vention does not contain real innovations in international law. The innovations consist in the fact that the crimes referred to in Articles II and III, which hitherto if committed by a government in its own territory against its own citizens, have been of no concern to international law, are made a matter of international concern and are, therefore, taken out of the "matters essentially within the domestic jurisdiction of any State," of Article II, paragraph 7 of the United Nations Charter. Although only contracting parties can invoke Articles VIII and IX of the Convention, United Nations organs are called to intervene.

Under Article IX, disputes between the contracting parties relating to the interpretation, application and *fulfillment* of the Convention shall be submitted to the International Court of Justice at the request of any of the parties to the dispute. Ratification of the Convention by the United States without reservation would repeal the reservations [37] made earlier by the United States. Article IX specifically includes disputes "relating to the responsibility of a state for genocide." This confirms our construction of the Convention. Individuals are criminally liable for genocide in a domestic court under domestic law, but they are not internationally liable. States alone are, under the general conditions of state responsibility, internationally responsible, but under international law, not under criminal law; only this international state responsibility includes—and here lies the innovation—genocide committed by a state against its own citizens.

Article VIII gives to any contracting party the right to call upon the competent organs of the United Nations to take such action under the Charter as they consider appropriate for the prevention and suppression of the crimes named in Articles II and III.

A last point which is generally neglected must be mentioned: While the duty of the ratifying states to enact legislation to punish genocide is stressed, hardly anything is said of the fact that the ratifying states are also bound to enact legislation to *prevent* these crimes. Such legislation does not belong to the field of criminal law; for the latter deals exactly with men after they have committed the crime, and even the police is only an agency of forcible prevention at the crisis of action. The duty to enact domestic legislation to *prevent* the crimes of Articles II and III is of a different character and poses many problems.

JOSEF L. KUNZ

INTERNATIONAL LAW AND GUILT BY ASSOCIATION

Advanced systems of criminal law accept the principle that guilt is personal. Guilt is established by evidence that the acts and intentions of the

[37] S. Res. 196, 79th Cong., 2d Sess. In signing the Pact of Bogotá, the United States made a reservation upholding all the earlier reservations.

individual were criminal. Evidence concerning the acts or intentions of persons with whom he was associated, the programs on policies of organizations of which he was a member, or the behavior of groups or people with whom he was classed have sometimes been admitted as indications of the bad character of the accused,[1] but, in common law, only to rebut the defendant's effort to prove his good character.[2] No matter how bad his character by general reputation or association, the accused must be considered innocent unless his guilt is established by evidence that he himself committed, attempted, or intended the crime charged.[3]

It is true, conspiracy is a common law offense which consists in a combination of two or more persons to accomplish some criminal or unlawful purpose or, in older precedents now generally superseded by legislation, to accomplish, by criminal or unlawful means, some purpose not in itself criminal or unlawful.[4] The unlawful purpose of the conspiracy can be proved by evidence of the acts or intentions of any of the alleged conspirators as well as the agreement among them, but no person can be found guilty except on evidence that he himself shared these purposes and assisted in their accomplishment.[5] The traditional importance attached to the idea that guilt is personal is indicated by the vigorous protests which jurists have launched against legislative innovations of a type common in times of social unrest or crisis, permitting criminal indictment or forbidding public employment of persons found to have been members of organizations whose purposes are considered subversive or to have associated with persons whose activities or associations are considered subversive.[6]

This attitude of advanced systems of law is not usually shared by primitive systems of law. Such systems usually lack adequate means for determining the acts of individuals, much less their intentions, and tend to judge the guilt of persons by their associations, classifications or organizations.

[1] This is a common practice in French courts. See The Affair of St. Cyr in James Fitzjames Stephen, A General View of the Criminal Law of England (London, 1863), pp. 457–458.

[2] Shaw, C. J., in Commonwealth *v.* Webster, 5 Cush. (Mass.) 325 (1849); Bouvier, Law Dictionary, "Character." "A man's general bad character is a weak reason for believing that he was concerned in any particular criminal transaction, for it is a circumstance common to him and hundreds and thousands of other people." Stephen, *op. cit.*, p. 309.

[3] Stephen, *op. cit.*, p. 303; G. W. Kirchwey, "Criminal Law," Encyclopedia of the Social Sciences, Vol. 4, p. 571.

[4] Shaw, C. J., in Commonwealth *v.* Hunt, 4 Met. (Mass.) 116 (1842); Fuller, C. J., in Pettibone *v.* U. S., 148 U. S. 203 (1892); Stephen, *op. cit.*, pp. 62, 148; F. B. Sayre, "Conspiracy," Encyclopedia of the Social Sciences, Vol. 4, p. 237; Bouvier, *op. cit.*, "Conspiracy."

[5] U. S. Criminal Code, sec. 37; U.S.C.A., Tit. 18, sec. 88.

[6] John Lord O'Brian, "Loyalty Tests and Guilt by Association," Harvard Law Review, Vol. 61, No. 4 (1948), p. 592; Edward Levi, Nathaniel Nathanson and Malcolm Sharp, "Guilt by Association," University of Chicago Round Table, March 13, 1948.

A member of a race, sect, minority, or nationality which is disliked is often presumed to be guilty of a crime which has occurred, and the primitive methods of torture, ordeal, compurgation or battle to ascertain guilt lend themselves to verifying such a presumption. Furthermore, unpopular groups or classes are often held collectively guilty and all the members punished. The theory that a group was responsible for the acts of its members was widely held.[7] The latter practice has continued in apportioning civil liability to repair injury. Corporations or associations may be found civilly liable to repair damages arising from wrongful acts or negligence of their officials or even without fault, thus imposing a charge on group funds to the loss of all the members or beneficiaries of the group, many of whom were innocent of any wrong-doing. In developed systems of law, however, corporations, associations, or other groups are not usually held criminally liable, although there are some exceptions.[8]

In primitive law the distinction between civil and criminal liability is not sharp. Both forms of liability usually flow from reprehensible conduct, the difference depending upon the degree of participation of the community authorities and of the injured individual in initiating action to rectify the situation. In advanced legal systems, however, the distinction is usually clear. Crime is an act of an individual involving punishment to protect the community against such acts, while civil liability is attributed, sometimes rather artificially, to a person or group suitable to repair a damage done. The law usually attributes the duty to make reparation to a person who has committed some fault either of intention or negligence related to the injury, but it may find an employer or corporation liable without fault on principles of suretyship or public convenience. Sometimes the two concepts of criminal and civil liability are confused as when "punitive damages" are awarded in a civil action, but normally the two are distinct.[9]

Some years ago the present writer suggested that in international law

> We are moving toward a theory of state civil responsibility and individual criminal responsibility. I do not think there would be any conflict in recognizing that the state may be civilly responsible, in the sense of having to make reparation for acts done under color of its authority by individuals, and that at the same time the individual may be criminally responsible in case his act is an offense against the law of nations. . . . As I read International Law, the idea of state criminal responsibility has not been favored. The cases where that has been suggested are rare, and on the whole, it has been considered that the state should be only civilly responsible; that is, only bound to make reparations for damages which have resulted from its violation of International Law. I would suggest, on the other hand, that criminal

[7] Kirchwey, *op. cit.*, Vol. 4, p. 570.

[8] J. W. Salmond, Jurisprudence (London, 1902), pp. 353 ff.

[9] A. R. Radcliffe-Brown, "Law, Primitive," Encyclopedia of the Social Sciences, Vol. 9, p. 204; Salmond, *op. cit.*, p. 70; below, note 39.

> responsibility is based upon psychological considerations and ought therefore to be a responsibility only of individuals. We should, therefore, recognize that the individual is criminally responsible when he commits an act which is an offense against the law of nations, and that the state cannot cover such an act with a blanket of immunity if it is itself under an international obligation not to permit such acts, even though it may be civilly liable to make reparation for the damage.[10]

Bearing this distinction in mind, I propose to deal here with the problem of guilt by association in international law only as it concerns criminal liability. It is believed there has been a steady progress in modern international law toward the concept of advanced systems of law which hold that guilt is personal. The Nuremberg trials served, I think, to forward that movement, a point worth emphasis, because in a recent broadcast I noticed the statement that "the Nuremberg trials did further the notion of guilt by association." [11]

There can be no doubt but that international law has tended to follow primitive systems of law in recognizing guilt by association. The alien, merely because an alien or because an alien of particular allegiance, has often been liable to expropriation, imprisonment or death. Such liabilities have been imposed particularly on the alien enemy, or on the alien whose fellow national or whose state has committed a wrong against the state or national of the state attributing this liability.[12] The serious liabilities of persons associated by nationality, domicile or otherwise with an "enemy state" or a "criminal state" involve, for all practical purposes, guilt by association without regard to the conduct or intentions of the individual so unfortunate as to be thus associated. The concept is well illustrated in the late medieval practice of private reprisals and the modern practice of capture in war. While these practices may be considered illustrations of civil liability, in their practical effects on the alien they resemble criminal liability. According to Nussbaum:

> In the Middle Ages the notion of reprisals included, and meant primarily, the use of force by individuals for the protection of their alleged rights against foreigners, and the use of force not only against the foreign debtor himself, but against his country or city and their innocent citizens. This practice, encountered also in ancient Greece, may be linked legally to the crude idea of joint responsibility of all members of a community for wrong done by one of them, but in the main it was a symptom of lawlessness and barbarism. Frequently reprisals would result in feuds.[13]

[10] Proceedings of the American Society of International Law, 1946, p. 106. See also Q. Wright, A Study of War (Chicago, 1942), pp. 913–914.

[11] Levi *et al., op. cit.*, p. 2.

[12] E. M. Borchard, Diplomatic Protection of Citizens Abroad (New York, 1919), p. 34.

[13] Arthur Nussbaum, A Concise History of the Law of Nations (New York, 1947), p. 34.

Chief Justice Chase, speaking for the Supreme Court of the United States, said in the case of Mrs. Alexander's Cotton:

> It is said, that though remaining in rebel territory, Mrs. Alexander had no personal sympathy with the rebel cause, and that her property, therefore, cannot be regarded as enemy property; but this court cannot inquire into the personal character and dispositions of individual inhabitants of enemy territory. We must be governed by the principle of public law, so often announced from this bench as applicable alike to civil and international wars, that all the people of each state or district in insurrection against the United States, must be regarded as enemies, until by the action of the legislature and the executive, or otherwise, that relation is thoroughly and permanently changed. . . . Being enemies' property, the cotton was liable to capture and confiscation by the adverse party.[14]

It would be interesting to trace in detail the modifications of such practices through recognition of expediences flowing from the reciprocal interest of states in trade and in the amelioration of the hardships of war, and through the application of moral and equitable principles found in "natural law" or in advanced legal systems deemed to be applicable by analogy to international relations.

The position of the alien in time of peace has steadily improved. According to Borchard, "the legal position of the alien has in the progress of time advanced from that of complete outlawry, in the days of early Rome and the Germanic tribes, to that of practical assimilation with nationals, at the present time." The medieval liabilities to the *droit d'aubaine* or the *droit de détraction* were eliminated, and while aliens frequently still suffer discriminations in the right to own land or to practice certain professions, the tendency is to accord them national treatment by virtue of special treaties, of general treaties, or of recognized custom.[15]

In war the strict law, according to Grotius, permitted a belligerent "to harm an enemy both in his person and in his property," including persons in enemy territory and subjects of the enemy anywhere, whether men, women or children, combatants or noncombatants, prisoners or hostages. This permission, according to Grotius, belonged to both the just and the unjust sides in war.[16] Grotius, however, recognized that even in war the principle should be applied that "no one can justly be killed intentionally except as a just penalty or in case we are able by no other way to protect our life and property."[17] Consequently, he urged belligerents to observe

[14] 2 Wall. 409, 419–420. The court noted the development of an immunity for enemy property on land but held, since "the rebels regard it (cotton) as one of their main sinews of war," the "capture was justified by legislation as well as public policy."

[15] Borchard, *op. cit.*, pp. 33–36.

[16] Grotius, *De Jure Belli ac Pacis* (Carnegie Endowment for International Peace, 1925), Bk. III, Ch. lv, pp. 643–648.

[17] *Ibid.*, Bk. III, Ch. xi, sec. ii, p. 723. Grotius cites Victoria, *De Jure Belli* (Carnegie Endowment for International Peace, 1917), pars. 36, 45, pp. 179, 182, on this point.

certain moderations of war or *temperamenta belli* sparing enemy persons and property except under military necessity [18] and, when the war was over, requiring compensation by the unjust side for all injuries committed.[19]

The nineteenth-century law of war accepted and codified Grotius' counsels of moderation. The combatant was entitled to treatment as a prisoner of war on surrender. The person in occupied territory, so long as he did not engage in subversive action, was under few special liabilities, and the enemy person domiciled in the belligerent's own territory was usually treated little differently from the belligerent's own citizens.[20] While certain collective responsibilities were recognized for seditious action in occupied territory, such liabilities required proof that the offense was in the nature of a conspiracy.[21] These ameliorating rules, while still accepted in theory, have been decreasingly observed in practice during the twentieth century as war has become more and more totalitarian.[22]

Apart from the liabilities flowing from war (and even in principle during war), Grotius and his immediate predecessors and successors accepted the principles "that no one who was innocent of wrong may be punished for the wrong done by another," [23] and that subjects should not be punished for the guilt of rulers.[24] As exceptions he recognized that in practice "both the persons and the acts of subjects are liable for the debts of rulers," or even for the debts of fellow nationals, but this liability was because of the civil obligation that damages be repaired, and not because of criminal liability to punishment.[25]

Grotius recognized the possibility of a criminal community, but its punishment, which might extend to dissolution of the community, should not, in his opinion, involve punishment of individuals directly. Persons and property should be spared.[26] This rather artificial effort to avoid guilt by association, while recognizing the criminal liability of states, has developed into the modern doctrine of state responsibility which, however, generally repudiates the concept of the criminal state and punitive damages. With rare exceptions damages against the state to which international law attributes responsibility are awarded only to repair injuries received by the government or nationals of the complaining state.

[18] Grotius, *op. cit.*, Bk. III, Chs. xi, xii, pp. 722 ff., 745 ff.

[19] *Ibid.*, Bk. III, Ch. x, pp. 718–721.

[20] Hague Convention IV (1907); Garner, International Law and the World War (London, 1920), pp. 56–59.

[21] Hague Convention IV (1907), Art. 50.

[22] Garner, *op. cit.*, p. 501; Q. Wright, "The Effect of the War on International Law—War and Neutrality," Minnesota Law Review, Vol. 5 (June, 1921), pp. 515 ff.; C. G. Fenwick, International Law (3rd ed., 1948), pp. 549 ff.

[23] Grotius, *op. cit.*, Bk. II, Ch. xxi, sec. xii; Bk. III, Ch. xi, sec. ii, pp. 539, 723.

[24] *Ibid.*, Bk. II, Ch. xxi, sec. xvii, p. 543.

[25] *Ibid.*, Bk. III, Ch. ii, sec. ii, pp. 624, 627.

[26] *Ibid.*, Bk. II, Ch. xxi, secs. vii-x, pp. 534–537.

Gentili emphasized the injustice of punishing a defeated state, even one which was fighting an unjust war, because most of the population would usually be innocent of wrong-doing. He notes many cases where punishment was visited upon the rulers—a practice supported in More's *Utopia,* and one which Gentili thinks is superior, although reprehensible if the only fault of the ruler was losing the war. Gentili's penetrating understanding, however, recognized that criminal liability should be individual not communal, psychological not sociological.[27]

Even war indemnities, traditionally taken by the victor to punish and deter the defeated as well as to compensate the victor, have come in principle to be regarded as reparations for losses resulting from violations of international law. This principle was finally accepted as a basis for the reparations imposed upon Germany in the Versailles Treaty, although Articles 231 and 232 were so interpreted as to occasion a German opinion that they were designed as a punishment for "war guilt."[28] This conclusion would be more justified in respect to the reparations demands made upon the defeated Powers after World War II, although here again the theory was one of civil responsibility to repair the losses sustained by the victims of aggression.[29]

The most important step which has been taken toward eliminating guilt by association in international law has been the renewed recognition after World War II of human rights and of individual crimes under that law. The recognition of human rights places the alien in principle on a parity with the national and assures both of them due process of law and fundamental freedoms. If the Universal Declaration of Human Rights, approved by the General Assembly of the United Nations in the autumn of 1948, were provided with adequate means for enforcement, guilt by association would be eliminated in both international law and municipal law.[30]

[27] *De Jure Belli* (Carnegie Endowment for International Peace, 1933), Bk. III, Ch. viii, pp. 322–327.

[28] U. S. Department of State, The Treaty of Versailles and After (Denys P. Myers, ed., Washington, 1947), pp. 413 ff.; Bernard M. Baruch, The Making of the Reparation and Economic Sections of the Treaty (New York, 1920), pp. 19 ff.

[29] Treaty of Peace with Italy, Feb. 10, 1947, Art. 74, does not specify reasons for the reparations, but the clauses in the peace treaties with Bulgaria (Art. 21), Hungary (Art. 23), Rumania (Art. 22), and Finland (Art. 23) state that reparations are to compensate the recipients for losses resulting from military operations and occupations of the payer. The report of the Potsdam Conference, Aug. 2, 1945, sec. IV, Reparations, recognized it as just that Germany "make compensation for damages" which she had caused to the allied nations. See also James F. Byrnes, Speaking Frankly (New York, 1947), pp. 26–29, 136.

[30] This Declaration forbids distinction in rights because of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, or because of the political, jurisdictional, or international status of the country or territory to which a person belongs (Art. 2); assures equal protection of the laws to all (Art. 7); requires presumption of innocence until found guilty, and fair trial in

The concept of individual crimes against international law has been long recognized and has been applied not only to piracy, banditry, filibustering and other acts of violence dangerous to the community of nations,[31] but also to acts of members of governments initiating unjust war. Grotius and Gentili recognized the propriety of punishing such rulers unless there were extenuating circumstances,[32] and history records a number of cases where such punishment was visited.[33] The excessive development of the conception of national sovereignty during the nineteenth century tended to support the assumption that individuals committing crime under the authority of the state were personally immune, although individual criminal liability for breaches of the law of war and for piracy were always recognized and applied. This claim to immunity was repudiated in the provisions of the Treaty of Versailles, providing for trial of the Kaiser, and by the German Court at Leipzig in the trial of certain war criminals. The war crimes trials after World War II marked important progress toward the general recognition that the crime of aggressive war should not be attributed to the state but to the individuals who initiate or plan it. It has not been sufficiently emphasized that in principle the Nuremberg trial, in addition to declaring Goering and other high German officials guilty, implied that Germany itself was not criminally guilty. "Crimes against international law," said the Nuremberg Tribunal, "are committed by men, not by abstract entities." [34]

It is true that the argument presented by the British prosecution suggested that the guilt of the defendants flowed from accessoryship in the guilt of Germany.[35] But the argument presented by the American prosecution [36] and accepted by the Tribunal was that the accused individuals and not the "abstract entity," Germany, were guilty of offenses against the law of nations, and that they could not acquire immunity through the claim that

criminal trials; forbids criminal liability under *ex post facto* laws (Art. 11); and guarantees freedom of opinion and expression (Art. 19) and the right of peaceful assembly and association (Art. 20). United Nations Bulletin, Jan. 1, 1949, Vol. 6, p. 6; this JOURNAL, Supp., Vol. 43 (1949), p. 127.

[31] Q. Wright, "War Criminals," this JOURNAL, Vol. 39 (April, 1945), pp. 275–285; "The Law of the Nuremberg Trial," *ibid.*, Vol. 41 (Jan., 1947), pp. 55–58. The constitutional authority of Congress to define and punish offenses against the law of nations assumes the existence of such offenses in customary or conventional international law. U. S. *v.* Arjona, 120 U. S. 479 (1887).

[32] Grotius, *op. cit.*, Bk. II, Ch. xx, sec. xxxviii; Bk. III, Ch. xi, secs. v ff., pp. 502 ff., 729 ff.; Gentili, *op. cit.*, Ch. viii, p. 323.

[33] Grotius and Gentili cite a number of cases (above, note 32). See also Albert Levy, "Criminal Responsibility of Individuals and International Law," University of Chicago Law Review, Vol. 12 (1945), p. 319, and Q. Wright, "The Law of the Nuremberg Trial," this JOURNAL, Vol. 41 (Jan., 1947), p. 63.

[34] Trial of Major War Criminals before the International Military Tribunal (Nuremberg, 1947), Vol. 1, p. 223.

[35] *Ibid.*, Vol. 3, pp. 104–105.

[36] *Ibid.*, Vol. 2, pp. 146–150.

they were acting in pursuance of the authority of Germany. That country had given up its power to confer such an immunity by assuming obligations not to resort to war.

> The solemn renunciation of war as an instrument of national policy necessarily involves the proposition that such a war is illegal in international law; and that those who plan and wage such a war with its inevitable and terrible consequences are committing a crime in so doing. . . . The principle of international law, which under certain circumstances, protects the representatives of a state, can not be applied to acts which are condemned as criminal by international law. . . . Individuals have international duties which transcend the national obligations of obedience imposed by the individual state. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the state if the state in authorizing action moves outside its competence under international law.[37]

It has also been suggested that the Nuremberg Charter, in authorizing the Tribunal to declare organizations criminal, thus creating a presumption of criminality against all the members of such organizations, accepted the concept of guilt by association. However, in its interpretation of this provision, the Tribunal limited the liability flowing from a finding that an organization was criminal to those who were voluntary members of the organization aware of its criminal purposes at the time the organization was engaging in criminal acts. An individual defendant was assured an opportunity to defend himself on all of these points. With this interpretation the concept of criminal organization was identified with that of conspiracy. No individual could be found guilty unless, in intention or act, he participated in a criminal conspiracy.[38]

It is believed that international law is developing away from its primitive status in giving clear recognition to the distinction between criminal and civil liability and in confining the former to individuals. This distinction appears to involve four points: in criminal liability the plaintiff is always the jural community of which the defendant is a member, while in civil liability the plaintiff may be any individual, group, or jural community which has been injured. In criminal liability, the interest of the plaintiff is in the maintenance of law, while in civil liability that interest is reparation for loss. In criminal liability, the defendant should always be an individual, while in civil liability, the defendant may be an individual, a group or even the jural community itself. In criminal liability the basis for liability is a psychological condition manifesting defiance of law, while in civil liability it is a sociological condition, manifesting reasonableness in the

[37] *Ibid.*, Vol. 1, pp. 220, 223.

[38] *Ibid.*, Vol. 1, p. 256. The Tribunal pointed out that on this matter it exercised judicial discretion "in accordance with well settled legal principles, one of the most important of which is that criminal guilt is personal and that mass punishment should be avoided."

apportionment of loss.[39] While the concept of fault may manifest both criminal defiance of law or civil duty to repair damages, the concept differs in the two cases. Fault determining criminal liability is a psychological term implying a state of mind, while fault determining civil liability is an artificial attribution which may consider psychic intention or negligence but may indicate only social convenience sometimes not deserving the name of fault. With this conception, state liability can only be a civil liability and so should only imply a duty to make reparation.[40]

There is still much to be done before international law frees itself from primitive ideas of guilt by association. Aliens and alien enemies will continue to be denied human rights, and persons will continue to be found liable because of association with states or other groups, classes, or ideologies which are deemed reprehensible or dangerous. Wars, reprisals and sanctions with punitive intent will continue to be launched against states to the injury of all their inhabitants (innocent as well as guilty) on the theory that the state is guilty.[41] These conditions cannot be entirely eliminated so long as states are obliged to depend primarily on their solidarity and capacity to defend themselves for continued existence. In principle, however, international law is advancing toward a civilized system that holds only individuals capable of crime and deduces criminal liability only from evidence that an individual committed criminal acts with criminal intent. Toward this progress the Universal Declaration of Human Rights and the war crimes trials have made a major contribution. Continuance of this progress will depend upon the success of the United Nations and its specialized agencies in "establishing conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained."[42]

QUINCY WRIGHT

[39] See Salmond, *op. cit.*, p. 394, who, however, distinguishes not only civil from criminal liability, but also remedial from penal liability in view of the occasional imposition of punitive damages or "penal liability" in civil proceedings.

[40] Harvard Research Draft Convention on Responsibility of States, Art. 1, this JOURNAL, Supp., Vol. 23 (1929), p. 140; Marjorie Whiteman, Damages in International Law (Washington, 1937), Vol. 1, pp. 710 ff.; Vol. 3, p. 1874; Wharton, Criminal Law, sec. 91; M. O. Hudson, International Tribunals (Washington, 1944), p. 180; Wright, A Study of War, pp. 911–915.

[41] Grotius justified war to punish a criminal state (above, note 26), and the system of sanctions provided in the League of Nations Covenant (Art. 16) was cited by the British prosecution in the Nuremberg trial as a recognition that states might be penally liable. Elsewhere this sanctioning procedure has been interpreted as preventive rather than as penal. The sanctions provisions of the United Nations Charter have "the object of maintaining or restoring international peace and security" and emphasize preventive action (see Art. 40). They also permit the target of police action to be a government or individuals rather than the state as such (see Arts. 39, 41, 42). See also Wright, A Study of War, pp. 911–915, 939–944, 1071–1074.

[42] United Nations Charter, Preamble.