

# Letters to The Times

## Placing Eichmann on Trial

### Factors Making Israel Suitable Venue for Process Discussed

*The writer of the following letter was special consultant to Justice Robert Jackson at the Nuremberg war crime trials, and more recently served as legal adviser to the Israeli delegation at the U. N.*

TO THE EDITOR OF THE NEW YORK TIMES:

In view of the great public interest in the projected trial of Adolph Eichmann, I would like to clarify briefly the question of Israel's jurisdiction in this case.

Contrary to what is often believed, there are no accepted rules of international law governing the penal competence of national courts, nor are the national laws uniform. By some local statutes, crimes committed on the territory of the particular state are subject to its jurisdiction (territoriality principle). Other states rule that their courts are competent to deal with defendants who are their own nationals, wherever the crime was committed (active nationality principle). Others again extend the principle to cases where the victims are their nationals (passive nationality principle).

Finally, there have always been particular crimes, like piracy, where the principle of universality was applied, on the argument that the wrongdoers were *hostes generis humani* (enemies of the human race). How much more applicable is such a principle with regard to the organizers of the mass murder of a whole people in many lands.

#### Countries Having Claims

The crimes attributed to Eichmann were committed in practically all the Nazi-occupied countries. Under one principle or another there are a dozen or more countries which might theoretically claim the right to try him (including several Eastern European countries). Conflicts of jurisdiction in such cases would be resolved by the usual means for settling international disputes—but since, as far as is known, no rival claim has been put forward in this case, the question appears to be academic.

The Federal Republic of Germany—which has tried a number of German war criminals for crimes not committed on German soil—is reportedly willing in the case of Eichmann to cooperate with the Israel authorities.

There are a number of factors which make Israel a suitable venue for the trial of Eichmann. For instance, the concentration there of 300,000 survivors; the most extensive documentation on file there, and the special Jewish character of the State of Israel, which found expression in the Balfour Declaration, the League of Nations Mandate and the United Nations Partition Plan of 1947.

It is, therefore, natural and proper for Israel to assume jurisdiction in a case involving the Nazi design to exterminate the Jewish people. In assuming such jurisdiction Israel does not purport or need "to speak for Jews elsewhere."

It is presumed that Eichmann will be tried under the 1950 Israel Law on the Trial of Nazis and Their Accomplices. Among the reasons why the "ex post facto" argument is not applicable to this law I would mention:

#### Recognition of Acts

Murder has been a recognized crime in every age and language. For the Judaeo-Christian world the first "statute" on the subject was the Ten Commandments. The 1950 law makes provision for dealing with murder by a particular group of people on an unimaginable scale. But it would be absurd to suggest that it was creating a "new" crime "ex post facto," and that the accused therefore did something which he could not have known was wrong at the time he did it.

The enormity and unprecedented nature of the crimes committed by the Nazi regime produced a revolution in international law. The new approach to war crimes and crimes against humanity resulted in the Nuremberg trials (against which exactly the same ex post facto argument was produced), the endorsement of the Nuremberg principles by the United Nations, the Genocide Convention and the adoption of national statutes for the trial of war criminals in a number of countries, of which the Israel law is only one example.

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