminal Court pmb., July 17, 1998, 2187 U.N.T.S. 90 (stating that the states party to the Rome Statute are "[d]etermined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes").