

## **Address for the Commemoration of Kristallnacht 2012**

We have come together this afternoon to commemorate the tragic events of Kristallnacht in Germany 74 years ago.

It was 1938. The second World War was nearly a year away. The Nazi Party governed Germany, led by Adolf Hitler — the Führer. The events in November 1938 did much to reveal the true intentions and nature of Hitler's regime.

The essence of the events of Kristallnacht have been touched on already this afternoon. Particular aspects will be remembered later. I will not dwell on them further, although one matter did catch my attention as particularly revealing. Some 30,000 male Jews were arrested on 9 and 10 November 1938. Not for any offence as we would understand arrest, but because they were Jewish. They were detained in grim and often violent conditions, so much so that many died while in captivity. Those who survived were released over the following three months, but they had been obliged to agree they would leave Germany leaving their assets forfeited to the government.

History now tells us that, emboldened by the events of Kristallnacht, the Nazi machine went much further, gravely so, in the months and years that followed.

No summary can remind us adequately of the horror and heartache experienced by those who were there. The full force of the wrong that was done to those who suffered cannot be truly appreciated from any outline of the events of that dark time. We should not pass quickly over all that hurt and loss.

All of that we must remember today.

Kristallnacht, though, also has a deeper significance which may be overlooked if we focus only on the personal tragedies of its immediate victims.

It was finally demonstrated by the events of Kristallnacht, and by the silence of the people of Germany that followed, that Germany had become a totalitarian state, governed by the Nazi Party and, ultimately, at the will of one person, the Chancellor Adolf Hitler. Within Germany opposition had fallen silent.

After Adolf Hitler had become the Chancellor of Germany in January 1933, his government acted rapidly to silence potential opposition. One of his early and critical successes as Chancellor was to win the political battle by which the judiciary became subjected to the will of the government.

A central tenet of the Nazi Party, and a personal belief of Adolf Hitler, was the supremacy of the Aryan race. In Nazi eyes they were the true Germanic people. With this went a strong political antipathy to Jews. With time others, and other religious groups which did not fully accept the policies of the Nazi Party, also were singled out for attack. But, from the beginning, there was a particular focus on Jews.

The silence of the people of Germany, their failure to react against the events of Kristallnacht, gave the Nazi regime a sure sign that it had achieved complete political supremacy and would not be challenged by the people or the judiciary within Germany, no matter how wrong were its actions.

I was struck by the words of a German theologian, Martin Niemöller:

*When Hitler attacked the Jews I was not a Jew, therefore I was not concerned. And when Hitler attacked the Catholics, I was not a Catholic, and therefore I was not concerned. And when Hitler attacked the unions and the industrialists, I was not a member of the unions and I was not concerned. Then Hitler attacked me and the Protestant church — and there was nobody left to be concerned.*

Thus Kristallnacht speaks not only to the memory of the Jewish people. It speaks to us all. In particular it cautions us of the danger to our society of the notion of the supremacy of one race, and of the need for vigilance against totalitarian forms of government.

Kristallnacht is also to be viewed on a wider scale.

Most of those who were leaders of the Nazi movement faced their moment of justice after the end of WW II when tried before the Nuremberg Tribunal. This was established to try Nazi war criminals by the four victor powers in Europe, USA, Russia, France and Great Britain. It was the very first International Criminal Court. It departed from the normal principles of international law by which each nation is sovereign and so tries breaches of international criminal law committed in that nation, or by citizens of that nation.

Efforts by the UN to establish an international court to try breaches of international criminal law had always been vetoed. The USA, Russia, France, Great Britain and China have a right of veto in the UN. They were the main victor nations in Europe and Asia of WWII, the UN having been established in 1945 at the end of WWII. However, when, between 1991 and 1993, BBC World and CNN broadcast day after day terribly disturbing images of the horrors in the conflict as the former Yugoslavian federation broke up, the UN eventually resolved to establish an international court to try offences of international criminal law in that conflict. But this was achieved only by strictly confining the jurisdiction of the court so that it could not try offences committed outside the former Yugoslavia or offences committed before January 1991, which was the start of the Balkan conflict. That having been settled the USA, Russia and China did not veto the establishment of the International Criminal Tribunal for the former Yugoslavia (the ICTY, or the War Crimes Tribunal as it is often called).

Australia has been a strong supporter of the ICTY, not because it had any involvement in the Balkans conflict but because of Australia's concern that there should be an international court to deal impartially with serious breaches of international criminal law.

There are up to 28 Judges of the ICTY. They are elected by the UN. Each is from a different country. The President had been imprisoned in Auschwitz at age eight.

The ICTY is now finishing its last trials. Contrary to an expectation that it would achieve little, 161 persons were charged with grave breaches of international criminal law. 13 of the 161 have been acquitted. Most of those charged were Presidents or Ministers of governments, or Generals in the Armed forces or Police of the various republics which then comprised the former Yugoslavia — ie. Serbia, Croatia, Bosnia/Herzegovina, Montenegro and Macedonia. The sixth country Slovenia managed to keep out of the conflict. Where possible, the policy followed was to prosecute the leaders, those who made the main decisions. No one, no matter how senior in a government, was immune from prosecution, which is not usual in many parts of Europe. As impartial investigation justified, prosecutions were brought against persons from all sides, not merely those from one side.

The Balkans conflict was in two stages. The first between 1991 and 1995, and the second mainly in 1998–1999.

Most of the atrocities of the Nazi regime in WW II were repeated in the Balkans with similar severity. Concentration camps, executions, torture, starvation and death were commonplace. Tens of thousands were killed; hundreds of thousands of people had their homes and villages destroyed. Over 850,000 refugees, mostly women and children, were forced across the borders of Kosovo (then in Serbia) alone.

I will give an example, very briefly, from the most recent conflict. It is apt to our purpose here today.

A village of some 300 people. Armed troops and police came just before dawn. The village was shelled by tanks and artillery. All were then ordered into the street. The women and children were marched off, without food or water or possessions. Those women and children who survived and crossed the border some 2 days later, became refugees. There were over 110 men, including all boys apparently 15 and older. They were machine-gunned in a barn and their bodies burnt to destroy evidence of the killings. The village was destroyed.

The crime of the villagers was not to be of the ethnicity of the government.

Jewish people became victims of both conflicts and Synagogues were damaged. However, as Yugoslavia had been a communist country there were not many Jewish people. Religious belief had not been encouraged under communist rule, but it was still with the people. Nevertheless, in truth both conflicts were political, not religious. At their core was the notion of racial superiority.

Here today we need to realise that these events occurred in Europe as recently as 13 years ago; indeed the most recent of them had occurred only four years before I arrived in The Hague. From them it is starkly evident that the significance of Kristallnacht and the whole experience of Nazi Germany has not been properly absorbed by our world society.

Of course much to do with these matters has changed since WW II. In particular it has been demonstrated, by Nuremberg and more recently by the ICTY, that terrible conduct contrary to the Law of Humanity and the Law of War can be punished severely, and that no leader can now be sure that he or she will escape justice. While this is pointing in the right direction there is still a great deal to be done before the world has an adequate system of international justice, a system which may be a significant discouragement to conduct of the type with which we are concerned.

A way around the UN veto has now been found. By acceding to the Treaty of Rome and agreeing to implement its terms, nations may now accept the jurisdiction of the International Criminal Court, which has now been established in The Hague to take over where the ICTY must stop. The ICC hopes to be able to deal with serious breaches of international criminal law wherever committed. Australia is among the nearly 120 nations which strongly support this development. However, this is not yet an adequate solution. There are still over 70 nations which do not accept the ICC. These include the USA, Russia, Israel, and our regional neighbours China, India and Indonesia.

However, even the ICC will not deal with events such as those commemorated by Kristallnacht because under the present law only events occurring in a time of armed conflict are breaches of international criminal law. The Nazi leaders were only tried for their conduct after the commencement of WW II.

Thus humanity still has much struggle ahead of it to ensure justice in the world.

While this uncertain process is evolving, it is commemorations such as this for Kristallnacht, which are necessary to keep alive an appreciation of the need for further change, and a sense of urgency about the process.

We have come together as Jews and Christians. It may help us to see that we do have a role to play in finding right and just solutions to the big problems facing humanity. The thought of a Jewish writer, in a work from the 15<sup>th</sup> century which I know only as *The Ways of the Righteous*, may assist.

*The thread on which the different good qualities of human beings are strung as pearls, is the fear of God. When the fastenings of this fear are unloosed, the pearls roll in all directions, and are lost; one by one.*

May we, together, seek to ensure that those fastenings are not further unloosed.

**Kevin Parker AC RFD QC**

8 November 2012