



***ADVANCE SHEET – SEPTEMBER 17,  
2021***

## **President's Letter**

This issue deals with the Nuremberg war crimes trial and its later assessment. The trial has sometimes been described as a heavier than air machine kept aloft by the rhetoric of the American chief prosecutor, Justice Robert Jackson. We reproduce here his notable opening statement. The trial was condemned as a "lynching bee" by Chief Justice Stone because of its ex post facto aspects; Senator Robert Taft's condemnation of it is said to have cost him the 1948 Republican presidential nomination but was celebrated as a "profile in courage" in President Kennedy's book of the same title.

Our second document is a thoughtful defense of the trial by one of the Nuremberg prosecutors, the British barrister Peter Calvocoressi, later chairman of Penguin Books when its American branch was located in Baltimore. Calvocoressi, though British, served as the "documents man" for the American prosecutors because of his fluency in German and his participation in the Bletchley decoding project, which gave him familiarity with the German war organization. Two unappreciated by-products of the trial were a multi-volume documentary record that made Holocaust denial impossible and its impact on German public opinion, large portions of it being broadcast on the radio.

Finally, we include a link to a television dramatization of President Kennedy's chapter on Senator Taft and Nuremberg. If Nuremberg was sui generis, Taft's critique applies more fully to more recent efforts at international criminal trials.

George W. Liebmann



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### **Why Karl Malden Was Wrong: It's A Bar Library Membership Card**

Whenever I make cultural references I try to remember that I'm old, but sometimes I cannot help myself. Years ago, perhaps before many of you were born, a famous movie actor turned television star, Karl Malden, told all of us that the American Express card was the most important card you could carry. With all due respect to Mr. Malden I would like to nominate a Bar Library membership card for the honor.

With the Library's membership year set to commence in several weeks, I would ask that you seriously consider becoming a member of an organization that has served the bench and bar for the past 181 years. Let me see if I can make my case. All that I ask of you is to fairly and honestly consider what I put before you unhindered by any preconceived notions or judgments. I will say what I have said many times before and that is "If you consider what the Library has to offer, how it will save you and/your firm substantial amounts of money, the case for a membership(s) is clear and convincing."

Collections, both print and digital, provide access to treatises that are hundreds of years old to cases and developments that might be as recent as a few hours ago. We are the place that law school professors come for in-depth research utilizing sources that cannot be obtained anywhere else. It is the place where practitioners come to access our extensive collection of Westlaw databases using one of the Library's computers or utilizing their own laptops by way of a wi-fi connection. Just download the material onto your laptop or even cut and paste it right into a specific file or document.

There are services such as the Maryland Motor Vehicle search service; telephone reference; circulating collections; an online catalog and the scanning and e-mailing of material that allow you to make great use of the Library without leaving your office, or, even home. It is the use of the Bar Library's materials that negates the necessity of your having to purchase them yourself. If you needed it and we do not have it, let us know. We frequently will purchase treatises at member request. In a number of instances we have also entered subscriptions to a number of Westlaw databases.

Going back even further than Karl Malden there once was a fellow who said “A penny saved is a penny earned.” As I recall, he was somewhat famous for his wisdom. We are not asking that you be as wise as Franklin, but to think about a Bar Library membership with the open mind that I asked you to keep.

At no time in the Library’s history have we needed your support more than we need it now. The pandemic has seen Library income fall dramatically at a time when many, suffering their own economic difficulties, have been turning to the Library. We will continue to try and serve the bench, bar and community to the best of our abilities. We have been around for these past 181 years because of all of you. I thank you, I ask for your continuing support and I hope to see you soon.

Joe Bennett

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## Opening Statement before the International Military Tribunal

On November 21, 1945, in the Palace of Justice at Nuremberg, Germany, Justice Robert H. Jackson, Chief of Counsel for the United States, made his opening statement to the International Military Tribunal.

May it please Your Honors:

The privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility. The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated. That four great nations, flushed with victory and stung with injury stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason.

This Tribunal, while it is novel and experimental, is not the product of abstract speculations nor is it created to vindicate legalistic theories. This inquest represents the practical effort of four of the most mighty of nations, with the support of 17 more, to utilize international law to meet the greatest menace of our times-aggressive war. The common sense of mankind demands that law shall not stop with the punishment of petty crimes by little people. It must also reach men who possess themselves of great power and make deliberate and concerted use of it to set in motion evils which leave

no home in the world untouched. It is a cause of that magnitude that the United Nations will lay before Your Honors.

In the prisoners' dock sit twenty-odd broken men. Reproached by the humiliation of those they have led almost as bitterly as by the desolation of those they have attacked, their personal capacity for evil is forever past. It is hard now to perceive in these men as captives the power by which as Nazi leaders they once dominated much of the world and terrified most of it. Merely as individuals their fate is of little consequence to the world.

What makes this inquest significant is that these prisoners represent sinister influences that will lurk in the world long after their bodies have returned to dust. We will show them to be living symbols of racial hatreds, of terrorism and violence, and of the arrogance and cruelty of power. They are symbols of fierce nationalisms and of militarism, of intrigue and war-making which have embroiled Europe generation after generation, crushing its manhood, destroying its homes, and impoverishing its life. They have so identified themselves with the philosophies they conceived and with the forces they directed that any tenderness to them is a victory and an encouragement to all the evils which are attached to their names. Civilization can afford no compromise with the social forces which would gain renewed strength if we deal ambiguously or indecisively with the men in whom those forces now precariously survive.

What these men stand for we will patiently and temperately disclose. We will give you undeniable proofs of incredible events. The catalog of crimes will omit nothing that could be conceived by a pathological pride, cruelty, and lust for power. These men created in Germany, under the "Führerprinzip", a National Socialist despotism equalled only by the dynasties of the ancient East. They took from the German people all those dignities and freedoms that we hold natural and inalienable rights in every human being. The people were compensated by inflaming and gratifying hatreds towards those who were marked as "scapegoats". Against their opponents, including Jews, Catholics, and free labor, the Nazis directed such a campaign of arrogance, brutality, and annihilation as the world has not witnessed since the pre-Christian ages. They excited the German ambition to be a "master race", which of course implies serfdom for others. They led their people on a mad gamble for domination. They diverted social energies and resources to the creation of what they thought to be an invincible war machine. They overran their neighbors. To sustain the "master race" in its war-making, they enslaved millions of human beings and brought them into Germany, where these hapless creatures now wander as "displaced persons". At length bestiality and bad faith reached such excess that they aroused the sleeping strength of imperiled Civilization. Its united efforts have ground the German war machine to fragments. But the struggle has left Europe a liberated yet prostrate land where a demoralized society struggles to survive. These are the fruits of the sinister forces that sit with these defendants in the prisoners' dock.

In justice to the nations and the men associated in this prosecution, I must remind you of certain difficulties which may leave their mark on this case. Never before in legal history has an effort been made to bring within the scope of a single litigation the developments of a decade, covering a whole continent, and involving a score of nations, countless individuals, and innumerable events. Despite the magnitude of the task, the world has demanded immediate action. This demand has had to be met, though perhaps at the cost of finished craftsmanship. To my country, established courts, following familiar procedures, applying well-thumbed precedents, and dealing with the legal consequences of local and limited events seldom commence a trial within a year of the event in litigation. Yet less than 8 months ago today the courtroom in which you sit was an enemy fortress in the hands of German SS troops. Less than 8 months ago nearly all our witnesses and documents were in enemy hands. The law had not been codified, no procedures had been established, no tribunal was in existence, no usable courthouse stood here, none of the hundreds of tons of official German

documents had been examined, no prosecuting staff had been assembled, nearly all of the present defendants were at large, and the four prosecuting powers had not yet joined in common cause to try them. I should be the last to deny that the case may well suffer from incomplete researches and quite likely will not be the example of professional work which any of the prosecuting nations would normally wish to sponsor. It is, however, a completely adequate case to the judgment we shall ask you to render, and its full development we shall be obliged to leave to historians.

Before I discuss particulars of evidence, some general considerations which may affect the credit of this trial in the eyes of the world should be candidly faced. There is a dramatic disparity between the circumstances of the accusers and of the accused that might discredit our work if we should falter, in even minor matters, in being fair and temperate.

Unfortunately, the nature of these crimes is such that both prosecution and judgment must be by victor nations over vanquished foes. The worldwide scope of the aggressions carried out by these men has left but few real neutrals. Either the victors must judge the vanquished or we must leave the defeated to judge themselves. After the first World War, we learned the futility of the latter course. The former high station of these defendants, the notoriety of their acts, and the adaptability of their conduct to provoke retaliation make it hard to distinguish between the demand for a just and measured retribution, and the unthinking cry for vengeance which arises from the anguish of war. It is our task, so far as humanly possible, to, draw the line between the two. We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well. We must summon such detachment and intellectual integrity to our task that this Trial will commend itself to posterity as fulfilling humanity's aspirations to do justice.

At the very outset, let us dispose of the contention that to put these men to trial is to do them an injustice entitling them to some special consideration. These defendants may be hard pressed but they are not ill used. Let us see what alternative they would have to being tried.

More than a majority of these prisoners surrendered to or were tracked down by the forces of the United States. Could they expect us to make American custody a shelter for our enemies against the just wrath of our Allies? Did we spend American lives to capture them only to save them from punishment? Under the principles of the Moscow Declaration, those suspected war criminals who are not to be tried internationally must be turned over to individual governments for trial at the scene of their outrages. Many less responsible and less culpable American-held prisoners have been and will continue to be turned over to other United Nations for local trial. If these defendants should succeed, for any reason, in escaping the condemnation of this Tribunal, or if they obstruct or abort this trial, those who are American-held prisoners will be delivered up to our continental Allies. For these defendants, however, we have set up an International Tribunal and have undertaken the burden of participating in a complicated effort to give them fair and dispassionate hearings. That is the best-known protection to any man with a defense worthy of being heard.

If these men are the first war leaders of a defeated nation to be prosecuted in the name of the law, they are also the first to be given a chance to plead for their lives in the name of the law. Realistically, the Charter of this Tribunal, which gives them a hearing, is also the source of their only hope. It may be that these men of troubled conscience, whose only wish is that the world forget them, do not regard a trial as a favor. But they do have a fair opportunity to defend themselves-a favor which these men, when in power, rarely extended to their fellow countrymen. Despite the fact that public opinion already condemns their acts, we agree that here they must be given a presumption of innocence, and we accept the burden of proving criminal acts and the responsibility of these defendants for their commission.

When I say that we do not ask for convictions unless we prove crime, I do not mean mere technical or incidental transgression of international conventions. We charge guilt on planned and intended conduct that involves moral as well as legal wrong. And we do not mean conduct that is a natural and human, even if illegal, cutting of corners, such as many of us might well have committed had we been in the defendants' positions. It is not because they yielded to the normal frailties of human beings that we accuse them. It is their abnormal and inhuman conduct which brings them to this bar.

We will not ask you to convict these men on the testimony of their foes. There is no count in the Indictment that cannot be proved by books and records. The Germans were always meticulous record keepers, and these defendants had their share of the Teutonic passion for thoroughness in putting things on paper. Nor were they without vanity. They arranged frequently to be photographed in action. We will show you their own films. You will see their own conduct and hear their own voices as these defendants re-enact for you, from the screen, some of the events in the course of the conspiracy.

We would also make clear that we have no purpose to incriminate the whole German people. We know that the Nazi Party was not put in power by a majority of the German vote. We know it came to power by an evil alliance between the most extreme of the Nazi revolutionists, the most unrestrained of the German reactionaries, and the most aggressive of the German militarists. If the German populace had willingly accepted the Nazi program, no Storm-troopers would have been needed in the early days of the Party and there would have been no need for concentration camps or the Gestapo, both of which institutions were inaugurated as soon as the Nazis gained control of the German State. Only after these lawless innovations proved successful at home were they taken abroad.

The German people should know by now that the people of the United States hold them in no fear, and in no hate. It is true that the Germans have taught us the horrors of modern warfare, but the ruin that lies from the Rhine to the Danube shows that we, like our Allies, have not been dull pupils. If we are not awed by German fortitude and proficiency in war, and if we are not persuaded of their political maturity, we do respect their skill in the arts of peace, their technical competence, and the sober, industrious, and self-disciplined character of the masses of the German people. In 1933 we saw the German people recovering prestige in the commercial, industrial, and artistic world after the set-back of the last war. We beheld their progress neither with envy nor malice. The Nazi regime interrupted this advance. The recoil of the Nazi aggression has left Germany in ruins. The Nazi readiness to pledge the German word without hesitation and to break it without shame has fastened upon German diplomacy a reputation for duplicity that will handicap it for years. Nazi arrogance has made the boast of the "master race" a taunt that will be thrown at Germans the world over for generations. The Nazi nightmare has given the German name a new and sinister significance throughout the world which will retard Germany a century. The German, no less than the non-German world, has accounts to settle with these defendants.

The fact of the war and the course of the war, which is the central theme of our case, is history. From September 1st, 1939, when the German armies crossed the Polish frontier, until September 1942, when they met epic resistance at Stalingrad, German arms seemed invincible. Denmark and Norway, the Netherlands and France, Belgium and Luxembourg, the Balkans and Africa, Poland and the Baltic States, and parts of Russia, all had been overrun and conquered by swift, powerful, well-aimed blows. That attack on the peace of the world is the crime against international society which brings into international cognizance crimes in its aid and preparation which otherwise might be only internal concerns. It was aggressive war, which the nations of the world had renounced. It was war in violation of treaties, by which the peace of the world was sought to be safe-guarded.

This war did not just happen-it was planned and prepared for over a long period of time



and with no small skill and cunning. The world has perhaps never seen such a concentration and stimulation of the energies of any people as that which enabled Germany 20 years after it was defeated, disarmed, and dismembered to come so near carrying out its plan to dominate Europe. Whatever else we may say of those who were the authors of this war, they did achieve a stupendous work in organization, and our first task is to examine the means by which these defendants and their fellow conspirators prepared and incited Germany to go to war.

In general, our case will disclose these defendants all uniting at some time with the Nazi Party in a plan which they well knew could be accomplished only by an outbreak of war in Europe. Their seizure of the German State, their subjugation of the German people, their terrorism and extermination of dissident elements, their planning and waging of war, their calculated and planned ruthlessness in the conduct of warfare, their deliberate and planned criminality toward conquered peoples,-all these are ends for which they acted in concert; and all these are phases of the conspiracy, a conspiracy which reached one goal only to set out for another and more ambitious one. We shall also trace for you the intricate web of organizations which these men formed and utilized to accomplish these ends. We will show how the entire structure of offices and officials was dedicated to the criminal purposes and committed to the use of the criminal methods planned by these defendants and their co-conspirators, many of whom war and suicide have put beyond reach.

It is my purpose to open the case, particularly under Count One of the Indictment, and to deal with the Common Plan or Conspiracy to achieve ends possible only by resort to Crimes against Peace, War Crimes, and Crimes against Humanity. My emphasis will not be on individual barbarities and perversions which may have occurred independently of any central plan. One of the dangers ever present is that this Trial may be protracted by details of particular wrongs and that we will become lost in a "wilderness of single instances". Nor will I now dwell on the activity of individual defendants except as it may contribute to exposition of the common plan.

The case as presented by the United States will be concerned with the brains and authority back of all the crimes. These defendants were men of a station and rank which does not soil its own hands with blood. They were men who knew how to use lesser folk as tools. We want to reach the planners and designers, the inciters and leaders without whose evil architecture the world would not have been for so long scourged with the violence and lawlessness, and wracked with the agonies and convulsions, of this terrible war.

### **The Lawless Road to Power:**

The chief instrumentality of cohesion in plan and action was the National Socialist German Workers Party, known as the Nazi Party. Some of the defendants were with it from the beginning. Others joined only after success seemed to have validated its lawlessness or power had invested it with immunity from the processes of the law. Adolf Hitler became its supreme leader or "Führer" in 1921.

On the 24th of February 1920, at Munich, it publicly had proclaimed its program (1708-PS). Some of its purposes would commend themselves to many good citizens, such as the demands for "profit-sharing in the great industries," "generous development of provision for old age," "creation and maintenance of a healthy middle class," "a land reform suitable to our national requirements," and "raising the standard of health." It also made a strong appeal to that sort of nationalism which in ourselves we call patriotism and in our rivals chauvinism. It demanded "equality of rights for the German people in its dealing with other nations, and the abolition of the peace treaties of Versailles and St. Germain." It demanded the "union of all Germans on the basis of the right of self-determination of peoples to form a Great Germany." It demanded "land and territory (colonies) for the enrichment of our people and the settlement of our surplus population." All of these, of course, were legitimate objectives if they were to

be attained without resort to aggressive warfare.

The Nazi Party from its inception, however, contemplated war. It demanded the “abolition of mercenary troops and the formation of a national army.” It proclaimed that:

“In view of the enormous sacrifice of life and property demanded of a nation by every war, personal enrichment through war must be regarded as a crime against the nation. We demand, therefore, ruthless confiscation of all war profits.”

I do not criticize this policy. Indeed, I wish it were universal. I merely wish to point out that in a time of peace, war was a preoccupation of the Party, and it started the work of making war less offensive to the masses of the people. With this it combined a program of physical training and sports for youth that became, as we shall see, the cloak for a secret program of military training.

The Nazi Party declaration also committed its members to an anti-Semitic program. It declared that no Jew or any person of non-German blood could be a member of the nation. Such persons to be disfranchised, disqualified for office, subject to the alien laws, and entitled to nourishment only after the German population had first been provided for. All who had entered Germany after August 2, 1914 were to be required forthwith to depart, and all non-German immigration was to be prohibited.

The Party also avowed, even in those early days, an authoritarian and totalitarian program for Germany. It demanded creation of a strong central power with unconditional authority, nationalization of all businesses which had been “amalgamated,” and a “reconstruction” of the national system of education white “must aim at teaching the pupil to understand the idea of the State (state sociology).” Its hostility to civil liberties and freedom of the press was distinctly announced in these words:

“It must be forbidden to publish newspapers which do not conduce to the national welfare. We demand the legal prosecution of all tendencies in art or literature of a kind likely to disintegrate our life as a nation and the suppression of institutions which might militate against the above requirements.”

The forecast of religious persecution was clothed in the language of religious liberty, for the Nazi program stated, “We demand liberty for all religious denominations in the State.” But, it continues with the limitation, “so far as they are not a danger to it and do not militate against the morality and moral sense of the German race.”

The Party program foreshadowed the campaign of terrorism. It announced, “We demand ruthless war upon those whose activities are injurious to the common interests”, and it demanded that such offenses be punished with death.

It is significant that the leaders of this Party interpreted this program as a belligerent one, certain to precipitate conflict. The Party platform concluded, “The leaders of the Party swear to proceed regardless of consequences-if necessary, at the sacrifice of their lives-toward the fulfillment of the foregoing points.” It is this Leadership Corps of the Party, not its entire membership, that stands accused before you as a criminal organization.

Let us now see how the leaders of the Party fulfilled their pledge to proceed regardless of consequences. Obviously, their foreign objectives, which were nothing less than to undo international treaties and to wrest territory from foreign control, as well as most of their internal program, could be accomplished only by possession of the machinery of the German State. The first effort, accordingly, was to subvert the Weimar Republic by violent revolution. An abortive putsch at Munich in 1923 landed many of them in jail. A period of meditation which followed produced *Mein Kampf*, henceforth the source of law for the Party workers and a source of considerable revenue to its supreme leader. The Nazi plans for the violent overthrow of the feeble Republic then turned to plans for its capture.

No greater mistake could be made than to think of the Nazi Party in terms of the loose organizations which we of the western world call “political parties”. In discipline,



structure, and method the Nazi Party was not adapted to the democratic process of persuasion. It was an instrument of conspiracy and of coercion. The Party was not organized to take over power in the German State by winning support of a majority of the German people; it was organized to seize power in defiance of the will of the people.

The Nazi Party, under the “Führerprinzip,” was bound by an iron discipline into a pyramid, with the Führer, Adolf Hitler, at the top and broadening into a numerous Leadership Corps, composed of overlords of a very extensive Party membership at the base. By no means all of those who may have supported the movement in one way or another were actual Party members. The membership took the Party oath which in effect amounted to an abdication of personal intelligence and moral responsibility. This was the oath: “I vow inviolable fidelity to Adolf Hitler; I vow absolute obedience to him and to the leaders he designates for me.” The membership in daily practice followed its leaders with an idolatry and self-surrender more Oriental than Western.

We will not be obliged to guess as to the motives or goal of the Nazi Party. The immediate aim was to undermine the Weimar Republic. The order to all Party members to work to that end was given in a letter from Hitler of August 24, 1931 to Rosenberg, of which we will produce the original Hitler wrote:

“I am just reading in the Volkischer Beobachter, edition 235/236, page 1, an article entitled “Does Wirth Intend To Come over?” The tendency of the article is to prevent on our part a crumbling away from the present form of government. I myself am travelling all over Germany to achieve exactly the opposite. May I therefore ask that my own paper will not stab me in the back with tactically unwise articles...” (047-PS) Captured film enables us to present the Defendant Alfred Rosenberg, who from the screen will himself tell you the story. The SA practiced violent interference with elections. We have the reports of the SD describing in detail how its members later violated the secrecy of elections in order to identify those who opposed them. One of the reports makes this explanation:

“....The control was effected in the following way: some members of the election committee marked all the ballot papers with numbers. During the ballot itself, a voters’ list was made up. The ballot-papers were handed out in numerical order, therefore it was possible afterwards with the aid of this list to find out the persons who cast ‘No’-votes or invalid votes. One sample of these marked ballot-papers is enclosed. The marking was done on the back of the ballot-papers with skimmed milk...” (R-142)

The Party activity, in addition to all the familiar forms of political contest, took on the aspect of a rehearsal for warfare. It utilized a Party formation, “Die Sturmabteilungen”, commonly known as the SA. This was a voluntary organization of youthful and fanatical Nazis trained for the use of violence under semi-military discipline. Its members began by acting as bodyguards for the Nazi leaders and rapidly expanded from defensive to offensive tactics. They became disciplined ruffians for the breaking up of opposition meetings and the terrorization of adversaries. They boasted that their task was to make the Nazi Party “master of the streets”. The SA was the parent organization of a number of others. Its offspring include “Die Schutzstaffeln”, commonly known as the SS, formed in 1925 and distinguished for the fanaticism and cruelty of its members; “Der Sicherheitsdienst”, known as the SD; and “Die Geheime Staatspolizei”, the Secret State Police, the infamous Gestapo formed in 1934 after Nazi accession to power.

A glance at a chart of the Party organization is enough to show how completely it differed from the political parties we know. It had its own source of law in the Führer and sub-Führer. It had its own courts and its own police. The conspirators set up a government within the Party to exercise outside the law every sanction that any legitimate state could exercise and many that it could not. Its chain of command was military, and its formations were martial in name as well as in function. They were composed of battalions set up to bear arms under military discipline, motorized corps,

flying corps, and the infamous “Death Head Corps”, which was not misnamed. The Party had its own secret police, its security units, its intelligence and espionage division, its raiding forces, and its youth forces. It established elaborate administrative mechanisms to identify and liquidate spies and informers, to manage concentration camps, to operate death vans, and to finance the whole movement. Through concentric circles of authority, the Nazi Party, as its leadership later boasted, eventually organized and dominated every phase of German life-but not until they had waged a bitter internal struggle characterized by brutal criminality we charge here. In preparation for this phase of their struggle, they created a Party police system. This became the pattern and the instrument of the police state, which was the first goal in their plan.

The Party formations, including the Leadership Corps of the Party, the SD, the SS, the SA, and the infamous Secret State Police, or Gestapo,-all these stand accused before you as criminal organizations; organizations which, as we will prove from their own documents, were recruited only from recklessly devoted Nazis, ready in conviction and temperament to do the most violent of deeds to advance the common program. They terrorized and silenced democratic opposition and were able at length to combine with political opportunists, militarists, industrialists, monarchists, and political reactionaries.

On January 30, 1933 Adolf Hitler became Chancellor of the German Republic. An evil combination, represented in the prisoners’ dock by its most eminent survivors, had succeeded in possessing itself of the machinery of the German Government, a facade behind which they thenceforth would operate to make a reality of the war of conquest they so long had plotted. The conspiracy had passed into its second phase.

### **The Consolidation of Nazi Power:**

We shall now consider the steps, which embraced the most hideous of Crimes against Humanity, to which the conspirators resorted in perfecting control of the German State and in preparing Germany for the aggressive war indispensable to their ends. The Germans of the 1920’s were a frustrated and baffled people as a result of defeat and the disintegration of their traditional government. The democratic elements, which were trying to govern Germany through the new and feeble machinery of the Weimar Republic, got inadequate support from the democratic forces of the rest of the world, including my country. It is not to be denied that Germany, when worldwide depression was added to her other problems, was faced with urgent and intricate pressures in her economic and political life which necessitated bold measures.

The internal measures by which a nation attempts to solve its problems are ordinarily of no concern to other nations. But the Nazi program from the first was recognized as a desperate program for a people still suffering the effects of an unsuccessful war. The Nazi policy embraced ends recognized as attainable only by a renewal and a more successful outcome of war, in Europe. The conspirators’ answer to Germany’s problems was nothing less than to plot the regaining of territories lost in the First World War and the acquisition of other fertile lands of Central Europe by dispossessing or exterminating those who inhabited them. They also contemplated destroying or permanently weakening all other neighboring peoples so as to win virtual domination over Europe and probably of the world. The precise limits of their ambition we need not define for it was and is as illegal to wage aggressive war for small stakes as for large ones.

We find at this period two governments in Germany-the real and the ostensible. The forms of the German Republic were maintained for a time, and it was the outward and visible government. But the real authority in the State was outside and above the law and rested in the Leadership Corps of the Nazi Party.

On February 27, 1933, less than a month after Hitler became Chancellor, the Reichstag building was set on fire. The burning of this symbol of free parliamentary government was so providential for the Nazis that it was believed they staged the fire themselves.

Certainly when we contemplate their known crimes, we cannot believe they would shrink from mere arson. It is not necessary, however, to resolve the controversy as to who set the fire. The significant point is in the use that was made of the fire and of the state of public mind it produced. The Nazis immediately accused the Communist Party of instigating and committing the crime, and turned every effort to portray this single act of arson as the beginning of a communist revolution. Then, taking advantage of the hysteria, the Nazis met this phantom revolution with a real one. In the following December the German Supreme Court with commendable courage and independence acquitted the accused Communists, but it was too late to influence the tragic course of events which the Nazi conspirators had set rushing forward.

Hitler, on the morning after the fire, obtained from the aged and ailing President Von Hindenburg a presidential decree suspending the extensive guarantees of individual liberty contained in the constitution of the Weimar Republic. The decree provided that: "Sections 114, 115, 117, 118, 123, 124, and 153 of the Constitution of the German Reich are suspended until further notice. Thus, restrictions on personal liberty, on the right of free expression of opinion, including freedom of the press, on the right of assembly and the right of association, and violations of the privacy of postal, telegraphic, and telephonic communications, and warrants for house-searches, orders for, confiscations as well as restrictions on property, are also permissible beyond the legal limits otherwise prescribed." (1390-PS)

The extent of the restriction on personal liberty under the decree of February 28, 1933 may be understood by reference to the rights under the Weimar constitution which were suspended:

"Article 114. The freedom of the person is inviolable. Curtailment or deprivation of personal freedom by a public authority is only permissible on a legal basis.

"Persons who have been deprived of their freedom must be informed at the latest on the following day by whose authority and for what reasons the deprivation of freedom was ordered; opportunity shall be afforded them without delay of submitting objections to their deprivation of freedom.

"Article 115. Every German's home is his sanctuary and is inviolable. Exceptions may only be made as provided by law.

"Article 117. The secrecy of letters and all postal, telegraphic, and telephone communications is inviolable. Exceptions are inadmissible except by Reich law.

"Article 118. Every German has the right, within the limits of the general laws, to express his opinions freely in speech, in writing, in print, in picture form, or in any other way. No conditions of work or employment may detract from this right and no disadvantage may accrue to him from any person for making use of this right....

"Article 123. All Germans have the right to assemble peacefully and unarmed without giving notice and without special permission.

"A Reich law may make previous notification obligatory for assemblies in the open air, and may prohibit them in case of immediate danger to the public safety.

"Article 124. All the Germans have the right to form associations or societies for purposes not contrary to criminal law. This right may not be curtailed by preventive measures. The same provisions apply to religious associations and societies.

"Every association may become incorporated (Erwerb der Rechtsfähigkeit) according to the provisions of the civil law. The right may not be refused to any association on the grounds that its aims are political, social-political, or religious.

"Article 153. Property is guaranteed by the Constitution. Its content and limits are defined by the laws.

"Expropriation can only take place for the public benefit and on a legal basis. Adequate compensation shall be granted, unless a Reich law orders otherwise. In the case of dispute concerning the amount of compensation, it shall be possible to submit the matter to the ordinary civil courts, unless Reich laws determine otherwise. Compensation must be paid if the Reich expropriates property belonging to the Lands,

Communes, or public utility associations.

“Property carries obligations. Its use shall also serve the common good.” (2050-PS)

It must be said in fairness to Von Hindenburg that the constitution itself authorized him temporarily to suspend these fundamental rights “if the public safety and order in the German Reich are considerably disturbed or endangered.” It must also be acknowledged that President Ebert previously had invoked this power.

But the National Socialist coup was made possible because the terms of the Hitler-Hindenburg decree departed from all previous ones in which the power of suspension had been invoked. Whenever Ebert had suspended constitutional guarantees of individual rights, his decree had expressly revived the Protective Custody Act adopted by the Reichstag in 1916 during the previous war. This act guaranteed a judicial hearing within 24 hours of arrest, gave a right to have counsel and to inspect all relevant records, provided for appeal, and authorized compensation from Treasury funds for erroneous arrests.

The Hitler-Hindenburg decree of February 28, 1933 contained no such safeguards. The omission may not have been noted by Von Hindenburg. Certainly he did not appreciate its effect. It left the Nazi police and party formations, already existing and functioning under Hitler, completely unrestrained and irresponsible. Secret arrest and indefinite detention, without charges, without evidence, without hearing, without counsel, became the method of inflicting inhuman punishment on any whom the Nazi police suspected or disliked. No court could issue an injunction, or writ of habeas corpus, or certiorari. The German people were in the hands of the police, the police were in the hands of the Nazi Party, and the Party was in the hands of a ring of evil men, of whom the defendants here before you are surviving and representative leaders.

The Nazi conspiracy, as we shall show, always contemplated not merely overcoming current opposition but exterminating elements which could not be reconciled with its philosophy of the state. It not only sought to establish the Nazi “new order” but to secure its sway, as Hitler predicted, “for a thousand years.” Nazis were never in doubt or disagreement as to what these dissident elements were. They were concisely described by one of them, Colonel General Von Fritsch, on December 11, 1938 in these words:

“Shortly after the first war I came to the conclusion that we should have to be victorious in three battles if Germany were to become powerful again: 1. The battle against the working class – Hitler has won this. 2. Against the Catholic Church, perhaps better expressed against Ultramontanism. 3. Against the Jews.” (1947-PS)

The warfare against these elements was continuous. The battle in Germany was but a practice skirmish for the worldwide drive against them. We have in point of geography and of time two groups of Crimes against Humanity – one within Germany before and during the war, the other in occupied territory during the war. But the two are not separated in Nazi planning. They are a continuous unfolding of the Nazi plan to exterminate peoples and institutions which might serve as a focus or instrument for overturning their “new world order” at any time. We consider these crimes against humanity in this address as manifestations of the one Nazi plan and discuss them according to General Von Fritsch’s classification.

## **1. The Battle against the Working Class:**

When Hitler came to power, there were in Germany three groups of trade unions. The General German Trade Union Confederation (ADGB) with 28 affiliated unions, and the General Independent Employees Confederation (AFA) with 13 federated unions together numbered more than 4,500,000 members. The Christian Trade Union had over 1,250,000 members.

The working people of Germany, like the working people of other nations, had little to gain personally by war. While labor is usually brought around to the support of the nation at war, labor by and large is a pacific, though by no means a pacifist force in the

world. The working people of Germany had not forgotten in 1933 how heavy the yoke of the war lord can be. It was the workingmen who had joined the sailors and soldiers in the revolt of 1918 to end the first World War. The Nazis had neither forgiven nor forgotten. The Nazi program required that this part of the German population not only be stripped of power to resist diversion of its scanty comforts to armament, but also be wheedled or whipped into new and unheard of sacrifices as a part of the Nazi war preparation. Labor must be cowed, and that meant its organizations and means of cohesion and defense must be destroyed. The purpose to regiment labor for the Nazi Party was avowed by Ley in a speech to workers on May 2, 1933 as follows:

“You may say what else do you want, you have the absolute power. True we have the power, but we do not have the whole people, we do not have you workers 100 per cent, and it is you whom we want; we will not let you be until you stand with us in complete, genuine acknowledgment.” (614-PS)

The first Nazi attack was upon the two larger unions. On April 21, 1933 an order not even in the name of the Government, but of the Nazi Party was issued by the conspirator Robert Ley as “Chief of Staff of the political organization of the NSDAP,” applicable to the Trade Union Confederation and the Independent Employees Confederation. It directed seizure of their properties and arrest of their principal leaders. The Party order directed Party organs which we here denounce as criminal associations, the SA and SS “to be employed for the occupation of the trade union properties, and for the taking into custody of personalities who come into question.” And it directed the taking into “protective custody” of all chairmen and district secretaries of such unions and branch directors of the labor bank. (392-PS)

These orders were carried out on May 2, 1933. All funds of the labor unions, including pension and benefit funds, were seized. Union leaders were sent to concentration camps. A few days later, on May 10, 1933, Hitler appointed Ley leader of the German Labor Front (Deutsche Arbeitsfront) which succeeded to the confiscated union funds. The German Labor Front, a Nazi controlled labor bureau, was set up under Ley to teach the Nazi philosophy to German workers and to weed out from industrial employment all who were backward in their lessons. (1940-PS) “Factory troops” were organized as an “ideological shock squad within the factory” (1817-PS). The Party order provided that “outside of the German Labor front, no other Organization (whether of workers or of employees) is to exist.” On June 24, 1933 the remaining Christian Trade Unions were seized, pursuant to an order of the Nazi Party signed by Ley.

On May 19, 1933, this time by a government decree, it was provided that “trustees” of labor appointed by Hitler, should regulate the conditions of all labor contracts, replacing the former process of collective bargaining (405-PS). On November 30, 1934 a decree “regulating national labor” introduced the Führer Principle into industrial relations. It provided that the owners of enterprises should be the “Führer” and the workers should be the followers. The “enterprise-Führer” should “make decisions for employees and laborers in all matters concerning the enterprise” (1861-PS). It was by such bait that the great German industrialists were induced to support the Nazi cause, to their own ultimate ruin.

Not only did the Nazis dominate and regiment German labor, but they forced the youth into the ranks of the laboring people they had thus led into chains. Under a compulsory labor service decree on 26 June 1935 young men and women between the ages of 18 and 25 were conscripted for labor (1654-PS). Thus was the purpose to subjugate German labor accomplished. In the words of Ley, this accomplishment consisted “in eliminating the association character of the trade union and employees’ associations, and in its place we have substituted the conception ‘soldiers of work’.” The productive manpower of the German nation was in Nazi control. By these steps the defendants won the battle to liquidate labor unions as potential opposition and were enabled to impose upon the working class the burdens of preparing for aggressive warfare.

Robert Ley, the field marshal of the battle against labor, answered our Indictment with suicide. Apparently he knew no better answer.

## **2. The Battle against the Churches:**

The Nazi Party always was predominantly anti-Christian in its ideology. But we who believe in freedom of conscience and of religion base no charge of criminality on anybody's ideology. It is not because the Nazi themselves were irreligious or pagan, but because they persecuted others of the Christian faith that they become guilty of crime, and it is because the persecution was a step in the preparation for aggressive warfare that the offense becomes one of international consequence. To remove every moderating influence among the German people and to put its population on a total war footing, the conspirators devised and carried out a systematic and relentless repression of all Christian sects and churches.

We will ask you to convict the Nazis on their own evidence. Martin Bormann, in June 1941, issued a secret decree on the relation of Christianity and National Socialism. The decree provided:

"For the first time in German history the Führer consciously and completely has the leadership of the people in his own hand. With the Party, its components, and attached units the Führer has created for himself and thereby the German Reich leadership an instrument which makes him independent of the church. All influences which might impair or damage the leadership of the people exercised by the Führer with help of the NSDAP, must "be eliminated. More and more the people must be separated from the churches and their organs, the pastors. Of course, the churches must and will, seen from their viewpoint, defend themselves against this loss of power. But never again must an influence on leadership of the people be yielded to the churches. This (influence) must be broken completely and finally.

"Only the Reich Government and by its direction the Party, its components, and attached units have a right to leadership of the people. Just as the deleterious Sequences of astrologers, seers, and other fakers are estimated and suppressed by the Estate, so must the possibility of church influence also be totally removed. Not until this has happened; does the State leadership have influence on the individual citizens. Not until then are people and Reich secure in their existence for all the future." (D-75)

And how the Party had been securing the Reich from Christian influence, will be proved by such items as this teletype from the Gestapo, Berlin, to the Gestapo, Nuremberg, on July 24, 1938. Let us hear their own account of events in Rottenburg.

"The Party on 23 July 1939 from 2100 on carried out the third demonstration against Bishop Sproll. Participants about 2500-3000 were brought in from outside by bus, etc. The Rottenburg populace again did not participate in the demonstration. This town took rather a hostile attitude to the demonstrations. The action got completely out of hand of the Party member responsible for it. The demonstrators stormed the palace, beat in the gates and doors. About 150 to 200 people forced their way into the palace, searched the rooms, threw files out of the windows and rummaged through the beds in the rooms of the palace. One bed was ignited. Before the fire got to the other objects of equipment in the rooms and the palace, the flaming bed could be thrown from the window and the fire extinguished. The Bishop was with Archbishop Groeber of Freiburg and the ladies and gentlemen of his menage in the chapel at prayer. About 25 to 30 people pressed into this chapel and molested those present. Bishop Groeber was taken for Bishop Sproll. He was grabbed by the robe and dragged back and forth. Finally the intruders realized that Bishop Groeber is not the one they are seeking. They could then be persuaded to leave the building. After the evacuation of the palace by the demonstrators I had an interview with Archbishop Groeber who left Rottenburg in the night. Groeber wants to turn to the Führer and Reich Minister of the Interior, Dr. Frick, anew. On the course of the action, the damage done as well as the homage of the Rottenburg populace beginning today for the Bishop I shall immediately hand in a full



report, after I am in the act of suppressing counter mass meetings....

“In case the Führer has instructions to give in this matter, I request that these be transmitted most quickly....” (848-PS)

Later, Defendant Rosenberg wrote to Bormann reviewing the proposal of Kerrl as Church Minister to place the Protestant Church under State tutelage and proclaim Hitler its supreme head. Rosenberg was opposed, hinting that nazism was to suppress the Christian Church completely after the war (See also 098-PS).

The persecution of all pacifist and dissenting sects, such as Jehovah’s Witnesses and the Pentecostal Association, was peculiarly relentless and cruel. The policy toward the Evangelical Churches, however, was to use their influence for the Nazis’ own purposes. In September 1933 Mueller was appointed the Führer’s representative with power to deal with the “affairs of the Evangelical Church” in its relations to the State. Eventually, steps were taken to create a Reich Bishop vested with power to control this Church. A long conflict followed, Pastor Niemöller was sent to concentration camp, and extended interference with the internal discipline and administration of the churches occurred.

A most intense drive was directed against the Roman Catholic Church. After a strategic concordat with the Holy See, signed in July 1933 in Rome, which never was observed by the Nazi Party, a long and persistent persecution of the Catholic Church, its priesthood, and its members, was carried out. Church schools and educational institutions were suppressed or subjected to requirements of Nazi teaching inconsistent with the Christian faith. The property of the Church was confiscated and inspired vandalism directed against Church property was left unpunished. Religious instruction was impeded and the exercise of religion made difficult. Priests and bishops were laid upon, riots were stimulated to harass them, and many were sent to concentration camps.

After occupation of foreign soil, these persecutions went on with greater vigor than ever. We will present to you from the files of the Vatican the earnest protests made by the Vatican to Ribbentrop summarizing the persecutions to which the priesthood and the Church had been subjected in this twentieth century under the Nazi regime. Ribbentrop never answered them. He could not deny. He dared not justify .

I now come to “Crimes against the Jews.”

TO PRESIDENT: We shall now take our noon recess.

[A recess was taken until 1400 hours.]

## **Afternoon Session**

THE PRESIDENT: The Tribunal will adjourn for 15 minutes at half past 3 and will then continue until half past 4.

MR. JUSTICE JACKSON: I was about to take up the “Crimes Committed against the Jews.”

### **3. Crimes against the Jews:**

The most savage and numerous crimes planned and committed by the Nazis were those against the Jews. Those in Germany in 1933 numbered about 500,000. In the aggregate, they had made for themselves positions which excited envy, and had accumulated properties which excited the avarice of the Nazis. They were few enough to be helpless and numerous enough to be held up as a menace.

Let there be no misunderstanding about the charge of persecuting Jews. What we charge against these defendants is not those arrogances and pretensions which frequently accompany the intermingling of different peoples and which are likely, despite the honest efforts of government, to produce regrettable crimes and convulsions. It is my purpose to show a plan and design, to which all Nazis were fanatically committed, to annihilate all Jewish people. These crimes were organized and promoted by the Party leadership, executed and protected by the Nazi officials, as

we shall convince you by written orders of the Secret State Police itself.

The persecution of the Jews was a continuous and deliberate policy. It was a policy directed against other nations as well as against the Jews themselves. Anti-Semitism was promoted to divide and embitter the democratic peoples and to soften their resistance to the Nazi aggression. As Robert Ley declared in *Der Angriff* on 14 May 1944: "The second German secret weapon is Anti-Semitism because if it is constantly pursued by Germany, it will become a universal problem which all nations will be forced to consider."

Anti-Semitism also has been aptly credited with being a "spearhead of terror." The ghetto was the laboratory for testing repressive measures. Jewish property was the first to be expropriated, but the custom grew and included similar measures against anti-Nazi Germans, Poles, Czechs, Frenchmen, and Belgians. Extermination of the Jews enabled the Nazis to bring a practiced hand to similar measures against Poles, Serbs, and Greeks. The plight of the Jew was a constant threat to opposition, or discontent among other elements of Europe's population—pacifists, conservatives, Communists, Catholics, Protestants, Socialists. It was in fact, a threat to every dissenting opinion and to every non-Nazi's life.

The persecution policy against the Jews commenced with nonviolent measures, such as disfranchisement and discriminations against their religion, and the placing of impediments in the way of success in economic life. It moved rapidly to organized mass violence against them, physical isolation in ghettos, deportation, forced labor, mass starvation, and extermination. The Government, the Party formations indicted before you as criminal organizations, the Secret State Police, the Army, private and semi-public associations, and "spontaneous" mobs that were carefully inspired from official sources, were all agencies that were concerned in this persecution. Nor was it directed against individual Jews for personal bad citizenship or unpopularity. The avowed purpose was the destruction of the Jewish people as a whole, as an end in itself, as a measure of preparation for war, and as a discipline of conquered peoples.

The conspiracy or common plan to exterminate the Jew was so methodically and thoroughly pursued, that despite the German defeat and Nazi prostration this Nazi aim largely has succeeded. Only remnants of the European Jewish population remain in Germany, in the countries which Germany occupied, and in those which were her satellites or collaborators. Of the 9,600,000 Jews who lived in Nazi-dominated Europe, 60 percent are authoritatively estimated to have perished. Five million seven hundred thousand Jews are missing from the countries in which they formerly lived, and over 4,500,000 cannot be accounted for by the normal death rate nor by immigration; nor are they included among displaced persons. History does not record a crime ever perpetrated against so many victims or one ever carried out with such calculated cruelty.

You will have difficulty, as I have, to look into the faces of these defendants and believe that in this twentieth century human beings could indict such sufferings as will be proved here on their own countrymen as well as upon their so-called "inferior" enemies. Particular crimes, and the responsibility of defendants for them, are to be dealt with by the Soviet Government's counsel, when committed in the East, and by counsel for the Republic of France when committed in the West. I advert to them only to show their magnitude as evidence of a purpose and a knowledge common to all defendants, of an official plan rather than of a capricious policy of some individual commander, and to show such a continuity of Jewish persecution from the rise of the Nazi conspiracy to its collapse as forbids us to believe that any person could be identified with any part of Nazi action without approving this most conspicuous item in their program.

The Indictment itself recites many evidences of the anti-Semitic persecutions. The Defendant Streicher led the Nazis in anti-Semitic bitterness and extremism. In an article appearing in *Der Stürmer* on 19 March 1942 he complained that Christian

teachings have stood in the way of “racial solution of the Jewish question in Europe”, and quoted enthusiastically as the twentieth century solution the Führer’s proclamation of February 24, 1942 that “the Jew will be exterminated.” And on November 4, 1943 Streicher declared in *Der Stürmer* that the Jews “have disappeared from Europe and that the Jewish ‘Reservoir of the East’ from which the Jewish plague has for centuries beset the people of Europe, has ceased to exist.” Streicher now has the effrontery to tell us he is “only a Zionist”-he says he wants only to return the Jews to Palestine. But on May 7, 1942 his newspaper, *Der Stürmer*, had this to say:

“It is also not only a European problem! The Jewish question is a world question! Not only is Germany not safe in the face of the Jews as long as one Jew lives in Europe, but a so the Jewish question is hardly solved in Europe so long as Jews live in the rest of the world.”

And the Defendant Hans Frank, a lawyer by profession, I say with shame, summarized in his diary in 1944 the Nazi policy thus: “The Jews are a race which has to be eliminated; whenever we catch one, it is his end” (2233-PS, 4 March 1944, P. 26). And earlier, speaking of his function as Governor General of Poland, he confided to his diary this sentiment: “Of course I cannot eliminate all lice and Jews in only a year’s time” (2233 PS, Vol. IV, 1940, P. 1158). I could multiply endlessly this kind of Nazi ranting but I will leave it to the evidence and turn to the fruit of this perverted thinking. The most serious of the actions against Jews were outside of any law, but the law itself was employed to some extent. There were the infamous Nuremberg decrees of September 15, 1935 (*Reichsgesetzblatt* 1935, Part. I, P. 1146). The Jews were segregated into ghettos and put into forced labor; they were expelled from their professions; their property was expropriated; all cultural life, the press, the theater, and schools were prohibited them; and the SD was made responsible for them (212-PS, 069-PS). This was an ominous guardianship, as the following order for “The Handling of the Jewish Question” shows:

“The competency of the Chief of the Security Police and Security Service, who is charged with the mission of solving the European Jewish question, extends even to the Occupied Eastern Provinces ....

“An eventual act by the civilian population against the Jews is not to be prevented as long as this is compatible with the maintenance of order and security in the rear of the fighting troops ....

“The first main goal of the German measures must be strict segregation of Jewry from the rest of the population. In the execution of this, first of all is the seizing of the Jewish populace by the introduction of a registration order and similar appropriate measures ....

“Then immediately, the wearing of the recognition sign consisting of a yellow Jewish star is to be brought about and all rights of freedom for Jews are to be withdrawn. They are to be placed in ghettos and at the same time are to be separated according to sexes. The presence of many more or less closed Jewish settlements in White Ruthenia and in the Ukraine makes this mission easier. Moreover, places are to be chosen which make possible the full use of the Jewish manpower in case labor needs are present ....

“The entire Jewish property is to be seized and confiscated with exception of that which is necessary for a bare existence. As far as the economical situation permits, the power of disposal of their property is to be taken from the Jews as soon as possible through orders and other measures given by the commissariat, so that the moving of property will quickly cease.

“Any cultural activity will be completely forbidden, to the Jew. This includes the outlawing of the Jewish press, the Jewish theaters, and schools.

“The slaughtering of animals according to Jewish rites is also to be prohibited .... ” (212-PS)

The anti-Jewish campaign became furious in Germany following the assassination in Paris of the German Legation Councillor Von Rath. Heydrich, Gestapo head, sent a

teletype to all Gestapo and SD offices with directions for handling “spontaneous” uprising anticipated for the nights of November 9 and 10, 1938 so as to aid in destruction of Jewish-owned property and protect only that of Germans. No more cynical document ever came into evidence. Then there is a report by an SS brigade leader, Dr. Stahleckker, to Himmler, which recites that:

“. . . Similarly, native anti-Semitic forces were induced to start pogroms against Jews during the first hours after capture, though this inducement proved to be very difficult. Following out orders, the Security Police was determined to solve the dervish question with an possible means and most decisively. But it was desirable that the Security Police should not put in an immediate appearance, at least in the beginning, since the extraordinarily harsh measures were apt to stir even German circles. It had to be shown to the world that the native population itself took the first action by way of natural reaction against the suppression by Jews during several decades and against the terror exercised by the Communists during the preceding period ....”

“. . . In view of the extension of the area of operations and the great number of duties which had to be performed by the Security Police, it was intended from the very beginning to obtain the co-operation of the reliable population for the fight against vermin-that is mainly the Jews and Communists. Beyond our directing of the first spontaneous actions of self-cleansing, which will be reported elsewhere, care had to be taken that reliable people should be put to the cleansing job and that they were appointed auxiliary members of the Security Police ....”

“. . . Kovno. To our surprise it was not easy at first to set in motion an extensive pogrom against Jews. Klimatis, the leader of the partisan unit, mentioned above, who was used for this purpose primarily, succeeded in starting a pogrom on the basis of advice given to him by a small advanced detachment acting in Kovno, and in such a way that no German order or German instigation was noticed from the outside. During the first pogrom in the night from 25 to 26 June the Lithuanian partisans did away with more than 1,500 Jews, set fire to several synagogues or destroyed them by other means and burned down a Jewish dwelling district consisting of about 60 houses. During the following nights about 2,300 Jews were made harmless in a similar way. In other parts of Lithuania similar actions followed the example of Kovno, though smaller and extending to the Communists vow had been left behind.

“These self-cleansing actions went smoothly because the army authorities who had been informed showed understanding for this procedure. From the beginning it was obvious that only the first days after the occupation would offer the opportunity for carrying out pogroms: After the disarmament of the partisans the self-cleansing actions ceased necessarily.

“It proved much more difficult to set in motion similar cleansing actions in Latvia....” (L-180)

Of course, it is self-evident that these “uprisings” were managed by the Government and the Nazi Party. If we were in doubt, we could resort to Streicher’s memorandum of April 14, 1939 which says:

“The anti-Jewish action of November 1938 did not arise spontaneously from the people.... Part of the Party formation have been charged with the execution of the anti-Jewish action.” (406-PS)

Jews as a whole were fined a billion Reichsmarks. They were excluded from all businesses and claims against insurance companies for their burned properties were confiscated, all by decree of the Defendant Goering. (Reichsgesetzblatt, 1938, Part I, Pp. 1579-82)

Synagogues were the objects of a special vengeance. On November 10, 1938 the following order was given:

“By order of the Group Commander: bq. All Jewish synagogues in the area of Brigade 50 have to be blown up or set afire.... The operation will be carried out in civilian clothing .... Execution of the order will be reported....” (1721-PS)

Some 40 teletype messages from various police headquarters will tell the fury with which all Jews were pursued in Germany on those awful November nights. The SS troops were turned loose and the Gestapo supervised. Jewish-owned property was authorized to be destroyed. The Gestapo ordered twenty to thirty thousand “well-to-do-Jews” to be arrested. Concentration camps were to receive them. Healthy Jews, fit for labor, were to be taken. (3051-PS)

As the German frontiers were expanded by war, so the campaign against the Jews expanded. The Nazi plan never was limited to extermination in Germany; always it contemplated extinguishing the Jew in Europe and often in the world. In the West, the Jews were killed and their property taken over. But the campaign achieved its zenith of savagery in the East. The eastern Jew has suffered as no people ever suffered. Their sufferings were carefully reported to the Nazi authorities to show faithful adherence to the Nazi design. I shall refer only to enough of the evidence of these to show the extent of the Nazi design for killing Jews.

If I should recite these horrors in words of my own, you would think me intemperate and unreliable. Fortunately, we need not take the word of any witness but the Germans themselves. I invite you now to look at a few of the vast number of captured German orders and reports that will be offered in evidence, to see what a Nazi invasion meant. We will present such evidence as the report of “Einsatzgruppe (Action Group) A” of October 15, 1941 which boasts that in overrunning the Baltic States, “Native anti-Semitic forces were induced to start pogroms against the Jews during the first hours after occupation.” The report continues:

“From the beginning it was to be expected that the Jewish problem in the East could not be solved by pogroms alone. In accordance with the basic orders received, however, the cleansing activities of the Security Police had to aim at a complete annihilation of the Jews. Special detachments reinforced by selected units-in Lithuania partisan detachments, in Latvia units of the Latvian auxiliary police-therefore performed extensive executions both in the towns and in rural areas. The actions of the execution detachments were performed smoothly.”

“The sum total of the Jews liquidated in Lithuania amounts to 71,105. During the pogroms in Kovno 3,800 Jews were eliminated, in the smaller towns about 1,200 Jews.”

“In Latvia, up to now a total of 30,000 Jews were executed. Five hundred were eliminated by pogroms in Riga.” (L-180)

This is a captured report from the Commissioner of Sluzk on October 30, 1941 which describes the scene in more detail. It says:

” ... The first lieutenant explained that the police battalion had received the assignment to effect the liquidation of all Jews here in the town of Sluzk, within two days .... Then I requested him to postpone the action one day. However, he rejected this with the remark that he had to carry out this action everywhere and in all towns and that only two days were allotted for Sluzk. Within these two days, the town of Sluzk had to be cleared of Jews by all means.... All Jews without exception were taken out of the factories and shops and deported in spite of our agreement. It is true that part of the Jews was moved by way of the ghetto where many of them were processed and still segregated by me, but a large part was loaded directly on trucks and liquidated without further delay outside of the town .... For the rest, as regards the execution of the action, I must point out to my deepest regret that the latter bordered already on sadism. The town itself offered a picture of horror during the action. With indescribable brutality on the part of both the German police officers and particularly the Lithuanian partisans, the Jewish people, but also among them White Ruthenians, were taken out of their dwellings and herded together. Everywhere in the town shots were to be heard and in different streets the corpses of shot Jews accumulated. The White Ruthenians were in greatest distress to free themselves from the encirclement. Regardless of the fact that the Jewish people, among whom were also tradesmen, were mistreated in a

terribly barbarous way in the face of the White Ruthenian people, the White Ruthenians themselves were also worked over with rubber clubs and rifle butts. There was no question of an action against the Jews more. It rather looked like a revolution ....”

There are reports which merely tabulate the numbers slaughtered. An example is an account of the work of Einsatzgruppen of SIPO and SD in the East, which relates that: In Estonia, all Jews were arrested immediately upon the arrival of the Wehrmacht. Jewish men and women above the age of 16 and capable of work were drafted for forced labor. Jews were subjected to all sorts of restrictions and all Jewish property was confiscated. All Jewish males above the age of 16 were executed, with the exception of doctors and elders. Only 500 of an original 4,500 Jews remained. Thirty-seven thousand, one hundred eighty persons have been liquidated by the SIPO and SD in White Ruthenia during October. In one town, 337 Jewish women were executed for demonstrating a ‘provocative attitude.’ In another, 380 Jews were shot for spreading vicious propaganda.

And so the report continues, listing town after town, where hundreds of Jews were murdered:

In Vitebsk 3,000 Jews were liquidated because of the danger of epidemics. In Kiev 33,771 Jews were executed on September 29 and 30 in retaliation for some fires which were set off there. In Shitomir 3,145 Jews ‘had to be shot’ because, judging from experience they had to be considered as the carriers of Bolshevik propaganda. In Cherson 410 Jews were executed in reprisal against acts of sabotage. In the territory east of the Dnieper, the Jewish problem was ‘solved’ by the liquidation of 4,891 Jews and by putting the remainder into labor battalions of up to 1,000 persons. (R-102)

Other accounts tell not of the slaughter so much as of the depths of degradation to which the tormentors stooped. For example, we will show the report made to Defendant Rosenberg about the army and the SS in the area under Rosenberg jurisdiction, which recited the following:

“Details: In presence of SS man, a Jewish dentist has to break all gold teeth and fillings out of mouth of German and Russian Jews before they are executed.”

Men, women and children are locked into barns and burned alive.

Peasants, women and children are shot on the pretext that they are suspected of belonging to bands. (R-135)

We of the Western World heard of gas wagons in which Jews and political opponents were asphyxiated. We could not believe it. But here we have the report of May 16, 1942 from the German SS Officer Becker to his supervisor in Berlin which tells this story:

Gas vans in C group can be driven to spot, which is generally stationed 10 to 15 kms. from main road, only in dry weather. Since those to be executed become frantic if conducted to this place, such vans become immobilized in wet weather.

Gas vans in D group were camouflaged as cabin trailers, but vehicles well-known to authorities and civilian population which calls them ‘death vans’.

Writer of letter (Becker) ordered all men to keep as far away as possible during gassing. Unloading van has ‘atrocious spiritual and physical effect’ on men and they should be ordered not to participate in such work. (501-PS)

I shall not dwell on this subject longer than to quote one more sickening document which evidences the planned and systematic character of the Jewish persecutions. I hold a report written with Teutonic devotion to detail, illustrated with photographs to authenticate its almost incredible text, and beautifully bound in leather with the loving care bestowed on a proud work. It is the original report of the SS Brigadier General Stroop in charge of the destruction of the Warsaw Ghetto, and its title page carries the inscription, “The Jewish ghetto in Warsaw no longer exists.” It is characteristic that one of the captions explains that the photograph concerned shows the driving out of Jewish “bandits”; those whom the photograph shows being driven out are almost



entirely women and little children. It contains a day-by-day account of the killings mainly carried out by the SS organization, too long to relate, but let me quote General Stroop's summary:

"The resistance put up by the Jews and bandits could only be suppressed by energetic actions of our troops day and night. The Reichsführer SS ordered, therefore, on 23 April 1948, the clearing out of the ghetto with utter ruthlessness and merciless tenacity. I, therefore, decided to destroy and burn down the entire ghetto without regard to the armament factories. These factories were systematically dismantled and then burned. Jews usually left their hideouts, but frequently remained in the burning buildings and jumped out of the windows only when the heat became unbearable. They then tried to crawl with broken bones across the street into buildings which were not afire. Sometimes they changed their hideouts during the night into the ruins of burned buildings. Life in the sewers was not pleasant after the first week. Many times we could hear loud voices in the sewers. SS men or policemen climbed bravely through the manholes to capture these Jews. Sometimes they stumbled over Jewish corpses; sometimes they were shot at. Tear gas bombs were thrown into the manholes and the Jews driven out of the sewers and captured. Countless numbers of Jews were liquidated in sewers and bunkers through blasting. The longer the resistance continued the tougher became the members of the Waffen SS, Police and Wehrmacht who always discharged their duties in an exemplary manner. Frequently Jews who tried to replenish their food supplies during the night or to communicate with neighboring groups were exterminated.

"This action eliminated," says the SS commander, "a proved total of 56,065. To that, we have to add the number killed through blasting, fire, etc., which cannot be counted." (1061-PS)

We charge that all atrocities against Jews were the manifestation and culmination of the Nazi plan to which every defendant here was a party. I know very well that some of these men did take steps to spare some particular Jew for some personal reason from the horrors that awaited the unrescued Jew. Some protested that particular atrocities were excessive, and discredited the general policy. While a few defendants may show efforts to make specific exceptions to the policy of Jewish extermination, I have found no instance in which any defendant opposed the policy itself or sought to revoke or even modify it.

Determination to destroy the Jews was a binding force which at all times cemented the elements of this conspiracy. On many internal policies there were differences among the defendants. But there is not one of them who has not echoed the rallying cry of nazism: "Deutschland erwache, Juda verrecke!" (Germany awake, Jewry perish!).

## **Terrorism and Preparation for War:**

How a government treats its own inhabitants generally is thought to be no concern of other governments or of international society. Certainly few oppressions or cruelties would warrant the intervention of foreign powers. But the German mistreatment of Germans is now known to pass in magnitude and savagery any limits of what is tolerable by modern civilization. Other nations, by silence, would take a consenting part in such crimes. These Nazi persecutions, moreover, take character as international crimes because of the purpose for which they were undertaken.

The purpose, as we have seen, of getting rid of the influence of free labor, the churches, and the Jews was to clear their obstruction to the precipitation of aggressive war. If aggressive warfare in violation of treaty obligation is a matter of international cognizance the preparations for it must also be of concern to the international community. Terrorism was the chief instrument for securing the cohesion of the German people in war purposes. Moreover, these cruelties in Germany served as atrocity practice to discipline the membership of the criminal organization to follow

the pattern later in occupied countries.

Through the police formations that are before you accused as criminal organizations, the Nazi Party leaders, aided at some point in their basic and notorious purpose by each of the individual defendants, instituted a reign of terror. These espionage and police organizations were utilized to hunt down every form of opposition and to penalize every nonconformity. These organizations early founded and administered concentration camps-Buchenwald in 1933, Dachau in 1934. But these notorious names were not alone. Concentration camps came to dot the German map and to number scores. At first they met with resistance from some Germans. We have a captured letter from Minister of Justice Gürtner to Hitler which is revealing. A Gestapo official had been prosecuted for crimes committed in the camp at Hohnstein, and the Nazi Governor of Saxony had promptly asked that the proceeding be quashed. The Minister of Justice in June of 1935 protested because, as he said:

“In this camp unusually grave mistreatments of prisoners have occurred at least since summer 1933. The prisoners not only were beaten with whips without cause, similarly as in the Concentration Camp Bredow near Stettin till they lost consciousness, but they were also tortured in other manners, e.g. with the help of a dripping apparatus constructed exclusively for this purpose, under which prisoners had to stand until they were suffering from serious purulent wounds of the scalp ....” (787-PS)

I shall not take time to detail the ghastly proceedings in these concentration camps. Beatings, starvings, tortures, and killings were routine-so routine that the tormenters became blasé and careless. We have a report of discovery that in Plötzensee one night, 186 persons were executed while there were orders for only 180. Another report describes how the family of one victim received two urns of ashes by mistake.

Inmates were compelled to execute each other. In 1942 they were paid five Reichsmarks per execution, but on June 27, 1942 SS General Glücks ordered commandants of all concentration camps to reduce this honorarium to three cigarettes. In 1943 the Reich leader of the SS and Chief of German Police ordered the corporal punishments on Russian women to be applied by Polish women and vice versa, but the price was not frozen. He said that as reward, a few cigarettes was authorized. Under the Nazis, human life had been progressively devalued, until it finally became worth less than a handful of tobacco-ersatz tobacco. There were, however, some traces of the milk of human kindness. On August 11, 1942 an order went from Himmler to the commanders of 14 concentration camps that only German prisoners are allowed to beat other German prisoners (2189-PS).

Mystery and suspense was added to cruelty in order to spread torture from the inmate to his family and friends. Men and women disappeared from their homes or business or from the streets, and no word came of them. The omission of notice was not due to overworked staff; it was due to policy. The Chief of the SD and SIPO reported that in accordance with orders from the Führer anxiety should be created in the minds of the family of the arrested person. (668-PS) Deportations and secret arrests were labeled, with a Nazi wit which seems a little ghoulish, “Nacht und Nebel” (Night and Fog) (L-90, 833-PS). One of the many orders for these actions gave this explanation:

“The decree carries a basic innovation. The Führer and Commander-in-Chief of the Armed Forces commands that crimes of the specified sort committed by civilians of the occupied territories are to be punished by the pertinent courts-martial in the occupied territories only when (a) the sentence calls for the death penalty, and (b) the sentence is pronounced within eight days after the arrest.

“Only when both conditions are met does the Führer and Commanders Chief of the Armed Forces hope for the desired deterrent effect from the conduct of punitive proceedings in the occupied territories.

“In other cases, in the future, the accused are to be secretly brought to Germany, and the further conduct of the trial carried on here. The deterrent effect of these measures lies (a) In allowing the disappearance of the accused without a trace, (b) therein that no

information whatsoever may be given about their whereabouts and their fate.” (833-PS)

To clumsy cruelty, scientific skill was added. “undesirables” were exterminated by infection of drugs into the bloodstream, by asphyxiation in gas chambers. They were shot with poison bullets, to study the effects. (L-103)

Then, to cruel experiments the Nazi added obscene ones. These were not the work of underling-degenerates but of master-minds high in the Nazi conspiracy. On May 20, 1942 General Field Marshal Milch authorized SS General Wolff to go ahead at Dachau Camp with so-called “cold experiments”; and four female gypsies were supplied for the purpose. Himmler gave permission to carry out these “experiments” also in other camps. (1617-PS) At Dachau, the reports of the “doctor” in charge show that victims were immersed in cold water until their body temperature was reduced to 28 degrees centigrade (82.4 degrees Fahrenheit), when they all died immediately (1618-PS). This was in August 1942. But the “doctor’s” technique improved. By February 1943 he was able to report that 30 persons were chilled to 21 to 29 degrees, their hands and feet frozen white, and their bodies “rewarmed” by a hot bath. But the Nazi scientific triumph was “rearming with animal heat.” The victim, all but frozen to death, was surrounded with bodies of living women until he revived and responded to his environment by having sexual intercourse. (1616-PS) Here Nazi degeneracy reached its nadir.

I dislike to encumber the record with such morbid tales, but we are in the grim business of trying men as criminals, and these are the things that their own agents say happened. We will show you these concentration camps in motion pictures, just as the Allied armies found them when they arrived, and the measures General Eisenhower had to take to clean them up. Our proof will be disgusting and you will say I have robbed you of your sleep. But these are the things which have turned the stomach of the world and set every civilized hand against Nazi Germany.

Germany became one vast torture chamber. Cries of its victims were heard round the world and brought shudders to civilized people everywhere. I am one who received during this war most atrocity tales with suspicion and scepticism. But the proof here will be so overwhelming that I venture to predict not one word I have spoken will be denied. These defendants will only deny personal responsibility or knowledge.

Under the clutch of the most intricate web of espionage and intrigue that any modern state has endured, and persecution and torture of a kind that has not been visited upon the world in many centuries, the elements of the German population which were both decent and courageous were annihilated. Those which were decent but weak were intimidated. Open resistance, which had never been more than feeble and irresolute, disappeared. But resistance, I am happy to say, always remained, although it was manifest in only some events as the abortive effort to assassinate Hitler on July 20, 1944. With resistance driven underground, the Nazi had the German State in his own hands.

But the Nazis not only silenced discordant voices. They created positive controls as effective as their negative ones. Propaganda organs, on a scale never before known, stimulated the Party and Party formation with a permanent enthusiasm and abandon such as we, democratic people, can work up only for a few days before a general election. They inculcated and practiced the Führerprinzip which centralized control of the Party and of the Party controlled State over the lives and thought of the German people, who are accustomed to look upon the German State, by whomever controlled, with a mysticism that is incomprehensible to my people.

All these controls from their inception were exerted with unparalleled energy and single-mindedness to put Germany on a war footing. We will show from the Nazis’ own documents their secret training of military personnel, their secret creation of a military air force. Finally, a conscript army was brought into being. Financiers, economists, industrialists joined in the plan and promoted elaborate alterations in

industry and finance to support an unprecedented concentration of resources and energies upon preparations for war. Germany rearmament so outstripped the strength of her neighbors that in about a year she was able to crush the whole military force of continental Europe, exclusive of that of Soviet Russia, and then to push the Russian armies back to the Volga. These preparations were of a magnitude which surpassed all need of defense, and every defendant, and every intelligent German, well understood them to be for aggressive purposes.

### **Experiments in Aggression:**

Before resorting to open aggressive warfare, the Nazis undertook some rather cautious experiments to test the spirit of resistance of those who lay across their path. They advanced, but only as others yielded, and kept in a position to draw back if they found a temperament that made persistence dangerous.

On 7 March 1936 the Nazis reoccupied the Rhineland and then proceeded to fortify it in violation of the Treaty of Versailles and the Pact of Locarno. Their encountered no substantial resistance and were emboldened to take the next step, which was the acquisition of Austria. Despite repeated assurances that Germany had no designs on Austria, invasion was perfected. Threat of attack forced Schuschnigg to resign as Chancellor of Austria and put the Nazi Defendant Seyss-Inquart in his place. The latter immediately opened the frontier and invited Hitler to invade Austria "to preserve order". On March 12th invasion began. The next day, Hitler proclaimed himself Chief of the Austrian State, took command of its armed forces and a law was enacted annexing Austria to Germany.

Threats of aggression had succeeded without arousing resistance. Fears nevertheless had been stirred. They were lulled by an assurance to the Czechoslovak Government that there would be no attack on that country. We will show that the Nazi Government already had detailed plans for the attack. We will lay before you the documents in which these conspirators planned to create an incident to justify their attack. They even gave consideration to assassinating their own Ambassador at Prague in order to create a sufficiently dramatic incident. They did precipitate a diplomatic crisis which endured throughout the summer. Hitler set September 30th as the day when troops should be ready for action. Under the threat of immediate war, the United Kingdom and France concluded a pact with Germany and Italy at Munich on September 29, 1938, which required Czechoslovakia to acquiesce in the cession of the Sudetenland to Germany. It was consummated by German occupation on October 1, 1938.

The Munich Pact pledged no further aggression against Czechoslovakia, but the Nazi pledge was lightly given and quickly broken. On the 15th of March 1939, in defiance of the treaty of Munich itself, the Nazis seized and occupied Bohemia and Moravia, which constituted the major part of Czechoslovakia not already ceded to Germany. Once again the West stood aghast, but it dreaded war, it saw no remedy except war, and it hoped against hope that the Nazi fever for expansion had run its course. But the Nazi world was intoxicated by these unresisted successes in open alliance with Mussolini and in covert alliance with Franco. Then, having made a deceitful, delaying peace with Russia, the conspirators entered upon the final phase of the plan to renew war.

### **War of Aggression:**

I will not prolong this address by detailing the steps leading to the war of aggression which began with the invasion of Poland on September 1, 1939. The further story will be unfolded to you from documents including those of the German High Command itself. The plans had been laid long in advance. As early as 1935 Hitler appointed the Defendant Schacht to the position of General Deputy for the War Economy (2261-PS). We have the diary of General Jodl (1780-PS); the "Plan Otto," Hitler's own order for

attack on Austria in case trickery failed (C-102); the "Plan Green" which was the blueprint for attack on Czechoslovakia (388-PS); plans for the war in the West (375-PS, 376-PS); Funk's letter to Hitler dated August 25, 1939 detailing the long course of economic preparation (699-PS); Keitel's top-secret mobilization order for 1939-40 prescribing secret steps to be taken during a "period of tension" during which no "state of war" will be publicly declared even if open war measures against the foreign enemy will be taken." This letter order (1639A-PS) is in our possession despite a secret order issued on May 16, 1945, when Allied troops were advancing into the heart of Germany, to burn these plans. We have also Hitler's directive, dated December 18, 1940, for the "Barbarossa Contingency" outlining the strategy of the attack upon Russia (446-PS). That plan in the original bears the initials of the Defendants Keitel and Jodl. They were planning the attack and planning it long in advance of the declaration of war. We have detailed information concerning "Case White," the plan for attack on Poland (C-120). That attack began the war. The plan was issued by Keitel on April 3rd, 1939. The attack did not come until September. Steps in preparation for the attack were taken by subordinate commanders, one of whom issued an order on June 14, providing that:

"The Commander-in-Chief of the Army has ordered the working out of a plan of deployment against Poland which takes in account the demands of the political leadership for the opening of war by surprise and for quick success....

"I declare it the duty of the commanding generals, the divisional commanders, and the commandants to limit as much as possible the number of persons who will be informed, and to limit the extent of the information, and ask that all suitable measures be taken to prevent persons not concerned from getting information....

"The operation, in order to forestall an orderly Polish mobilization and concentration, is to be opened by surprise with forces which are for the most part armored and motorized, placed on alert in the neighborhood of the border. The initial superiority over the Polish frontier guards and surprise that; can be expected with certainty are to be maintained by quickly bringing up other parts of the Army as well to counteract the marching up of the Polish Army....

"If the development of the political situation should show that a surprise at the beginning of the war is out of question, because of well-advanced defense preparations on the part of the Polish Army, the Commander-in-Chief of the Army will order the opening of the hostilities only after the assembling of sufficient additional forces. The basis of all preparations will be to surprise the enemy...." (2327-PS)

We have also the order for the invasion of England, signed by Hitler and initialed by Keitel and Jodl. It is interesting that it commences with a recognition that although the British military position is "hopeless," they show not the slightest sign of giving in. (442-PS)

Not the least incriminating are the minutes of Hitler's meeting with his high advisers. As early as November 5, 1937 Hitler told Defendants Goering, Raeder, and Neurath, among others, that German rearmament was practically accomplished and that he had decided to secure by force, starting with a lightning attack on Czechoslovakia and Austria, greater living space for Germans in Europe no later than 1943-45 and perhaps as early as 1938 (386-PS). On the 23rd of May, 1939 the Führer advised his staff that:

"It is a question of expanding our living space in the East and of securing our food supplies.... Over and above the natural fertility, thorough-going German exploitation will enormously increase the surplus.

"There is therefore no question of sparing Poland, and we are left with the decision: To attack Poland at the first suitable opportunity. We cannot expect a repetition of the Czech affair. There will be war." (L-79)

On August 22nd, 1939 Hitler again addressed members of the High Command, telling them when the start of military operations would be ordered. He disclosed that for propaganda purposes, he would provoke a good reason. "It will make no difference,"

he announced, “whether this reason will sound convincing or not. After all, the victor will not be asked whether he talked the truth or not. We have to proceed brutally. The stronger is always right.” (1014-PS) On 23 November 1939, after the Germans had invaded Poland, Hitler made this explanation:

“... For the first time in history we have to fight on only one front, the other front is at present free. But no one can know how long that will remain so. I have doubted for a long time whether I should strike in the East and then in the West. Basically I did not organize the armed forces in order not to strike. The decision to strike was always in me. Earlier or later I wanted to solve the problem. Under pressure it was decided that the East was to be attacked first ....” (789-PS)

We know the bloody sequel. Frontier incidents were staged. Demands were made for cession of territory. When Poland refused, the German forces invaded on September 1st, 1939. Warsaw was destroyed; Poland fell. The Nazis, in accordance with plan, moved swiftly to extend their aggression throughout Europe and to gain the advantage of surprise over their unprepared neighbors. Despite repeated and solemn assurances of peaceful intentions, they invaded Denmark and Norway on 9th April 1940; Belgium, The Netherlands, and Luxembourg on 10th May 1940; Yugoslavia and Greece on 6th April 1941.

As part of the Nazi preparation for aggression against Poland and her allies, Germany, on 23rd August 1939, had entered into a non-aggression pact with Soviet Russia. It was only a delaying treaty intended to be kept no longer than necessary to prepare for its violation. On June 22, 1941, pursuant to long-matured plans, the Nazis hurled troops into Soviet territory without any declaration of war. The entire European world was aflame.

## **Conspiracy with Japan:**

The Nazi plans of aggression called for use of Asiatic allies and they found among the Japanese men of kindred mind and purpose. They were brothers, under the skin.

Himmler records a conversation he had on January 31, 1939 with General Oshima, Japanese Ambassador at Berlin. He wrote:

“Furthermore, he (Oshima) had succeeded up to now to send 10 Russians with bombs across the Caucasian frontier. These Russians had the mission to kill Stalin. A number of additional Russians, whom he had also sent across, had been shot at the frontier.” (2195-PS)

On September 27th, 1940 the Nazis concluded a German-Italian-Japanese 10-year military and economic alliance by which those powers agreed “to stand by and cooperate with one another in regard to their efforts in Greater East Asia and regions of Europe respectively wherein it is their prime purpose to establish and maintain a new order of things.”

On March 5, 1941 a top-secret directive was issued by Defendant Keitel. It stated that the Führer had ordered instigation of Japan’s active participation in the war and directed that Japan’s military power has to be strengthened by the disclosure of German war experiences and support of a military, economic, and technical nature has to be given. The aim was stated to be to crush England quickly thereby keeping the United States out of the war. (C-75)

On March 29, 1941 Ribbentrop told Matsuoka, the Japanese Foreign Minister, that the German Army was ready to strike against Russia. Matsuoka reassured Ribbentrop about the Far East. Japan, he reported, was acting at the moment as though she had no interest whatever in Singapore, but intends to strike when the right moment comes. (1877-PS)

On April 5, 1941 Ribbentrop urged Matsuoka that entry of Japan into the war would “hasten the victory” and would be more in the interest of Japan than of Germany since it would give Japan a unique chance to fulfill her national aims and to play a leading part in Eastern Asia (1882-PS).



The proofs in this case will also show that the leaders of Germany were planning war against the United States from its Atlantic as well as instigating it from its Pacific approaches. A captured memorandum from the Führer's headquarters, dated October 29, 1940, asks certain information as to air bases and supply and reports further that: "The Führer is at present occupied with the question of the occupation of the Atlantic islands with a view to the prosecution of war against America at a later date. Deliberations on this subject are being embarked upon here." (376-PS)

On December 7th, 1941, a day which the late President Roosevelt declared "will live in infamy," victory for German aggression seemed certain. The Wehrmacht was at the gates of Moscow. Taking advantage of the situation, and while her plenipotentiaries were creating a diplomatic diversion in Washington, Japan without declaration of war treacherously attacked the United States at Pearl Harbor and the Philippines. Attacks followed swiftly on the British Commonwealth, and The Netherlands in the Southwest Pacific. These aggressions were met in the only way that they could be met, with instant declarations of war and with armed resistance which mounted slowly through many long months of reverses until finally the Axis was crushed to earth and deliverance for its victims was won.

Your Honor, I am about to take up "Crimes in the Conduct of War", which is quite a separate subject. We are within 5 minutes of the recessing time. It will be very convenient for me if it will be agreeable to you.

THE PRESIDENT: We will sit again in 15 minutes' time.

[The tribunal recessed until 1550 hours.]

THE PRESIDENT: The Tribunal must request that if it adjourns for 15 minutes members of the bar and others are back in their seats after an interval of 15 minutes. Mr. Justice Jackson, I understand that you wish to continue to 5:15, when you may be able to conclude your speech?

MR. JUSTICE JACKSON: I think that would be the most orderly way.

THE PRESIDENT: Yes, the Tribunal will be glad to do so.

MR. JUSTICE JACKSON: May it please your Honor, I will now take up the subject of "Crimes in the Conduct of War".

Even the most warlike of peoples have recognized in the name of humanity some limitations on the savagery of warfare. Rules to that end have been embodied in international conventions to which Germany became a party. This code had prescribed certain restraints as to the treatment of belligerents. The enemy was entitled to surrender and to receive quarter and good treatment as a prisoner of war. We will show by German documents that these rights were denied, that prisoners of war were given brutal treatment and often murdered. This was particularly true in the case of captured airmen, often my countrymen.

It was ordered that captured English and American airmen should no longer be granted the status of prisoners of war. They were to be treated as criminals and the Army was ordered to refrain from protecting them against lynching by the populace. (R-118) The Nazi Government, through its police and propaganda agencies, took pains to incite the civilian population to attack and kill airmen who crashlanded. The order, given by the Reichsführer SS Himmler on 10 August 1943, directed that: "It is not the task of the police to interfere in clashes between German and English and American flyers who have bailed out". This order was transmitted on the same day by SS Obersturmbannführer Brand of Mmmmler's personal staff to all senior executive SS and Police officers, with these directions:

"I am sending you the inclosed order with the request that the Chief of the Regular Police and of the Security Police be informed. They are to make this instruction known to their subordinate officers verbally." (R-110)

Similarly, we will show Hitler's top secret order, dated 18 October 1942, that Commandos, regardless of condition, were "to be slaughtered to the last man" after capture (498-PS). We will show the circulation of secret orders, one of which was

signed by Hess, to be passed orally to civilians, that enemy fliers or parachutists were to be arrested or liquidated (062-PS). By such means were murders incited and directed.

This Nazi campaign of ruthless treatment of enemy forces assumed its greatest proportions in the fight against Russia. Eventually all prisoners of war were taken out of control of the Army and put in the hands of Himmler and the SS (058-PS). In the East, the German fury spent itself. Russian prisoners were ordered to be branded. They were starved. I shall quote passages from a letter written February 28, 1942 by Defendant Rosenberg to Defendant Keitel:

“The fate of the Soviet prisoners of war in Germany is on the contrary a tragedy of the greatest extent. Of 3,600,000 prisoners of war, only several hundred thousand are still able to work fully. A large part of them has starved, or died, because of the hazards of the weather. Thousands also died from spotted fever ....

“The camp commanders have forbidden the civilian population to put food at the disposal of the prisoners, and they have rather let them starve to death ....

“In many cases, when prisoners of war could no longer keep up on the march because of hunger and exhaustion, they were shot before the eyes of the horrified population, and the corpses were left.

“In numerous camps, no shelter for the prisoners of war was provided at all. They lay under the open sky during rain or snow. Even tools were not made available to dig holes or caves .... “

Finally, the shooting of prisoners of war must be mentioned; for instance, in various camps, all the ‘Asiatics’ were shot”. (081-PS)

Civilized usage and conventions to which Germany was a party had prescribed certain immunities for civilian populations unfortunate enough to dwell in lands overrun by hostile armies. The German occupation forces, controlled or commanded by men on trial before you, committed a long series of outrages against the inhabitants of occupied territory that would be incredible except for captured orders and captured reports which show the fidelity with which those orders were executed.

We deal here with a phase of common criminality designed by the conspirators as part of the common plan. We can appreciate why these crimes against their European enemies were not of a casual character but were planned and disciplined crimes when we get at the reason for them. Hitler told his officers on August 22, 1939 that: “The main objective in Poland is the destruction of the enemy and not the reaching of a certain geographical line” (1014-PS). The project of deporting promising youth from occupied territories was approved by Rosenberg on the theory that “a desired weakening of the biological force” of the conquered people is being achieved (031-PS). To Germanize or to destroy was the program. Himmler announced, “Either we win over any good blood that we can use for ourselves and give it a place in our people or, gentlemen-you may call this cruel, but nature is cruel, -we destroy this blood.” As to “racially good types” Himmler further advised, “Therefore, I think that it is our duty to take their children with us, to remove them from their environment, if necessary by robbing or stealing them” (L-70). He urged deportation of Slavic children to deprive potential enemies of future soldiers.

The Nazi purpose was to leave Germany’s neighbors so weakened that even if she should eventually lose the war, she would still be the most powerful nation in Europe. Against this background, we must view the plan for ruthless warfare, which means a plan for the commission of War Crimes and Crimes against Humanity.

Hostages in large numbers were demanded and killed. Mass punishments were inflicted, so savage that whole communities were extinguished. Rosenberg was advised of the annihilation of three unidentified villages in Slovakia. (970-PS) In May of 1943 another village of about 40 farms and 220 inhabitants was ordered wiped out. The entire population was ordered shot, the cattle and property impounded, and the order required that “the village will be destroyed totally by fire.” (163 PS) A secret report

from Rosenberg's Reich Ministry of Eastern Territory reveals that:

"Food rations allowed the Russian population are so low that they fail to secure their existence and provide only for minimum subsistence of limited duration. The population does not know if they will still live tomorrow. They are faced with death by starvation....

"The roads are clogged by hundreds of thousands of people, sometimes as many as one million according to the estimate of experts, who wander around in search of nourishment ....

"Sauckel's action has caused unrest among the civilians .... Russian girls were deloused by men, nude photos in forced positions were taken, women doctors were locked into freight cars for the pleasure of the transport commanders, women in night shirts were fettered and forced through the Russian towns to the railroad station, etc. All this material has been sent to the OKH." (1381-PS)

Perhaps the deportation to slave labor was the most horrible and extensive slaving operation in history. On few other subjects is our evidence so abundant or so damaging. In a speech made on January 25, 1944 the Defendant Frank, Governor General of Poland, boasted, "I have sent 1,300,000 Polish workers into the Reich" (05.9-PS, P. 2). The Defendant Sauckel reported that "out of the 5 million foreign workers who arrived in Germany not even 200,000 came voluntarily." This fact was reported to the Fuhrer and Defendants Speer, Goring, and Keitel. (R-24) Children of 10 to 14 years were impressed into service by telegraphic order of Rosenberg's Ministry for the Occupied Eastern Territories:

"The Command is further charged with the transferring of worthwhile Russian youth between 10-14 years of age, to the Reich. The authority is not affected by the changes connected with the evacuation and transportation to the reception camps of Bialystok, Krajewo, and, Olitei The Fuhrer wishes that this activity be increased even more." (200-PS)

When enough labor was not forthcoming, prisoners of war were forced into war work in flagrant violation of international conventions (016-PS). Slave labor came from France, Belgium, Holland, Italy, and the East. Methods of recruitment were violent (R-324, 018 PS, 204-PS). The treatment of these slave laborers was stated in general terms, not difficult to translate into concrete deprivations, in a letter to the Defendant Rosenberg from the Defendant Sauckel, which stated:

"All prisoners of war, from the territories of the West as well as of the East, actually in Germany, must be completely incorporated into the German armament and munition industries. Their production must be brought to the highest possible level ....

"The complete employment of all prisoners of war as well as the use of a gigantic number of new foreign civilian workers, men and women, has become an indisputable necessity for the solution of the mobilization of labor program in this war.

"All the men must be fed, sheltered, and treated in such a way as to exploit them to the highest possible extent at the lowest conceivable degrees of expenditure ...." (016-PS)

In pursuance of the Nazi plan permanently to reduce the living standards of their neighbors and to weaken them physically and economically, a long series of crimes were committed. There was extensive destruction, serving no military purpose, of the property of civilians. Dikes were thrown open in Holland almost at the close of the war not to achieve military ends but to destroy the resources and retard the economy of the thrifty Netherlanders.

There was carefully planned economic syphoning off of the assets of occupied countries. An example of the planning is shown by a report on France dated December 7, 1942 made by the Economic Research Department of the Reichsbank. The question arose whether French occupation costs should be increased from 15 million Reichsmarks per day to 25 million Reichsmarks per day. The Reichsbank analyzed French economy to determine whether it could bear the burden. It pointed out that the armistice had burdened France to that date to the extent of 18 1/2 billion Reichsmarks,

equalling 370 billion francs. It pointed out that the burden of these payments within 2 1/2 years equalled the aggregate French national income in the year 1940, and that the amount of payments handed over to Germany in the first 6 months of 1942 corresponded to the estimate for the total French revenue for that whole year. The report concluded:

“In any case, the conclusion is inescapable that relatively heavier tributes have been imposed on France since the armistice in June 1940 than upon Germany after the World War. In this connection, it must be noted that the economic powers of France never equalled those of the German Reich and that the vanquished France could not draw on foreign economic and financial resources in the same degree as Germany after the last World War.”

The Defendant Funk was the Reich Minister of Economics and President of the Reichsbank; the Defendant Ribbentrop was Foreign Minister; the Defendant Goering was Plenipotentiary of the Four Year Plan; and all of them participated in the exchange of views of which this captured document is a part. (2149 PS) Notwithstanding this analysis by the Reichsbank, they proceeded to increase the imposition on France from 15 million Reichsmarks daily to 25 million per day.

It is small wonder that the bottom has been knocked out of French economy. The plan and purpose of the thing appears in a letter from General Stulpnagel, head of the German Armistice Commission, to the Defendant Jodl as early as 14 September 1940 when he wrote, “The slogan ‘Systematic weakening of France’ has already been surpassed by far in reality” (1756-PS).

Not only was there a purpose to debilitate and demoralize the economy of Germany’s neighbors for the purpose of destroying their competitive position, but there was looting and pilfering on an unprecedented scale. We need not be hypocritical about this business of looting. I recognize that no army moves through occupied territory without some pilfering as it goes. Usually the amount of pilfering increases as discipline wanes. If the evidence in this case showed no looting except of that sort, I certainly would ask no conviction of these defendants for it.

But we will show you that looting was not due to the lack of discipline or to the ordinary weaknesses of human nature. The German organized plundering, planned it, disciplined it, and made it official just as he organized everything else, and then he compiled the most meticulous records to show that he had done the best job of looting that was possible under the circumstances. And we have those records.

The Defendant Rosenberg was put in charge of a systematic plundering of the art objects of Europe by direct order of Hitler dated 29 January 1940 (136-PS). On the 16th of April 1943 Rosenberg reported that up to the 7th of April, 92 railway cars with 2,775 cases containing art objects had been sent to Germany; and that 53 pieces of art had been shipped to Hitler direct, and 594 to the Defendant Goering. The report mentioned something like 20,000 pieces of seized art and the main locations where they were stored. (015-PS)

Moreover this looting was glorified by Rosenberg. Here we have 39 leather-bound tabulated volumes of his inventory, which in due time we will offer in evidence. One cannot but admire the artistry of this Rosenberg report. The Nazi taste was cosmopolitan. Of the 9,455 articles inventoried, there were included 5,255 paintings, 297 sculptures, 1,372 pieces of antique furniture, 307 textiles, and 2,224 small objects of art. Rosenberg observed that there were approximately 10,000 more objects still to be inventoried. (015-PS) Rosenberg himself estimated that the values involved would come close to a billion dollars (090-PS).

I shall not go into further details of the War Crimes and Crimes against Humanity committed by the gangster ring whose leaders are before you. It is not the purpose in my part of this case to deal with the individual crimes. I am dealing with the Common Plan or design for crime and will not dwell upon individual offenses. My task is to show the scale on which these crimes occurred, and to show that these are the men

who were in the responsible positions and who conceived the plan and design which renders them answerable, regardless of the fact that the plan was actually executed by others.

At length, this reckless and lawless course outraged the world. It recovered from the demoralization of surprise attack, assembled its forces and stopped these men in their tracks. Once success deserted their banners, one by one the Nazi satellites fell away. Sawdust Caesar collapsed. Resistance forces in every occupied country arose to harry the invader. Even at home, Germans saw that Germany was being led to ruin by these mad men, and the attempt on July 20, 1944 to assassinate Hitler, an attempt fostered by men of highest station, was a desperate effort by internal forces in Germany to stop short of ruin. Quarrels broke out among the failing conspirators, and the decline of the Nazi power was more swift than its ascendancy. German Armed Forces surrendered, its Government disintegrated, its leaders committed suicide by the dozen, and by the fortunes of war these defendants fell into our hands. Although they are not, by any means, all the guilty ones, they are survivors among the most responsible. Their names appear over and over in the documents and their faces grace the photographic evidence. We have here the surviving top politicians, militarists, financiers, diplomats, administrators, and propagandists, of the Nazi movement. Who was responsible for these crimes if they were not?

### **The Law of the Case:**

The end of the war and capture of these prisoners presented the victorious Allies with the question whether there is any legal responsibility on high-ranking men for acts which I have described. Must such wrongs either be ignored or redressed in hot blood? Is there no standard in the law for a deliberate and reasoned judgment on such conduct?

The Charter of this Tribunal evidences a faith that the law is not only to govern the conduct of little men, but that even rulers are, as Lord Chief Justice Coke put it to King James, "under God and the law." The United States believed that the law long has afforded standards by which a juridical hearing could be conducted to make sure that we punish only the right men and for the right reasons. Following the instructions of the late President Roosevelt and the decision of the Yalta conference President Truman directed representatives of the United States to formulate a proposed International Agreement, which was submitted during the San Francisco Conference to Foreign Ministers of the United Kingdom, the Soviet Union, and the Provisional Government of France. With many modifications, that proposal has become the Charter of this Tribunal.

But the Agreement which sets up the standards by which these prisoners are to be judged does not express the views of the signatory nations alone. Other nations with diverse but highly respected systems of jurisprudence also have signified adherence to it. These are Belgium, The Netherlands, Denmark, Norway, Czechoslovakia, Luxembourg, Poland, Greece, Yugoslavia, Ethiopia, Australia, Haiti, Honduras, Panama, New Zealand, Venezuela, and India. You judge, therefore, under an organic act which represents the wisdom, the sense of justice, and the will of 21 governments, representing an overwhelming majority of all civilized people.

The Charter by which this Tribunal has its being, embodies certain legal concepts which are inseparable from its jurisdiction and which must govern its decision. These, as I have said, also are conditions attached to the grant of any hearing to defendants. The validity of the provisions of the Charter is conclusive upon us all, whether the have accepted the duty of judging or of prosecuting under it, as well as upon the defendants, who can point to no other law which gives them a right to be heard at all. My able and experienced colleagues believe, as do I, that it will contribute to the expedition and clarity of this Trial if I expound briefly the application of the legal philosophy of the Charter to the facts I have recited.

While this declaration of the law by the Charter is final, it may be contended that the prisoners on trial are entitled to have it applied to their conduct only most charitably if at all. It may be said that this is new law, not authoritatively declared at the time they did the acts it condemns, and that this declaration of the law has taken them by surprise.

I cannot, of course, deny that these men are surprised that this is the law; they really are surprised that there is any such thing as law. These defendants did not rely on any law at all. Their program ignored and defied all law. That this is so will appear from many acts and statements, of which I cite but a few.

In the Führer's speech to all military commanders on November 23, 1939 he reminded them that at the moment Germany had a pact with Russia, but declared: "Agreements are to be kept only as long as they serve a certain purpose." Later in the same speech he announced: "A violation of the neutrality of Holland and Belgium will be of no importance" (789 PS). A top secret document, entitled "Warfare as a Problem of Organization," dispatched by the Chief of the High Command to all commanders on April 19, 1938 declared that "the normal rules of war towards neutrals may be considered to apply on the basis whether operation of rules will create greater advantages or disadvantages for the belligerents" (L-2U). And from the files of the German Navy Staff, we have a "Memorandum on Intensified Naval War," dated October 15, 1939, which begins by stating a desire to comply with International Law. "However," it continues, "if decisive successes are expected from any measure considered as a war necessity, it must be carried through even if it is not in agreement with international law." (L-184) International law, natural law, German law, any law at all was to these men simply a propaganda device to be invoked when it helped and to be ignored when it would condemn what they wanted to do. That men may be protected in relying upon the law at the time they act is the reason we find laws of retrospective operations unjust. But these men cannot bring themselves within the reason of the rule which in some systems of jurisprudence prohibits ex post facto laws. They cannot show that they ever relied upon international law in any state or paid it the slightest regard.

The third Count of the Indictment is based on the definition of War Crimes contained in the Charter. I have outlined to you the systematic course of conduct toward civilian populations and combat forces which violates international conventions to which Germany was a party. Of the criminal nature of these acts at least, the defendants had, as we shall show, clear knowledge. Accordingly, they took pains to conceal their violations. It will appear that the Defendants Keitel and Jodl were informed by official legal advisors that the orders to brand Russian prisoners of war, to shackle British prisoners of war, and to execute commando prisoners were clear violations of international law. Nevertheless, these orders were put into effect. The same is true of orders issued for the assassination of General Giraud and General Weygand, which failed to be executed only because of a ruse on the part of Admiral Canaris, who was himself later executed for his part in the plot to take Hitler's life on July 24, 1944.

The fourth Count of the indictment is based on Crimes against Humanity. Chief among these are mass killings of countless human beings in cold blood. Does it take these men by surprise that murder is treated as a crime?

The first and second Counts of the Indictment add to these crimes the crime of plotting and waging wars of aggression and wars in violation of nine treaties to which Germany was a party. There was a time, in fact, I think the time of the first World War, when it could not have been said that war-inciting or war making was a crime in law, however reprehensible in morals.

Of course, it was, under the law of all civilized peoples, a crime for one man with his bare knuckles to assault another. How did it come that multiplying this crime by a million, and adding fire arms to bare knuckles, made it a legally innocent act? The doctrine was that one could not be regarded as criminal for committing the usual



violent acts in the conduct of legitimate warfare. The age of imperialistic expansion during the eighteenth and nineteenth centuries added the foul doctrine, contrary to the teachings of early Christian and international law scholars such as Grotius, that all wars are to be regarded as legitimate wars. The sum of these two doctrines was to give war-making a complete immunity from accountability to law.

This was intolerable for an age that called itself civilized. Plain people with their earthy common sense, revolted at such fictions and legalisms so contrary to ethical principles and demanded checks on war immunities. Statesmen and international lawyers at first cautiously responded by adopting rules of warfare designed to make the conduct of war more civilized. The effort was to set legal limits to the violence that could be done to civilian populations and to combatants as well.

The common sense of men after the first World War demanded, however, that the law's condemnation of war reach deeper, and that the law condemn not merely uncivilized ways of waging war, but also the waging in any way of uncivilized wars of aggression. The world's statesmen again went only as far as they were forced to go. Their efforts were timid and cautious and often less explicit than we might have hoped. But the 1920's did outlaw aggressive war.

The re-establishment of the principle that there are unjust wars and that unjust wars are illegal is traceable in many steps. One of the most significant is the Briand-Kellogg Pact of 1928, by which Germany, Italy, and Japan, in common with practically all nations of the world, renounced war as an instrument of national policy, bound themselves to seek the settlement of disputes only by pacific means, and condemned recourse to war for the solution of international controversies. This pact altered the legal status of a war of aggression. As Mr. Stimson, the United States Secretary of State put it in 1932, such a war:

“ . . . is no longer to be the source and subject of rights. It is no longer to be the principle around which the duties, the conduct, and the rights of nations revolve. It is an illegal thing .... By that very act, we have made obsolete many legal precedents and have given the legal profession the task of re-examining many of its codes and treaties.”

The Geneva Protocol of 1924 for the Pacific Settlement of International Disputes, signed by the representatives of 48 governments, declared that “a war of aggression constitutes . . . an international crime.” The Eighth Assembly of the League of Nations in 1927, on unanimous resolution of the representatives of 48 member nations, including Germany, declared that a war of aggression constitutes an international crime. At the Sixth Pan-American Conference of 1928, the 21 American Republics unanimously adopted a resolution stating that “war of aggression constitutes an international crime against the human species.”

A failure of these Nazis to heed, or to understand the force and meaning of this evolution in the legal thought of the world, is not a defense or a mitigation. If anything, it aggravates their offense and makes it the more mandatory that the law they have flouted be vindicated by juridical application to their lawless conduct. Indeed, by their own law-had they heeded any law-these principles were binding on these defendants. Article 4 of the Weimar constitution provided that: “The generally accepted rules of international law are to be considered as binding integral parts of the law of the German Reich” (2050-PS). Can there be any doubt that the outlawry of aggressive war was one of the “generally accepted rules -of international law” in 1939?

Any resort to war-to any kind of a war-is a resort to means that are inherently criminal. War inevitably is a course of killings, assaults, deprivations of liberty, and destruction of property. An honestly defensive war is, of course, legal and saves those lawfully conducting it from criminality. But inherently criminal acts cannot be defended by showing that those who committed them were engaged in a war, when war itself is illegal. The very minimum legal consequence of the treaties making aggressive wars illegal is to strip those who incite or wage them of every defense the law ever gave,

and to leave war-makers subject to judgment by the usually accepted principles of the law of crimes.

But if it be thought that the Charter, whose declarations concededly bind us all, does contain new law I still do not shrink from demanding its strict application by this Tribunal. The rule of law in the world, flouted by the lawlessness incited by these defendants, had to be restored at the cost to my country of over a million casualties, not to mention those of other nations. I cannot subscribe to the perverted reasoning that society may advance and strengthen the rule of law by the expenditure of morally innocent lives but that progress in the law may never be made at the price of morally guilty lives.

It is true of course, that we have no judicial precedent for the Charter. But international law is more than a scholarly collection of abstract and immutable principles. It is an outgrowth of treaties and agreements between nations and of accepted customs. Yet every custom has its origin in some single act, and every agreement has to be initiated by the action of some state. Unless we are prepared to abandon every principle of growth for international law, we cannot deny that our own day has the right to institute customs and to conclude agreements that will themselves become sources of a newer and strengthened international law. International law is not capable of development by the normal processes of legislation, for there is no continuing international legislative authority. Innovations and revisions in international law are brought about by the action of governments such as those I have cited, designed to meet a change in circumstances. It grows, as did the common law, through decisions reached from time to time in adapting settled principles to new situations. The fact is that when the law evolves by the case method, as did the common law and as international law must do if it is to advance at all, it advances at the expense of those who wrongly guessed the law and learned too late their error. The law, so far as international law can be decreed, had been clearly pronounced when these acts took place. Hence, I am not disturbed by the lack of judicial precedent for the inquiry it is proposed to conduct.

The events I have earlier recited clearly fall within the standards of crimes, set out in the Charter, whose perpetrators this Tribunal is convened to judge and punish fittingly. The standards for War Crimes and Crimes against Humanity are too familiar to need comment. There are, however, certain novel problems in applying other precepts of the Charter which I should call to your attention.

### **The Crime against Peace:**

A basic provision of the Charter is that to plan, prepare, initiate, or wage a war of aggression, or a war in violation of international treaties, agreements, and assurances, or to conspire or participate in a common plan to do so, is a crime.

It is perhaps a weakness in this Charter that it fails itself to define a war of aggression. Abstractly, the subject is full of difficulty and all kinds of troublesome hypothetical cases can be conjured up. It is a subject which, if the defense should be permitted to go afield beyond the very narrow charge in the Indictment, would prolong the Trial and involve the Tribunal in insoluble political issues. But so far as the question can properly be involved in this case, the issue is one of no novelty and is one on which legal opinion has well crystalized.

One of the most authoritative sources of international law on this subject is the Convention for the Definition of Aggression signed at London on July 3, 1933 by Romania, Estonia, Latvia, Poland, Turkey, the Soviet Union, Persia, and Afghanistan. The subject has also been considered by international committees and by commentators whose views are entitled to the greatest respect. It had been little discussed prior to the first World War but has received much attention as international law has evolved its outlawry of aggressive war. In the light of these materials of international law, and so far as relevant to the evidence in this case, I suggest that an "aggressor" is generally held to be that state which is the first to commit any of the

following actions:

- (1) Declaration of war upon another state;
- (2) Invasion by its armed forces, with or without a declaration of war, of the territory of another state;
- (3) Attack by its land, naval, or air forces, with or without a declaration of war, on the territory, vessels or aircraft of another state; and
- (4) Provision of support to armed bands formed in the territory of another state, or refusal, notwithstanding the request of the invaded state, to take in its own territory, all the measures in its power to deprive those bands of all assistance or protection.

And I further suggest that it is the general view that no political, military, economic, or other considerations shall serve as an excuse or justification for such actions; but exercise of the right of legitimate self-defense, that is to say, resistance to an act of aggression, or action to assist a state which has been subjected to aggression, shall not constitute a war of aggression.

It is upon such an understanding of the law that our evidence of a conspiracy to provoke and wage an aggressive war is prepared and presented. By this test each of the series of wars begun by these Nazi leaders was unambiguously aggressive.

It is important to the duration and scope of this Trial that we bear in mind the difference between our charge that this war was one of aggression and a position that Germany had no grievances. We are not inquiring into the conditions which contributed to causing this war. They are for history to unravel. It is no part of our task to vindicate the European status quo as of 1933, or as of any other date. The United States does not desire to enter into discussion of the complicated pre-war currents of European politics, and it hopes this trial will not be protracted by their consideration. The remote causations avowed are too insincere and inconsistent, too complicated and doctrinaire to be the subject of profitable inquiry in this trial. A familiar example is to be found in the "Lebensraum" slogan, which summarized the contention that Germany needed more living space as a justification for expansion. At the same time that the Nazis were demanding more space for the German people, they were demanding more German people to occupy space. Every known means to increase the birth rate, legitimate and illegitimate, was utilized. "Lebensraum" represented a vicious circle of demand from neighbors more space, and from Germans more progeny. We do not need to investigate the verity of doctrines which led to constantly expanding circles of aggression. It is the plot and the act of aggression which we charge to be crimes.

Our position is that whatever grievances a nation may have, however objectionable it finds the status quo, aggressive warfare is an illegal means for settling those grievances or for altering those conditions. It may be that the Germany of the 1920's and 1930's faced desperate problems, problems that would have warranted the boldest measures short of war. All other methods-persuasion, propaganda, economic competition, diplomacy-were open to an aggrieved country, but aggressive warfare was outlawed. These defendants did make aggressive war, a war in violation of treaties. They did attack and invade their neighbors in order to effectuate a foreign policy which they knew could not be accomplished by measures short of war. And that is as far as we accuse or propose to inquire.

### **The Law of Individual Responsibility:**

The Charter also recognizes individual responsibility on the part of those who commit acts defined as crimes, or who incite others to do so, or who join a common. plan with other persons, groups or organizations to bring about their commission. The principle of individual responsibility for piracy and brigandage, which have long been recognized as crimes punishable under international law, is old and well established. That is what illegal warfare is. This principle of personal liability is a necessary as well as logical one if international law is to render real help to the maintenance of peace. An international law which operates only on states can be enforced only by war because

the most practicable method of coercing a state is warfare. Those familiar with American history know that one of the compelling reasons for adoption of our constitution was that the laws of the Confederation, which operated only on constituent states, were found ineffective to maintain order among them. The only answer to recalcitrance was impotence or war. Only sanctions which reach individuals can peacefully and effectively be enforced. Hence, the principle of the criminality of aggressive war is implemented by the Charter with the principle of personal responsibility.

Of course, the idea that a state, any more than a corporation, commits crimes, is a fiction. Crimes always are committed only by persons. While it is quite proper to employ the fiction of responsibility of a state or corporation for the purpose of imposing a collective liability, it is quite intolerable to let such a legalism become the basis of personal immunity.

The Charter recognizes that one who has committed criminal acts may not take refuge in superior orders nor in the doctrine that his crimes were acts of states. These twin principles working together have heretofore resulted in immunity for practically everyone concerned in the really great crimes against peace and mankind. Those in lower ranks were protected against liability by the orders of their superiors. The superiors were protected because their orders were called acts of state. Under the Charter, no defense based on either of these doctrines can be entertained. Modern civilization puts unlimited weapons of destruction in the hands of men. It cannot tolerate so vast an area of legal irresponsibility.

### **Even the German Military Code provides that:**

“If the execution of a military order in the course of duty violates the criminal law, then the superior officer giving the order will bear the sole responsibility therefor. However, the obeying subordinate will share the punishment of the participant: (1) if he has exceeded the order given to him, or (2) if it was within his knowledge that the order of his superior officer concerned an act by which it was intended to commit a civil or military crime or transgression” (Reichs-gesetzblatt, 1926 No. 37, P. 278, Art. 47)

Of course, we do not argue that the circumstances under which one commits an act should be disregarded in judging its legal effect. A conscripted private on a firing squad cannot expect to hold an inquest on the validity of the execution. The Charter implies common sense limits to liability just as it places common sense limits upon immunity. But none of these men before you acted in minor parts. Each of them was entrusted with broad discretion and exercised great power. Their responsibility is correspondingly great and may not be shifted to that fictional being, “the State”, which cannot be produced for trial, cannot testify, and cannot be sentenced.

The Charter also recognizes a vicarious liability, which responsibility is recognized by most modern systems of law, for acts committed by others in carrying out a common plan or conspiracy to which a defendant has become a party. I need not discuss the familiar principles of such liability. Every day in the courts of countries associated in this prosecution, men are convicted for acts that they did not personally commit, but for which they were held responsible because of membership in illegal combinations or plans or conspiracies.

### **The Political, Police, and Military Organizations:**

Accused before this Tribunal as criminal organizations are certain political and police organizations which the evidence will show to have been instruments of cohesion in planning and executing the crimes I have detailed. Perhaps the worst of the movement were the Leadership Corps of the NSDAP, the Schutzstaffeln or “SS”, and the Sturmabteilungen or “SA”, and the subsidiary formations which these include. These

were the Nazi Party leadership, espionage, and policing groups. They were the real government, above and outside of any law. Also accused as organizations are the Reich Cabinet and the Secret Police, or Gestapo, which were fixtures of the Government but animated solely by the Party.

Except for a late period when some compulsory recruiting was done in the SS, membership in all these militarized organizations was voluntary. The police organizations were recruited from ardent partisans who enlisted blindly to do the dirty work the leaders planned. The Reich Cabinet was the governmental facade for Nazi Party Government and in its members legal, as well as actual responsibility was vested for the entire program. Collectively they were responsible for the program in general, individually they were especially responsible for segments of it. The finding which we ask you to make, that these are criminal organizations, will subject members to punishment to be hereafter determined by appropriate tribunals, unless some personal defense-such as becoming a member under threat to person, to family, or inducement by false representation, or the like-be established. Every member will have a chance to be heard in the subsequent forum on his personal relation to the organization, but your finding in this trial will conclusively establish the criminal character of the organization as a whole.

We have also accused as criminal organizations the High Command and the General Staff of the German Armed Forces. We recognize that to plan warfare is the business of professional soldiers in all countries. But it is one thing to plan strategic moves in the event war comes, and it is another thing to plot and intrigue to bring on that war. We will prove the leaders of the German General Staff and of the High Command to have been guilty of just that. Military men are not before you because they served their country. They are here because they mastered it, long with these others, and drove it to war. They are not here because they lost the war, but because they started it. Politicians may have thought of them as soldiers, but soldiers know they were politicians. We ask that the General Staff and the High Command, as defined in the Indictment, be condemned as a criminal group whose existence and tradition constitute a standing menace to the peace of the world.

These individual defendants did not stand alone in crime and will not stand alone in punishment. Your verdict of "guilty" against these organizations will render prima facie guilty, as nearly as we can learn, thousands upon thousands of members now in custody of United States forces and of other armies.

### **The responsibility of this Tribunal:**

To apply the sanctions of the law to those whose conduct is found criminal by the standards I have outlined, is the responsibility committed to this Tribunal. It is the first court ever to undertake the difficult task of overcoming the confusion of many tongues and the conflicting concepts of just procedure among divers systems of law, so as to reach a common judgment. The tasks of all of us are such as to make heavy demands on patience and good will. Although the need for prompt action has admittedly resulted in imperfect work on the part of the Prosecution, four great nations bring you their hurriedly assembled contributions of evidence. What remains undiscovered we can only guess. We could, with witnesses' testimony, prolong the recitals of crime for years-but to what avail. We shall rest the case when we have offered what seems convincing and adequate proof of the crimes charged without unnecessary cumulation of evidence. We doubt very much whether it will be seriously denied that the crimes I have outlined took place. The effort will undoubtedly be to mitigate or escape personal responsibility.

Among the nations which unite in accusing these defendants the United States is perhaps in a position to be the most dispassionate, for, having sustained the least injury, it is perhaps the least animated by vengeance. Our American cities have not been bombed by day and by night, by humans, and by robots. It is not our temples that

had been laid in ruins. Our countrymen have not had their homes destroyed over their heads. The menace of Nazi aggression, except to those in actual service, has seemed less personal and immediate to us than to European peoples. But while the United States is not first in rancor, it is not second in determination that the forces of law and order be made equal to the task of dealing with such international lawlessness as I have recited here.

Twice in my lifetime, the United States has sent its young manhood across the Atlantic, drained its resources, and burdened itself with debt to help defeat Germany. But the real hope and faith that has sustained the American people in these great efforts was that victory for ourselves and our Allies would lay the basis for an ordered international relationship in Europe and would end the centuries of strife on this embattled continent.

Twice we have held back in the early stages of European conflict in the belief that it might be confined to a purely European affair. In the United States, we have tried to build an economy without armament, a system of government without militarism, and a society where men are not regimented for war. This purpose, we know now, can never be realized if the world periodically is to be embroiled in war. The United States cannot, generation after generation, throw its youth or its resources on to the battlefields of Europe to redress the lack of balance between Germany's strength and that of her enemies, and to keep the battles from our shores.

The American dream of a peace-and-plenty economy, as well as the hopes of other nations, can never be fulfilled if those nations are involved in a war every generation so vast and devastating as to crush the generation that fights and burden the generation that follows. But experience has shown that wars are no longer local. All modern wars become world wars eventually. And none of the big nations at least can stay out. If we cannot stay out of wars, our only hope is to prevent wars.

I am too well aware of the weaknesses of juridical action alone to contend that in itself your decision under this Charter can prevent future wars. Judicial action always comes after the event. Wars are started only on the theory and in the confidence that they can be won. Personal punishment, to be suffered only in the event the war is lost, will probably not be a sufficient deterrent to prevent a war where the warmakers feel the chances of defeat to be negligible.

But the ultimate step in avoiding periodic wars, which are inevitable in a system of international lawlessness, is to make statesmen responsible to law. And let me make clear 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. We are able to do away with domestic tyranny and violence and aggression by those in power against the rights of their own people only when we make all men answerable to the law. This trial represents mankind's desperate effort to apply the discipline of the law to statesmen who have used their powers of state to attack the foundations of the world's peace and to commit aggressions against the rights of their neighbors.

The usefulness of this effort to do justice is not to be measured by considering the law or your judgment in isolation. This trial is part of the great effort to make the peace more secure. One step in this direction is the United Nations organization, which may take joint political action to prevent war if possible, and joint military action to insure that any nation which starts a war will lose it. This Charter and this Trial, implementing the Kellogg-Briand Pact, constitute another step in the same direction and juridical action of a kind to ensure that those who start a war will pay for it personally.

While the defendants and the prosecutors stand before you as individuals, it is not the triumph of either group alone that is committed to your judgment. Above all personalities there are anonymous and impersonal forces whose conflict makes up much of human history. It is yours to throw the strength of the law back of either the

one or the other of these forces for at least another generation. What are the real forces that are contending before you?

No charity can disguise the fact that the forces which these defendants represent, the forces that would advantage and delight in their acquittal, are the darkest and most sinister forces in society—dictatorship and oppression, malevolence and passion, militarism and lawlessness. By their fruits we best know them. Their acts have bathed the world in blood and set civilization back a century. They have subjected their European neighbors to every outrage and torture, every spoliation and deprivation that insolence, cruelty, and greed could inflict. They have brought the German people to the lowest pitch of wretchedness, from which they can entertain no hope of early deliverance. They have stirred hatreds and incited domestic violence on every continent. These are the things that stand in the dock shoulder to shoulder with these prisoners.

The real complaining party at your bar is Civilization. In all our countries it is still a struggling and imperfect thing. It does not plead that the United States, or any other country, has been blameless of the conditions which made the German people easy victims to the blandishments and intimidations of the Nazi conspirators.

But it points to the dreadful sequence of aggressions and crimes I have recited, it points to the weariness of flesh, the exhaustion of resources, and the destruction of all that was beautiful or useful in so much of the world, and to greater potentialities for destruction in the days to come. It is not necessary among the ruins of this ancient and beautiful city with untold members of its civilian inhabitants still buried in its rubble, to argue the proposition that to start or wage an aggressive war has the moral qualities of the worst of crimes. The refuge of the defendants can be only their hope that international law will lag so far behind the moral sense of mankind that conduct which is crime in the moral sense must be regarded as innocent in law.

Civilization asks whether law is so laggard as to be utterly helpless to deal with crimes of this magnitude by criminals of this order of importance. It does not expect that you can make war impossible. It does expect that your juridical action will put the forces of international law, its precepts, its prohibitions and, most of all, its sanctions, on the side of peace, so that men and women of good will, in all countries, may have “leave to live by no man’s leave, underneath the law.”

THE PRESIDENT: The Tribunal will now adjourn until 10 o’clock tomorrow morning.

[The Tribunal adjourned until 22 November 1945 at 1000 hours.]

# Threading My Way

Peter Calvocoressi



Duckworth



## Justice at Nuremberg

The city of Nuremberg, home of Hans Sachs and other Meistersinger, has become in modern times a symbol first of Nazi racist ideologies and then of the postwar attempt to apply the rules of war to Nazi criminals, but in 1945 it was simply weird. So too were many other German cities. Flying from Croydon to Nuremberg over Cologne, which I had known well before the war, I saw what looked like a theatrical set for a Gothic drama of disasters and ruin, and walking round Cologne a year or so later I was not sure which was the Hohestrasse. Nuremberg was specially weird because the inner city had been a medieval showpiece and was now wrecked, twice bombed by the RAF in the last months of war and then flattened by the US army. Outside the medieval limits were a large courthouse and gaol which, although badly damaged, could be put back into good working order and equipped with modern paraphernalia such as a multiple translation system. So, after an initial ceremonial session in Berlin, the International Military Tribunal for the Trial of Major War Criminals sat in Nuremberg. Most of the staffs of the Tribunal and the four prosecuting teams were accommodated in the Grand Hotel which was only partly destroyed. For the better sort houses were commandeered outside the old city and staffed with living-out servants who were only too glad to get jobs and wages, opportunities for extra food and cigarettes and the use of showers and baths when the masters were away at work. For most of my time at the main Nuremberg trial I was billeted in a small house on the outskirts of the twin cities of Nuremberg and Furth which had grown together to make one large urban area. The house, presumably built by a local worthy, was the epitome of bourgeois comfort and tastelessness. My companions were two Americans, Telford Taylor and Sidney Alderman. The latter was Justice Robert Jackson's senior assistant, a southerner and former Chief Counsel to the Southern Railroad, a quiet man whose chief relaxation was playing the violin with great affection and a little less skill.

The Nuremberg trial was solemn and dignified but often tedious and even drab. The sense of occasion which envelopes any major trial was tautened by what had gone before it and what was felt to be coming – by the peculiar horrors of the war which was only just ended and by the virtual certainty that at the end of the trial some of the accused would hang. There was too the eminence of the accused who had fallen from great power to

the abjectness of captivity and ill-fitting suits, men who had not only 'witnessed huge affliction and dismay' but had caused them; and there was the further unusual sight of an international bench of judges and an international prosecuting team. On the other hand these dramatic elements were offset by the sombre setting. The courtroom had none of the trappings of high proceedings, the judges were unglamorously garbed, and the rhetoric and exchanges were reduced by the needs of translation to the effectiveness of a gramophone record played at the wrong speed.

There were occasional diversions. For me much the most memorable was a trip to Salzburg to see its first postwar *Figaro*. I had not been in Salzburg for ten years or more and this visit was memorable in more ways than one. Our party consisted of Telford Taylor, who was now a general, myself and our wives. We drove peacefully to the German border with Austria where we found a motorcycle escort lined up to receive us. This was a surprise but, until we set off, not alarming. From that point, however, the escort made all the running. Not only did we proceed at great speed to Salzburg but we did not slacken pace when we got there. We were to stay at Leopoldskrone on the far side of the city, and as we roared through it, cycle sirens now wailing, terrified natives dashed for the safety of doorways or leapt into the bosoms of trams. Taylor, shamed by this performance by the new master race, insisted – not without difficulty however – that in the evening we would go to the opera unescorted. The cast included Irmgard Seefried, Elisabeth Schwarzkopf and Willi Domgraf-Fassbaender.

Without the Americans there would have been no Nuremberg trial or, if there had been a trial, it would have been very different. The Americans insisted on it and shaped it. The British, notably Churchill and John Simon, the Lord Chancellor, did not want a trial of any sort. They wanted leading Nazis to be executed without trial, and even when outmanoeuvred by the Americans they tried to have the trial reduced to a mere formality consisting of little more than the reading of charges followed by summary execution. The Americans were shocked. The Russians said they were shocked too. De Gaulle tersely said there had to be a proper trial.

In the event there were one major trial in Europe (and a counterpart in Tokyo), twelve further trials of exalted Germans arraigned before special American courts in Germany, a handful of similar British and French proceedings and very numerous trials of lesser fry by German and non-German courts extending over many years (and their counterparts in the Pacific and South-east Asian theatres of war). In all some 10,000 persons were brought to trial for breaches of the laws of war – much the most extensive attempt ever made to enforce and extend the laws of war and to propel the rule of law into international as well as national affairs.

The impact of the proceedings at Nuremberg has been considerable. The very word Nuremberg summons up remembrance, however accurate or inaccurate, of the principal trial, and in the succeeding half-century it has

been constantly referred to, not only by lawyers. It has been responsible for revisions of the laws of war in the shape of international Conventions signed by many states. These Conventions, amplifying earlier Conventions, are part of international law and bring the laws of war into line with modern warfare. Further, the Nuremberg trial was not confined to war crimes as these have been understood for centuries. It also broke new ground in three respects: first, by bringing before a competent tribunal the question whether planning and starting a war may be in itself a crime; secondly, whether atrocities unconnected with a war in progress may amount to crimes in international law, cognizable by an international court; and thirdly, by affirming the accountability of individuals for war crimes and other international crimes.

Any criminal trial involves preliminary decisions on who is to be indicted and what for. The accused at Nuremberg were picked in a strangely haphazard way. Normally a defendant on a criminal charge is put on trial only after the prosecutor has precisely determined what charges to bring and, additionally, has a pretty clear idea of the evidence available to support the charges. But although much thought was given to framing the indictment little was known or, until late in the day, done about assessing the evidence available against individuals. The identity of the accused was treated as a secondary matter. Some of the accused virtually picked themselves – Goering, for example – and the prosecutors had a broad idea of the sorts of things that he and his fellows had done over the years, but the discussions between the four chief prosecutors turned more on what they had been than on what they had done. They were picked to represent the Nazi German state in all its main aspects and activities. Lists were drawn up and exchanged. There was bargaining over which names to drop and whom to add. There were different views about the number to include in a single trial and one scandalous muddle – for which the British were chiefly to blame – when one member of the Krupp family was indicted although moribund and then an attempt was made to substitute another member of the family against whom evidence of criminality was unpersuasive.

What was done at Nuremberg owed a great deal to what was not done after the First World War. Then, plans for an international trial had been scuppered by the Americans and although the victors produced a list of 845 Germans who should stand trial before German courts only 45 were indicted, fewer were tried, sentences were light, and many of those convicted found it mysteriously easy to escape from their gaols. After the second war the Americans were in little doubt that this time there must be an international trial. They were, however, divided about what sort of trial.

Lawyers in Washington, where a high proportion of persons in and around government are lawyers, debated hotly whether to make the Nuremberg trial as simple as possible by limiting it to well-established

war crimes (for example, killing prisoners of war) or to be more ambitious and take the opportunity to probe and extend the rule of law. The first course would have the advantages of simplifying and shortening the proceedings and making intelligible to the general public what would be essentially a murder trial. The latter course, which prevailed with President Roosevelt himself and other political leaders, turned the trial into a much more complex conspiracy trial embracing not only war crimes but also the two distinct categories of crimes against peace and crimes against humanity. This American decision, which was pressed on more or less hesitant allies, was adopted for an accumulation of reasons: the sense of outrage as the tally and toll of atrocities became known, many of them perpetrated from 1933 onwards, first in Germany and then over much of Europe, including crimes which were not war crimes since for most of the Nazi period there was no war; the strong, if imprecise, feeling that planning and initiating wars of aggression had become a crime in international law and that it was time to put the argument before a court of law; the more general lawyers' imperative to apply law, not to let it go by default, not to lose the opportunity to probe the efficiency and reach of law by the only appropriate means – a case before a court; a calculated desire to set the record straight and pre-empt the growth of myths, such as the belief that the Kaiser's armies had not been defeated but were forced to capitulate because they were stabbed in the back by weak-kneed civilians behind the lines; a fear of indiscriminate vengeance if no attempt were made to punish criminals by legal process. There were also obligations to Allied governments and to Jewry, the most obvious victims of the Nazi regime. A number of European governments had fled from the continent and established themselves temporarily in London. As early as 1940 the British and French governments denounced German criminal activity in Czechoslovakia and Poland, and the next year President Roosevelt denounced the taking of hostages by German authorities and the Russians protested against wholesale violations of international law. These steps gathered international momentum. In 1942 nine countries attended a conference on the Punishment of War Criminals which led to the creation by seventeen countries of a War Crimes Commission to collect evidence. After the entry of the United States into the war in 1941 the three major combatants declared that war criminals would be sent back to the scene of their crimes for trial with the exception of major criminals who would be tried by the principal Allied Powers. All these factors combined to tilt the balance in favour of a wide-ranging trial for which the term 'war crimes trial' was a misnomer. It embraced more crimes than that.

War crimes have an ancient pedigree. Broadly speaking they are acts of violence which even war does not justify. In the eyes of the law not all is fair in war, whatever may be the case in love. One of the characteristics of civilisations is making rules to regulate war: when war is permissible and what is permissible or impermissible in war. Moralists, legists and



clerics have joined forces in making rules to restrict and tame wars. Over the centuries the rules have changed, as they still do. In modern times the principal expression of this trend has been a series of international treaties by which the signatories have proclaimed what they believe to be the state of the law. Thus the main aim of the Hague Conventions of 1899 and 1907 was to protect those entangled in war, notably prisoners and the wounded; they also proscribed some particularly noxious and obnoxious weapons, for example, expanding bullets. The Geneva Convention of 1925 added poison gas and germ warfare. Since the Second World War the four further Geneva Conventions of 1949 have brought the law up to date with more recent developments in weaponry. In 1945 there was no problem over the definition of war crimes in general and a considerable extent of positive law defining particular kinds of warring as criminal. There were, however, a number of related problems. There was the business of finding and presenting evidence against particular individuals. It quickly became clear that far from being hard to find the evidence was embarrassingly and overwhelmingly plentiful owing to the capture of a huge mass of German documents which showed that terrible crimes had been committed. But this mass of material had to be sorted and properly understood and at first sight it directly incriminated lesser fry rather than the senior officers and leading government figures whom the prosecutors were resolved to bring to book. Next, although the law clearly condemned the use of some weapons which had been developed in recent times, other means of making war had not been particularised in Conventions, if only because they had not yet been developed or foreseen. Thus the use of poison gases and germ warfare had been expressly declared to contravene the laws of war but the mass bombing of civilians had not, even though – no less than the use of gas – it was in some instances a breach of the rules which forbade the use of excessive and indiscriminate force.

This issue was never raised at Nuremberg because of yet another problem. German leaders could have been charged with criminality in relation to the bombing of London and other cities and, more plainly, the so-called Baedeker raids on cities such as Bath of artistic fame but no strategic significance. A standing international court with criminal jurisdiction could have entertained such charges, but the Nuremberg tribunal was an *ad hoc* tribunal whose competence was limited by the Charter establishing it and by the circumstances of its creation – by the victors in a particular war. The Nuremberg tribunal was competent to hear charges against specified major German malefactors only, and it could not unblushingly have convicted them of war crimes arising from aerial bombardment since their antagonists had used mass bombing more heavily, no less indiscriminately and on occasions (on Dresden, for example) even less justifiably. The absence of a standing court with criminal jurisdiction – a counterpart to the International Court of Justice at The Hague which has civil jurisdiction only – was and still is one of the gravest weaknesses in

the endeavour to extend the rule of law in international affairs. It makes the application of the law too selective for its own health.

The decision to go beyond war crimes and charge the accused with other criminal activities, together with the number and variety of the accused and the span of twelve years (1933-45) to be taken into consideration, imposed on the prosecution the need to devise a framework which would encompass all these things. The device chosen was to allege a common plan or conspiracy between the accused in the course of which each had been guilty of some or all of the crimes thereafter alleged. In addition, and in order to facilitate further proceedings against the hundreds or thousands of Germans beyond the mere 24 to appear in the dock at Nuremberg, six organisations were also indicted as such. The conviction of any one of these organisations would not automatically incriminate any individual member of that organisation but it would tar him with a black mark if he were subsequently to be put on trial in an international or national court.

The conspiracy scheme was an intellectually robust idea but it had its defects. Conspiracy as a crime in itself is a notion familiar to Anglo-Saxon lawyers but puzzling to others; historically it proved impossible to establish the conspiracy alleged; and for the lay public a conspiracy trial is much more difficult to follow than a murder trial. The centrepiece of the conspiracy was the so-called crime against peace: preparing and initiating and waging aggressive wars. There were two distinct charges – conspiracy to plan etc. aggressive war, and actually planning etc. such wars. There was no doubt that wars of this kind had been planned and fought by the Third Reich and there was no doubt that by 1939 63 states, including Germany, Italy and Japan, had condemned and renounced recourse to war by signing or adhering to the Kellogg-Briand Pact of 1928. But it was questionable whether the Pact made aggressive war (however that might be defined) criminal as well as illegal and, further, whether individuals might be held accountable as well as states. The Treaty of Versailles had included a clause requiring the Kaiser to stand trial personally before a special tribunal for breaches of the laws of war, but since attempts to extradite him from his asylum in the Netherlands failed the question of personal accountability at this level was not judicially tested. At Nuremberg defence lawyers argued that international public law dealt only with the acts of states but the tribunal rejected this plea. It also ruled that aggressive war was an internationally established crime at least since 1928. Eight of the defendants at Nuremberg were convicted on both the counts relating to aggressive war, while another four were acquitted of conspiracy but found guilty of planning and waging aggressive war. All those sentenced to death (twelve, including Bormann, tried *in absentia* but almost certainly already dead) were found guilty on other charges too.

These other charges included the crimes for which the term crimes against humanity had come into use earlier in the century, although it was not yet enshrined in legal usage. At Nuremberg these charges were

designed to comprise atrocities committed at any time after 1933 and in any place inside or outside Germany. But the tribunal declared itself incompetent to entertain such charges in relation to anything that had occurred before 1939. This was the result of a muddle. In the course of the discussing and haggling among the chief prosecutors drafting the indictment the conspiracy charge which, in the American scheme, was central to the entire enterprise had got dropped in relation to everything except aggressive war, with the result that the tribunal found itself precluded by its Charter from taking the broader view and, on crimes against humanity, precluded from deciding how far such crimes were known to international as well as national law.

For the tribunal's brief was not to apply international law at large but the more limited one of implementing the Charter which had set up the tribunal and prescribed the scope of its proceedings. This Charter was contained in an agreement of 1945 made by the four major allies on behalf of all the then United Nations and subsequently adhered to by nineteen of them. The right of these states to set up the tribunal was challenged but the challenge was rebuffed on the grounds that since every state possesses the sovereign right to set up courts sovereign states may together set up a court for prescribed purposes, provided these purposes are lawful. There was a further challenge to the law to be applied on the grounds that there existed no international legislature competent to make law. To this argument the tribunal itself replied by accepting the contrary argument that international treaties and conventions are declaratory of existing law rather than enactments of new law. If that is so, then the law declared by such treaties or conventions binds all states and not merely the signatories – an important conclusion since many states, including the Soviet Union, were not parties to some of the relevant conventions which the prosecution was seeking to enforce.

The conduct of the trial as well as its planning was dominated by the Americans. The American prosecuting team was much the largest and the American chief prosecutor, Robert Jackson, was the outstanding figure. He was the kind of lawyer who is unusual anywhere but even more unusual in England than the United States. He had a passion for justice which most lawyers fight shy of as though it were professionally unbecoming, and he entered a court not merely to argue points of law but to win. He had stepped down from the Supreme Court of the United States not unmindful of the limelight about to be focussed on a singularly dramatic occasion but also profoundly committed to the business of enlarging the rule of law and prosecuting to conviction a group of unusually baleful miscreants. His opening speech and, if to a lesser degree, his closing speech were powerfully intelligent and very moving statements. But he had his failings. The American team was about 2,000 strong, including 200 lawyers of whom fifty had court-room roles at one point in the trial or another. In this large body were many excellent lawyers, many mediocrities and quite a number

of feuds. Jackson's qualities did not include leadership or diplomacy and he showed little interest in organising his team. He concentrated on his personal appearances before the tribunal to the exclusion of much else. When not working on his speeches he spent much time back in Washington or sightseeing in Europe. At an early stage he quarrelled with one of his principal deputies, a personal friend, and sent him packing. He was disdainful of his fellow chief prosecutors. For a short time he had uncomfortably at his elbow General William Donovan, a hero of the First World War and the autocrat in the second of the OSS – a hybrid intelligence and operations outfit famous for treading on many toes. Donovan arrived in Nuremberg nobody quite knew how or why, but with the evident determination to be little if at all less prominent than Jackson. He upset Jackson by pointing out to him that although he had recruited many excellent lawyers they knew little about the facts of the cases which they had been hired to present and were floundering in the mass of German documents where their evidence must lie. Donovan was not only right about this state of affairs but maintained humbly that he alone could rectify it. Jackson managed to see him off his territory and Donovan disappeared from Nuremberg as mysteriously as he had arrived.

The British team was by contrast small, relatively harmonious and when it came to the crunch of public performance notably efficient. The Russian and French teams were even smaller. The British numbered about 200 with half a dozen barristers. Nominally the chief prosecutor was the Attorney-General, Hartley Shawcross, who appeared and spoke effectively on the big occasions but left the day-to-day conduct of those parts of the trial assigned to the British to David Maxwell-Fyfe, his predecessor as Attorney-General until the change of government in London after the general election in July 1945. With Maxwell-Fyfe were one KC – G.D. Roberts, a jovial, burly and experienced criminal lawyer with an imposing presence but no intellectual bent – and three juniors who all went on to higher things: Harry Phillimore to be a High Court judge, Mervyn Griffith-Jones to be Crown Counsel at the Old Bailey (where he won fame of a sort with a famously ill-chosen remark to the jury in the trial of Penguin Books for publishing *Lady Chatterley's Lover* unexpurgated) and Elwyn Jones to be Lord Chancellor. Maxwell-Fyfe tried to my surprise to recruit me for the Conservative Party, a strange misjudgment, and he was less than fair to Elwyn Jones whom he seemed to dislike on purely political grounds, but he was a thoroughly professional, hard-working and courteous lawyer who won general esteem for his performance before the tribunal. His pertinacity, equanimity and command of detail were impressive and effective, a foil to Jackson's rhetoric and breadth of vision. Between them they did more than anybody else to save the proceedings from becoming humdrum or on the other hand narrowly vindictive.

Thanks largely to them the trial served a purpose beyond legal history. To Goering's contemporaries it was axiomatic that the crimes attributed

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to the Nazis had occurred: the charges had to be proved by proper legal procedures but the substance of the matter was not in doubt in that generation. To a later generation, however, of Germans and non-Germans this belief was no longer axiomatic. Half a century later younger people would ask whether these terrible things could really be true. The answer lay in the documents, unimpeachably authentic, produced at and for the Nuremberg trial. The volume of this material was all but overwhelming – the archives of the German navy, for example, had been captured virtually intact for a period stretching back eighty years – and putting these documents on the record was not the least of the trial's achievements and one which justified those who had advocated a wide-ranging, if dauntingly complex, indictment and then presented the case with scrupulous professionalism.

I myself was not a member of any of the four prosecuting teams. My role was peculiar. Although a practising member of the English Bar I had had no experience of criminal or international law and my posting to Nuremberg had more to do with my wartime Intelligence work than my prewar legal career. I was seconded to all four of the prosecuting teams by my employers, the Joint Intelligence Committee of the Joint Chiefs of Staff, and took with me a little team of three or four persons recruited from former colleagues at Bletchley Park. Three of the four prosecuting teams were not interested in us. I was on friendly personal terms with the British lawyers. With the Russians and French I had next to no contacts and I doubt whether they knew I was there. My work was with the Americans, specifically with Telford Taylor who had been a colleague and friend at Bletchley Park and to whom Jackson had delegated the prosecution of two of the six indicted organisations: the German General Staff and High Command, and the SS. The former was a notional group which had been indicted because it was held to embody the core of the German militarist beast and Taylor, more aware than most of the need to collect and present hard evidence against members of the group, wanted help in an arduous task for which not much time was available. That I was a lawyer was useful but not the main reason for my presence. Together with my principal assistant Oliver Berthoud (whose splendid sense of dry humour, as comforting as his intelligence was useful, later made him an outstanding headmaster until his sadly early death) I was at Nuremberg because I knew a lot about the organisation of the German forces and the SS and about their wartime behaviour. Oliver and I were also familiar with the variety and the jargon of daily reports, war diaries and other documents which German units at all levels had to compile and copies of which were pouring into Nuremberg for the use of prosecuting and defence counsel. And when it came to interrogating Germans from Field Marshals downwards we started with the advantage of being fluent in their language and well-informed about their affairs. Senior officers in particular, men who had been used to giving orders and studying situations but had been shut

away for months since the War's end with nothing to do and nobody to talk to, were delighted with the chance to talk shop, to explain and generally engage in conversation with people who knew what they were talking about. From our wartime work Oliver and I knew whom it would be most fruitful to interrogate and on what lines to interrogate them. Since most of them were in Russian custody we relied on the Russian delegation at Nuremberg to discover whether they were still alive and where they were and then to arrange for them to be despatched to Nuremberg where they were held so long as we wanted them to be there. We could not interrogate anybody who was under indictment in any trial – that would have been improper – but this was not a serious limitation since there were more than enough interesting characters for us to see. Some of them became so interested in our talks that they volunteered to write notes, even long essays, using the horrible blunt purple pencils which were all they seemed to be allowed by the keeper of the prison in which they were lodged until they were returned to wherever they had come from.

We had to establish two main points: that our indicted military group was a group or organisation within the terms of the tribunal's Charter, and that it had participated in the crimes alleged in the indictment. Telford Taylor and I were always doubtful on the first point and the tribunal decided against us. My advice, accepted by Taylor and then by Jackson, was to interpret the group narrowly – a small group of senior planners and field commanders, a group defined by function rather than rank and which would number about forty individuals in all over the entire period from 1933 to 1945. We could then present this group as a coherent power centre which had criminally abused its powers. We did not attack the military profession but we alleged a persistent disregard of the laws of war amounting at times to criminal atrocities. With oral testimony from senior serving officers to supplement the evidence from captured German documents we established our second point to the extent that the tribunal, while ruling that the indicted group was too fluid a group to satisfy the requirements of the Charter, judged nevertheless that members of it had been guilty of serious crimes: for example, implementing Hitler's order to execute without trial captured commandos even if wearing military uniforms; and participating in the enormities perpetrated by the special SS units which murdered tens of thousands of Jews and other civilians in areas under the army's control on the eastern fronts.

Since most of the culpable individuals in this group were not before the tribunal it was left to the several prosecuting Powers to bring cases against them. The British staged two or three half-hearted trials, the French fewer and the Russians none, but after the main Nuremberg trial the Americans conducted in the same city in 1947-49 twelve further trials, including two against senior military chiefs. The defendants in these twelve trials ranged from one to 23: 177 defendants in all, of whom 24 were sentenced to death, almost all of these being either members of SS death squads on the eastern

front or doctors who had used living human bodies for medical experiments. Thirty-five were acquitted and the remaining 118 got prison sentences. Of the two cases involving military figures the one was concerned with the taking and killing of hostages and with unjustifiably reckless spoliation, mainly in Greece and Yugoslavia; in the other thirteen generals and field marshals were charged with planning and waging wars of aggression (of which all were acquitted) and with other crimes, notably executing captured commandos and Russian commissars even when captured in uniform. Of these thirteen, all but two army officers received prison sentences between life and three years while a single admiral and a single Luftwaffe general were acquitted. To help with these two trials I worked for three months in Washington on more piles of captured documents and then returned to Nuremberg as an employee of the US War Department which was responsible for all twelve trials with Telford Taylor as Chief of Counsel.

Putting generals on trial upset a lot of people. In the popular view military men might be stupid but they were honourable and clean. The military in other countries were outraged by allegations of brutality against their German brother officers, but while this professional loyalty across the lines of battle had its appealing side it was based on ignorance of the facts and often on a determination to remain ignorant. German generals were not all bad, but some were and the attempts of apologists to close ranks to defend the criminals among them and shield what they regarded as their professional honour were misguided and unsustainable. These apologists were particularly concerned to insist that the German army had had nothing to do with the excesses of the SS in occupied territories and abhorred all that sort of thing, but the evidence of military complicity in SS operations was convincing and the passage of time has steadily reinforced it as more and more has become known about the wartime cooperation between the army and the SS, on the eastern fronts in particular. By the time war came in 1939 the Nazis had corrupted even the self-assured and standoffish military caste where, even though outright villains were few and far between, a cowardly hypocrisy in the face of SS villains and a pharisaical disposition to look the other way attested the persuasive power of propaganda. This insidious power has no more grisly illustration than the well-attested accounts of officers in once reputable regiments who hunted down and killed mental patients turned loose for their sport in the grounds of institutions.

To anybody sitting in the court at Nuremberg one of the hardest facts to digest was the brevity of the Nazis' rule: only twelve years and yet so much damage and so many horrors before they were put down. The trial had promised to be a great occasion with the word historic dripping from every writer's pen. Unforgettable it has proved to be, but not in the mode anticipated. It was not showy or dressy, as court scenes – in England at any rate – are expected to be. The judges wore sober suits and black gowns,

except the two Russian judges who wore unexciting uniforms. Nor was there anything of the savage tenseness of the television court drama. The most dramatic element was the mere presence in the dock of once high and mighty men, led into it at the beginning of each session by one of the most famous men in the world, Hermann Goering. Yet for all their fame the accused were more rumpled than glamorous and what made the scene awesome was not what was going on but what had gone before. Among the accused Goering was pre-eminent. While his fellows retreated into aloofness or collapsed into pathos he displayed an alert intelligence. He did not disavow Hitler or his crimes and had come to terms with the certainty that when the trial ended he would die.

The pace of the trial was leaden, not merely because of the complex scope of the indictment and the number of the accused but also and most drainingly because of the requirements of translation. The judges and prosecutors spoke three different languages and the accused and their counsel a fourth. Few in the court understood all four and even those who could still could not follow the proceedings in more than two tongues since nobody has more than two ears. Simultaneous translations and the earphones with which we were all provided did no more than give each person a choice of what to listen to. It fell to me to cross-examine Field Marshal von Rundstedt. I put my questions to him in English and he answered in German, questions and answers being translated three ways simultaneously. But I needed to know, first, how my question had been put to him in German, since he replied not to my words but to the German translation of them. His reply came to me across the court in German but also, through one of my earphones, in the English translation which some, but not all, of the judges were hearing. Ideally I wished also to know how both sides of this exchange had been rendered to the Russian and French judges, for if one of the judges interposed a question he would be reacting to the words of the translator to whom he was listening. It was, in short, impossible to keep track of everything that was being said and the business of conducting examinations in a mere two languages made the sessions slow and tedious, quite apart from the possibilities of error posed by the other two sets of translations. In the circumstances the ten months which the trial took were a commendable achievement but at the time much of that period was grindingly dull. The eight judges had to listen all the time but nobody else did.

Yet never did the proceedings seem unimportant. The trial was part of something that mattered very much. The ghastly war and its grisly concomitants hung about the place like a pall which had not had time to blow away. There was a strong conviction that the failure to make the world a safer place after the First World War must not be repeated and that one essential item was to attach responsibility to the individuals most responsible for starting the second war, deploying the SS death squads put together to cull Slavs, and devising the holocaust of Jews and gypsies from

all over Europe; and to punish them. The trial was not without its defects, not in the sense that it was unfair or unjust to those in the dock but in its appearance of one-sidedness, more a consequence of victory than of law-breaking. It was also disappointing to the extent that the court – and the courts which heard the subsequent American trials – ducked the issue of crimes perpetrated before the war began. The question whether rulers may with impunity commit atrocities in peacetime within their own borders remained unanswered, although it had at least been raised and a few years later in 1949 a Genocide Convention explicitly condemned as criminal wholesale attacks, in peace or war, intended to destroy wholly or partially a national, ethnic, racial or religious group, and declared that such attacks were justiciable by national or international courts. The trial also produced useful statements on the law relating to the taking of hostages, forced labour, deportation and official looting and the principles applied by the tribunal were codified by the UN as an accepted part of international law.

But no permanent court has been established to entertain these matters and so long as this is so governments and individuals may continue to break the law with the fairly confident expectation that nothing unpleasant will be done to them. The thorniest obstacle to the creation of such a court is the reluctance of powerful states to establish an institution which may then criticise them. After the Gulf War of 1991 many people wanted Saddam Hussein to be arraigned before an international court but there were others who did not. Arabs, however much they deplored Saddam Hussein's misdeeds, did not relish the prospect of an Arab leader being tried by non-Arabs; Americans recoiled from a trial in which Saddam Hussein's criminality might be affirmed but charges might also be voiced about their own conduct of the war and against Israel's many infractions of international law in their occupied territories and in Lebanon. There is furthermore a distinction between a criminal and a civil court which, politics apart, bedevils plans for creating a permanent international tribunal with criminal jurisdiction. A civil court adjudicates between the claims of parties before it. A criminal court imposes sentences – but how effectively? Before an individual can be punished he must first be caught and, preferably, be induced to plead. Alternatively, if he is not caught he may be tried and condemned in his absence but in that event the implementation of the court's sentence presents peculiar difficulties. The culprit is presumably in a country where his supporters are unlikely to yield him up to justice. The court which condemns him has neither the jurisdiction nor the beak to go and get him. The UN will be loath to invade and in effect start a war in the role of tipstaff, while measures short of war such as economic sanctions must fall largely on a blameless populace.

These weaknesses in the international order have encouraged national governments into unlawful courses. Criminals or suspected criminals living in one country have been kidnapped by another. Adolf Eichmann was abducted from Bolivia by agents of the Israeli state to stand trial by



prosecutors who flagrantly flouted the law in order to stage the trial. Eichmann's guilt was clear enough and superabundantly odious, but Israel too was guilty of criminal action. So too was the government of the USA when it sent the American Army to kidnap Manuel Noriega in Panama for a trial in the USA which was an extension not of the rule of law but of the domain of anarchy in international affairs.

On the question of war crimes trials decades after the events I endorse unreservedly the general rule of law that time does not efface a crime. (An amnesty may do so but an amnesty is a political, not a judicial, act.) Nevertheless it does not follow that it is always proper to indict a suspected war criminal. For such an indictment to be proper there must be good evidence to support the allegations and a sound prospect of a fair trial. Time erodes these requirements, particularly where condemnation will largely depend on reliable identification. The extreme instance of an improper trial was that of John Demjanjuk, extradited from the USA for trial in Israel where he was convicted. Not only was he almost certainly the wrong man, but even had he been guilty as charged the reliability of the testimony to prove his identity was deplorably low (and the conduct of the trial seriously degraded by the introduction of inadmissible hearsay). But this particular trial, in which the pursuit of justice was vitiated by zeal for vengeance, was only one departure from the rules of law in similar circumstances. In Britain Parliament passed a belated Act to permit otherwise impermissible trials of persons who – guilty or not – had taken refuge in Britain after the Second World War, and this Act was doubly distasteful since it both altered the law in retrospect and facilitated trials which would depend on evidence of identity to be presented after the passage of nearly half a century. The upshot of these arguments is that some criminals may stay free and unpunished. So be it. Not all criminals get caught, and the nature of the crime alleged makes no difference in law to the force of the argument.

## A Television Dramatization of President Kennedy's Chapter on Senator Taft and Nuremberg.

<https://thelandofwhatever.blogspot.com/2019/08/forgotten-tv-profiles-in-courage-1964.html>

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