

XVIII

No. XVIII.

October 8th, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

(Research Office)

WAR CRIMES NEWS DIGEST.

[NOTE: The above title replaces that of Press News Summary  
used in the early numbers of this series.  
(For internal circulation to the Commission.)- R.O.]

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I.

S U M M A R Y   O F   E V E N T S .

A U S T R I A

Austrian Nazi Trials: Press Protests at Leniency.

Moscow Radio (23.9.46) stated: Austrian public opinion is expressing its dissatisfaction at the Austrian courts. Strong indignation has been aroused by the recent trial of five members of the Werewolf movement. "Neues Oesterreich" said the Prosecutor, in opening the case against the five accused, did not allow public representatives to attend. "Oesterreichische Volksstimme" reported that the People's Tribunal in Graz sentenced Weber, chief guard at the Peggau concentration camp, to 20 years' imprisonment only, although he was guilty of murdering over 100 inmates. It expressed indignation that only one of the murderers was placed on trial, while several others who shared the responsibility for events in the Peggau camp were called as witnesses, and their evidence, which was calculated to assist the accused, was admitted.

Arrest of Biro in the Russian Zone.

An A.P. message from Vienna (23.9.46) reported: Anton BIRO, general manager of the Wagner and Biro steel works, was arrested by Russian police in the Soviet zone of Vienna, and was reported to have been taken to Bratislava. He is to be taken to Czechoslovakia for trial as a war criminal. The Austrian police, acting under Russian orders, gave the family a few hours to move out of the family home.

Several months ago the Russians claimed ownership of the Wagner and Biro steelworks, and ordered Biro to transfer to the Russian military bank in Vienna large sums of the company's money. Both orders had been refused on the advice of the Austrian Government.

B E L G I U M .

The Escape of Degrelle.

The Daily Sketch (1.10.46) reported: DEGRELLE was thought to be hiding at a private estate on the Spanish side of the Portuguese frontier. As the last of the unpunished Quislings, DEGRELLE, an informant says, is not likely to remain much longer beyond the long reach of retribution.

G E R M A N Y .

(General)

The Betrayer of Gerdeler.

An Agency message (28.9.46) reported from Berlin: Charges of crimes against humanity and/or murder have been filed against Helen Schwaerzel, the German woman who betrayed Dr. Karl GOERDELER, ringleader in the attempt to assassinate Adolf Hitler on July 20th, 1944.

Nazi Treatment of Foreign Workers.

On the strength of reports found in secret Nazi files, "Neues Deutschland" (22.9.46) stated that "A.E.G.", Siemens and other Nazi armament works were classified as "patent" enterprises by the Gestapo. Foreign

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G E R M A N Y (General) - Continued.

workers who had committed offences were, after punishment, sent to special labour camps, and these "patent" enterprises gave the Gestapo a guarantee that foreign workers would be treated "in the way they were to be treated." If the directors of these armament works were now pretending they had never supported the Nazi régime, it might be asked for what reason the Gestapo made A.E.G. and Siemens "patent" enterprises for unreliable foreign workers.

American Zone.

Recapture of Noack.

News of Germany (16.9.46) stated: Hermann NOACK, a convicted German war criminal (see News Digest No. XVII, page 4), who escaped from the Landsberg prison, where he was awaiting execution for the killing of two American fliers, was captured last week in Hof, by German civilian police, after shooting him twice in the legs.

Execution of Gerstenberger.

News of Germany (16.9.46) reported: Justus GERSTENBERGER, 49, German civilian, was hanged at Landsberg prison for killing an American soldier near Gertenbach on July 16th, 1944. GERSTENBERG was sentenced on 21.1.46 to be hanged. The verdict was reviewed and confirmed by theatre army officials.

Arrest of Hugenberg.

Frankfurt radio reported (3.10.46): Dr. Alfred HUGENBERG, 81-year-old German industrialist and one of the first supporters of Hitler had been arrested on his estate at Rohbracken, Westphalia, at the request of the British Military Government. HUGENBERG is not on the official Allied list of war criminals, but was named in a statement implicating German industrialists in Nazi crimes drawn up by a United States Senate sub-committee investigating the German economic organisation.

Preparations for Haina Sanatorium Trial.

News of Germany (20.9.46): Preparatory inquiries for the trial of doctors and nurses of Land Sanatorium Haina have been completed. Of the 620 Hospital inmates, 450 were transferred during the war to concentration camps Mauthausen and Hadamar.

New "Rogues Gallery" List.

A Reuter message from Frankfurt (15.9.46) stated: The U.S. Army in Europe have issued a new "rogues gallery" of 165 Germans who are wanted by the American authorities for questioning or arrest. The list includes Nazis, SS. leaders, scientists and former officials of the Reich Government, and men at the head of the Nazi economic and finance ministry in Holland.

British Zone.

Ravensbrück Camp Trial

An Agency message (14.9.46) reported from the British Zone: Fritz SUHREN, Commandant of the Ravensbrück Concentration Camp, where hundreds of thousands of women died, is to be tried in the British Zone. With him will be



G E R M A N Y - British Zone  
(Cont.)

seventeen of the camp staff. Thea BINZ, an SS. woman who terrorised the inmates, is among the defendants.

War Crimes Trials: Greater German Interest.

The D.P.D. reported from Hamburg (18.9.46): The interest taken by the German civilian population in the war criminals' trials now taking place in major towns of North Rhine-Westphalia has caused the authorities to relax the control system for visitors. The trials are now open to all Germans to give them an opportunity to acquaint themselves with the British judicial systems. The trials will be in camera only when secret evidence is taken. Military Government recommends visits to war criminals trials to all Germans living in the districts.

G R E E C E.

The Case of General Marinoff.

An Agency message from Paris (18.9.46), stated: Greece will demand that General Ivan MARINOFF, Bulgarian Minister to France, whom they have cited as a war criminal, be brought to trial. .... Instructions have been sent to M. Stavropoulos, Greek delegate to the Commission, to ask for General MARINOFF's extradition. The MARINOFF case—without precedent in international war crimes procedure—is complicated by the fact that the accused holds diplomatic status in France.

H U N G A R Y.

Extradition of War Criminals: Rumanian-Hungarian Agreement.

Budapest Radio (28.9.46) reported: "Semnalul" has criticised the inability of the Hungarian authorities to trace and arrest nearly 400 war criminals sentenced by the Cluj People's Court. In this connection, Hungarian official quarters point out that Rumania is not one of the victorious allies, and, consequently, Hungary has no obligation to co-operate in the prosecution of war criminals. Nevertheless, the Hungarian Government, inspired by a truly democratic spirit, has come to an agreement with the Rumanian Government on the prosecution and mutual extradition of war criminals. The protocol of the agreement has not yet been signed for technical reasons. Meanwhile, both parties are applying the principles embodied therein.

I R A N.

Arrest of Frostein.

The B.U.P. reported from Teheran that Dr. Adolf FROSTEIN, an agent who admitted that he was sent from Germany to "Nazify" the Middle East and destroy British communications, had been arrested by the Persian secret police in Teheran. He told the police that he had been in Persia nine months, posing as a Syrian, and earlier had travelled through Syria and Irak. He asserted that he was a close friend of Goering.

I T A L Y.

(United States Forces)

Conviction of General Maeltzer.

The Times (16.9.46) reported: General MAELTZER, German commander in Rome from November, 1943, to June, 1944, was sentenced by an American military court at Florence to ten years' imprisonment for violating the international convention of Geneva. He caused 200 American prisoners of war to be exposed to acts of violence, insults, and public curiosity when they were marched through the streets of Rome on February 2nd, 1944, after being captured at the Anzio beachhead. Affidavits from men who took part in the march said the troops were spat upon, insulted, and had stones thrown at them as they passed through the streets.

N O R W A Y.

Conviction of Rinnan.

The Times reported from Oslo (20.9.46): In Trondheim to-day Henry RINNAN and ten men of his gang of war criminals were sentenced to death and the rest of his 23 men and seven women collaborators given sentences ranging from life imprisonment to two and a half years' hard labour.

P O L A N D.

Forthcoming Trials.

Radio Warsaw (20/21.9.46) reported: A series of major trials of German war criminals will start in the next few days. The first will be those of Rudolf HOSS, former Commander of Oswiecim (Auschwitz), and of FORSTER, former Gauleiter of Danzig. The trials of FISCHER and LEIST will take place in Warsaw early in the winter. Negotiations are proceeding with the U.S. authorities for the extradition of General STROOP, the liquidator of the Warsaw Ghetto, who is also accused of murdering U.S. prisoners of war; and of General v.d. BACH, responsible for crimes during the Warsaw rising.

Extermination of the Jews.

The Jewish Chronicle reported (29.8.46): Ninety-eight per cent of the Jews who remained in Poland after September, 1939, died as a result of the war. This statement was made in a statistical report issued by the Central Commission for Investigation of German Crimes, set up by the Polish Government.

In a chapter entitled "Phases and Methods of the Solution of the Jewish Problem under German Occupation," it is noted that the Germans began to carry out their programme of extermination on the first day after the war started. Although Poles were considered citizens of an inferior race in the districts incorporated by the Nazis, Jews were excluded from this category, and were therefore deprived of any protection by the State. The report gives facts about Nazi methods for the extermination of Jews, details of which are now well known. By dividing the Nazi policy of extermination into two phases, the Commission found that up to the time of the Nazi attack on the Soviet Union on June 22nd, 1941, 500,000 Jews had perished. From the summer of 1941 to February 1945, 2,300,000 Jews died at the hands of the Germans. The Commission also reports that 1,000,000 non-Polish Jews were killed in Poland by the Germans.

T H E F A R E A S T

THE INTERNATIONAL MILITARY TRIBUNAL.

An A.P. message (19.9.46) referred to evidence showing that TOJO was so confident of victory that he assured Germany in 1940 that only part of Japan's army would be needed to crush the U.S.

Deputy prosecutor TAVENNER said Germany insisted Japan should capture Singapore, keep the U.S. occupied in the Pacific, and fight Russia before turning south on the French, Dutch and British colonies. Early in 1941 Japan postponed a decision on the Nazi request to fight Russia in the north before turning south.

[For further summary of the trial record see Appendix to this number.]

Suicide of a Witness.

An A.P. message of 20.9.46 reported: General KUSABI, a leading witness for the Russians at the International War Crimes Trials in Tokio, who died mysteriously in Russian custody, committed suicide by poison. KUSABI's evidence against Hideki TOJO, former Japanese war lord, and others of the 27 defendants was to be heard when the Russians took over the prosecution.

C H I N A a n d H O N G K O N G.

Execution of General Sakai.

The China Newsweek of 19.9.46 reported that the Japanese General Takashi SAKAI, who was found guilty and sentenced to death in August 1946, was executed at Nanking on September 30th. General SAKAI was the conqueror of Hongkong.

Trial of Colonel Nagata.

The Times reported from Shanghai (19.9.46): Colonel NAGATA, former head of the Japanese gendarmerie and the notorious Bridge House gaol, will soon be tried before a Chinese military tribunal on charges of ill-treatment and torture of British and Chinese nationals. The British investigation team here has handed over all data to the Chinese authorities.

Libel Action by a Nazi War Criminal.

The Times reported from Shanghai (27.9.46): A Chinese court had dismissed an action for libel brought against the local manager of the United Press by a Nazi war crimes prisoner, named SCHENKE, who is awaiting trial. The alleged libel was based on charges republished from American official documents. An anomaly in the Chinese law of libel raised at an adjourned sitting of the court on September 16th disclosed that only Chinese official statements were exempt from libel, because the Judicial Yuan, in the absence of any written agreement between the Chinese and American Governments, did not recognise the legality of American War Crimes Commissions.



SINGAPORE, MALAYA and NETHERLANDS EAST INDIES.

Death Sentence on Nagatomo.

The Daily Telegraph reported (17.9.46): Colonel NAGATOMO was sentenced to death by hanging by an Australian war crimes court in Singapore, for atrocities against Allied prisoners.

Identification of Suspects.

According to an Agency message of 26.9.46, thirty members of the Japanese Security Police—former Kempetai (secret police) members will be paraded through the streets of the Malayan capital Kuala Lumpur on Monday to give the public an opportunity of identifying any who were connected with atrocities or murders.

Reduction of Sentences.

A Reuter message (26.9.46) stated that three Japanese sentenced to death on charges of inhumane treatment of British, Australian, Dutch and American internees in the Sime Road Camp, Singapore, were reprieved. Two had their sentences reduced to ten years' imprisonment, and the third to eight years. Captain SUZUKI, camp commandant, sentenced to life imprisonment, had the sentence reduced to ten years, and a fifth prisoner had his sentence reduced from seven years to one year. These reductions were ordered by the G.O.C. Malaya. There had been criticisms, mainly by former internees, that the original sentences were excessive, as none of the prisoners had been responsible for the death of any internee.

Acquittal, in virtue of "Superior Orders".

A Reuter message of 1.10.46 reported from Singapore: Major KATSUMURA, officer commanding the Japanese secret police at Buitenzorg, Java, during the Japanese occupation, was acquitted by the Australian War Crimes Court, in Singapore, on a charge of complicity in the unlawful killing of three Allied prisoners-of-war and a Dutch woman in September, 1943, on orders from the secret police HQ. in Batavia. Lieut.-Colonel JENNINGS, presiding, said the court had been guided by the amendment to Australian military law which said that soldiers under conditions of war discipline could not be expected to weigh the legal merits of orders they received. Five of Major KATSUMURA's subordinates were acquitted along with him.

II.

THE NUREMBERG TRIAL.

Delivery of Judgment.

On September 30th, 1946, the International Military Tribunal, which had opened the trial on November 20th, 1945, began the delivery of its judgment.

The Bench consisted of: United Kingdom: Lord Justice LAWRENCE (President of the Court), Mr. Justice BIRKETT; United States: Mr. Francis BIDDLE, Mr. John J. PARKER; France: Professor DONNEDIEU de VABRES, M. FALCO; Russia: Major-General I.T. NIKITCHENKO, Lieut.-Colonel A.F. VOLCHKOV.

It will be recalled that the Indictment comprised four counts: Count I: Common Plan or Conspiracy; Count II: Crimes against Peace; Count III: War Crimes; Count IV: Crimes against Humanity.

FINDINGS OF THE TRIBUNAL.

Criminal Organisations.

In addition to the 24 defendants the prosecution had indicted six organisations, viz.: the Reich Cabinet; the Leadership Corps; The SS. and SD.; the Gestapo; the S.A.; and the High Command and General Staff.

In regard to these indictments the judgment observed that, in effect, a member of an organisation which the Tribunal had declared to be criminal might be subsequently convicted of the crime of membership and be punished for that crime by death. This was not to assume that international or military courts which would try these individuals would not exercise appropriate standards of justice. This was a far-reaching and novel procedure. Its application, unless properly safeguarded, might produce great injustice.

The Court declared the following organisations to be criminal bodies within the meaning of Article 6 of the Charter. (In each case they excluded from this finding persons who had left the positions referred to before September 1st, 1939.)

The Leadership Corps.

The judgment stated that the Gauleiters, the Kreisleiters and the Ortsgruppen Leiters had participated in criminal activities; and that the Reichsleitung, as the staff organisation of the Party, was also responsible, as well as the heads of the various staff organisations of the Gauleiters and Kreisleiters. The decision of the Tribunal on these staff organisations included only the Amtsleiters, who were heads of offices on the staffs of the Reichsleitung, Gauleitung, and Kreisleitung. With respect to other staff officers and party organisations attached to the Leadership Corps, other than the Amtsleiters referred to above, the Tribunal followed the suggestion of the prosecution excluding them from the declaration.

The Tribunal declared to be criminal, within the meaning of the Charter, the group composed of those members of the Leadership Corps holding the positions enumerated in the preceding paragraph or who became or

THE NUREMBERG TRIAL (Cont.).

remained members of the organisation with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organisation in the commission of such crimes.

The Gestapo.

The judgment stated that in dealing with the Gestapo the Tribunal included all executive and administrative officials of Amt IV of the RSHA, or concerned with Gestapo administration in other departments of the RSHA, and all local Gestapo officials serving both inside and outside of Germany, including the members of the Frontier Police, but not including the members of the Border and Customs Protection or the Secret Field Police, except such members as have been specified above. At the suggestion of the prosecution the Tribunal had excluded persons employed by the Gestapo for purely clerical, stenographic, janitorial, or similar unofficial routine tasks. In dealing with the S.D. the Tribunal included Amts III, VI and VII of the RSHA, and all other members of the SD., including all local representatives and agents, honorary or otherwise, whether they were technically members of the S.S. or not.

The Tribunal declared to be criminal within the meaning of the Charter the group composed of those members of the Gestapo and S.D. holding the positions enumerated in the preceding paragraph who became or remained members of the organisation with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes.

The SS. and SD.

The portion of the indictment dealing with the SS. also included Die Sicherheitsdienst des Reichsführer-SS (commonly known as the S.D.)

The judgment declared that in dealing with the S.S. the Tribunal included all persons who had been officially accepted as members of the SS., including the members of the Allgemeine SS., members of the Waffen SS., members of the SS. Totenkopf Verbände, and the members of any of the different police forces who were members of the SS. The Tribunal did not include the so-called riding units.

The Tribunal declared to be criminal within the meaning of the Charter the group composed of those persons who had been officially accepted as members of the S.S. as enumerated in the preceding paragraph who became or remained members of the organisation with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organisation in the commission of such crimes, excluding, however, those who were drafted into membership by the State.

In regard to some points of law which have been debated in the Press the Tribunal observed: The maxim nullum crimen sine lege is not a limitation of sovereignty, but is in general a principle of justice. To assert that it is unjust to punish those who in defiance of treaties and assurances have attacked neighbouring states without warning is obviously untrue, for in such circumstances the attacker must know that he is doing wrong, and so far from it being unjust to punish him, it would be unjust if his wrong were allowed to go unpunished.



THE NUREMBERG TRIAL Cont.)

And, again, in regard to the Kellogg Pact: In the opinion of the Tribunal the solemn renunciation of war as an instrument of national policy necessarily involves the proposition that such a war is illegal in international law; and that those who plan and wage such a war, with its inevitable and terrible consequences, are committing a crime in so doing. War for the solution of international controversies undertaken as an instrument of national policy certainly includes a war of aggression, and such a war is therefore outlawed by the pact.

(This passage was also quoted by Lord SIMON in an article on the Judgment in the Sunday Times of 6.10.46.)

On the next day, October 1st, the Tribunal gave judgment against individual defendants:

Sentenced to death by hanging:

G Ö R I N G:	Guilty on all four counts.
R I B B E N T R O P	Guilty on all four counts.
K E I T E L:	Guilty on all four counts.
K A L T E N B R U N N E R:	Guilty on counts three and four.
R O S E N B E R G:	Guilty on all four counts.
F R A N K:	Guilty on counts three and four.
F R I C K:	Guilty on counts two, three, and four.
S T R E I C H E R:	Guilty on count four.
S A U C K E L:	Guilty on counts three and four.
J O D L:	Guilty on all four counts.
S E Y S S - I N Q U A R T:	Guilty on counts two, three, and four.
B O R M A N N:	Guilty on counts three and four.

Imprisonment for life.

H E S S :	Guilty on counts one and two.
F U N K :	Guilty on counts two, three and four.
R A E D E R:	Guilty on counts one, two, and three.

Twenty years' Imprisonment.

D A I D U R v o n S C H I R A C H:	Guilty on count four.
S P E E R:	Guilty on counts three and four.

Fifteen Years' Imprisonment:

V o n N E U R A T H:	Guilty on all four counts.
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THE NUREMBERG TRIAL (Cont.)

Ten Years' Imprisonment.

D Ö N I T Z :                      Guilty on counts two and three.

Not Guilty.

Hjalmar SCHACHT; von PAPEN; FRITZSCHE.

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DISSENTING OPINION OF THE SOVIET JUDGE.

In a dissenting opinion, appended to the judgment (as provided in the Hague Agreement), the Soviet judge, General NIKITCHENKO, said he considered that SCHACHT, von PAPEN and FRITZSCHE should have been found guilty; that HESS should have received a death sentence; and that the Reich Cabinet, the General Staff and the High Command should have been declared criminal bodies. The reasons for dissent were set out in a statement of 11,000 words.

In regard to this opinion Sir David MAXWELL FYFE said, after his arrival in England: "There should not be any impression that this disagreement had any political significance. It would be most unfortunate to the Russian judges if the idea was created that the harmony and international co-operation of this trial had broken down. Our co-operation on the prosecution side was a fine piece of teamwork throughout the whole ten months. The disagreement was entirely on the evidence."

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It was semi-officially announced (2.10.46) that the Allied Control Council had decided that the men sentenced to death would be hanged in Nuremberg gaol on October 16th; and that prison sentences would be served in a prison in Berlin. Petitions to the Allied Control Council for clemency were submitted within the prescribed time limit of four days by all the convicted men except KALTENBRUNNER, SPEER and von SCHIRACH. RAEDER petitioned for his sentence of life imprisonment to be altered to death by shooting, arguing that this would not be inconsistent with Article 29 of the Charter which forbids any increase in the severity of a sentence.

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Position of the Acquitted Men.

After being arrested, released and put under "house arrest" it was announced (5.10.46) that the three acquitted men would be free to come and go as they pleased without interference from either German or American police. An official American statement said they would remain at liberty pending trial by the Nuremberg Denazification Panel, a German body. The statement added that the acquitted men were subject to German law and to the German authorities, and would be given German police protection if they wished. SCHACHT was however, arrested at Backnang (7.10.46) by the Wurtemberg-Baden police. It was authoritatively stated at British Headquarters at Herford that none of the three acquitted men had applied for permission to enter the British zone. It was further stated that such an application would have to be rejected on the ground that they were not domiciled in the zone. The French authorities also announced that permission to enter the French zone would be refused.

SUBSEQUENT PROCEEDINGS.

Industrialists and Militarists.

Justice JACKSON, as reported in the Press of 2.10.46, said, commenting on the acquittals: "Our arguments for their conviction, which seemed so convincing to all of us prosecutors, seem not to have made a similar impression on the Tribunal. The effect of these acquittals on the further prosecution of the industrialists and militarists which have been planned will have to be studied from the text of the opinion."

The Daily Telegraph correspondent said: "I have canvassed lawyers and other members of the legal teams here in connection with the subsequent trials of Nazis. The view is widely held that the acquittal of SCHACHT makes the bringing to justice of bankers and industrialists well nigh impossible."

Members of Criminal Bodies.

The Manchester Guardian (2.10.46) reported from Berlin: Application of the judgment against the Nazi organisations is left to the four Allied Commanders-in-Chief in their separate zones, though a four-Power commission may be instituted to keep the control authority informed of the consistency or inconsistency of what is done in the zones. .... In the British zone .... members of condemned organisations will be handed over for trial to German courts. In order to try them the criminal chambers of Landgerichte will be endowed with special jurisdiction. The courts will not, however, consider the guilt or innocence of organisations in question. Membership of those organisations will itself be the crime with which the accused will be charged. .... If he admits membership he can only plead mitigating circumstances—that his membership was compulsory or that it was of a nominal sort or something of that kind. .... It is not intended (again so far as the British are concerned) to inflict the death penalty in such cases unless the accused is found to have committed a serious war crime.

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M I S C E L L A N E O U S.

The vast scale of the proceedings is illustrated by the following data:

The Tribunal held 403 open sessions, occupying 217 days. The shorthand transcripts amounted to over 6,000,000 words. Thirty-three witnesses gave evidence orally for the prosecution against the individual defendants; 61 witnesses, in addition to 19 of the defendants, gave evidence for the defence. A further 143 witnesses gave evidence for the defence by means of written answers to interrogatories. The Tribunal appointed commissioners to hear evidence relating to the Organisations, and 101 witnesses were heard for the defence before the commissioners, and 1,809 affidavits from other witnesses were submitted. Six reports were also submitted, summarizing the contents of a great number of further affidavits. Thirty-eight thousand affidavits signed by 155,000 people were submitted on behalf of the political leaders; 136,213 on behalf of the SS.; 10,000 on behalf of the SA.; 7,000 on behalf of the SD.; 3,000 on behalf of the General Staff and OKW.; and 2,000 on behalf of the Gestapo.

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APPENDIX.

EXTRACTS FROM JUNE REPORT OF SUPREME COMMANDER OF  
ALLIED POWERS IN JAPAN ON THE TRIAL OF  
MAJOR WAR CRIMINALS IN TOKIO.

(Summary of Evidence given before the International Military Tribunal -  
June 24th to June 28th, 1946.)

Testimony of Suzuki.

On 24 June Tomin SUZUKI, one of the figures in the recent strike of the Yomiuri Shimbun, testified that there had been "no such thing as a free Press in Japan" since 1935. He said that news services were "completely under the control and domination of the Japanese Government."

Under cross-examination he admitted there were some loopholes in Press restrictions and that he had taken advantage of these to write some of his opinions in magazines. He said he was an exponent of democracy and had been questioned by the police and informed to leave Tokio and cease writing or lecturing but that he had not been arrested.

He informed the Court that he had opposed collaboration with the Nazis because he believed it would lead to war. His affidavit further stated that he had written articles favouring settlement of the China dispute and criticising Japan's military aggression.

Although a witness for the prosecution, SUZUKI said that he believed Shigenori TOGO, one of the defendants and former Foreign Minister under Premier TOJO, was a peaceful man and had been duped by TOJO into entering his Cabinet upon false assurances. SUZUKI referred to an interview he had with TOGO upon his acceptance of the Cabinet post in which the latter declared that TOJO had assured him that everything possible would be done to make a peaceful settlement with the United States. SUZUKI stated that an article touching this point appeared in the Contemporary Japan in 1941.

Testimony of Shidehara.

On 25 June when the prosecution offered the affidavit of Baron Kijuro SHIDEHARA, one of the important witnesses for the prosecution, it was objected to by Owen Cunningham, counsel for Hiroshi OSHIMA. The ground was that SHIDEHARA's understanding and speaking ability of English was as good as that of anyone in court and that the admission of the affidavit in lieu of direct testimony of the witness would violate the fundamental law of evidence. The President overruled the objection after remarking that the Tribunal was not bound by the usual laws of evidence and the procedure regarding affidavits had already been decided after due deliberation.

Baron SHIDEHARA, Foreign Minister at the time of the Manchurian Incident, told the Tribunal that a Japanese military clique consisting principally of young army officers in Manchuria had made preparations for the Incident and only shortly before its occurrence was he informed that "action of some sort" was in the offing. He related that the Wakatsuki Cabinet opposed this action and subsequently made efforts to control the army and prevent expansion. These efforts were unsuccessful and the Cabinet was forced to resign.

He declared that the Cabinet angered the militarists when it approved and recommended reductions in both the army and navy budgets.

On cross-examination he denied that the resignation of the Wakatsuki Cabinet was due to internal dissension over other matters rather than to pressure from the army.

He admitted that the defendant Jiro MINAMI, former War Minister in the Hamaguchi Cabinet, had tried to co-operate with the Cabinet in the reduction of military expenditures and to prevent expansion of the Manchurian Incident. SHIDEHARA said he had been made acting Prime Minister when Yuko HAMAGUCHI was assassinated by a Japanese who was alleged to have been dissatisfied with the Naval Disarmament Policy.

In view of the testimony of SHIDEHARA on cross-examination the prosecution gained permission of the Tribunal to examine him. Questions were directed at determining who was actually responsible for the Manchurian Incident. After some hedging SHIDEHARA stated that he presumed the War Minister should be held responsible but General MINAMI did not know of the Incident when it broke out and despite his efforts he had been unable to control it.

On the second cross-examination the defence failed to gain an admission that the Army Chief of Staff was responsible for the action of the army rather than the War Minister or the Cabinet.

#### Testimony of Shimizu.

On 26 June Konosuke SHIMIZU, a former associate of the defendant Shumei OKAWA, connected the latter with the unsuccessful March Incident of 1931 and with the Incident of 15 May known as "5-15".

He said in his affidavit that OKAWA and a number of army officers including General Kazushige UGAKI and Colonel Kingoro HASHIMOTO, a defendant on trial, were involved in a plot to overthrow the Japanese Government. SHIMIZU stated he was scheduled to throw bombs outside the Diet building after which OKAWA and others were to enter and seek to gain control of the Government.

SHIMIZU declared that the plot failed to materialise when the military withdrew its support. He said Major General Kuniaki KOISO had informed the plotters of a direct order from the army to abandon the scheme.

On another occasion he said that OKAWA while drunk informed him that OKAWA and others, including Colonel ITAGAKI, Vice-Chief of Staff of the Kwangtung Army, would bring about an incident in Mukden. SHIMIZU also connected OKAWA with the Incident of 15 May.

Upon cross-examination the witness admitted that the bombs which were to have been used in the March Incident were only fire-crackers intended to emit smoke and make a loud noise.

#### Testimony of Tokugawa.

After the affidavit of Marquis Yoshichika TOKUGAWA had been introduced by the prosecution, counsel for the defendant HASHIMOTO endeavoured to show that the defendant OKAWA was in the habit of making "grandiose" statements while drunk.

#### Testimony of Fujita.

On 27 June Isamu FUJITA, a journalist, testified by affidavit that Colonel Chiaki SHIGETO and the defendant Colonel Kingoro HASHIMOTO had advocated the taking of positive action in Manchuria a month before the Manchurian Incident was commenced with the blowing-up of a railroad.



He said he gained this information in conversations with the two officers and that both were pleased when the Manchurian Incident occurred.

He testified that SHIGETO said he would replace Chang Hsueh-liang, the "Young Marshal of Manchuria", who the army thought was following a provocative policy and who was said to have planned a line parallel to the South Manchurian Railway.

Testimony of Inukai.

On 27 June the Tribunal heard the evidence of Ken INUKAI, son of the Prime Minister INUKAI who was assassinated by a young naval officer in the Incident of 15 May.

Some of the highlights of his testimony were:

- (1) His father was threatened several times for pursuing an anti-military policy in Manchuria. These threats were made by Kaku MORI, Chief Secretary of his father's Cabinet and leader of a military faction within the Seiyukai Party.
- (2) Prime Minister INUKAI was shot within a week after he had made a speech condemning militarism and advocating a more democratic policy.
- (3) During his five months of office Prime Minister INUKAI opposed further extension of the Manchurian Incident and appealed to the Emperor for negotiations with China. Young INUKAI said the Emperor informed his father that politics should not be controlled by the army alone.
- (4) Prime Minister INUKAI desired and actually proposed to the Emperor the issuance of an Imperial Rescript to terminate the Manchurian situation. The witness did not explain why such a rescript was not issued.
- (5) Prime Minister INUKAI dispatched a special emissary to Nanking for consultation with General Chiang Kai-shek relative to sending a Chinese and Japanese envoy to Manchuria. Although the mission was secret the army intercepted communications to the Prime Minister.
- (6) Prime Minister INUKAI appointed Sadao ARAKI as Minister of War because of ARAKI's popularity with young officers.

Testimony of Wakatsuki.

On 28 June the prosecution introduced the affidavit of the aged Baron Reijiro WAKATSUKI which revealed some of the events occurring from April to December 1931 during the term of his Cabinet. He revealed that his Cabinet had sought a speedy termination of hostilities in Manchuria and had resigned because of its unsuccessful attempts to control the army.

According to his affidavit the chief task of his Cabinet was the preparation of the budget reducing army and navy expenses for the following Hamaguchi Cabinet.

The witness accused the defendant Jiro MINAMI, his former War Minister, of failure to control the army or carry out the unanimous policy of the Cabinet with reference to Manchuria. MINAMI, he asserted,



continued to make reports of expansion in Manchuria and each time gave assurances that the situation would not grow worse.

On cross-examination he related that he had directed Kinzo ADACHI, Home Minister in the Cabinet, to negotiate to bring in the Seiyukai Party to prove that the nation was opposed to the Manchurian Incident. He said that he later deemed this action inadvisable and directed ADACHI to cease his efforts but the latter continued the negotiations and this action resulted in en bloc resignation of the Cabinet.

Testimony of Ugaki.

On 28 June General Kazushige UGAKI, former Minister of War, testified that the plot organized by Shumei OKAWA to seize control of the Japanese Government failed because of the refusal of the General to support it.

The witness testified that he received the proposal in the form of a letter which was also admitted in evidence. OKAWA's letter was written during the time the late Yuko HAMAGUCHI was Prime Minister. He identified OKAWA as one of the leaders of a series of plots resulting in the conquest of Manchuria and the war against China.

After receipt of the letter Ugaki declared that he immediately notified assistants in the War Ministry to forbid the army to participate in the plot.

UGAKI said that it was his desire to keep the army out of politics but that he was opposed in his progress by such ultra-nationalists as Generals TERUUCHI, SUGIYAMA and NISHIO.

The General said that he was given the Imperial command to form a Cabinet but was unable to do so because of army opposition.

In answer to the question whether the Minister of War was responsible for actions taken by the Kwangtung Army and other overseas forces, UGAKI replied that the responsibility was that of Chief of the General Staff.

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XVIII  
Add.

UNITED NATIONS WAR CRIMES COMMISSION

(Research Office)

WAR CRIMES NEWS DIGEST

No. XVIII.

SPECIAL NUREMBERG ADDENDUM.

October 10th, 1946.

NOTE:

The following extracts from Press and Radio illustrate the first reactions of world opinion to the Judgment.

It is hoped to issue further Addenda in due course when the considered opinions of legal writers become available.

PRESS COMMENTS ON THE NUREMBERG JUDGMENT.

A U S T R I A

As might be expected, the Austrian Press is chiefly concerned with the acquittals of von PAPEN and von SCHIRACH. The former they would like to have tried in Austria. For the rest, the newspapers recognise the importance of the judgment, and especially the declaration that the seizure of Austria was an act of aggression.

The Neues Oesterreich (1.10.46) states: Austrian justice is criticised for lack of toughness in dealing with our Nazis. But how should we deal with them now that their ringleader BALDUR has received a term of 20 years, while the original progenitor of Austrian Nazism goes scot-free? Let PAPEN be surrendered to us, let us deal with him according to our Austrian laws, and the neighbouring anti-Fascist world will most certainly have no ground for complaint.

Arbeiterzeitung (2.10.46): Von PAPEN was ..... the evil genius, who sapped and undermined our country's moral resistance ..... Another criminal on our list who contributed so much to Austria's misery and who got off lightly at the trial is BALDUR von SCHIRACH, Hitler's Regent in Vienna. These two may yet be extradited and tried here for their crimes against our country.

Oesterreichische Volksstimme (2.10.46): We welcome with gratification that Nuremberg has passed its sentence condemning Nazism as a war-mongering, barbarous and merciless regime. We welcome in particular that the invasion of Austria was described as an act of aggression.

Radio Vienna (3.10.46): The Minister of Justice, in a telegram to the head of the U.S. Prosecutors in Nuremberg said: "The request to the International Military Tribunal for the extradition of PAPEN and SCHIRACH is being maintained. May I ask you to support the quickest possible transfer for them to Vienna? May I repeat that it is the unanimous wish of the Austrian people to have their crimes against Austria investigated by Austrian authorities."

B E L G I U M

(2/3.Oct.46)

Most newspapers agree that Nuremberg constitutes an historical precedent, which may well have a salutary influence on the future. La Lanterne says: The trial has shown the world that, however highly placed, civilian and military leaders belong to humanity and are responsible to it, as in every common mortal, for their actions and errors. Le Peuple considers the prohibition of crimes against peace and humanity no longer merely an ideal in international agreements.

Paul STRUYE, in La Libre Belgique says the acquittals and graded penalties at Nuremberg give exceptional weight to the death sentences. Respect for justice, he says, forbids personal resentment. Naturally everything has not been perfect in this first try-out of international justice. It is to be regretted that the tribunal was composed exclusively of judges from the victorious nations.

On the other hand, Le Drapeau Rouge described the acquittals as "revolting."



C Z E C H O S L O V A K I A.

The Czech Press points out that the judgment, given on the day after the anniversary of Munich, has condemned the assault on Czechoslovakia and everything that happened on March 15th, 1939.

In Slobodne Slovo (1.10.46), Dr. DRTINA, Minister of Justice, welcomed the fact that an international trial of the instigators of an aggressive war had taken place at all. This was not so certain, either before or during the war, all the more so, as during the first world war there was much talk about punishing the war guilty; we know how that ended. Another important fact is that this international court accepted in its verdict the principle that the first and fundamental crime is the unleashing of an aggressive war.

In the Rude Pravo (6.10.46) Professor KRAININ (? TRAININ) disagrees with the Tribunal's verdict on SCHACHT, FRITZSCHE, PAPEN and HESS, and on the German High Command and the Cabinet, and agrees with the remarks of the Soviet judge on these points.

In Pravo Lidu (2.20.46) Dr. SIMAK wrote that although most of the culprits received the severest sentence, one cannot avoid the impression that the punishment inflicted on the remainder—for instance, on von NEURATH, whose activities had such an immediate bearing on our country—was not entirely commensurate with their guilt.

The Svobodne Ceskoslovensko (3.10.46) also finds that "the greatest strain on our sense of justice is caused by the sentence on NEURATH—15 years' imprisonment for a man who, by his smooth and seemingly considerate conduct, made it possible for Heydrich and K.H. Frank to carry on their evil work with impunity."

F R A N C E.

Commenting on the three acquittals (1.10.46) the spokesman of the General Confederation of Former Deportees, M. SAMPAX, declared: The Nuremberg verdict is an insult to the memory of my tortured and exterminated comrades. It confirms the fact that the era of persecution is not over, but, on the contrary, encouraged.

The new secretary general of the Socialist party, M. MOLET, said that the acquittal of SCHACHT and von PAPEN is unbelievable, whatever our respects for international justice.

In "L'Epoque" (2.10.46), Albert MOUSSET describes the judgment as "a relief for the human conscience."

Le Figaro (2.10.46) comments: Not only do we not regret that the justice of Nuremberg has been slow, detailed and formalist; we think it was necessary that it should have had all these characteristics. We think it a happy fact that justice should have been applied with an overabundance of precaution and scruple.

Le Parisien libere describes the verdict as "justice but not vengeance."

On the other hand, the acquittals were bitterly censured by many writers. In a broadcast from Paris (2.10.46) BENAZET exclaimed: "Were we wrong when we said we did not trust the Nuremberg trial?" and expressed surprise that the French judge had not joined in the dissenting opinion. He regards the prison sentences, also, as acquittals since they are "fictitious in political cases."

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G E R M A N Y

Berlin Zone.

Berlin newspapers on October 1st were dominated by the Nuremberg judgment. Erik REGER in a "Tagesspiegel" commentary said: "The essential part of the indictment is that concerning the defendants' crime against peace. This part has nothing to do with jurisprudence, but ranks as an event in the history of mankind."

"Tagesspiegel" wrote: "A future generation will appreciate the significance of the fact that the Nuremberg Court devoted almost a full year to this trial and that time was not wasted but put to good use. It will also realise what great service this methodical trial, which so many contemporary observers found astounding, rendered to a more profound sense of justice."

"Der Morgen" wrote: What makes the Nuremberg trial a milestone in the history of mankind is that the civilised nations have come together to demand retribution from individuals for sins against the community, not in the form of revenge, but for the sake of justice and as a future warning.

Berlin radio (U.S.S.R. sector) said (1.10.46): "Already the Nuremberg Tribunal have established the criminality not only of individuals but of entire organisations. This was to have been expected, since the whole German State machinery has been one single and pliable instrument of war and terror. German justice was an integral part of this State machinery... Therefore the purification of our people is impossible without far-reaching juridical reforms. These must include the ruthless weeding out of all incriminated and undemocratic men in the legal and judicial professions. In the Soviet zone, new recruits to the judiciary coming from the universities have been supplemented by People's Judges. The first of the courses giving special training to capable and reliable anti-Fascists has now been completed in Brandenburg Province. The first 25 men and women have taken over their duties as People's Judges."

American Zone.

A poll taken by the S.W. German radio among the inhabitants of Baden-Baden of all classes gave the following percentage figures in favour of "guilty" in respect of the four counts of the indictment. Count I:

GÖRING: 97; HESS: 62; RIBBENTROP: 89; KEITEL: 59;  
ROSENBERG: 60; STREICHER: 97; RAEDER: 39; JODL: 32;  
NEURATH: 62.

The following percentage answered "guilty" on Count II:

GÖRING: 100; HESS: 61; RIBBENTROP: 91; KEITEL: 72;  
ROSENBERG: 69; FRICK: 78; STREICHER: 87; FUNK: 59;  
DOENITZ: 50; RAEDER: 71; JODL: 65; SEYSS-INQUART: 79;  
NEURATH: 62.

The following percentage answered "guilty" on Count III:

GÖRING: 97; RIBBENTROP: 67; KEITEL: 63; KALTENBRUNNER: 98;  
ROSENBERG: 78; FRANK: 76; FRICK: 78; STREICHER: 94;  
FUNK: 59; DOENITZ: 21; RAEDER: 15; SAUCKEL: 89; JODL: 35;  
BORMANN: 90; SEYSS-INQUART: 85; SPEER: 10; NEURATH: 15.



G E R M A N Y.

American Zone - (Cont)

The following percentage answered "guilty" on Count IV:

GORING: 98; RIBBENTROP: 49; KEITEL: 59; KALTENBRUNNER: 98;  
ROSENBERG: 82; FRANK: 91; FRICK: 82; STREICHER: 98;  
FUNK: 70; SCHIRACH: 61; SAUCKEL: 96; JODL: 26; BORMANN: 90;  
SEYSS-INQUART: 91; SPEER: 17; NEURATH: 22.

Dr. ZINN, Hesse Minister of Justice, said (2.10.46) that the verdict was unsatisfactory, at least as regards the acquittal of PAPEN, who was chiefly responsible for the events of the last twelve years. Speaking of the possibility of further proceedings against the acquitted, the Minister said that it was necessary first of all to clarify the legal difficulties arising from the Control Council Law No. 11, which provides for the abolition of the German legal provisions concerning high treason.

Dr. PFEIFFER, Bavarian Minister, wrote (4.10.46) in a letter to General MULLER, Director of the U.S. Military Government for Bavaria: "I urgently ask you to make it possible to execute the warrant of the Purge Tribunal No. 1 in Nuremberg for the arrest of SCHACHT, von PAPEN and FRITZSCHE. Indignation at the acquittal of these three men is extraordinarily strong among the entire German people. It will be a moral responsibility to carry out the deliverance law (Befreiungsgesetz) in Bavaria if these men find it possible to evade this law."

In Munich (3.10.46) the Mayor, the General Secretary of the Trade Unions, and the S.P.D. Chairman expressed their satisfaction with the trial, while the Munich Chief of Police, BAUGARTNER, Minister of Agriculture, the President of the Miners' Union, and the Minister of Transport expressed their misgivings at the acquittal of SCHACHT, PAPEN, and FRITZSCHE.

General CLAY told a British journalist that the acquittal of the S.A. in Nuremberg would be followed by the release of leading S.A. men from internment but added that they would, in most cases, appear before a German denazification court. About 77,000 persons were now interned in the U.S. zone, of whom 12,000 to 15,000 could not for the time being be released as they would have to account for war crimes before U.S. courts. A Neue Zeitung correspondent was told that the draft Constitutions drawn up by the German authorities for the States in the U.S. zone, were, on the whole, very satisfactory. Their adoption, however, would still take some time. A number of U. S. judges and legal experts selected in the U.S.A. would arrive in Germany very soon to conduct further proceedings in Nuremberg against war criminals in the U.S. zone. Several hundreds would be tried, the exact figure depending on the degree to which U.S. authorities were satisfied with the work of German denazification courts in their zone.

British Zone.

In the British zone the judgment of the I.M.T. caused lively discussion. "The international composition of the Tribunal", wrote Berliner Zeitung (2.10.46), "raises the judgment to the level of a generally applicable precedent."

"Neues Deutschland" (2.10.46) considered the 12 death sentences as just and completely in harmony with the people's conception of right and wrong. On the other hand, they did not understand the sentences of imprisonment, and certainly not the three acquittals.

GERMANY.

British Zone - (Cont)

"Neue Zeit" (2.10.46) wrote that those acquitted were responsible before the German people and the world for a fatal policy which led to Germany's disaster.

Dr. ADENAUER, as quoted by the DFD (1.10.46) regarded the verdict as progress, but "trials for war crimes should not be confined to Germans." It had been difficult, he added, for the German people to gain a true picture of the trial from the meagre Press reports, and he hoped that well-known German experts on international law would analyse the essential features of the trial so that the public would learn the truth about it.

For the rest, the bulk of the Press comments were devoted to the acquittals, which as the LFD. said (1.10.46) "have not been understood by the overwhelming majority of the German people", and to the possibility of a retrial of the three acquitted men.

Arno SCHOLZ in the Telegraf (1.10.46) wrote: The Nuremberg verdict could not be expected to coincide with that which Germans, who have far more charges to make, would pronounce. That the Reich Cabinet has been declared not responsible is not understood. The General Staff and the High Command did not resist Hitler's aggression in any way. The German people must now demand the right to pass its own judgment.

GRIMME, Cologne Minister of State, said (6.10.46) that the verdict had a positive side since at Nuremberg objective law and not politics had spoken. According to international law now no guilt could be laid at the door of the three acquitted men and the verdict had therefore done a service to the German people by recognising a sovereign German law before which PAPEN, SCHLACHT and FRITZSCHE would have to render account. Dr. GRIMME emphasised especially that this verdict had acquitted the German people of collective guilt and added: "If we are innocent, then we can become a partner to negotiations and a dictated peace cannot be enforced upon us."

At Bremen (7.10.46) a conference of heads of German governments in the British and American zones discussed a resolution requesting that a German court should now be established with competence for the whole of Germany to try Nazi leaders and their assistants for crimes against the German people. It appeared that the resolution would be carried unanimously until the Prime Minister of Oldenburg, Herr TANTZEN, expressed his dissent. TANTZEN took his stand on a principle of importance which, it must be admitted, sadly needs re-establishing in Germany. He was against any continuance in German life of "people's justice", or anything resembling the People's Courts, which he pointed out, were instituted by the Nazis and inspired by a conception quite other than the true conception of justice. He wanted courts of law administering the law and not seeking to express the "popular will". The resolution was accordingly modified to read: "That it should be made possible for the German people to constitute a court for all Germany before which such guilt as is yet unexpiated against the German people can be established and judged."

G E R M A N Y.

U.S.S.R. ZONE.

The chief organs of the Press pay formal tribute to the importance of the judgments. Thus, Dr. WERNER, Mayor of Berlin, said (Berlin Radio - 2.10.46): "Germans have seen individual guilt assessed without bias and in complete fairness and that the victorious Powers are not animated by any lust for destruction. There is no doubt that all judges were filled with a high sense of duty and justice."

Taegliche Rundschau (6.10.46) wrote: The verdict has made it clear to the malevolent sceptics and the whole world that a well-considered agreement can become a political reality if its partners are men of good will and determined to work together.

For the rest the Press and radio give chief prominence to protests and resolutions condemning the acquittals as "scandalous miscarriages of justice".

Berliner Zeitung (3.10.46) wrote: All ruiners of the German people deserve the death penalty, whether or not they have offended against international law. On this latter point, different views can be held, as can be seen from the objection of the Soviet member of the Tribunal against the incomprehensibly lenient sentences.

Ulbricht in Neues Deutschland said that though the Tribunal has held that the three acquitted men cannot be convicted of direct participation in the crimes against other nations, they can, under German law, be convicted of crimes against Germany. .... It should be the business of a German People's Court to sentence all those war criminals who were active in the Fascist administration or economic machinery, on the Boards of the combines, big banks and cartels, or as leaders of Fascist organisations.

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## THE NETHERLANDS

The Netherlands Press expressed satisfaction at the conviction of SEYSS-INQUART, combined with astonishment at the three acquittals. The Hilversum radio (2.10.46) quoted Minister MAARSSEVEEN, who represented the Netherlands at Nuremberg during the last two days, as saying that he "considered the reason for the verdict on SEYSS-INQUART excellently expounded, from the Dutch point of view. The German occupation policy in Holland was clearly exposed in the verdict."

De Tijd (2.10.46) wrote that comments of the public on the unexpected acquittals were extremely strong.

The Nieuwe Utrechtsche Dagblad (2.10.46) wrote: "This progressive paper expresses admiration for the way in which the trial was conducted. We knew that the composition of the tribunal was a guarantee of sound judgment, and were prepared to regard the verdict as inviolable. The verdict in the cases of von PAPEN, SCHACHT and FRITZSCHE has, however, changed our view. .... We are speechless at this verdict, but we are also dejected, for a great gulf again appears between 'formalistic' law and the general public's awareness of what should constitute law."

## POLAND

Robotnik of 4.10.46 devoted a leader to the judgment which, it says, "marks the beginning of a new stage in the history of international law. The sentences constitute a condemnation of all those who cause an aggressive war, as well as all those who help in its preparation and thus plot against world peace. This Tribunal is one of the institutions created after the second World War to serve as an instrument for punishing the possible authors of a third war." It finds, however, that the verdict has "serious shortcomings" though these do not detract from the fact that the Tribunal has made history.

In regard to the acquittals of three of the defendants, many of the articles are severely critical, and align themselves with the Soviet judges' dissenting opinion.

In a statement to a P.A.P. correspondent (4.10.46) BARCIKOWSKI, President of the Supreme National Tribunal, said: "In my view, the conduct of the three acquitted men, as shown by the indictment and the evidence submitted at the trial, does not admit of exoneration. As regards the criminality of Nazi organisations, I believe that any organisation which in any manner aims at aggressive war should be considered criminal. Since aggressive war was the mainspring of Hitler's entire movement, it seems to me that the facts ascertained during the trial furnish sufficient grounds for regarding the S.A., the General Staff and the High Command and in particular the Government of the Reich as criminal organisations."

An article by Jerzy PANSKI, broadcast on 2.10.46, said in part: "The Nuremberg verdict, with 13 (sic) death sentences, six (sic) prison sentences and three acquittals has caused amazement, disappointment, bitterness and anxiety as to whether it does not imply surrender. .... Can such a crime be measured in terms of years spent in prison? Perhaps the various sentences indicate the scale of the crimes. Perhaps Ribbentrop is a greater criminal than Neurath and Raeder, responsible for greater loss of life than Doenitz. But if the sentence is to mean the death of Fascism, then all who are responsible for Fascism should have been condemned. If the world heard of the prison sentences with amazement, it will regard the three acquittals as a slap in the face."

S P A I N.

In a broadcast from Madrid (4/10/46) Juan de la COSA said, in part: "We have been startled to find that common crimes and military and diplomatic activities in the service of the Motherland have been put in the same category. This is the consequence of creating new kinds of crimes—that of plotting a war of aggression, crimes against peace and mankind, and war crimes, the interpretation of which causes confusion. .... Because of this conception of aggression, in future wars the victor, the only one able to do so, will accuse the defeated of being an aggressor, and in judging him will have the support of a juridical principle. This is bad. .... Another question! Do military men, diplomatists, industrialists and financiers owe obedience to their legally constituted Government? .... Can our listeners imagine that in any country in the world, the C.-in-C. would say to his Government: 'Is our next war to be a war of aggression? If it is, I cannot participate as I do not want to incur the crime of plotting a war of aggression.'"

UNITED KINGDOM.

Chief among the earlier comments on the judgment is one in the Sunday Times (6.10.46) by Lord SIMON, who maintains that the decision to create a court to try the major war criminals has been justified by the event, as the trial has established the possibility of elevating the rules of international law for regulating or preventing aggressive war into effective provisions, for breach of which offenders may be brought before a criminal court with adequate powers to convict and punish.

In regard to the acquittals, Lord SIMON remarks that "long experience has convinced me that no one is really qualified to quarrel with a verdict unless he has first informed himself fully on the issues to be decided and given to the whole of the evidence the full and concentrated attention which it has received from those who have had to pronounce a conclusion."

The Times Nuremberg correspondent wrote (1.10.46): "As I have previously pointed out, the inclusion in the indictment of the German High Command had aroused a good deal of misgiving among professional soldiers all over the world, and it need now be no secret that, even before the trial opened, General EISENHOWER expressed his doubts to me of a conviction being obtained. The compelling reason of the Tribunal in arriving at its decision was its opinion that the General Staff and the High Command could not be defined as an 'organisation' or a 'group' within the meaning of the Charter."

The Manchester Guardian wrote (1.10.46) that Lord LAWRENCE found it necessary to justify the Tribunal's law, but in so doing "reflected the doubts which many still hold."

The Economist (5.10.46) agreed that it was easy on the evidence to condemn the Nazi leadership on the charge of planning aggressive wars and crimes against humanity; but thought that the force of the condemnation was not unaffected by the fact that the nations sitting in judgment had exempted themselves from the same law.

The New Statesman (5.10.46) said that the "condemnation of these 18 men does not acquit anyone else, but makes more glaring the sins of those who connived at their conspiracy up to the outbreak of war."



UNITED KINGDOM (Cont.)

In a letter to The Times (8.10.46), Lord PARMOUR joins with Dr. Gilbert MURRAY in questioning "the justice of a system which only admits of the trial of the victors by the vanquished."

The Manchester Guardian (8.10.46), protesting against the treatment of the three acquitted men, wrote: If Nuremberg administered justice, this is its mockery. Are men who have survived ten months' close investigation by the Powers, and been set free, now to be tried again by Germans who seek to prove their own merits by showing themselves more relentless even than their victors? ..... The present plight of these three men is a disgrace to their great judges, for the writ of the Powers runs through the length and breadth of Germany and they cannot disclaim responsibility for anything that happens there.

Some letters to the newspapers by well-known men convey the impression that the capital sentences were pronounced solely on the charge of aggressive war. In point of fact, ten out of the eleven defendants thus sentenced were convicted also on Count III - War Crimes—that is to say, murder; the one exception was Julius STREICHER; the latter was convicted on one charge only—crimes against humanity. Thus, Professor JOAD (Sunday Despatch - 6.10.46) declares that the law (under which the men were sentenced) "did not pre-exist the crimes with which it charges the prisoners whom it condemns", and he goes on to ask "when have these four provisions of international law dealing with offences against which these men were charged been agreed to by International Law?" The answer in regard to Count III would be: The Hague Convention.

Professor JOAD associates himself with Bernard SHAW in considering that the defendants had their heads turned by absolute power—ignoring the fact that their programme was established before they obtained power—and pleads for their release as "ordinary rather pitiable chaps."

UNITED STATES.

The Daily Telegraph reported from New York (3.10.46) that the majority of the New York newspapers united in praising the scrupulous fairness of the Nuremberg verdicts and expressing the hope that the trial may prove a preventive of future wars.

Typical of many comments was that of the New York Times, which writes: "The International Tribunal has meted out what it was supposed to mete out—stern justice, not vengeance."

The following are some typical Press views:

New York Herald-Tribune: The Tribunal lays legal basis for its action firmly and precisely. The new precedent which has been established is a fair and just assessment of 'war guilt.'

New York Post: If anything, the Court can be accused of keeping too closely to the letter of the law rather than to its spirit.

Chicago Sun: For the first time in history a legal concept has been established that aggressive war is a punishable crime.



UNITED STATES (CONT).

Christian Science Monitor: The accusers have set up Humanity's conscience above any nation's claim, including their own, to be the sole judge of its acts.

Chicago Daily News: If the precedent it has established comes to receive the support of world opinion the Court's findings may go far toward outlawing war, but without the support of public opinion the verdicts can mean merely that it is bad to be associated with the losing side in war.

The Times (3.10.46) reported from Washington: Members of the legal profession here and there strongly dissent from the statement of Mr. Justice JACKSON that after the agreement of August 5th, 1945, which established the Tribunal had been signed by the four nations in London, the "old order by which all war was legal visibly passed away." They are not ready to push their belief in the wrongness of ex post facto law to an insistence that the guilty should escape punishment; they demand that "future doubt" as to the illegality of aggressive warfare and the liability of national leaders to punishment shall be removed by a declaratory action of the United Nations.

U. S. S. R.

The general attitude of the U.S.S.R. Press is approval of the verdict, coupled with "reservations". The latter are, naturally, on the lines of the dissent of the Soviet judge.

Izvestia (2.10.46) noted with satisfaction that, for the first time, condemnation of aggression has taken the shape of a court verdict. Justice prevailed. The aggressors and instigators of war are to mount the scaffold. The forces of reaction are trying to destroy the co-operation between the United Nations which served mankind during the war. The work of the Nuremberg Tribunal has shown that life is stronger than these intrigues and designs.

A Moscow broadcast (4.10.46) said, in part: The Soviet people cannot help asking whether it is possible to condemn Hitlerism and its aggressive policy, without passing sentence on all links of the criminal German war machine and in the first place on the German High Command. .... There was certainly no distinct wall of separation between the German High Command and General Staff on one side and the Nazi party, SS. and Gestapo, condemned as criminal organisations, on the other. On the contrary, it was proved that numerous crimes were performed by members of the SS. at the direct behest of the German High Command and General Staff. .... The sentence would have assumed much greater significance had the Tribunal condemned the entire military and political machinery together with all its organisations, including the Hitler Government and the German High Command.

Michael GUS, in a radio commentary (3.10.46) said: Any attempt to exploit a serious mistake in the judgment would be harmful and even disastrous for Germany and its future. And it is well known that a serious mistake was made: neither the Reich Cabinet nor the High Command were declared to be criminal organisations. This fact, against which the Soviet member of the Tribunal protested, is a mistake first and foremost because well-known facts, clearly laid before the Court, proved the criminal character of the Reich Cabinet and the High Command of Hitlerite Germany.

YUGOSLAVIA.

The only Press and radio comments hitherto available are concerned chiefly with the public dissatisfaction at the leniency of the court.

Politika (2.10.46) sharply condemns the acquittal of PAPEN, SCHACHT and FRITZSCHE, and the tolerance of the Court towards organisations such as the Reich Government, German General Staff and Supreme Command, consorts with the sponsors of war and deadly punitive expeditions. Approving the Soviet representative's protest against the verdict, the article emphasises that all peoples who suffered under the Fascist yoke will join in this protest.

Borba of the same date describes the judgment as "an encouragement to Fascist criminals and aggressors", and declares that "the Soviet representatives alone insisted on a just verdict."

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UNITED NATIONS WAR CRIMES COMMISSION

Supplement to War Crimes News Digest No. XVIII

Survey of Legal Literature

(Contributed by Egon Schwelb, Legal Officer)

This survey is being circulated in advance of No. XVIII of the War Crimes News Digest, issued by the Research Office of the United Nations War Crimes Commission.

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Professor Hobza: The punishment of war criminals p.4.  
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Eugene Aroneanu: Le Crime contre L'Humanité. Nouvelle Revue de Droit International Privé No. 2 - 1946, pp. 16 et seq.

The following summary, in English, of M. Aroneanu's article has been prepared by one of Mr. Justice Jackson's collaborators and published in No. 2 of 1946 of La Nouvelle Revue de Droit International Privé, pp. 60 et seq.

PART I

In the period before the war, foreseen by Count Four of the Indictment, the Crime against Humanity was totally ignored by international laws "of peace". This crime was recognized juridically only after the outbreak of the war. The "brutal attacks against the civil population", "the destruction of lives and goods", the cultural and religious existence of the population, "massive executions", "deportations of the population in the most atrocious circumstances", the horrible treatment inflicted upon members of the Jewish community, etc., as well as crimes committed by the Third Reich since 1933 were for the first time announced juridically by the Anglo-French-Polish Note in favor of Poland, of 17 April 1940, as constituting a "flagrant violation of the laws of war and particularly The Hague Convention on the Laws and Customs of War".

To look only at the prescriptions inserted in the laws of war the Crime against Humanity up to the time of the Statute of 8 August 1945 bore the title of "crime of war". But the evolution of the events progressively detached it from its "war" status.

The Declaration of St. James declared that these acts "have nothing in common with the notion of the act of war". The Moscow Conference considered them as a law of "peace time" for the liberated countries. At the same time it is constantly affirmed that these acts are committed in violation of international laws inserted in the laws of war. The Crime against Humanity evolved in its relation to common law and international laws will be defined in relation to two developments and finally to national and international jurisdictions. Its juridical nature is revealed progressively as follows:



The Jackson Report of 7 June 1945 treats it for the first time independently. The Statute of 8 August 1945 gives it an actual title. And, finally, the Indictment of 18 October 1945 defines it in identical terms with "crimes of war", and indicates that these latter are "also Crimes against Humanity".

From that time on we have only "one big juridical family" the Crime against Humanity. Committed in time of war it bears the title of "crime of war".

Up to this point the Crime against Humanity received only a negative explanation: it was not a war crime. Two serious questions arose:

- (1) What is its juridical nature?
- (2) Since, although being independent of war it falls under prescriptions inserted in the laws of war - what is the nature of these laws?

#### PART II

#### Crime against Humanity and Common Law:

When committed against the innocent the Crime against Humanity resembles a common law crime, but a common law criminal cannot involve hundreds and thousands of murders. Such a limited number of criminals cannot assassinate so many millions of victims. It is necessary to examine "the criminal power" of these wretches in the general circumstances of the accomplishment of their crime. One may distinguish three steps: First, the suppression of criminal law to the prejudice of certain categories of individuals. The absence of public force at the service of criminal law indicates the suppression of criminal law and not its violation. The victims are placed outside of the law by the same authority which gives vigor to the law, namely, the sovereignty of the State. Second, the public power failing to enforce respect of the common law is present for the arrest of victims. The public power becomes an accomplice of the crime by executing sovereign acts of the State. Finally, the execution takes place with expressed or tacit consent of the entire State organization, thanks to the functioning of all these institutions: The Chief of State, Government, Parliament, the Party in Power, the Army, the Press, the Magistrature, Railroads, Industries, etc. Orders have not been executed because they have been given but because it was possible to execute them. A public criminal order was perfected.

A Crime against Humanity is a common law crime only on the condition of recognizing the true "common law crime" in the person of National Socialist Germany. Personal responsibility finally falls on all those who individually or together have contributed to the constitution of this State or have executed acts of sovereignty under it.

#### The Crime against Humanity and International Laws:

The Crime against Humanity, before being a "crime," is only an act of State sovereignty and for this reason it cannot be attacked by internal laws. This act of sovereignty is "criminal" only if a sovereignty superior to that of the State, that is, a international sovereignty, has decided accordingly. Otherwise stated, the act of sovereignty by which a State infringes on the rights of liberty or the life of its nationals can be legally a wrong only in relation to international laws. However, existing international laws are clear in this connection.

The international laws which in time of peace would sanction the Crime against Humanity by limiting the sovereignty of States would declare forbidden: "the internment of civilians in inhuman conditions," "civilians deliberately starved," "deportation of civilians," "snatching away of young girls and women for purpose of prostitution," "the torture of civilians," "murders and massacre,"

"systematic terrorism," etc. These prescriptions cannot be found in an international law "of peace", but on the contrary in the laws and customs of war. That amounts to saying that all the prescription which are inserted in the laws of war and which relate to military operations, and which therefore have nothing in common with the notion of the act of war are limitations on the sovereignty of the State. At present the problem is put in a different way: How is it that limitations on State sovereignty, absent in international laws "of peace," are inserted in the laws of war; and what is the value of these rules for peacetime?

The Limitations on State Sovereignty and the Laws of War:

War is the most frequent manner of changing sovereignty up to the present. It was natural that it was at this time that States, to protect their populations, wrote into the laws minimum standards for the exercise of State sovereignty. The fortune of arms could place a part or all of a given territory under the administration of another State. It is thus that along with the rules concerning the conduct of military operations are found rules concerning the conduct of State sovereignty. And it was by the laws limiting State sovereignty and not by the laws of war that Austria and Czechoslovakia suffered, without war, the same crimes as those committed against Poland and the other countries later, conquered as a result of war. The change of sovereignty was made without a fight. The Crime against Humanity should be considered uniquely in its relation to the exercise of State sovereignty in time of war as in time of peace. However, sovereignty may be established. The Crime against Humanity is considered not in connection with violation of the rules of war but in violation of the rules of conduct of State sovereignty limited by the laws inserted in "the code" of the laws of war. By consenting freely to the limitations contained in the laws of war, States have given to the international collectivity the right to judge on the one hand the violations of the rules of war and on the other the violations of the rules of States sovereignty.

Limitations on State Sovereignty in the Time of Peace:

War is a temporary institution. State sovereignty is a permanent institution. A smaller thing cannot contain a larger thing. The laws of war cannot contain laws limiting the sovereign State.

Sovereignty is exercised at all times and at all places; it is a permanent institution and by its juridical nature it belongs to the international order. Whether or not there is a war, State sovereignty continues to exist. A common law crime is not a "night crime" or a "day crime" depending on the moment when it was committed, but a crime committed in violation of a permanent law of life guaranteed by a permanent State or order.

The limitation of State sovereignty written into the laws of war follows State sovereignty and not war. The inhabitants of a criminal State are the first to profit by these prescriptions because it is for their protection that international laws limiting State sovereignty with respect to human life were signed.

The limitations of State sovereignty in the laws of war belong by their juridical nature to the laws which regulate international order. This is confirmed by an important event. On 31 March 1933, in order to protest against the first crimes of the Third Reich, Sir John Simon invoked in the House of Commons the first paragraph of Article 23 - e of the Covenant of the League of Nations thus:

"The members of the League will endeavor to insure and to maintain human labor conditions for men, women, and children in their own country as well as in all countries to which extend their commercial and industrial relations, and to this end maintain the necessary international organizations."



This law limits State sovereignty and by this fact is valid in time of peace as in time of war. Similarly, the laws which limit State sovereignty and which are further inserted in the laws of war are for the same reason valid in time of war and in time of peace.

In conclusion, the Crime against Humanity has passed through the following evolution:

(1) It is not committed in violation of the common law, but owing to the suppression of this law, to the prejudice of certain categories of individuals; racial, national, religious, and political.

(2) This suppression of internal criminal law is an act of State sovereignty.

(3) This act of State sovereignty is a crime committed in violation of international laws limiting the sovereignty of States with respect to the human person.

(4) The international laws limiting the sovereignty of States with respect to the human person govern the international order and are valid for both without distinction, in times of peace and in times of war, whether they are inserted in "the code" of the laws of war or in that of the laws of peace.

(5) Consequently the Crime against Humanity committed in time of peace (Count Four of the Indictment) falls under the same laws as the Crimes against Humanity committed in time of war (Count Three of the Indictment).

Professor Dr. Antonin Hobza: Survey of the International Law of War. With an Annexe: The Punishment of War Criminals, Prague, 1946. (In Czech)

The re-opening of the Czechoslovak Universities has made very urgent the demand for text-books of the subjects which are part of the curriculum of law students. As the author points out in his preface, it has not been possible to prepare, in the short time since liberation (May 1945), a text-book on International Law having regard to recent international literature as well as to the experience gained during the second World War. Professor Hobza therefore decided to publish in book form the lectures on the international law of war he used to deliver to his students up to 1939. He has added, however, to the book an annexe dealing with recent developments in the law of the punishment of war criminals. This annexe (pages 151 to 171) will be summarised here in some detail. This is warranted by the fact that Professor Hobza is one of the scholars of international law who lived under the occupation through six years, entirely cut off from all reliable information regarding facts and literature connected with the subject. It is believed that the opinion of an international lawyer thus faced with the result of the developments of 1939 - 1945, will be of some interest to those who had the opportunity of observing the course of events at close quarters.

I. In the first chapter ("The Development") the author points out that a long time before the first World War the opinion of civilised nations



had been established that waging war does not give the belligerents the right to use whatever means they choose, but that it was contrary to the legal notions of civilised nations to use barbarian and perfidious means of warfare. There was, however, no unanimity as to the precise delimitation of the individual prohibited acts, as to their nature, and as to the reaction to such delicts. The fourth Hague Convention regarding the laws and customs of warfare on land provides, in its Article 3 only for the liability of the States to pay compensation. The Geneva Convention on Prisoners of War of 1929, however, enjoins upon the contracting States to communicate with each other the provisions of penal law they may adopt to ensure the application of the Convention. The obligation to surrender war criminals to the victorious Powers was imposed upon the conquered nations by the Peace Treaties of Versailles, St. Germain, and the other treaties concluding the first World War. They were to be punished by municipal military courts.

An unambiguous notion of an international crime did not, however, exist, and does not exist today. There are, of course, some categories of so - called war crimes, both in the narrower and in the wider sense. War crimes in the wider sense are all crimes punished under either municipal or international laws as far as they have been committed in connection with the war. War crimes in the narrower sense are certain barbaric or perfidious types of war or warfare prohibited by the international law of war.

An attempt at the prosecution of war criminals by an international court was, for the first time, made through the provisions of the Versailles Treaty providing for the punishment of the Emperor Wilhelm II for "a supreme offence against international morality and the sanctity of treaties". These penal sanctions have not materialised because world public opinion was not sufficiently strong or unified at the time. It was the world revolution which started during the second World War, which induced the Governments of the civilised nations to proceed from the formulation of war crimes to their punishment. The revolutionary ideas were supported by the Press, by progressive statesmen and progressive jurists, whose part in the creation of revolutionary norm should be neither overlooked nor ridiculed. The question of aggressive war played a fundamental role in the development of the problem of the punishment of war criminals. Originally, war was the right of every sovereign State and was considered a remedy of self-help. After the first World War the civilised nations arrived at the conclusion that aggressive war is an aggression not only against the attacked State, but, simultaneously, an aggression against the international legal order, which is based on the principle of the peaceful settlement of international disputes, and that it was a delict of international law - nay, even an international crime. The author then refers to the so-called Geneva Protocol of 1924, the Declaration of the General Assembly of the League of Nations of the 24th September, 1927, and the Resolution of the Pan-American Conference at Havana on 18th February, 1928 and points out that it was the Briand-Kellogg Pact of 27th August, 1928, through which the legal position of belligerent States has been changed. Whereas previously the legal position of both belligerent parties in relation to each other had been equal, the war now became the relationship between, on the one hand, the international offender, whose acts were repugnant to international law, and the attacked State, which was protected by it on the other hand. It was, therefore, not possible to judge the acts of the two belligerent states on the same footing, at least from the moral point of view. The equal legal basis had however not yet been altered. The laws and customs of war applied to both parties. There was still in existence the principle of equality of both belligerent parties as far as their international legal responsibility for the kind of warfare was concerned. The theory of a criminal aggressive war had not yet penetrated into international practice.

II. In the second chapter of the Annexe Professor Hobza deals with what he calls the new provisions regarding the punishment of war criminals. The legal situation as described in the first chapter has been, he says, substantially altered by the unheard-of and sensational conspiracy entered into by Hitlerite Germany against international law and the security of states, races, and their members. This conspiracy has admittedly thrown overboard all provisions of international law and all principles connected with the idea of the humanisation of war. It has taken over into its programme all barbarous and perfidious means of warfare known from history and has invented new, far more terrible ones, bringing the whole civilised world into a state of terror, fear and despair. This conspiracy excludes, as a consequence of its aims and methods, the application of the legal provisions valid for a normal war. There was no question of two fighting fronts, on principle equal before the law, but it was a plot secretly prepared with all conceivable criminal methods, against which eventually the whole civilised world rose in order to save the rule of law and the main achievements of modern civilisation. This world conflict between law and crime led to a revolutionary world movement demanding:

- (1) the punishment of war criminals by international tribunals,
- (2) the safeguarding of peace by a world organisation with powers of compulsion,
- (3) the disarmament of nations who habitually use violent methods in international relations.

This revolutionary movement led to revolutionary laws and and revolutionary tribunals, international and municipal. The revolutionary character of the new legal provisions explains their grandeur, but also their incompleteness and uncertainty. It does not consist of strict legal formulae, but of ideas, which are to be brought to life quickly. From this it follows that the application of all the principles of the old, pre-revolutionary law is out of place, and would amount to a misunderstanding of the whole revolutionary period with all the changes which have been brought about. As far as the punishment of war crimes, both in the narrower and in the wider sense, is concerned, a solid basis has been created by two international agreements which are of extraordinary importance both for international and for municipal law, namely the Moscow Declaration of 1943 and the London Agreement of 1945.

After summarising the contents of these two documents, the author says that the International Military Tribunal resembles military courts or courts-martial in the traditional sense

- (a) by being established in occupied territory - in Germany;
- (b) by being established in a territory under military administration - the Control Council for Germany, appointed by the Four Great Powers;
- (c) by the fact that the decision respecting execution and alteration of the sentences is vested in this military administration.

It differs from military law courts:

- (a) by the fact that it consists of judges of different nations;
- (b) by the fact that it adjudicates under international provisions which are contained in the Charter of the International Military Tribunal annexed to the London Agreement.

In discussing the three types of crimes falling under the jurisdiction of the International Military Tribunal under Article 6 of its



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Charter (crimes against peace, war crimes in the narrower sense, crimes against humanity) Professor Hobza remarks that it goes without saying that many of the crimes mentioned are already punishable under municipal laws. He quotes Trainin's statement that "a soldier who violates the laws and customs of war appears in a two-fold role: in the role of a bandit and in the role of a soldier". He also accepts Trainin's opinion regarding the "transformation of the war into organised state banditry".

The notion of the crime of planning an aggressive war is, according to Hobza, entirely new. The same applies, in his opinion, to the notion of the international crime against humanity. The preparation and organisation of the conspiracy against peace, law and humanity is, under the London Agreement, the basic crime which qualifies all connected individual crimes. We are faced with an entirely new notion of a collective international crime. This notion makes possible the prosecution of whole organisations and the punishment of individuals for the mere membership in such organisations. The old rule that a collective (a corporate body) cannot be liable of a crime has been abandoned in spite of differing opinions of many conservative lawyers.

The learned author underlines that for Czechoslovakia the questions connected with belligerent occupation are of particular importance. As the territory of Bohemia and Moravia was, at the time of the "protectorate", occupied by German forces, it would seem at first sight that it was possible simply to apply the written and customary provisions regarding belligerent occupation to the war crimes committed in Czechoslovakia. This, of course, would be possible if we were faced with a normal war, either defensive or offensive. Actually, according to the London Agreement, we have before us an entirely new phenomenon - a conspiracy against international law; and the war accompanying this conspiracy can aptly be described as a criminal war or, according to the Soviet Foreign Minister, Molotov, as a "bandit war." After the second World War we have instead of the traditional two types of war, to distinguish between three:

- (1) defensive war,
- (2) offensive war in the traditional sense, where both parties stand on the basis of the international law of war
- (3) criminal war, where the aggressor does not feel bound by any provisions of international law whatsoever.

The aggressive war in the traditional sense is repugnant to international law only through its initiation, whilst the criminal war is a violation of the Law of Nations both through its initiation and through the way it is being waged. Consequently, it is necessary to distinguish between a belligerent occupant in the traditional sense and a criminal occupant within the meaning of the London Agreement.

If the total war initiated by Germany is, in fact, an international crime, very important consequences flow from this for the belligerent occupation. In a normal war, certain obligations of the inhabitants of occupied territory correspond to the rights of the belligerent occupant, and vice versa. If, however, the occupant is declared by the civilised world to be a criminal in the legal sense, then the distinction between his acts against persons and property according to whether or not they are permitted loses any relevance. In the same way as it would be absurd if the legal order distinguished between what the thief or robber may or may not appropriate out of the attacked object, as absurd is the notion that a criminal occupant would be obliged to respect private property, but that he could be allowed, in law, to appropriate to himself moveable State property, to order requisitions and contributions, to administer justice and to organise public administration. It would be absolutely unreasonable to enjoin upon the attacked population that it must not resist in arms

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the criminal army which itself does not recognise any law, which enslaves innocent persons, imprisons them in concentration camps, and tortures and murders them in ways for the condemnation of which it is impossible to find appropriate expressions in human language.

It is a consequence from the notion of criminal war that:

- (1) all acts of the organs of criminal occupation against persons and property are, without distinction, crimes in the legal sense;
- (2) all actions undertaken by the population against the criminal army are legitimate means of defence.

The partisan formations fighting against the German invaders operated in legality and by no means in illegality, as it used to be popularly, but erroneously described according to the German opinion and from the point of view of German law which the Germans themselves described as "Machtrecht".

The criminal war, or the war of conspiracy, is the widest notion comprising all types of war crimes under the London Agreement. Under the express provisions of this Agreement the instigators of the plan of the criminal war are responsible for all acts performed by any persons in the execution of the plan, and any of those persons by the mere participation commits a war crime. This applies still more in the case of the special organisations established only for the purposes of the criminal war, like the S.S., or S.A., and similar organisations. The notion of a criminal war entirely excludes the existence of any rights of the criminal occupant on occupied territory.

The doctrine would be erroneous which would say that the legal notion of a criminal war initiated by Germany has been established as late as by the London Agreement of 1945, and that the international customs of war or the Hague Conventions of 1899 and 1907, which grant to the belligerent occupant certain rights on the occupied territory applied to the German acts committed in occupied territory up to that Agreement. This is an opinion which will certainly be held by certain Germans. This attitude is, however, entirely wrong. Already in the course of 1938 the civilised nations held the conviction that Hitler was preparing an organised attack on the international legal order, an attack, which at the end of the war has been described by the London Agreement as a criminal conspiracy. From this conspiracy there arose the criminal war which is, on principle, repugnant to all provisions of the international law of war. The legal conviction of the criminal character of the German war, of the conspiracy against peace, and the crimes against humanity, had been created already at the beginning of the war, and has been only declared by the London Agreement.

In a revolution, legal norms are created even without written formulation. The laying down of written rules is always a later step taken when the revolutionary principles are to be clearly expressed and to be retained in force.

Nor would the situation be met by the opinion that the London Agreement has introduced "new" provisions with retrospective effect. This was not acceptable at the London Conference to some lawyers for its repugnancy to the old principle "no crime and no punishment without a law" (that is: without a preceding law). As a matter of fact the criminal character of the acts dealt with by the London Agreement had been recognised by the revolutionary legal opinion of all civilised nations prior to the London Agreement. The Germans cannot, therefore, rely on the belief that during the whole war up to the London Agreement they could consider themselves to be belligerent occupants in the sense of the older international law, and that this law granted them certain rights towards the local population.



As far as the above-mentioned principle "no crime and no punishment without a law" is concerned, it is according to Professor Hobza in the interest of a correct appreciation to add the following: this principle is correct only on condition that in the relevant provinces of law (international law, municipal law, canonic law) there is already in being a perfect criminal code based and codified by written laws, and that the acts in question were not committed at a stage, when the new law is only in the making by judicial sentences and when the judge is simultaneously the law-giver. We know from the history of law that the sentence is older than the statute, and that the evolution proceeded from sentences to enactments, from the decisions on individual questions to abstract general rules, from casuistry to general rules and written laws. Law always begins in being declared by the judge before it is written down by the legislator. Professor Hobza quotes in support of this statement an anonymous article in *Cahiers du Monde Nouveau*, 2. No. 2 (Février 1946, page 1266, et seq.). The same applies to international law. This holds still more good in the case of revolutionary law. At the beginning this law is being created by administrative and judicial decisions on the basis of the legal conviction which has conquered in the revolution. In the province of international law it is really unthinkable that, at the very beginning of a world revolution, there should be concluded law-creating international conventions (international laws) in all the forms necessary in normal times; the promulgation of real laws on the basis of the new victorious ideas is regularly effected only towards the end of the revolution or when it has been finished.

As far as the punishment of the major war criminals of the European Axis is concerned, the International Military Tribunal has been created by the agreement of the four leading Powers concluded without the usual formalities in the name of other civilised nations. This was a revolutionary procedure. The Tribunal is called upon to judge acts which during the revolution have been looked on as international crimes according to the conscience of the civilised nations. The objection that the basis for punishment, namely a preceding law, is missing makes no sense at a time of revolution.

Professor Hobza draws attention to another peculiarity of revolutionary law. The old legal notions and formalities are not sufficient for this law because a revolution cannot be effected within the old legal order. Revolutionary tribunals do not judge delicts in the legal sense only, but primarily political delicts. It is, he says, rightly pointed out in the quoted article in *Cahiers du Monde Nouveau* that the importance of the second World War was rather political than military. It had not the object of giving effect to certain legal rights by means of war, but the war had a political aim: to overpower and eventually annihilate certain nations and to enslave humanity. It was really a fight against humanity, and for the crimes against humanity are therefore primarily responsible those political leaders who prepared the plan of the criminal war, and not those who fought and who are responsible in the second instance only. The fundamental features of this world disaster would not be appropriately covered if we restricted ourselves to the points of view of the old law of war, which has been entirely superseded by new events. The author ends this chapter by quoting "For new crimes, new law".

III. The third chapter is devoted to the description of the punishment of war crimes in Czechoslovakia. Reference is made to the Czechoslovak enactment of 19th June, 1945, establishing Extraordinary People's Courts, as amended by later statutes. The Extraordinary People's Courts are organs of the Czechoslovak Republic, its municipal organs, both as far as their organisation and as far as their jurisdiction and the formulation of the crimes are concerned. In their

ideological/



ideological aspect they are simultaneously organs of international justice, which, for the first time, has been enacted and organised as far as the punishment of war criminals is concerned, during the second World War and after its conclusion. As all categories of war crimes are enumerated in the Charter annexed to the London Agreement, it would have been sufficient if every United Nation had established or designed a certain Court to have jurisdiction to punish war criminals under the provisions of international law. This is the case with the Military Commissions of the United States, according to the Regulations for the Punishment of War Crimes of the 23rd September, 1945. The Retribution Decree of the President of the Czechoslovak Republic chose, however, a different method: it established Extraordinary People's Courts and vested in them jurisdiction not only over war crimes, but also over certain municipal crimes committed at the time of the enhanced danger to the Republic. The Decree itself formulates the war crimes. This is an example of the well-known transformation of international provisions into the forms of internal municipal law, in accordance with the so-called transformation theory which is applied in Central and Eastern Europe, whereas according to the more modern and more correct Anglo-Saxon opinion international law forms part of the municipal law and can therefore be applied directly. The connection with war crimes in the international sense is indicated in the Retribution Decree only indirectly by the fact that it speaks of the punishment of Nazi criminals, of the German war effort, of crimes committed in the service or in the interest of Germany or of her allies, and by declaring membership or holding office in certain German organisations, or organisations subservient to Germany, to be criminal. The Retribution Decree does not mention international law at all. It cannot be considered a municipal provision which gives effect to the principles contained in the London Agreement, because this Agreement was concluded after the promulgation of the Czechoslovak Retribution Decree. One may, however, see in its provisions regarding war criminals the execution of revolutionary principles expressing the legal conviction of the civilised nations as it came into existence in the course of the second World War. The juxtaposition of international and municipal crimes in one municipal enactment has both its drawbacks and its advantages. The main advantage for the Czechoslovak Extraordinary People's Courts consists in the fact that all crimes falling within their jurisdiction have a uniform basis. The Extraordinary People's Court is obliged to base its judgments exclusively on the provisions of the Czechoslovak Retribution Decree. The author remarks that the Czechoslovak State has jurisdiction to punish also such war crimes as would not, perhaps, be covered by the provisions of the Retribution Decree; it would, however, be necessary to vest this task in a different Court, or widen the jurisdiction of the Extraordinary People's Court accordingly.

G.L.J: Crimes Against Humanity. World Conscience demands Nazi Oppressors to be brought to Justice. British Zone Review, a fortnightly review of the activities of the Control Commission for Germany (B.E.) and Military Government Volume 1, No.21, 6th July, 1946.

This Article gives valuable information on the way the British Authorities in the British Zone of Germany are dealing with the problem of crimes against humanity. From the point of view of legal theory, the following explanation of the notion of crimes against humanity is of particular interest.

"Isolated offences do not fall within the notion. As a rule systematic mass action, particularly if it can be shown to be authoritative, will be necessary to transform a common crime, into a crime against humanity and also of international concern. Only crimes which either by their magnitude and savagery or by their great number or by the fact that a similar pattern is applied at different times and places, shock the conscience of mankind, are regarded as crimes against humanity. This applies whether or not they were offences against the law in force in Germany at the time where they were committed".

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It will be noted that these observations are based on the United Nations War Crimes Commission Document C.201, (General Propositions defining the term "Crimes against Humanity"), submitted to the Commission by Committee III on 30th May, 1946, paragraph 6 of which reads as follows:

"Isolated offences do not fall within the notion. As a rule systematic mass action, particularly if it can be shown to be authoritative, will be necessary to transform a common crime, punishable merely under municipal law, into a crime against humanity which thus becomes also the concern of International Law. Only crimes which either by their magnitude and savagery or by their great number or by the fact that a similar pattern is applied at different times and places, endanger the international community or shock the conscience of mankind, warrant intervention by States other than that on whose territory the crimes have been committed, or whose subjects have become their victims".

Commander W. M. Mouton: "War Crimes". Nederlandsch Juristenblad, Year 1946, Nos. 30 and 31, pp. 509 et seq., and 529 et seq., (in Dutch).

A review of two Articles by the Netherlands Representative on the United Nations War Crimes Commission, W. M. Mouton's, which was published in the Dutch legal periodical "Nederlandsch Juristenblad" on the 14th and 21st September 1946, will appear in the next issue of this "Survey".



XIX

No. XIX.

October 25th, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

(Research Office)

WAR CRIMES NEWS DIGEST.

NOTE. The above title replaces that of Press News Summary  
used in the early numbers of this series.  
(For internal circulation to the Commission.) - R.O.7

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I.

SUMMARY OF EVENTS.

THE FAR EAST

TRIAL OF MAJOR WAR CRIMINALS IN TOKYO.

Extracts from Reports for July and August 1946  
received through the British Commissioner.

(A) JULY.

The prosecution continued to work slowly through its case. The slow pace of proceedings, interrupted as they frequently are by procedural matters, was reduced to a snail's pace towards the end of the month when Chinese witnesses were being cross-examined on their affidavits, necessitating translations in Chinese as well as Japanese and English.

A prosecution request to present as evidence excerpts from affidavits of some 650 former prisoners of war, internees, etc., was heatedly opposed by the defence, who wanted to bring the witnesses themselves to Tokyo. The Tribunal, however, admitted the request, provided that complete copies of the affidavits were made available to the defence.

UEEZU, one of the defendants, has asked permission to call as witnesses in his defence five Japanese ex-army officers, three of whom are believed to be in Russian hands. (One of these officers is Lieut.-General HATA HIKESABURO, whom Marshal HATA, SHUNROKU's counsel, maintains is the person who really committed many of the offences ascribed by the prosecution to his client.) This may cause more delays, since no system has been evolved for securing such witnesses, although the Tribunal had granted one previous similar request.

At the beginning of the month the prosecution was dealing with the beginnings of the "Manchurian Incident," and in the latter part of the month with those of the "China Incident." In connection with the latter, defence counsel suggested that economic penetration by Britain and the United States in China had perhaps justified Japan in taking defensive measures, as economic aggression was always followed by "political manoeuvrings". The President disallowed this line of cross-examination, saying: "Economic aggression is not a crime."

Early in July the American judge, Mr. Justice HIGGINS, retired on personal grounds. He was succeeded by Major-General CRAMER, who sat on the Tribunal for the first time on the afternoon of the 22nd July.

(B) AUGUST:

During August the Major War Criminals Trial was devoted to the Manchuria and China phases of the indictment. At the beginning of the month the prosecution presented official documents from the archives of the Japanese Foreign Office showing Japanese plans to

dominate and exploit Manchuria. One interesting document set out the casuistic argument Japan was to use against the international censure which she knew her actions in Manchuria would evoke. This was that as Manchuria had come into existence as a result of the disintegration of China, it was Manchuria who violated China's territorial integrity. The documentary evidence was supported by the testimony, particularly on the subject of the murder of CHANG TSO-LIN, of the former Japanese Consul General at MUKDEN, MORISHIMA.

The greater part of the month was, however, taken up with the China phase. Various witnesses testified on Japan's provocative behaviour in North China, and, later, on the behaviour of Japanese troops and particularly on the atrocities committed during the "Rape of Nanking." This testimony was supported at the end of the month by much further evidence in the form of affidavits (which defence counsel frequently and strenuously opposed, demanding the presence of the deponents). In this general context Japan's economic aggression in China was naturally mentioned again, and defence counsel objected, referring to the President's remark (reported above) that "economic aggression is not a crime." The objection was overruled by the President, who said that it is a crime "if it is an adjunction of an aggressive war".

But by far the greatest time given to the China evidence was taken up by the examination of the Ex-Emperor, Henry PU YI. He had been brought to Tokyo, under armed guard, by the Russians, and he occupied the stand continuously for the Court's eight working days between 16 and 27 August. His testimony described the complete grip of the Japanese Kwantung Army on all important spheres of activity in Manchuria. Early in his testimony he said that he had assumed the rôle of Emperor of Manchuria in order to oust the Japanese, but later declared that all his acts, including his assumption of the office, were done under duress from the Japanese. His only function had been to give a rubber-stamp authenticity to the acts and decisions of the Japanese, who never left him alone. This was the main theme of his testimony.

When he referred to his inability to speak in private to Lord LYTTON in 1932, he said: "I would have been murdered if I had told the truth". Upholding an objection to the prosecution's leading questions, the President of the Tribunal pointed out that PU YI was not on trial, and that "danger of life or fear of death does not excuse cowardice or desertion on the battle field", and that likewise it did not excuse treason or collaboration. This clear indication of the Tribunal's assessment of PU YI's reliability did not prevent the protracted cross-examination referred to above.

The defendants HIRANUMA, MATSUI and SHIRATORI were each absent through sickness from court for an odd day during the month. OKAWA was removed on 26 August from the Tokyo Imperial University Hospital to the Matsuzawa Hospital, a lunatic asylum.

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THE FAR EAST (Cont.)

SUMMARY OF EVENTS FROM PRESS SOURCES.

J A P A N.

THE INTERNATIONAL MILITARY TRIBUNAL.

A Reuter message from Tokyo (8.10.46) said: Russia has told the International Military Tribunal in Tokyo that the Emperor HIROHITO should be declared a war criminal and put on trial. The Soviet also wants "ZAIIBATSU," big Japanese industrial and financial combines, to be tried as criminal organisations. A 65-page Russian statement said the war began in 1931 with Japan's Manchurian aggression, and all members of the Government at that time should be on trial.

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C H I N A   A N D   H O N G K O N G

The Times reported from Hongkong (15.10.46): Three Japanese medical orderlies were convicted in Hongkong yesterday of inhumane treatment of prisoners of war in Formosa. One, a sergeant, was sentenced to eight years' imprisonment, and two corporals received two years' imprisonment.

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S I N G A P O R E.

An A.P. message from Singapore (10.10.46) said: Generals OTSUKA and HIDAKA were among five Japanese who to-day received death sentences for war-time atrocities in the Outram Jail, Singapore. The two Generals were judicial officers during the Japanese occupation of Singapore.

Five of the jail staff received life sentences, and 29 others sentences ranging from one to 18 years.

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E U R O P E

SUMMARY OF EVENTS FROM PRESS SOURCES

A U S T R I A

Suicide of Dr. Eppinger.

The Times (27.9.46) reported from Vienna the suicide of Dr. Hans EPPINGER, who was believed to have been implicated in medical experiments at Dachau.

Death Sentence on Seidl, ex-commandant of Theresienstadt.

Wiener Zeitung (4.10.46) reported: Dr. Siegfried SEIDL, the former camp commandant of Theresienstadt, was found guilty of high treason under paragraphs 10 and 11 of the constitution, of committing torture under clauses 2 and 3 of paragraph 3 of the War Criminals Law and of brutal ill-treatment which resulted in death. The accused was sentenced to death by hanging and to the confiscation of his property.

C Z E C H O S L O V A K I A

Trial of Kurt Daluge.

Prague radio (9.10.46) announced the opening of this trial, on that day, before the Extraordinary People's Court in Prague-Pankrac. The Prosecution accused the defendant of seven groups of crimes as listed in the Retribution Decree. These crimes fell into three categories: (a) crimes against the Republic committed during the Munich crisis and the occupation of the Border Region; (b) crimes committed by participating in the invasion of 15th March, 1939, and (c) crimes committed while holding office as Acting Reich Protector. The indictment charged DALUGE with at least 1,050 murders. The Presiding Judge, Dr. Kozak, opened the trial. The Tribunal consisted of the same judges who tried K.H. Frank. DALUGE was defended by Dr. Stok. The Tribunal rejected an objection by the defence that the Court was incompetent to deal with the case and that DALUGE should be judged by the International Tribunal at Nuremberg.

DALUGE's line of defence was that he had hardly any real power in the Protectorate, and could do nothing against Frank's orders. Hitler and Himmler, he said, had been the responsible leaders; and, as a soldier bound by his oath, he had been compelled to carry out their orders. He claimed that Lemmer, former Head of Hitler's Chancellery, could testify that Frank had seen Hitler five times, whereas he, as Reich Protector, had never seen him even once. The Court decided to admit this plea, provided that Lemmer's affidavit reached the Court before the end of the trial. Lemmer is now in Nuremberg jail. The Court proved that DALUGE had drawn up a report for Hitler stating that 3,188 Czechs had been arrested, 1,357 shot, the villages of Lidice and Lezaky destroyed, and other acts of terror committed. DALUGE was convicted and, after attempting suicide, was executed on October 23rd.

The Daily Telegraph (2.10.46) reported from Prague that the trial of Dr. TISO, former President of Slovakia under the Germans, was to open at Bratislava on 6.10.46. Accused with him were MAROH, Propaganda Minister, and SIDOR, Minister to the Vatican, who will be tried in his absence.

GERMANY.

(General)

Berlin asks for a War Criminal Court.

Berlin radio reported (15.10.46): The Greater Berlin works council adopted a resolution, asking the Allied Control Council to set up a German court for the trial of war criminals in Berlin. A second resolution demanded the expropriation of active Nazis, war criminals, and persons with vested interests in war.

War Criminals: New Law signed.

Berlin radio (15.10.46): Ordinance No. 38, concerning the arrest and punishment of war criminals, nationalists and militarists, and the internment, control and surveillance of potentially dangerous German citizens was confirmed and signed by the Co-ordinating Committee on 12th October.

American Zone.

Competence of German Courts: New U.S. M.G. Regulations.

Berlin Radio reported (15.10.46): New regulations concerning the competence of the German courts have been issued which amends U.S. Military Government Ordinance No. 2. They take effect on 15th October. They provide that no German court may declare itself competent in cases of criminal or civil law or exercise jurisdiction affecting one of the United Nations, their citizens, or the Armed Forces of one of the United Nations, or individuals belonging to these Armed Forces, or members of their entourage, unless expressly authorised under the law, or by an ordinance or by instruction of the Allied Control Council or the U.S. Military Government. The same applies to stateless persons regarded as displaced persons of one of the United Nations and to citizens of the United Nations holding public offices or employed in an official capacity in the Allied administration of Germany. Nor is a German court competent to deal with punishable offences committed by former national socialists or other persons against citizens of the Allied nations or their property, unless expressly authorised by the Allied Control Council or U.S. Military Government.

Citizens of the Allied Nations and persons regarded as displaced persons, or stateless persons belonging to one of the United Nations, who do not come under one of the above groups of persons are also exempt from German jurisdiction, unless they submit to their competence in writing or have been permanent residents in Germany since 1930.

Moreover, under the new ruling no death sentence may be carried out without the consent of the U.S. Military Government. Such consent will be given by the Head of the Military Government concerned in the three States of the U.S. zone or by the Deputy Military Governor. .... The right of the Head of the Military Government of a State and the Deputy U.S. Military Governor to postpone or prohibit the execution of a death sentence at any time before the execution remains unaffected.



G E R M A N Y. (Cont)

American Zone.  
(Cont.)

News of Germany (27.9.46) reported that five German doctors, Konrad SCHIEFFER, Siegfried RUFF, Hermann BECKER-FREYSING, Theodor BENZINGER, and Professor Oskar SCHRODER, had been arrested at Heidelberg and sent to Nuremberg for trial by the "Subsequent Proceedings" organisation of the I.M.T. They are charged with killing concentration camp inmates by experiments in sub-zero temperatures whereby the victims were frozen to death.

British Zone.

Progress of Trials in Germany.

In the House of Lords (15.10.46), Lord MAUGHAM called attention to the trials in the British zone in Germany of persons alleged to be guilty of war crimes and of German nationals alleged to be guilty of crimes and atrocities against the laws of humanity, and of members of the organisations declared to be criminal by the International Court at Nuremberg, and also to the measures taken against persons described as security suspects.

Lord PAKENHAM, replying for the Government, said there had been tried by military courts in the British zone in Germany 495 war criminals, and cases against 3,913 suspects were in various stages of preparation. Only about 1,000 of this total had so far been apprehended. The Government desired expedition, for they recognised the seriousness of the position. A review of the whole situation before the military courts was to be carried out during the next few weeks.

In dealing with those suspected of crime it was now necessary to deal with members of organisations declared criminal at Nuremberg. These would be drawn primarily from the total of about 39,000 in detention. The consequences of the Nuremberg verdict were being considered carefully, and the Government would not set themselves a task which could not be carried out within a reasonable period.

[The full official text of this debate, as reported in Hansard, has been circulated to all Members of the Commission.]

U-Boat Officers Trial.

A B.A.O.R. Press release (14.10.46) said that Karl Heinz MOEHLE, commandeer of the fifth U-boat flotilla, was to stand trial as a war criminal. MOEHLE, a witness in the trial of Admiral Doenitz, was charged with violating the laws of warfare by issuing orders to commanding officers of U-boats that they should destroy Allied ships together with their crews. The trial was to open at Hamburg on October 15th.

(MOEHLE was found guilty and sentenced to five years' imprisonment on October 16th.)

GERMANY (Cont)

British Zone.

Executions in the British Zone.

A B.A.O.R. Press release (9.10.46) said that the Commandant and other convicted members of the staff of Neuengamme Concentration Camp were among 16 war criminals hanged in the British Zone on the previous day. Of 90,000 people who passed through Neuengamme 40,000 died; 3,000 from unnatural causes, and 37,000 from natural causes induced by the unnatural conditions in the camp and its satellites. The killing of 1,000 Russians by phenol injections, the gassing of 197 in their cells, the hanging of 60 Dutchmen, and the execution of a mixed party of some 70 men and women without trial, in April 1945, were a few of the atrocities perpetrated at the camp.

The members of the camp staff executed yesterday were: PAULY, THUMANN, KITT, DREIMANN, RUGE, WARNCKE, REESE, SPECK, BREMS, BAHR and TRZEBINSKE.

Others executed were: GERICKE and HESSLING, convicted of running a baby farm for the infant children of Polish and Russian forced workers. Ninety out of one hundred babies forcibly removed from their mothers, died in this home over a period of six months; KNORR, convicted of killing inmates of concentration camps at Stocken and Ahlem; GRILL and MULLI, convicted of hanging a Polish worker who had an affair with a German woman.

A B.A.O.R. Press release dated 12.10.46 said that twelve war criminals were hanged in the British Zone on the previous day, viz.: QUAKERNACK, REDDEHASSE, HEIDMANN and OEGIELSKY, convicted of killing inmates of Belsen Camp.

Werner RHODE, camp doctor, convicted of killing four British women agents by injections at Struthof/Natzweiler Camp. This man was also responsible for torturing and burning alive his victims after they had been used for medical research.

STRAUB and BERG, condemned for the murder by slow hanging of an R.A.F. pilot at Struthof/Natzweiler Camp; also responsible for the hanging of thousands of victims.

FISCHER convicted for the murder of an R.A.F. pilot; WOLFERT and HARTLES condemned for a similar murder.

FRANKE and JAUCH, convicted for killing by hanging twenty children and other Allied nationals, who had been used for medical experiments.

Kesselring taken to Frankfurt.

Agency messages (15.10.46) stated: Field-Marshal von KESSELRING, former commander of the German forces in Italy, was flown from Northolt to Frankfurt yesterday, escorted by a British Army colonel.

Von KESSELRING had been in American custody. In August the British applied for him to be transferred to their jurisdiction, so that he could be questioned concerning atrocities and reprisals committed against Italian partisans.

GERMANY (Cont.)

British Zone.

Death Sentence on Schipper.

A Reuter message (11.10.46) stated: A British military court at Wilhelmshaven to-day sentenced to death Sebastian SCHIPPER, member of the staff of the Wilhelmshaven Gestapo gaol known as the "yellow cross" prison. SCHIPPER was charged with the killing and ill-treatment of Allied nationals. Two other Gestapo men received prison sentences.

LUXEMBURG.

The Commission was informed (18.10.46) that some trials of war criminals were expected to open at Luxemburg about December 1st.

POLAND.

Oswiecim Camp Trial.

The Warsaw radio announced (3.10.46): The Polish War Crimes Mission has obtained the consent of the French, British and U.S. authorities to the transfer of all war criminals responsible for the conduct of the Oswiecim camp and of all documentary evidence regarding the camp to Poland. HOESS, the camp commandant, is being held in Poland. The trial of HOESS and of all his surviving collaborators, which will be held in Katowice, will be one of the biggest ever held in Poland, with over 100 criminals in the dock.

Arrests and Surrenders.

The following announcements were made by the Warsaw radio (11.10.46.-14.10.46): A transport of several score war criminals will arrive here shortly from Dachau, where they are being held by the Americans. Among them is General of the SS., REINHARDT, the author of the destruction of Warsaw, and Councillor IUSE, accused of looting Polish cultural treasures and of persecuting the Polish clergy.

The security authorities have arrested one of the Commandants of the Maidanek death camp in Silesia. He is Rudolph BETTER, who was responsible for many deaths and acts of brutality. He will be tried by a special court.

The Polish authorities have collected much evidence on the criminal activity of SS. General von dem BACH, especially in connection with the brutal deportation of Polish population of the Zywiec District; 270 photographs illustrating this process, with von dem BACH as the central figure of it, have been collected.



P O L A N D (Cont)

Arrests and Surrenders (cont.)

Forty-four war criminals extradited by the Polish authorities have arrived in Stettin from the British zone. They include Jozef FUSS, who took part in mass executions of Poles; Fritz BRAUNER, who volunteered for the public execution of 45 Poles in 1943; and Heinrich SCHMIEDING, who organised the deportation of thousands of Poles to forced labour in Germany.

Extradition proceedings will be taken against them.

The U.S. authorities in Germany have handed over General Jacob STERNBERG to the Polish authorities. During the war he commanded German detachments assigned to suppress partisan formations in the Lublin region.

An agency message (14.10.46) reported that General SPOHRENBURG, SS. Chief in Lublin from 1943 to 1944, and head of the department for suppression of resistance in Eastern Poland, had been handed over to Poland by the U.S. Military Government in Germany to be tried as a war criminal.

Y U G O S L A V I A.

Belgrade Trial of 32 War Criminals.

The Council of the Military Tribunal for Belgrade to-day began the trial of 32 German war criminals, members of the Wehrmacht, the SS., or the Todt Organisation. In his indictment the military prosecutor said that, as officers in charge and guards of camps for Yugoslav prisoners-of-war in Norway, the 32 defendants took an active part in individual and mass murder, beating and flogging to death, as well as starving and various other tortures, which resulted in the most painful death of at least 1,500 prisoners of Yugoslav nationality.

Reported Acquittal of General Gambari.

According to the Belgrade Communist newspaper "Borba", General GAMBARI, former commander of the Italian occupation forces in Yugoslavia, has been acquitted of all charges alleging crimes in Balkan countries.

II.

THE NUREMBERG JUDGMENT.

Rejection of Appeals for Clemency.

The Allied Control Council announced on October 10th, 1946, that petitions for clemency had been presented on behalf of GÖRING, HESS, RIBBENTROP, KEITEL, ROSENBERG, FRANK, FRICK, STREICHER, FUNK, DÖNITZ, RAEDER, SAUCKEL, JODL, SEYSS-INQUART, and von NEURATH, and BORMANN. No petitions were presented on behalf of KALTENBRUNNER, von SCHIRACH, or SPEER. The council could not receive the plea by RAEDER to be shot instead of imprisoned, as the council could not increase sentences passed by the Tribunal.

The council rejected the pleas by Göring, Hess, Ribbentrop, Keitel, Rosenberg, Frank, Frick, Streicher, Funk, Dönitz, Sauckel, Jodl, Seyss-Inquart, and von Neurath. The council also rejected as premature the plea for clemency made on behalf of Bormann, without prejudice to such a submission if he should ever be arrested. The pleas by the SS., Gestapo, S.D., and Nazi Leadership Group were deemed "not receivable" because the council was not authorized to reconsider the judgment of the International Military Tribunal.

The Soviet representative made the following statement: "I deem it my duty to state that I wholeheartedly agree with the opinion of the U.S.S.R. member of the Tribunal and I am sure there was enough evidence also to sentence SCHACHT, PAPEN, and FRITZSCHE and obtain the death verdict on HESS and recognise that the HITLER Government with its general staff and supreme military command were criminal organisations."

Executions at Nuremberg.

An Allied Control Council communiqué was issued by the Four-Power Commission at Nuremberg at 6.15 a.m. on October 17th, 1946. It said: "The sentences of death passed by the International Military Tribunal at Nuremberg on the first day of October 1946, on the undermentioned war criminals were carried out this day in our presence: Joachim von RIBBENTROP, Wilhelm KEITEL, Ernst KALTENBRUNNER, Alfred ROSENBERG, Hans FRANK, Wilhelm FRICK, Julius STREICHER, Fritz SAUCKEL, Alfred JODL, and Arthur SEYSS-INQUART. Hermann Wilhelm GÖRING took his own life at 10.45 p.m. on October 15th, 1946."

Position of the Acquitted Men.

The Times reported from Nuremberg (8.10.46): General Lucius Clay, deputy military governor of the American zone, has made it clear that the case of SCHACHT and of Hans FRITZSCHE—presumably of PAPEN too if he does not gain permission to enter the British zone—is regarded as a purely German affair so long as they are not tried for offences on which they were acquitted under the Nuremberg indictment. He expressed the wish, however, that they should remain free until their conviction.

Mr. Lock, in a letter to the Manchester Guardian (9.10.46) deplored the intention of the German authorities to re-arrest the acquitted men. He wrote: "Is not this a most unfortunate position, for will not all that is now taking place become "precedent" in the

common international law which is being gradually built up? Had these men been soldiers under military law or civilians under their own national laws acquittal would have secured them from further processes, but the international law, under which they were tried affords no such protection. Their fellow-countrymen wish to try them under "de-Nazification laws," of which we know little."

Dr. Mosheim, in a letter to the Daily Telegraph (11.10.46) on the proposed trial by a de-Nazification Court, wrote, in part, of the three men acquitted: "Whereas the International Military Tribunal was established 'for the just and prompt trial and punishment of the major war criminals of the European Axis' who had committed crimes against, peace, against laws or customs of war, or against humanity, the jurisdiction of the De-Nazification Court lies in a different sphere. That follows clearly from the 'Laws of Liberation from Nazism and Militarism.' This law, which is operative in the three 'Länder' of the U.S. zone of occupation, is based on Directive No. 24 of the Control Council for Germany. The aim of the law is to purge the public, economic and cultural life in Germany from prominent Nazis and militarists and their influential supporters. .... The utmost the De-Nazification Court can do is to issue an order against the person whom the judges deem it necessary after a fair and exhaustive hearing, to be employed for ten years in a labour camp on reconstruction and restitution work. In addition, judgment can be made against the individual concerned to pay damages to a restitution fund and certain civic rights can be withdrawn from him. The whole amounts, therefore, more or less to an administrative measure. The International Military Tribunal was set up for criminal proceedings. According to the De-Nazification Law, de-Nazification proceedings can be carried on irrespective of any criminal prosecution which might take place at the same time in respect of the same facts." .....

#### British Press Comments.

Criticisms of the judgment continued to be based on the assumption that the only charge on which the defendants were convicted was that of "strategic planning". "E.H.W." wrote to the Manchester Guardian (14.10.46): "Most disquieting among the many anomalies at Nuremberg was the resort to retroactive law, a conception usually considered repugnant to British feeling and tradition. This repugnance is shared in America, where Senator TAIT has stated: 'The trial violated the fundamental principle of American law that a man cannot be tried under a law which did not exist at the time of his crime. .... As every sovereign nation has a private general staff engaged in drawing up plans for problematic wars, it seems fantastic that the German Service chiefs were convicted, because they did what their counterparts did the world over.' .....

Colonel Liddell Hart, writing to The Times (18.10.46) criticised the death sentence on JODL as "unduly severe", and said that he was "only a super-clerk" and that "there was no evidence that he instigated crimes against prisoners." He went on to argue that "It would seem that his condemnation hangs on the fact that he signed orders that were dictated by HITLER. In legal practice a signature implies more responsibility than it does in military practice. Every commander's orders in the British Army are issued under the signature of his staff officer or adjutant as a matter of form. It is always understood that the responsibility lies with the commander who gives the orders, not with the adjutant who signs them. It is hoped that this important difference may be realised by any further courts composed of civil judges."



In reply to some of these criticisms, Dr. SCHWELA, Legal Officer, wrote to The Times (19.10.46), as follows:

"Sir,—

Your necessarily brief biographical sketches of the Nazi leaders, together with the criticism expressed by your Special Correspondent at Nuremberg and by Captain Liddell Hart, will be considered to be a confirmation of the opinion held in many quarters that KEITEL and JODL were hanged simply for doing their professional duty—namely, planning, preparing and waging war—and that their sentence was an application of what is regarded in those quarters as ex post facto law at that.

Perusal of the judgment, when it is available to the public, will, I feel, correct this impression, for the judgment makes it quite clear that KEITEL and JODL, who were found guilty also on Counts 3 and 4 (charging the commission of war crimes and crimes against humanity), admitted respectively the following facts, which were established by the tribunal:—

(1) KEITEL issued a directive commanding that paratroops made prisoners of war were to be turned over to the Sicherheitsdienst, or S.D., an organisation declared criminal (August 4th, 1942).

(2) JODL's staff, with his knowledge, drafted, and KEITEL circulated, a directive ordering that all members of allied commando units, whether in uniform and whether armed or not, were to be "slaughtered to the last man," even if they attempted to surrender, that they were never to be treated as prisoners of war, and that they were to be handed over to the Sicherheitsdienst if they survived. (October 18th, 1942.) KEITEL reaffirmed the directive after the landings in Normandy in an order initialed by JODL and later extended it to allied missions fighting with the partisans.

(3) When, in September, 1941, Admiral CANARIS drew KEITEL's attention to the fact that the O.K.W. regulations for the treatment of Soviet prisoners of war were illegal under international law, KEITEL wrote on his memorandum: 'The objections arise from the military concept of chivalrous warfare. This is the destruction of an ideology. Therefore I approve and back the measures.' (September 23rd, 1941.)

(4) KEITEL ordered that attacks on soldiers in the east should be met by putting to death 50 to 100 Communists for one German soldier—(September 16th, 1941)—and that military commanders should always have hostages executed when German soldiers were attacked. (October 1, 1941.) KEITEL also admitted that in May, 1941, a directive was passed on to field commanders laying down that political commissars should be liquidated by the army. The plan to eliminate Soviet

commissars was contained in the directive for "Case Barbarossa."

(5) KEITEL signed an order that civilians suspected of offences against troops should be shot without trial, and that the prosecution of German soldiers for offences against civilians was unnecessary. (May 13th, 1941.)

(6) On December 7th, 1941, the so-called "Nacht und Nebel" decrees, over KEITEL's signature, provided that in occupied territories civilians who had been accused of crimes of resistance against the army of occupation should be tried only if a death sentence was likely, otherwise they should be handed over to the Gestapo for transportation to Germany.

(7) By teletype of October 28th, 1944, JODL ordered the evacuation of all persons in Northern Norway, and the burning of their houses.

The defence that KEITEL and JODL had acted under superior orders was rejected by the Tribunal. The true test, the Tribunal said, was not the existence of the order but whether a moral choice was in fact possible.

It submitted that there is a difference between an adjutant certifying a true copy of an order issued by his commander, as in the practice referred to by Captain Liddell Hart, and a field-marshal or a general himself issuing the criminal order, though he claims to have done so under the order of the head of his Government. KEITEL and JODL were not sentenced because they were German service chiefs, but, on the contrary, because, in the words of the Tribunal, they were 'a disgrace to the honourable profession of arms.' No one received the capital sentence at Nuremberg unless he was found guilty of war crimes or crimes against humanity.

I am, etc.,

(signed) Egon SCHWELB,

Legal Officer,  
United Nations War Crimes Commission.

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"SUBSEQUENT PROCEEDINGS"

Further War Crimes Trials.

The Times reported from Washington (16.10.46): Justice JACKSON stated in a report to President TRUMAN, that proceedings were in preparation against other Nazi war criminals, including "a considerable number of industrialists and financiers". He added that a careful analysis was being made of the tribunal's decision, to determine any effects of the acquittal of SCHACHT and von PAPEN on this plan. The only question remaining to be settled was the method to be used for further trials. The most expeditious, he thought, would be "that each of the occupying Powers assume responsibility for the trial within its own zone of prisoners in its own custody."

In a further report from Washington, The Times (18.10.46) stated that, in announcing the resignation of Justice JACKSON as Chief Prosecutor, the White House said that the President was giving careful consideration to Mr. Justice JACKSON's proposal that the remaining criminals, including industrialists, politicians, diplomats, and police officials, should be tried by the individual Powers occupying Germany.

Reuter (17.10.46) reported from Nuremberg: Mr. Peterson, United States Assistant Secretary of War, predicted that trials of Nazi industrialists, politicians, S.S. chiefs, and others—now that the major criminals have been executed—will begin "some time next month." He discussed detailed plans for these new trials with Brigadier General TAYLOR, who was appointed last spring as Justice JACKSON's deputy in charge of subsequent proceedings. More precise information about these trials must await an announcement from the White House, following Justice JACKSON's resignation as chief prosecutor. Reflecting an "intense interest" on the part of War Department officials in these next trials, Mr. Peterson said that Washington officials were "specially anxious that subsequent trials be prosecuted with the same aggressiveness that characterised the first trials."

Reuter reported from Berlin (24.10.46) the following announcement: The American Military Government has promulgated the programme under which special tribunals in the U.S. Zone will try former Nazi leaders, the number of defendants approaching 1,000. Dr. Karl BRANDT, Reich Commissioner for Health, and other SS. doctors will be charged with experiments on human beings in concentration camps and with "mercy-killing." The chief German industrialists (including Alfred KRUPP, the Dresden Bank, Friedrich FLOCK and his associates), diplomats and SS. officers and Hitlerite judges are expected to follow the doctors into the dock.

According to the U.S. News Service, the following have been removed from Dachau to Nuremberg for trial: MEISSNER, Chief of the Reich Chancellery; LAMMERS, Secretary of the Reich Chancellery; DARRE, Minister of Agriculture; and BACKE, successor to DARRE.

Brigadier-General TELFORD TAYLOR, U.S. Army, has been appointed Chief Prosecutor, and in the next two or three months his War Crimes Office will run six courts in simultaneous session. The opening date for the trials has been fixed for November 15th, but it is understood the trials may be delayed. Three American judges have arrived at Nuremberg.



XX

No. XX.

November 15th, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

(Research Office)

WAR CRIMES NEWS DIGEST.

NOTE: The above title replaces that of Press News Summary  
used in the early numbers of this series.  
(For internal circulation to the Commission.) - R.O.]

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I.

SUMMARY OF EVENTS.

EUROPE.

(Note: Names marked with a + indicate war criminals already listed by the United Nations War Crimes Commission.)

AUSTRIA.

Former H.J. Leaders sentenced.

Neues Oesterreich (6.10.46): The verdict was announced yesterday at the trial before the People's Court of the seven HJ leaders, who were accused of taking part in the murder of 60 Hungarian Jews. Hans DOBESBERGER was sentenced to three years' imprisonment; Alfred EHRLICH and Johann KEINZ two years'; Walter FEIGL 18 months' and Fritz HAGENHAUER 15 months.

CZECHOSLOVAKIA.

Trial and Execution of Joeckl; ex-commandant of Terezin.

Reuter reported from Prague (25.10.46) that Heinrich JOECKL, + former commander of the Terezin concentration camp had been executed in Litamerice prison. He had been found guilty of murder,, manslaughter, and blackmail, and of having supported the Nazi movement on the territory of the Czech Republic. JOECKL had charge of the camp known as the "little fortress Terezin", used as a camp for Czech politicians, many thousands of whom were tortured and killed.

Other agency messages describing the trial said that on one occasion six Jewish inmates of the Terezin concentration camp in Czechoslovakia were alleged by witnesses to have been compelled by Heinrich JOECKL, to fight each other to the death with pitchforks. JOECKL admitted that there had been a plan to mass all the inmates together and blow them up before the final retreat of Germans from Czechoslovakia.

Prague radio (25.10.46), describing the end of the trial, said: From a judicial point of view, the sentence was only of interest where the counts on which JOECKL was found not guilty were concerned. He was acquitted on the following charges: (1) Carrying out Nazi propaganda on Czechoslovak territory; (2) treating human beings as slaves and deporting them; (3) public violence in having restricted personal freedom; (4) robbery in the service of Germany (5) informing. This was more than was asked for by JOECKL's counsel. The sentence was received apathetically by JOECKL.

Hans Ludin handed over to the Czechoslovaks.

Reuter reported (17.10.46) that Hans LUDIN, former German Minister in Czechoslovakia had been handed over to the Czechoslovakian Government by the American occupation authorities in Austria, and was now in Bratislava prison waiting trial as a war criminal.

FRANCE

Trial of Nazi Industrialists:

Paris Radio (4.11.46) reported: M. Charles Dubost, French Assistant Prosecutor at Nuremberg, to-day made a statement to AFP concerning the proposed trial of Nazi industrialists. Speaking on behalf of the French delegation, M. Dubost said that the trial ought to be an international one, similar to that already held at Nuremberg. Mr. Justice Jackson, in a recent report to President Truman, suggested that separate trials be held in the various zones; M. Dubost, however, thought that discrepancy in penalties might result from such a procedure.

GERMANY.

Trials by German Courts.

Allied Control Council Order No. 38.

Radio Berlin (15.10.46) announced: Allied Control Council Ordinance No. 38 dispels many doubts about future action against Nazi war criminals who have not yet been tried. The powers which this ordinance gives to German courts is evidence of the confidence the Allies place in the German people. The disturbing and confusing differences in de-Nazification procedure in the various zones are ended at last. It is with great satisfaction that we find not only Nazi activists but also the industrialists who profited from rearmament included in the category of main criminals. The fact that the Control Council has made provisions for the confiscation of assets acquired in the "Aryanisation" process and from armaments profits is also welcomed. Furthermore, the ordinance allows German courts to try persons accused of crimes against the German people according to German law.

War Criminals Court: Works Councils' Request.

Another announcement of the same date said the first plenary meeting of the Greater Berlin works councils, held on 15.10.46, unanimously adopted a resolution, to be submitted to the Allied Control Council, asking the Council to set up a German court for the trial of war criminals in Berlin. The plenary meeting further addressed an appeal to all German parties and organisations in all four zones, urging them to support the demand for the setting up of a German court to try those war criminals who, under the Nuremberg verdict, escaped the punishment they deserved.

Petition by the Greater Hesse Assembly.

News of Germany (21.10.46) reported: The Greater Hesse Constituent Assembly sent a resolution to the Allied Control Council, asking permission to interpret the Council's law No. 11 (lifting certain paragraphs of the German penal code relating to high treason) so as to apply those paragraphs against violations committed before August 5th, 1946, and directed against the Weimar constitution. The resolution further declared the formation of a uniform German court to handle the trials to be desirable and expressed its assent to the viewpoint taken by the Land Minister for justice in this matter.



GERMANY.

American Zone.

Trial of Nazi Leaders: U.S. Military Government Order.

The DINA service reported from Nuremberg (24.10.46):  
It was announced here to-day that the setting up of courts of justice in the U.S. zone for the trial of former Nazi leaders has been authorised in Military Government Order No. 7, which deals with the prosecution of leading Axis personages who were not tried by the International Military Tribunal. It defines and delineates the sphere of activities of the secretariat, which will have a headquarters in Nuremberg, and which will administer and co-ordinate the affairs of the Courts of Justice in the U.S. zone. On international trials, Order No. 7 says: "The Military Governor can, at his discretion, enter into agreements with one or several commanders of zones of member nations of the Allied Control Council for the purpose of joint proceedings in various cases."

The courts in the U.S. zone are to be set up in accordance with Control Council Law No. 10 and Articles 10 and 11 of the Charter of the International Military Tribunal. Every U.S. court will consist of three or more members appointed by the Military Governor. The Military Governor, at his discretion, may also appoint one deputy judge. Decisions and verdicts will be found by a simple majority. The accused will receive the indictment in advance, and may be represented by counsel. Proceedings will be conducted or translated into a language which the accused can understand. Through their counsel, the accused may produce evidence (ein Beweisverfahren fuehren), cross-examine witnesses, ask the court to summon witnesses and submit documents. The courts will not be bound by rigid technical rules concerning the taking of evidence. No appeal will be permitted. The Military Governor can alter but not increase sentences. Cases tried by international courts are subject to the approval (Begutachtung) of the zonal commanders. The execution of death sentences can be postponed should the statements of the convicted person be of value in proceedings against others. Forfeiture of property or restitution ordered by the court will be executed by the Military Governor according to Control Council Law No. 10, Articles II and III. The secretariat in Nuremberg will collect and distribute documents, keep files and archives, assist the various courts and maintain liaison with the Military Governor. The work of the Secretariat will be supervised by the courts themselves.

Simultaneously with the announcement of Major General Telford Taylor's appointment as Chief Prosecutor, it was officially announced on Thursday in Nuremberg that, in proceedings against war criminals, he has been placed under U.S. Military Government for Germany. He is directly subordinate to the Deputy Military Governor and will co-operate with the U.S. Military Government legal adviser and the Chief of Judicial Service, U.S. Forces in Europe. The Chief of Judicial Service, as adviser to the General Staff and the C-in-C. U.S. Forces, is responsible for the prosecution and investigation of "violations of the Rights of War against U.S. citizens, especially prisoners-of-war"; it is also his duty to prosecute for atrocities committed in concentration camps before they were captured by U.S. troops. The U.S. Chief Prosecutor is competent to prosecute "leaders of the European Axis Powers and their principal representatives" and "such members of groups and organisations declared criminal by the International Military Tribunal". Other cases of war crimes can be referred to the Chief Prosecutor by the Military Governor or his deputy.

GERMANY.

American Zone.

(Cont.)

Second Nuremberg Trials.

Leipzig Radio (3.11.46) announced: The indictment for the second Nuremberg trial, the first of a series involving some 1,000 persons, has been published. The trial of 23 German doctors will reveal a degeneration of moral standards which is an outrage on the scientific conscience. .... Every effort is being made to forget this moral degeneration of ours, and other countries are expected to do likewise. This attitude is the same as that of many Germans, who, under HITLER, refused to admit the concentration camp atrocities and brushed aside the truth as mendacious propaganda. ...

With reference to the arrival of three U.S. judges at Nuremberg to take part in the coming trials of German doctors and others, as reported in No. XIX of this series, News of Germany (26.10.46) reported that three judges, with Colonel Swearingen as alternate, will comprise the tribunal for the trials of the 23 German doctors who will be tried in the same courtroom used for GORING and his co-defendants. When these trials are finished the judges may preside over another of the series of war crimes trials scheduled here.

The Schacht Case.

Stuttgart Radio reported (6.11.46): Colonel Dawson has sent the following letter to Dr. SCHACHT: "General Clay has instructed me to acknowledge your letter of 11th October, and to state that it is the declared policy of Military Government to avoid intervention in German courts and courts set up under the Law of 5th March, 1946, as long as instructions of the occupation power are not infringed. The German courts, reconstituted on a democratic basis, as well as the courts set up under the Law of 5th March, 1946, are responsible for protecting the legal rights of persons under their jurisdiction... Military Government, therefore, holds that in your case there is no reason for intervening in court proceedings."

Art Treasures returned.

The DANA service announced (20.10.46): Colonel Allen, Chief of the U.S. Military Government Restitution Division, stated that altogether 40,000 art items had been returned to the owner States in a year. Of a total of 61 consignments, 17 with 28,900 individual items went to the French Government, eight with roughly 1,650 items to U.S. troops (sic) in Austria, four with 400 items to Belgium, two with 400 items to Czechoslovakia, while 4,700 items were returned to the Netherlands; 1,700 to Poland and 2,300 to the Soviet Union. In September one consignment of 1,443 items was sent to France and another with 142 to the Netherlands both including paintings, sculptures, tapestries and art items of lesser importance.

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✓ No copy of this indictment is at present available. A list of the probable defendants in the trial of the doctors was circulated in Research Circular No. 15.



GERMANY.

American Zone (Cont.).

Guderian, Milch<sup>+</sup>, Bodenschatz<sup>+</sup> and Thierack<sup>+</sup> for Trial.

An agency message from Frankfurt (23.10.46) mentioned among the defendants at the forthcoming trials: GUDERIAN (former chief of the German General Staff); MILCH<sup>+</sup> (former Air Under-Secretary) and former Luftwaffe chief BODENSCHATZ.

Router reported (1.11.46) that court proceedings at Nuremberg would begin again before Christmas with the trial of Otto THIERACK(+), former Reich Minister of Justice, and five or six Nazi Secretaries of State and judges of the "People's Court."

MILCH<sup>+</sup> was indicted on 13.11.46 for murder and for authorising medical experiments on prisoners.

British Zone.

T r i a l s.

Flensburg Death Ship Trial.

A B.A.O.R. Press release (25.10.46) announced: Three members of the SS. have been sentenced to death on a charge of "crimes against humanity" at a Military Government Court at Flensburg. The Court acquitted seven of the accused in view of the conflicting evidence. It was stated at the trial that 1,000 prisoners from Stutthof concentration camp were transported to Flensburg by a barge conditions on which resembled the "Black Hole of Calcutta". Two hundred died on the way, and it was alleged that a further 40 women were shot by the SS. guards before the remainder of the prisoners embarked. It is understood that appeals will be lodged on behalf of Otto WIPPERMAN, Herbert HOLZ and Herbert WALLBRECHT, the three sentenced to death.

The Ravensbrück Camp Trial.

The Commission was informed that the trial of Commandant SUHREN (+), Dr. TREITE and 16 other officials at the Ravensbrück women's camp would open before a British Military Court at Herford on December 3rd next (for list of defendants see Weekly Bulletin No. 66 of 4.11.46.) SUHREN<sup>+</sup> and PFLAUM, his labour leader, escaped 8.11.46.

James McDOWALL, correspondent of the Manchester "Daily Despatch" at British H.Q., wrote (29.10.46): Among the victims at this camp were at least five British women secret agents, WAAF. and FANY. officers, captured after being parachuted into occupied countries, and after being tortured, killed—three by shooting and two in the gas chamber.

The witnesses were to include: Squadron Officer Vera ATKINS, who briefed women agents before they dropped into enemy territory; Odette SANSOM, who was awarded the George Cross for her work in the resistance movement, and, despite torture, refused to incriminate her colleagues; Genevieve de GAULLE, niece of the General, Miss La GUARDIA, sister of the U.N.R.R.A. chief, and Countess RACZYNSKI, related to the Polish Foreign Minister.

Ravensbrück had an average population of 40,000 women. In one period of three weeks in March last year 3,000 women were gassed "to decrease the numbers because of overcrowding."



GERMANY.

British Zone (Cont.)

Report concerning SS. General Fegelein.

The Daily Telegraph (4.11.46) mentioned a report that a certain NANSSEN, who was given a police post in the North Rhine province was identical with SS. General FEGELEIN, brother-in-law of Eva BRAUN, who married HITLER.

Krupp may be tried by British.

The Manchester Guardian (6.11.46) quoted a Reuter report from Frankfurt that American and British war crimes authorities had reached an agreement whereby the British would try Alfred KRUPP, head of the Krupp armament firm, as a war criminal.

G R E E C E.

The Commission was informed of the opening of the following trials early in November:

Generals BREUER and MULLER and Sergeant SCHUBERT.

The charges alleged: 1. Murder and massacres; 2. Systematic terrorism; 3. Deportation of civilians; 4. Pillage; 5. Wanton destruction of villages in Crete; 6. Torture and ill-treatment of civilians.

The defendants were accused of being responsible for the execution of some 3,000 persons in Crete during the German occupation of the island. The Bishop of Arcadi gave details of the massacres in the region of Viamou (Crete), and of the burning at Damasta and other villages near Candia. General BREUER tried to excuse the atrocities committed in the villages of Crete on the ground that they were reprisals for the kidnapping of General KREIPER. The Bishop of Rethimnes gave evidence concerning the destruction of Anoyia where out of 750 houses only 25 - 30 were spared.

Colonel Beikus and his SS. Organisation.

On November 4th there opened the trial of members of the German SS. organisation No. 3000 commanded by Colonel BEIKUS whose extradition was demanded by Greece. Colonel BEIKUS is accused of acts of terrorism and other crimes. Nine Italians who collaborated with him will be tried simultaneously. The organisation in question financed itself by exploiting gambling dens, etc., in Greece.

I T A L Y.

War Criminals: Enquiry Commission's Examination.

Rome Radio reported (24.10.46): The Commission of Enquiry into alleged war crimes met on 21st and 22nd October, following the decision taken on 7th September, which established the principle of military penal justice for those who violated the international laws of war. The Commission examined a list of about 40 soldiers and civilians who may be accused. It includes ROATTA, Governor BASTIANINI, Generals ROBOTTI and MAGALDI, and Lieut.-Colonel SORENTINO. The Commission will propose that the War Ministry place the acts before the competent authorities. The first group also included Lt.-Colonel Pietro CARUSO, ex-Chief of Rome Police, who was shot after being tried on another charge by the Rome High Court.

Re-arrest of SS. Colonel Dollmann.

Reuters reported (9.11.46) that Colonel Martin DOLLMANN, former SS. chief in Rome, who escaped from an Allied prison camp in April, 1946, had been re-arrested by the Italian police.

Generals Melzer and Mackenzen for Trial.

The Hamburg Radio (11.10.46) announced: two German generals, MELZER and MACKENZEN, will appear before a military tribunal in Rome next Friday accused of murdering a number of Italians in April 1944.

T H E   N E T H E R L A N D S.

SS. General Rauter for Trial.

The Sunday Times (3.11.46) reported from The Hague that SS. Police General Hans RAUTER, former Gestapo Chief in Holland, would be tried by a Special Court there. The Nieuwe Courant said that RAUTER might be handed over, later, for trial in the British zone of Germany. (RAUTER has not been charged by the British.)

Nazi War Criminals sent to Holland.

Radio Hilversum (1.11.46) reported: The Netherlands War Crimes Commission has during the last few days transferred the following war criminals to the Netherlands: Gerhard H. MUELLER, SS. Sturmbannführer, Major of the Schutzpolizei, deputy commandant of the 83rd Regiment, "Landsturm Niederlande"; Ludwig HOMERICH, SS. Oberscharführer in the regiment concerned in the notorious Tiel bank robbery at the beginning of 1945; Willy MANNIG, head of the SD in Zwolle at the beginning of 1945, responsible for many war crimes; Johan PAROUTEL, responsible for the summary execution of 35 Dutchmen at the Westerbork camp in the autumn of 1944.

N O R W A Y.

Death Sentence on Wilhelm Wagner.

The Jewish Chronicle reported from Oslo (1.11.46): Sentence of death has been passed on Wilhelm WAGNER, a German police officer, formerly stationed at the Norwegian concentration camp at Berg, for having been the ringleader in the deportation of 531 Jews from Norway in 1942. Only ten of the Jews survived. A Jewish student who had been at the camp said that following a rumour that the British had landed, the Jews were lined up and taken to Oslo. On arrival at Auschwitz, the employable ones were put to work and the rest sent to the "gas-chambers."

P O L A N D.

Police-General Walter von Stein for trial.

An agency message from Warsaw (14.10.46) said that, in addition to Police General van SPOHRENBURG (see No. XIX of this Digest, page 9), 120 other Germans would be handed over, including a former commandant of the Auschwitz concentration camp, and General Walter von STEIN, former police president for Danzig and West Prussia.

U.S.A. War Crimes Investigator coming to Warsaw.

Warsaw Radio (11.11.46) reported: General Taylor, the U.S. representative for the investigation of German war crimes in Europe, will arrive in Warsaw on 8th November. He has succeeded Jackson, the U.S. Chief Prosecutor. He will be the guest of the Ministry of Justice. His arrival is connected with the preparations for the trials in Nuremberg of German industrialists and of those guilty of deporting the Polish population to Germany.

S P A I N.

The Degrelle Case: Spain's Position.

In a talk on the Madrid Radio (19.10.46) Regina Garcia said that Mr. Trygve Lie, U.N. Secretary-General, had received a note from the Belgian Government concerning the supposed help given by Spain to DEGRELLE's escape. The speaker observed that, freely acceding to demands of the Powers interested in DEGRELLE, the Spanish Government had asked him to leave the country within a short period. He left Spain clandestinely and by his own efforts, evading general vigilance measures. The Spanish authorities could not justly treat this man like a common criminal. Hence they could not be accused of complicity in DEGRELLE's escape and cannot supply the information demanded by the Belgian Government.



U. S. S. R.

Stalin's Declaration on War Criminals.

Moscow radio (29.10.46) reported STALIN's answer to point 17 of the questions put to him in an interview: "17.- How far, in the opinion of the Kremlin, should the Allied Powers go in hunting down and trying minor war criminals in Germany? Does it consider that the Nuremberg decisions created a sufficiently strong basis for such action?" - "The further they go the better."

YUGOSLAVIA.

The Novisad Trial.

The trial opened on 22.10.46 before the Supreme Court of Voivodina of nine Hungarians accused of causing the massacres at Novisad (1942) in which over 2,000 people—Serbs and Jews—are said to have perished during the Hungarian occupation of Novisad and Southern Backa. The Presiding Judge was Dr. Peter Varka; the prosecutor was Dr. Karel; defence counsel were appointed ex officio by the Court.

The accused were headed by General Ferenc SZOMBATHELYI, former chief of the General Staff. It is alleged that in September 1941, he established a court-martial which sentenced patriots to death. It was he also who decided on all the massacres in the Voivodina.

Another defendant was General Ferenc FÖKETHALYI-ZEIDNER, Commander of the Fifth Army, with headquarters in Szegedin, who was SZOMBATHELYI's right-hand man. He drew up an elaborate plan for carrying out serious crimes in the Voivodina.

Josef GRASSY, as commandant in Novisad, took a direct part in the Novisad massacre and personally ordered his subordinates to commit even greater bestialities.

The remaining six defendants were accused of active participation in the atrocities committed in the Voivodina.

On the second day of the trial General SZOMBATHELYI was interrogated. He said that he considered the bloody round-up at Novisad an internal affair which came within the purview of the gendarmerie and the police, while the military units only assisted in it. It emerged from his admission that the supreme functionaries in Hungary at that time knew of these round-ups and the methods applied, and that "Horthy knew everything." It was on SZOMBATHELYI's proposal that a special mobile tribunal was attached to the General Staff and passed the most severe punishment on patriots. The defendant also admitted that the execution of the round-up was entrusted to ZEIDNER, then Commander of the Fifth Army at Szeged, who boasted publicly that he was HITLER's commissioner in Backa. SZOMBATHELYI also admitted that he knew ZEIDNER to be a fanatical Nazi who intended to exterminate all Novisad Jews. For this reason, the civil authorities were not informed of the forthcoming round-up lest the Jews should get alarmed and escape.

YUGOSLAVIA (Cont.)

The Novisad Trial (cont).

The Court then turned to the question of the compulsory labour units. SZOMBATHELYI admitted that the treatment and food were bad and that beatings-up occurred frequently. He pleaded that the culprits were punished. SZOMBATHELYI was then interrogated on the subject of punitive working units. He admitted that prisoners were maltreated and tortured. On the eve of SZALASI's coup d'état in 1944, SZOMBATHELYI and HORTHY visited HITLER and KEITEL, and HITLER then requested that the German Army should be allowed the complete occupation of Hungary; SZOMBATHELYI admitted having issued orders to the Hungarian Army not to resist the German advance into Hungary.

On the third day of the trial (24.10.46) the Court heard the evidence of ZEYDNER, former commander of the Honved Fifth Army. He admitted that SZOMBATHELYI ordered "energetic" reprisals to be carried out. Upon receiving this order ZEYDNER gave the signal for "raids" in Novisad resulting in the murder of over 2,000 men, women and children. He submitted a report to SZOMBATHELYI and HORTHY, after the raid, boasting that the danger of a rising in Backa had been removed for at least a year.

Reuter reported (31.10.46) that the tribunal had, on that day, sentenced to death nine of the accused, including Generals SZOMBATHELYI, ZEYDNER and General GRAZI. SZOMBATHELYI was sentenced to death by shooting. Lajos GAL, Dr. Miklos NADJ, Ferenc BAJOS, Pavle PEREPATIC and Dr. Erne BAJSAJI were also sentenced to death by shooting; FAKET-ELJANI, GRAZI and ZELDI to death by hanging.

A further Reuter despatch of 5.11.46 reported that the condemned prisoners had been executed that day at Novisad.

The Trial of the Korgen Camp (Norway) Staff.

(Note: The crimes in Korgen Camp were the subject of Yugoslav charges filed with the U.N.W.C.C. - 4136,4137)

Tanyug Radio (17.10.46) reported the trial, which was held at Belgrade, before a military tribunal: Captain Heinrich SCHULTE of the Wehrmacht, Korgen camp commandant, was described by witnesses as having ordered the beating up and shooting of prisoners and, on one occasion, the opening of fire on them from the camp tower. He increased the number of working hours to 14 a day, and provided inadequate rations. SCHULTE denied everything, though, under cross-examination, he admitted that he "had heard later" that prisoners were flogged. Only after the Presiding Judge had read the deposition of a German witness, did SCHULTE admit having ordered the shooting of a mentally deranged prisoner and the shooting from the tower. SCHULTE said that he had never heard of the Geneva Convention referring to prisoners-of-war.

The next defendant, Adolf WENZEL, a Wehrmacht N.C.O., was a notorious torturer. He admitted having struck people with the rifle-butt and bayonetting them.

One of the worst prison camps was on the island of Ulvingen in the Far North. Its commandant, Lieut. Emil von BARSIKOWSKI, ordered two or three prisoners to be killed every day. He said that only one was killed, occasionally. Apart from that, he denied



YUGOSLAVIA (Cont.)

The Trial of the Korgen Camp (Norway) Staff (cont.)

everything. The N.C.O. Karl FLECKSTEIN was for a time camp commandant at Ulvingen, and was one of the worst torturers. He admitted having struck prisoners, which, he said, was allowed by the Geneva Convention.

Captain Joseph ZWIEGER of the Wehrmacht was stated by numerous witnesses to have forced sick prisoners to carry heavy stones. The last of the defendants, Captain Czeslaw RASZEK of the Wehrmacht, by nationality a Pole, was a counter-espionage officer, Gestapo agent, and one of the chief German espionage agents in Norway. He is directly responsible for the deaths of a great number of prisoners. He organised an espionage network, with the aid of Yugoslav criminals in all Norwegian camps, getting the names of members of supporters of the National Army of Liberation and Yugoslav partisan detachments, which he forwarded to the Gestapo. On one occasion, he handed over 85 prisoners who were immediately liquidated. The defendant denied everything. The accused would have liked all the prisoners to have been killed, "because there would have been no living witnesses left of what was done in Norway."

Three Yugoslav witnesses described how 1,500 Yugoslavs met their deaths in the Norwegian death camps. Another witness, pointing to MATTHIJS, said: "This is the fellow who made us sing while we were digging graves and they were shooting our comrades. Four hundred of us came to Bothen, and of this number 280 were killed."

On 18.10.46 the Tribunal heard further evidence. Witnesses confirmed all the counts of the accusation and described in detail horrible scenes of flogging, shootings, starvation and other tortures ordered by the accused Germans. According to the testimony of one survivor, Oscar LINDER, a camp official, forced a Yugoslav prisoner to write a will leaving all his possessions to LINDER, and when the prisoner had been systematically tortured with hunger and flogging, and finally expired, his "heir" LINDER extracted his gold teeth. Witnesses charged the accused Rastnek CHESLAUS with having ordered a large number of killings of Yugoslavs and of Russian prisoners-of-war.

On 23.10.46 Taryug reported: After an eight-day trial the the Belgrade Military Tribunal to-day sentenced Karl HESSE, Commander of the Korgen camp, to be shot, together with his deputies Karl LAMPE, Ignatz VITEK and 18 other officers and N.C.O.'s, mostly members of the SS. Two others have been sentenced to 20 years' penal servitude, one to 15 years, one to 14 and two to 10 years. Other defendants of a total of 32 accused, were sentenced to imprisonment ranging from five to nine years. In announcing the verdict, the Court stated that the defendants had committed atrocities not only contravening the Geneva Convention but also basic human feelings and customs of war. The defendants took an active part in mass and individual murders of prisoners, flogging to death, poisoning, strangling, starvation and other methods of torture which resulted in at least 1,500 Yugoslavs losing their lives.



YUGOSLAVIA (Cont.)

Concentration Camp Judgments.

Belgrade Court Sentences German War Criminals.

Belgrade Radio reported (5.11.46): The Belgrade Military Court this morning announced sentence of death by shooting on the Commandants of the Osnabrück camp, Colonel Ernst BLUMEL and Friedrich EVCKE; Strasbourg camp commandant, Colonel Kurt SIEBER; Bardleben camp commandant Waldemar DEHM; Wehrmacht officers Friedrich RADEMACHER, Franz KUNZE and Erich ERINHAUS, foreign foreman of the munitions factory in Balsrode. Willy MUND, Lagerführer of the labour command; Feldwebel Willy MÜLLER; the physician at the city hospital of Lüneburg, Dr. Helmuth BOCK and Dr. Gunter SCHULZ, and a nurse from the hospital, Margarethe DELERHSEN.

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THE FAR EAST ...

THE FAR EAST.

GENERAL.

The Daily Telegraph Tokyo correspondent (1.11.46) gave the following figures, said to be derived from war crimes statistics from Australia, the British South-East Asia Command and records of the Supreme Commander for the Allied Powers. It does not include Dutch, Canadian or French Indo-China figures, which are not up-to-date.

Of those tried, 981 were found guilty and 242 not guilty. Death sentences were passed on 225. Most of these were hanged and the remainder shot. There were 16 suicides.

Class B. war criminals are those accused of having violated the laws and customs of war. They include military officers and prison camp guards.

[The corresponding UNWCC. Progress Report gave the following data for the Far East: Cases tried: 520; Accused 1,350; Death sentences: 384; Imprisonment: 704; Acquitted: 262.]

J A P A N.

The International Military Tribunal.

Agency messages (21.10.46) reported a statement by the Associate Prosecutor, Mr. Quilliam of New Zealand to the effect that secret orders for war with Britain and the United States were issued on November 10th, 1941—nearly a month before the sudden attack was delivered; that in January, 1941, the Japanese made an aerial survey of the North-west Malayan coast at the exact spot where invasion forces landed on December 8th, 1941; and that the printing of operational orders for Pearl Harbour and other attacks began on November 1st. The Pearl Harbour attack took place on December 7th, 1941.

The Daily Telegraph Tokyo correspondent reported (1.11.46): A high-placed person on the staff of the International Military Tribunal which is trying 26 class A. prisoners, estimated that perhaps these trials can be terminated by March 1948. (?) There are 3, he said, who are most likely to be acquitted: SHIGEMATSU, former Foreign Minister; KAYA, former Finance Minister; and HATA, Supreme Commander in China, unless confusion as to his identity is cleared up. It is unlikely, if it is decided to try the members of Zaibatsu, the Japanese industrial and financial combine, that these trials will come up before the end of the present TOJO hearings.

The same paper contained an article by J. Profumo, former chief of staff to the British Mission in Japan, which said, in part: It would be wrong to imagine that the question of war crimes and war criminals has aroused any deep-rooted national interest. There are no signs of any real sense of guilt among the people as a whole.

Scorn for TOJO and others indicted as major war criminals arises not from the idea that they regard them as responsible for plotting the war, but rather for having led Japan to defeat.

J A P A N.

The International Military Tribunal (cont.)

At present the people are amazed at the elaborate physical set-up of the International Military Tribunal. It is reasonable to hope that the logical and laboriously equitable proceedings of the Tribunal will instil into the people a new insight into the treachery and guilt of their compatriots.

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C H I N A A N D H O N G K O N G.

The Times announced from Hongkong (6.10.46) the opening of the trial, on the following day, of Colonel TOKUNAGA, commandant of prisoners-of-war camps in Hongkong. Captain SAITO, chief medical officer, one lieutenant, one interpreter, and one sergeant on 11 charges ranging from inhuman treatment to causing the deaths of prisoners-of-war. TOKUNAGA is charged with causing the deaths of nine British N.C.O.'s and privates in August and September, 1942, also with the beating, torturing and unlawful killing of numerous Chinese civilians, and the misappropriation of Red Cross food, medicines, and clothing for his own use. The trial is expected to last a month. Lieut.-Colonel LAMING, of the Judge Advocate-General's staff, India, is presiding.

Death Sentence on General Kuichi.

The China News Weekly stated (24.10.46) that General TANAKA KUICHI, former Commander of the Japanese 23rd Army and No. 1 war criminal in South China, was sentenced to death by the Military Tribunal in Canton on October 17th. He was the fifteenth Japanese officer to have been so condemned by the Ministry of National Defence.

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S I N G A P O R E A N D M A L A Y A.

"Death Railway" Trial: General Ishida accused.

Reuter reported from Singapore (21.10.46) that General ISHIDA, the Japanese officer who controlled the construction of the "death railway" linking Burma and Siam, during which 14,000 prisoners died, was charged before a war crimes court with inhuman treatment of prisoners of war resulting in many deaths; also with the employment of prisoner of war labour for a war operation. British, Australian and Dutch officers composed the court which was also to try four subordinates on the same charge and for individual atrocities.



THE FAR EAST. (Cont).

SINGAPORE AND MALAYA (Cont).

General Harada ex-C.I.C. Java sentenced.

Reuter reported from Singapore (25.10.46) that sentence of death was passed by the Crimes Court on General HARADA, Japanese C.-in-C. in Java, and on his staff officer, Colonel HASUGI, for ordering the beheading of three Australian airmen. His chief judicial officer, Colonel HARA, was sentenced to 15 years' imprisonment.

War Crimes Trials: Statistics.

A Press correspondent reported (18.10.46) that up to that date 16 Japanese had been executed for atrocities in Singapore and Malaya. The War Crimes Court had tried 132 cases up to that week, and 48 were "on the waiting list," involving 119 Japanese.

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II.

THE NUREMBERG JUDGMENT REACTIONS.

B E L G I U M.

"Pourquoi Pas" (4.10.46) wrote, in part: complaints have been made that the trial at Nuremberg went on too long. The man in the street, who reads about it in the newspapers, got impatient saying: "When will all this business finish, since there is no doubt as to the guilt of these people? What is the use of this interminable procedure?" But now one can realise how indispensable was the care and minute attention to detail which typified the procedure of the tribunal. It was essential that no shadow of doubt should be allowed to exist and that the guilt of the accused should be revealed to the whole world. Now this has been done. .... The fact that it was enunciating a new law explains the slowness of the trial. The first charge was of crimes against peace and the preparation of a war of aggression. If one were to apply this new principle of law to certain great figures of history, what great conqueror of the past from Alexander to Napoleon, would not merit the same treatment as GOERING and KEITEL? If the preparation of war is regarded as a crime against peace, one must consider that not only will all history books have to be rewritten, but the whole conception of the laws of war, which have become woven into the pattern of humanity will have to be altered. It may be that the judgment of Nuremberg will open a new era in the history of civilisation. Will it perhaps be that the world will acquire a conscience?

In the (Belgian) Soir (16.10.46) Julien Benda wrote under the heading "Méditation sur un verdict": Rappelons que, si cette conception du droit international fondé sur les commandements de la conscience humaine et non sur la souveraineté des Etats prend corps aujourd'hui dans un verdict mondial, elle a toujours été, tout au moins en principe-mais c'est de principes qu'il s'agit ici-celle des Français. C'est elle qui paraît dans le fameux décret de la Révolution: "La nation française renonce à entreprendre aucune guerre dans le but de faire des conquêtes et n'emploiera jamais ses forces contre la liberté d'aucun peuple."

G E R M A N Y.

General McClure, Director of Information OMIGUS, as reported in News of Germany (26.10.46) stated that of the people questioned on the outcome of the trials, 53 per cent. in the zone considered the verdicts in general as "just right"; 29 per cent. thought they were "too mild"; 11 per cent. believed they were "too harsh"; and 7 per cent had no opinion.

Seventy-four per cent of the respondents said the trials were carried out in a just manner and only 5 per cent said they were not, while 21 per cent offered no opinion.

In answer to the question: "In your opinion was too harsh a judgment handed down for a particular individual or for a particular group of the accused?" the results were: Yes - 23 percent; No - 57 per cent; no opinion - 20 per cent.

THE NUREMBERG JUDGMENT REACTIONS

G E R M A N Y (Cont.)

"It should be noted," the survey pointed out, "that those who thought that one or some of the verdicts had been too harsh were about twice as numerous as those (11 per cent) condemning the entire verdicts as too strict. Those who answered the question in the affirmative specified KEITEL, JODL, the military in general, RAEDER, HESS and Von NEURATH, in that order."

The acquittal of SCHACHT, Von PAPEN and FRITZSCHE and the prison sentences imposed on some of the other defendants evoked expressions of "surprise and dismay" from the vast majority of political leaders interviewed, the survey report said. But a smaller number criticised the acquittal of the four organisations that were not condemned by the International Military Tribunal—the German general staff, Reich cabinet, S.A. and OKW. (combined high command).

U N I T E D K I N G D O M.

In The Times (29.10.46) Professor Goodhart wrote in reply to one of Captain Liddell Hart's letters: first, in regard to the complaint that the sentence on JODL was excessive:

"The judgment reads in part as follows: 'JODL was the arch-planner of the war and responsible in large measure for the conduct of operations. ... JODL also signed the order to shoot commandos and prisoners of war, the first draft of which was drawn up by his staff.' In what sense can this judgment be described as 'relatively moderate'? It may be true that JODL, as chief of the general staff of the German supreme command, attempted to persuade HITLER to modify these orders, but the fact remains that British soldiers were shot, contrary to the rules of war, because he signed and issued them. It is no excuse to say, as some writers have done, that if JODL had refused to carry out HITLER's dictates someone else would have been found willing to do so, and that he himself might have been executed for disobedience; this is a risk which every man, whether he be a soldier or a civilian, must face if decent government is to survive."

In regard to the argument that a staff officer incurs no liability by signing an illegal order, Professor Goodhart wrote:

"A staff officer must, of course, insist that the orders he transmits are carried out, whether he believes that they are wise or not, but this does not mean that he is justified in insisting that orders which he knows, or ought to know, are illegal shall be enforced. To take an extreme case, no staff officer will be protected if he knowingly issues treasonable orders, even though he does so under the instructions of his commanding officer. .... There is, I believe, no justification for the view that staff officers form a special class, not subject to the ordinary law of the land."



THE NUREMBERG JUDGMENT REACTIONS.

THE UNITED STATES OF AMERICA.

President Truman, as quoted in the Daily Telegraph (13.11.46) said that the world's best legal minds should study the possibility of setting up a code of international criminal law to deal with those who waged aggressive war. He hoped that the United Nations would reaffirm the principles of the "Nuremberg Charter" in the "context of the general codification of the offences against the peace and security of mankind."

In a letter to Judge Biddle, United States member of the Nuremberg Tribunal, he stated: "I hope we have established for all time the proposition that aggressive war is criminal and will be so treated."

The Christian Science Monitor, in a leading article (1.10.46) wrote, in part: Nuremberg will stand as a landmark in international law. ... The real delay was caused by the determination to allow the accused the fullest chance to defend themselves. This has provoked public impatience in the present, but from history it should command respect. ... The most questioned point about the whole proceeding—the claim that it has created a crime ex post facto—cannot be lightly dismissed, indeed, it puts on all of us a new urgency to write into law the moral convictions already attained in the world. It reminds us that we should—before we have to try another lot of international gangsters—set out beforehand the crimes we will punish and set up an effective world police force to arrest them before they have overrun half the world. Even a Nuremberg trial is not so good as one before the World Court might be. And it would be better to have criminals charged under laws adopted by a world's legislature.

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Survey of Legal Literature.

Supplement

to No. XX of the

War Crimes News Digest

Edited by Egon Schwelb, Legal Officer.

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J.P. TRAININ: QUESTIONS OF GUERRILLA WARFARE IN THE LAW OF WAR  
Originally published in Izvestia Akademmi Nauk, U.S.S.R.,  
Otdelenie ekonomiki i prava, No.4(1945) translated  
into English by Dr. John N. Hazard and republished by  
permission in (40) American Journal of International  
Law, (July, 1946) page 534.

The well known Russian jurist, Director of the Institute of Law of the Academy of Science of the U.S.S.R., one of the two Soviet delegates who signed the Four Power Agreement of 8th August, 1945, and the author of the book "Hitlerite Responsibility under Criminal Law", gives in this paper a history of the law of war, as far as it concerns the status of guerillas. He refers, in addition to the opinions of writers on International law, which are usually quoted in this connection, also to very interesting statements by Engels on the unsuccessful attempt to organise guerilla warfare by the Southern States in the American Civil War and to the Prussian anti-guerilla measures in the 1870-71 war against France. He elaborates upon the idealogical clashes at the Brussels Conference and at the two Hague Peace Conferences. His main proposition is that both on grounds of principle, and on grounds of positive law, the latter being elaborated on the basis of the discussions of the three conferences, the citizens of an invaded country, who defend their fatherland, are under the protection of International Law, irrespective of whether or not they were able to comply with the technical requirements, such as uniforms and insignia.

LESTER NURICK & ROGER BARRETT: LEGALITY OF GUERRILLA FORCES UNDER THE LAWS OF WAR (40) AMERICAN JOURNAL OF INTERNATIONAL LAW (JULY 1946) page 563.

This article, which appeared in the American Journal of International Law, together with the article by Professor Trainin, is a valuable complement to the latter. The authors who are both officers in the Judge Advocate General's Department of the United States Army, but who express their own opinions, which are not necessarily those of the Judge Advocate General or the War Department, present to the reader a comprehensive, historical and dogmatic survey of the problems raised by guerilla or partisan warfare,

in analysing both the International Conventions and the historical precedents, in the United States-Mexican War(1847-48), in the Mexican Civil War(1865), in the United States Civil War, in the Franco-German war, in the Philippine Insurrection(1899-1902), in the South African War and in World War II.

GEORG SCHWARZENBERGER: A FORERUNNER OF NUREMBERG

THE BREISACH WAR CRIME TRIAL OF 1474

THE MANCHESTER GUARDIAN, SEPTEMBER 28TH, 1946.

The reader in International Law in the University of London published in the "Manchester Guardian" an article describing a trial held in the 15th Century, which shows many features familiar to the modern student of the problem of war crimes. Because of the difficulty of access to a back number of a daily paper, the article is here reproduced in full.

The trial of Sir Peter of Hagenbach in 1474 appears to be the first international war crime trial. It has even more modern interest than that, for it was conducted throughout in accordance with high judicial standards and the duel between the public prosecutor and counsel for the defence centred in the issue of obedience to superior orders. Clearly the roots of modern international law go much deeper than is commonly assumed.

To appreciate the setting of the trial its political background must be sketched. Duke Charles of Burgundy had raised his country to the zenith of the power which Burgundy was to achieve on the chess board of Europe. His friends called him Charles the Bold. His enemies decried him as Charles the Terrible, and by the massacre of the inhabitants of Nesles in 1472 he had certainly done full justice to this title.

REIGN OF TERROR.

In 1469 financial difficulties forced the Archduke of Austria to pledge to Charles his possessions on the Upper Rhine, including the fortified town of Breisach. Charles installed Sir Peter of Hagenbach as his Governor, or Landvogt. In accordance with the standards set by his master, Hagenbach ignored completely the promise that the ancient liberties of towns and inhabitants in the pledged territories would be respected. He established a regime of arbitrariness and terror that went beyond anything that was customary even in those rather tough times. Life, honour and property counted for nothing. Hagenbach and his soldiers became guilty of outrages which did not lag behind the worst deeds of modern totalitarian gangsterism. They further extended their depredations to Swiss merchants on their way to and from the Frankfurt Fair and frequently encroached upon the rights of neighbouring towns and countries.

It was an open secret that Charles' ultimate ambition was the Imperial Crown. Yet more than any other single cause the outrages committed by Hagenbach contributed to bring about what until then had been regarded as impossible - the alliance against Burgundy of all her neighbours. Austria, the Swiss Leagues and towns, France and the towns and knights of the Upper Rhine, who before had all been at loggerheads with one another, realised that they had to make their choice; they had either to make an end of this tyranny or to submit helplessly one by one to every whim of Charles and his subordinates. The support which the Archduke of Austria could draw from his allies enabled him to offer the full amount that was required for the redemption of his possessions. On flimsy pretexts Charles refused to fulfil his treaty obligation. Meanwhile, however, the ball had been set rolling by German mercenaries of Hagenbach and by the citizens of Breisach. Together they



captured Peter of Hagenbach. Then the other allies took the field against the Duke of Burgundy, who met with his death in the Battle of Nancy.

The Archduke of Austria, in whose territory Hagenbach had been captured, ordered his trial. Whereas an ordinary trial would have been conducted before local judges, it was agreed in this case that the allied cities, including the Swiss towns, should delegate judges. As by then these Swiss towns had ceased to form part of the Holy Roman Empire, their participation gave an international character to the bench, before which Hagenbach was tried. To represent the order of knighthood among the judges, sixteen knights were added to their number.

On May 4, 1474, the trial took place on the market-place of Dreisach. Henry Iselin, of Basle, acted as public prosecutor. Fortunately, records of his speech and of that of counsel for the defence were preserved. The prosecutor arraigned the accused for having committed crimes which went far beyond the breach of contractual obligations. In Iselin's submission, Hagenbach's deeds outraged all notions of humanity and justice and constituted crimes under natural law. In the words of the prosecutor, the accused had "trampled under foot the laws of God and men" and had committed what would be called today crimes against humanity.

Were Hagenbach's crimes war crimes, considering the fact that they had been committed before the outbreak of open hostilities between Burgundy and the allies? It is true that war crimes in the strictest sense of the word involve violations of the rules of warfare. Yet it should be remembered that right down to the beginning of the nineteenth century the border-line between states of peace and war was very thin, if often it existed at all. The hold of Burgundy over the pledged Austrian territories was more akin to the occupation of enemy territory in war-time than to a peace-time occupation of foreign territory under treaty. Further, it may be held that this trial offers a much-needed precedent (in a non-technical sense) of a case in which war crimes in the wider sense of the term - as used in the Charter of the Nuremberg Tribunal - have come before an international bench. If such deeds are considered to be amenable to international criminal jurisdiction such jurisdiction rests less on the rather accidental fact of war than on the abuse of sovereign jurisdiction which such crimes constitute. So, in the Charter of the Nuremberg Tribunal, the jurisdiction of the International Military Tribunal has been made to cover crimes against humanity, whether committed "before or during the war".

#### THE DEFENCE.

Further accusations were made in interrogatories, witnesses were heard, and then Hagenbach's advocate spoke for the accused. His only point was one on which ever since war criminals have relied - the defence of superior orders:

Sir Peter of Hagenbach does not recognise any other judge and master but the Duke of Burgundy from whom he had received his commission and his orders. He had no right to question the orders which he was charged to carry out, and it was his duty to obey. Is it not known that soldiers owe absolute obedience to their superiors? Does anyone believe that the Duke's Landvogt could have remonstrated with his master or have refused to carry out the Duke's orders? Had not the Duke by his presence subsequently confirmed and ratified all that had been done in his name?

When the accused himself addressed the tribunal, he based his whole defence on this ground.

The judges deliberated for several hours. When judgment was pronounced the tribunal rejected the advocate's preliminary objections to its jurisdiction. It overruled the plea of superior orders, found Hagenbach guilty

and condemned him to death. The executioner of Colmar was chosen from among eight competitors, and before the execution took place, a representative of the Emperor deprived Sir Peter of Hagenbach of his knighthood as one who had committed all the crimes which it had been his duty to prevent. Finally, the Provost of Einsisheim, the marshal of the Tribunal, gave his order to the executioner with the words "Let justice be done."

JACOB ROBINSON: THE NUREMBERG JUDGMENT  
CONGRESS WEEKLY, NEW YORK  
VOLUME 13, No. 25 (October 25th, 1946)

Dr. Jacob Robinson, the Director of the Institute of Jewish Affairs in New York, gives, in this article on the Nuremberg Judgment, a tentative analysis of the Tribunal's unanimously arrived at concept of "crimes against humanity". He quotes the English text of Article 6 (c) of the Charter of the International Military Tribunal, as it read before it was amended by the Berlin Protocol of 6th October, 1945, and continues: "With the semi-colon after the word 'war' there would have been two types of crimes against humanity, some without any relationship to the other two crimes provided for in this Article and some only in relation to them. But nearly two months after the Charter was signed in London, on August 8th, 1945, a discrepancy was discovered between the Russian text and the English and French versions. In the Russian text after the word 'war' there came a comma; in the English and French version, a semi-colon. On the basis of the Protocol of October 6th, 1945, it was recognized that the proper punctuation mark was a comma. By the substitution of the semi-colon through a comma a restrictive interpretation was given to the expression 'crimes against humanity'. As the text now stands, the Charter only defines what kinds of crimes against humanity are within the jurisdiction of the Tribunal. Contrary to crimes against peace and war crimes, both of which have an independent existence, crimes against humanity are 'accompanying' or 'accessory' crimes to the first two if committed in connection with or execution of the crimes of aggressive war or violations of laws and customs of war". The author submits that for a proper evaluation of the concept of crimes against humanity, as evolving from the Charter, and particularly as interpreted by the International Military Tribunal, the following questions are decisive: what is the relation between this crime and the other two crimes; what is the initial moment of the crime; what about the geographical application of the crime; and what are the methods of the crime?

After analysing the relative passages of the Judgment he concludes: "It is clear from these statements that all crimes committed against humanity after the beginning of the war in 1939, come within the jurisdiction of the Tribunal. A presumption is thus being created which releases the Tribunal from the necessity of investigating each individual act in regard to its connection with war of aggression. The situation is different regarding crimes committed before the war. The Tribunal refuses to make a general statement on their criminality, but a great number of them are classed as criminal acts."

On the second problem, namely the initial date, Dr. Robinson says: "It is important to note that the Tribunal did not find the existence of a common plan or conspiracy, in regard to the commission of war crimes and crimes against humanity. Such a conspiracy existed in the view of the Court only in regard to the crime of aggressive war. This concept is of no great importance for crimes against humanity in view of their connection with war of aggression. It would seem that the initial date of this conspiracy would also be the initial date of crimes against humanity. The Tribunal did not state, in absolutely exact terms, when the conspiracy started. The Court found that plans were made to wage war, as early as November 5th, 1937, and probably before that. If, according to the Court, the conspiracy must not be too far removed from the time of decision and action, it would appear that the Court considers 1937 as the initial date of war of aggression. Thus no anti-Jewish acts committed before that period could be classed as criminal. However, in listing the criminal acts of the individuals and organizations,



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the Court does not follow this chronological limitation."

He then refers to the appropriate statements of the Court regarding the defendants Streicher, Frick and Funk.

From the viewpoint of the development of international law, the author says, the gravest issue is that of the problem of crimes committed by a state or its representative, against its own citizens. The Hague and Geneva Conventions drastically limited the rights of belligerents regarding war prisoners and wounded and the rights of occupying countries regarding their native populations. But there was no general provision in regard to treatment by the state of its own nationals. The theory of humanitarian intervention, the protection of minorities, the recently established duty of the United Nations to promote human rights and fundamental freedoms notwithstanding, sovereignty is still generally understood as absolute freedom in treating its own nationals. The Tribunal did not discuss this problem, but the answer is certainly clear that crimes committed by Germans against German nationals are within the general concept of crimes against humanity.

In support of this, Dr. Robinson adduces the Tribunal's ruling on the Leadership Corps of the Nazi Party and on the SS. Respecting the question which methods of persecutions are considered criminal by the International Military Tribunal, Dr. Robinson emphasizes that time and again the Court underlines the connection between the initial stage of persecution and the so-called "final solution". While aghast at the mass slaughter and shocked by the dramatic boycott of April 1, 1933 and pogrom of November, 1938, the Court lists as criminal activities: legislative acts; other acts tending to political discrimination; economic discrimination; plundering of property; diplomatic pressure of Germany on satellites; deportation; political segregation (Nuremberg laws); ghettoization; slave labor; starvation; "infection of mind"; religious persecution.

Dr. Robinson's interpretation of the Judgment and its bearing on the term "crime against humanity" proceeds on lines similar to those on which the Commission Document C.237 (a reproduction of Doc. III/62) is based.

XXI

No. XXI.

December 10th, 1946.

UNITED NATIONS WAR CRIMES COMMISSION

(Research Office)

WAR CRIMES NEWS DIGEST.

[NOTE: The above title replaces that of Press News Summary  
used in the early numbers of this series.  
(For internal circulation to the Commission).- R.O.]

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## S U M M A R Y   O F   E V E N T S

### E U R O P E.

#### A U S T R I A.

##### Deputy Commandant of Theresienstadt arrested.

Neues Oesterreich (8.11.46) reported: The gendarmerie in Gmunden (Austria) have arrested Oskar SENER, the former deputy camp commandant of Theresienstadt, in Czechoslovakia. SENER worked for the S.D. and for the Central Office for Jewish emigration.

##### Former SS man sentenced.

Arbeiter Zeitung (9.11.46): The People's Court sentenced Otto WINTER to ten years' penal servitude under the war criminals' law. His property was declared forfeit. WINTER belonged to the notorious SS-Standarte 89 since 1934, and after the occupation of Austria he was promoted leader of the Standarte. The President stated that there was no proof that WINTER had abused his position or injured someone; he therefore passed the minimum sentence permitted by the law.

#### B E L G I U M.

##### Death Sentence on van de Wiele.

The Exchange Telegraph reported from Antwerp (25.11.46) that the Flemish Quisling J.E. van de WIELE, had been sentenced to death by a military court in that city.

#### C Z E C H O S L O V A K I A.

##### Death Sentence on Wilhelm Schmidt.

The Prague radio reported (12.11.46) that Wilhelm SCHMIDT, Deputy Commander of the Terezin Concentration Camp (Czechoslovakia) was sentenced to death on that day, and hanged the same evening. SCHMIDT was convicted of murder and torture. Terezin was used as a special camp for Czech politicians, many thousands of whom were tortured and killed.

[Arrest of SENER, deputy commandant, see under Austria.]

##### Trial of Tiso.

Josef TISO, ex-"President of Slovakia" was arraigned before a People's Court at Bratislava on December 2nd. The trial opened with the reading of a 213-page indictment which said that the accused sought contact with GORING, RIBBENTROP, and other leading Nazis to enlist their help in severing Slovakia from the Czechoslovak State. The indictment also mentioned the declaration of war on Great Britain



C Z E C H O S L O V A K I A (Cont).

Trial of Tiso (Cont.)

and the United States, the aid given to Germany in the war, the struggle against the partisans, and the deportation of Jews.

Defence counsel contended that TISO should be tried by an international court, and claimed Parliamentary immunity for him. Counsel also claimed that the arrest of TISO in Germany, where he had sought refuge after the liberation of Czechoslovakia, was a breach of international law. Similar pleas were entered for MACH, TISO's Minister of Propaganda, who is on trial with him. The court overruled all the objections.

Dr. DURCANSKY, TISO's Foreign Minister, is being tried in his absence.

G E R M A N Y.

(a) TRIALS BY GERMAN COURTS.

Sentence on an Informer.

Agency messages reported from Berlin (15.11.46) that Helène SCHWAERZEL was sentenced to 15 years' imprisonment by a Berlin criminal court for denouncing to the Gestapo GÖRDELER, Mayor of Leipzig, hanged for the bomb plot against HITLER in July, 1944. The sentence included 10 years' deprivation of civic rights and confiscation of her property in favour of the Allied Control Council. She had received 1,000,000 M. reward. She had been charged with murder and committing crimes against humanity, but the murder charge was dropped.

Trial of von Papen and Fritzsche.

The A.P. reported (11.11.46) that German denazification officials were drafting indictments against v. PAPEN and FRITZSCHE, and that they would probably be brought before German courts in about six weeks' time. The officials refused to divulge the nature of the charges. (FRITZSCHE was indicted on 3.12.46.)

Position of Schacht.

"News of Germany" reported (22.11.46) that proceedings questioning the legality of the arrest of Dr. Hjalmar SCHACHT had been instituted by his attorney, Dr. Wolfgang SCHWAMBERG at the administrative court at Stuttgart.

GERMANY (Cont).

(a) TRIALS BY GERMAN COURTS (Cont.)

Re-trial of Tillesen.

On 29.11.46 a German, TILLESSEN (52), was tried at Freiburg before a German judge, named Goring, for the murder of ERZBERGER in 1921. The circumstances were not in doubt and he admitted his guilt, but pleaded HITLER's indemnity of 1933. The prosecution demanded the death penalty, maintaining that the indemnity was void under the Control Commission's ruling in regard to Nazi laws. The judge admitted TILLESSEN's plea and released him. The French authorities arrested TILLESSEN on leaving the court, announcing that he would be retried, and have since dismissed the judge and instituted an enquiry.

The Times (3.12.46) wrote that French opinion was stirred by the openly sympathetic hearing which TILLESSEN received, and regards the acquittal as a dangerous precedent. Another of the murderers of ERZBERGER, SCHULZ, was arrested at Wiesbaden on 18.11.46, and is awaiting trial. Various German professional organisations have protested against the acquittal.

The Trial of Hadamar Defendants.

"News of Germany" reported from Wiesbaden (20.11.46): Legal Division, OMG Greater Hesse, has arranged for the transfer of three German war criminals, two of whom already had received long term prison sentences from a U.S. war crimes tribunal, to German authorities in order that they stand trial for murder under the German law, OMG Greater Hesse has announced. A conviction of murder in a German court may carry the death penalty, legal officials disclosed. The two already tried, Irmgard HUBER, chief nurse of the Hadamar insane asylum and Dr. Adolf WAHLMAN, chief physician of the asylum, found guilty in October 1945, are serving sentences of life and 25 years, respectively. Dr. Walter SCHMIDT, former chief physician at the Eichberg lunatic asylum and at present in a civilian political internment camp, is the third member of the group. He is charged with complicity in the murder of approximately 5,000 Germans.

[NOTE: The Hadamar trial was the subject of a Trial Report No. 6. See also Document C. 150.]

(b) AMERICAN ZONE.

THE SECOND NUREMBERG TRIALS.

A U.S. Press release of 14.11.46 mentioned among these trials that of THIERACK, ex-Minister of Justice (who has committed suicide - see British zone), together with his deputies SCHLEGELBERGER and ENGERT; and that of Oswald POHL, head of the WVHA (Concentration Camp Service), together with some of his leading officials, viz., Georg and Hans LOERNER, August FRANK, Hans BAUER, Heinz FANSLAU, Josef VOGT, Fritz LECHLER, Karl SOMMER, and Karl MUMENTHEY.

The proposed schedule calls for several trials to proceed at the same time. As many as six courts may be working simultaneously.

GERMANY (Cont.)

(b) AMERICAN ZONE.

THE SECOND NUREMBERG TRIALS (Cont.)

The authority upon which these trials are based is the Four-Power London Agreement of August 1945, Law No. 10, and the Military Government Ordinance No. 7, published on 25.10.46, which established the zonal military tribunals. (For Summary of Ordinance No. 7 see No. XX of this Digest, page 3.)

(More detailed information regarding forthcoming trials was given in other Press releases, as below.)

Trials of Military Leaders.

A U.S. Press release dated 25.10.46 said that, in addition to the cases against doctors and industrialists, charges were being prepared against German military leaders, who were not being indicted as military men per se, but in pursuance of the International Military Tribunal's judgment which stated that the German military leaders were a ruthless caste, against which there is "clear and convincing evidence" of war crimes and crimes against humanity, and recommended further trials "so that those among them who are guilty of these crimes should not escape punishment."

The Trial of ex-Marshall MILCH.

As mentioned in No. XX of this series, page 5, ex-Air-Marshall MILCH was indicted at Nuremberg on 13.11.46. A U.S. Press release dated 13.11.46 explains that the indictment (the text of which is available in this office) is based on Law No. 10, and comprises three counts. The first count charges MILCH, as a member of the Central Planning Board, with complicity in war crimes, involving slave-labour of some 5,000,000 inhabitants of occupied countries and the employment in war work of prisoners who were also subjected to murders and ill-treatment.

Count 2 charges MILCH with complicity in medical experiments on prisoners of war and civilians of other nations interned in Germany (including some of the experiments cited in the charge against the 23 doctors). Both Counts 1 and 2 are cited as violating international Conventions (The Hague and Geneva Conventions), and the Laws and Customs of war.

Count 3 alleges crimes against humanity as defined in Article II of Law No. 10, and covers acts committed against German nationals.

The trial was expected to begin on December 15th, 1946.

The Trial of 23 Doctors.

A U.S. Press release dated 21.11.46 said that the 22 men and 1 woman arraigned in this case were indicted on the above date. They pleaded Not Guilty. The Court then adjourned till December 9th.



G E R M A N Y (Cont.)

(b) AMERICAN ZONE.

THE SECOND NUREMBERG TRIALS (Cont.)

The Trial of 23 doctors (cont.)

The defendants were: Karl BRANDT, Siegfried HANDLOSER, Paul ROSTOCK, Oskar SCHROEDER, Karl GENZKEN, Karl GEBHARDT, Kurt BLOME, Rudolf BRANDT, Joachim MRUGOWSKY, Helmut POPPENDORF, Wolfram SIEVERS, Gerhard ROSE, Siegfried RUFF, Hans Wolfgang ROMBERG, Viktor BRACK, Hermann BECKER-FREYSENG, Georg August WELTZ, Konrad SCHAEFER, Waldemar HOVEN, Wilhelm BEIGLBOCK, Adolf POKORNY, Herta OBERHEUSER, and Fritz FISCHER.

The indictment, which is based on Law No. 10, Article 11, charged the defendants with having participated in a common design or conspiracy to commit war crimes against Humanity as defined in Control Council Law No. 10 of December 20th, 1945, and states that these crimes included "murders, brutalities, cruelties, tortures, atrocities and other inhuman acts."

Under Count 2, the defendants are charged with making medical experiments on civilians and members of armed forces of the Allied countries, without their consent, including high altitude, freezing, malaria, mustard gas, sulfanilamide, bone transplantation, sea-water drinking, jaundice, sterilisation, spotted fever, poison and phosphorous burns.

Karl BRANDT and certain of the defendants are charged, in particular, with killing thousands of people under the "so-called euthanasia programme."

Under Count 3 the defendants are charged with "crimes against humanity" in respect of offences of the same kind as in Count 2 committed against German nationals.

Under Count 4, Karl BRANDT and SIEVERS are charged with "membership in an organisation declared to be criminal by the International Military Tribunal"—in this case the SS.

The Lancet of November 1946 discusses the problem whether scientific use should be made of the discoveries made by the Nazi doctors in their experiments on human beings. To do so says The Lancet, might make it easier, in the future, to justify another crime of the same kind.

Trial of Judicial Officials.

With regard to the Ministry of Justice trial, a U.S. Press release of 23.11.46 said: With both THIERACK and FREISLER dead—FREISLER was killed in Berlin in an air raid on February 3rd, 1945—the case against German justice and German courts resembles the first Nuremberg trial against the 22 war criminals, where HITLER, HIMMLER and GOEBBELS were missing from the dock. But just as "Trial One" proceeded despite this and proved the cruelties and perversions of the Nazi system in every walk of life, so the Justice Case will go on as scheduled, to reveal the methods by which German Justice was perverted and German Courts were turned into slaughter houses no less deadly than the concentration camps.

GERMANY (Cont)

(b) AMERICAN ZONE

THE SECOND NUREMBERG TRIALS

Trial of Judicial Officials. (Cont.)

In addition to SCHLEGELBERGER and ENGERT, referred to above, two other judicial officials who took a prominent part in this transformation of German jurisdiction, Oswald ROTH AUG, former President of the Nuremberg Special Court, and Hermann CUHORST, former President of the Stuttgart Special Court, have been brought to Nuremberg. They will both be indicted in the forthcoming Ministry of Justice case.

Trials of Industrialists.

It was semi-officially announced at Frankfurt (13.11.46) that four prominent leaders of the Flick steel combine, two bankers, an ex-general and a leading attorney had been turned over to the Third Army and taken to Nuremberg.

The four industrialists were in custody of the branch awaiting the outcome of an investigation into the Flick organisation which played a key rôle in the German armaments programme. The four are: Friedrich FLICK, armament production leader and director general of the Charlotten furnace; Otto FLICK, his son, manager of the Rombacher plants and chief of the Max furnace; Konrad KALETSCH, financial adviser and attorney-general of the combine; Werner von HOVEN, manager of the "social section" of the Max plant and responsible for the work of prisoners of war and foreign labourers. Also turned over to the Third Army were: August ROHDE, of the Deutsche Bank; Hugo ZINSSER, of the Dresdner Bank; Franz HAYLER, former SS general and official of the German economics ministry; and Alois WESTRICK, former prominent German attorney.

SECRETARIAT: PROSECUTING STAFFS;  
JUDGES: OBSERVERS

Secretary-General of the Tribunal.

It was semi-officially stated that the appointment of Judge George READ, of Detroit, as secretary general for all military tribunals at Nuremberg had been announced by Maj. Gen. KEATING, acting deputy military governor. The secretary general's office keeps a complete record of all documents submitted to tribunals, both prosecution and defence. The secretary general also receives and processes applications for defence counsel, obtains witnesses for the defence, and takes care of the personal needs of the defence counsel.

Staffs of U.S. Chief of Counsel in Second Nuremberg Trial.

A U.S. Press release dated 28.10.46 mentioned the appointment of a staff of one executive officer and 10 lawyers to assist General Telford TAYLOR, U.S. Chief of Counsel, in the second series of trials.

The executive officer is Colonel Clarence M. TOMLINSON. The attorneys are: Mr. Thomas E. ERVIN, Deputy to the Chief Counsel; Mr. Jack W. ROBBINS, Legal Assistant to General TAYLOR; Mr. James M. McHANEY, Director of the SS. Division; Mr. Walter H. RAPP, Director of the Evidence Division; Mr. Abraham L. POMERANTZ, Senior Counsel for Nazi industrialists; Mr. Charles E. LYON, Chief of one of the Economics

GERMANY (Cont)

(b) AMERICAN ZONE.

THE SECOND NUREMBERG TRIALS (Cont.)

Staffs of U.S. Chief of Counsel in Second Nuremberg Trial. (Cont.)

Trial Teams under Mr. POMERANTZ; Mr. James E. HEATH, Chief of the other Economics Trial Team assisting Mr. Pomerantz; Mr. Drexel A. SPRECHER, Director of the Economics Division; Mr. Oliver W. TOLL, Director of the Ministries Division; and Mr. Clark DENNEY, Director of the Military Division.

Administrative details on all the cases will be handled by the executive office under Colonel TOMLINSON.

Two of General Taylor's assistants, Mr. ERVIN and Mr. ROBBINS, will handle legal work on all war crimes cases.

The legal work on the first trial of 23 doctors is being done by the SS. Division under Mr. McHANEY.

Responsible for obtaining evidence for war crimes cases is Mr. Walter H. RAPP.

Nazi industrialists will be tried on indictments prepared by Mr. POMERANTZ and his assistants.

Cases on Nazi leaders of German economy will be prepared under the direction of Mr. SPRECHER.

Mr. Oliver W. TOLL has charge of preparing the ministries cases.

German militarist cases will be handled by Mr. DENNEY and his assistants in the Military Division.

Judges at Second Series of Nuremberg Trials.

The following information was given in a special release of 24.10.46.

Three judges and an alternate arrived at Nuremberg on 23.10.46, viz., Hon. Walter B. BEALS, Justice of the Supreme Court of the State of Washington; Hon. H.L. SEBRING, judge of the Supreme Court of Florida; and Hon. Johnson Tal CRAWFORD, former justice of the Oklahoma District Court in Ada, Okla. The alternate judge is Lt.-Colonel V.C. SWEARINGEN, former Assistant Attorney General of Michigan. These justices with Colonel SWEARINGEN as alternate, will comprise the tribunal for the trials of the 23 German doctors.

Observers at Nuremberg Trials.

A U.S. special release of 8.11.46, referring to the "Second Nuremberg Trials" said that observers from six nations had accepted General Taylor's invitation to attend those trials. Whether or not these observers would take active part in the prosecution of the cases against SS. commandants, militarists, German politicians, and industrialists and financiers, had not yet been decided, but they would be welcome at the prosecution table in



GERMANY (Cont.)

(b) AMERICAN ZONE.

THE SECOND NUREMBERG TRIALS (Cont.)

Observers at Nuremberg Trials (cont.)

whichever trial they were most interested. It was expected that should any of these nations bring other German leaders to trial in their respective countries, the evidence pertaining to such proceedings, as well as the pertinent judgments handed down by the International Military Tribunal and by the military tribunals now established, would be available for their use. So far (8.11.46), the Russians, Czechs, Poles, Yugoslavs, French, and Dutch had established offices in the Nuremberg Palace of Justice, awaiting the first trial, against 23 Nazi doctors.

Publicity Measures.

U.S. Press release (21.11.46) mentions that 54 German civilians, including mayors and city councillors, attended the arraignment of the 23 doctors on November 21st. This is in conformity with the U.S. policy of convincing the Germans that the defendants get a fair trial.

MISCELLANEOUS TRIALS AND EXECUTIONS IN  
THE U.S. ZONE.

Death Sentences for murders of airmen.

"News of Germany" (15.11.46) reported from Dach that EHLEN, WINKLER and VIEHL were sentenced to death by hanging by an American military court for murdering four American airmen. MÜLLER and BÄSSE, co-defendants, were sentenced to six years in prison each, and BECK to a four-year term.

Brought down after an air raid on Kassel and handed over to the Gestapo, the fliers had been delivered to the Nentershausen camp near Kassel. There they were beaten with butt-ends and afterwards, outside the camp, shot by the three major defendants.

Execution of Endress and Drauz.

The Daily Telegraph (5.12.46) reported that two German war criminals, Heinz ENDRESS and Richard DRAUZ had been hanged at Landsberg prison, near Frankfurt, for murdering American officers and men who were prisoners of war.

Trial of Dachau Guards.

Munich radio (21.11.46) reported that 116 former guards at Dachau concentration camp had, since October 12th, been sentenced to terms of imprisonment ranging from six months to eight years by an American Military Tribunal which held its last session on that date. Twenty-one were acquitted.

G E R M A N Y.

(c) BRITISH ZONE.

TRIALS BY MILITARY GOVERNMENT COURTS.

[NOTE: Military Government Courts and German Courts come under control of the Legal Division of the Control Commission (British Element). Military Courts are the concern of the Judge Advocate General.]

Information communicated to the Commission (see Doc. A.28 of 3.12.46) showed that two trials before Military Government Courts have been carried out up to date, namely at Oldenburg (5.8.46), resulting in 6 death sentences for murders in a German penal camp; and at Flensburg (25.9.46), resulting in 3 death sentences, for murders during transfers between concentration camps. Eight other cases were pending on the above date, including the trial of the 7 Hamburg doctors mentioned below.

Trial of seven Hamburg doctors and two police officers.

On 2.12.46 this trial opened before a Military Government court at Hamburg. They were charged under Law No. 10 for the sterilisation of gypsies, as persons who were regarded by the Nazis as racially undesirable.

The Ravensbrück Camp Trial.

The escape of two of the chief defendants, SUHREN, the ex-commandant of the camp, and PFLAUM, the labour leader, about November 9th, were briefly mentioned in the previous number of this series. According to a message from the Daily Telegraph correspondent at Herford, the two men were interned at Neuengamme camp. They cut their way through the electrified fence early in the morning with the help, it is believed, of the underground movement, and got away across the open land before the alarm was given. The trial was due to begin on 5.12.46.

Reprieve for General Falkenhorst.

It was announced by the B.A.G. on 4.12.46 that the death sentence on General FALKENHORST, former C.i.C. in Norway, had been commuted to one of 20 years' imprisonment. General FALKENHORST was sentenced by a mixed British-Norwegian Military Court at Brunswick on 2.8.46, for ordering Allied commandos to be shot or delivered to the Gestapo.

Criticism of British Indictments.

In a letter to the "Freethinker" (17.11.46) a Mr. Lynden IRVING, recently a defending counsel in recent war crimes trials, objects, inter alia, to the practice of indicting defendants for "being concerned in the killing of ---". "Where," he asks, "are the limits to such a charge?" He also objects to lesser war criminals being tried and condemned before the guilt of their "commanding Superiors," under whose orders they acted, have been judicially examined. He admits, however, that the trials were "fair as as one could expect."

G E R M A N Y.

(c) BRITISH ZONE (Cont.)

Suicide of Otto Thierack.

A BAOR Press release of 23.11.46 said that Otto THIERACK, ex-Minister of Justice, hanged himself at Eselheide C.I.C. camp on October 26th, by standing on a tub, and kicking it from under him. He was discovered by guards on their rounds. Doctors vainly tried artificial respiration. He left a letter stating that he could not face trial. THIERACK was due for trial at Nuremberg early in December.

(See also under American zone.)

(d) FRENCH ZONE.

CONCENTRATION CAMP TRIAL AT RASTATT.

An Agency message of 9.11.46 stated: A mass trial of 563 former German administrators of concentration camps among them camp leaders, doctors, male nurses, and members of the Gestapo and the SS., will start next week at Rastatt, in Baden Southern Germany. They are accused of being responsible for the death of at least 25,000 victims of the concentration camps. The defendants include officials of Natzweiler camp.

Radio Paris (15.11.46) reported that the French Cabinet, on a proposition by M. TEITGEN, Keeper of the Seals, decided to maintain its demand for a second big trial, this time of the major German industrialists.

[Regarding re-trial of TILLESEN, see under (a): Trials by German courts.]

(e) RUSSIAN ZONE.

The Sachsenhausen (Oranienburg) Camp Trial.

This trial, together with the ex-Commandant KAINDL and other members of the camp staff, was handed over by the British to the Russian authorities. The case has not yet been tried, but it was believed that the trial will begin before the New Year. It had been agreed that British representatives would be invited to attend.



COMMENTS ON THE NUREMBERG JUDGMENT.

For Lord WRIGHT's broadcast on 22.11.46, see Document A.24.

The Information Bulletin of the World Jewish Congress of 1.11.46 published a statement by its executive committee, which said, in part: Special satisfaction will be derived from the fact that at Nuremberg, war of aggression has been proclaimed a crime, indeed, the 'supreme crime' for which statesmen, diplomats, and military and naval leaders, no longer able to hide behind the fiction of the so-called acts of state, are made individually responsible. The myth of the unlimited sovereignty of the State has been put aside, and its right to wage war of aggression emphatically denied. .... While the verdict relates only to crimes against humanity having a direct connection with the conduct of a war of aggression, it is nevertheless evident that a protecting and avenging arm, not heretofore known, has been fashioned against international evil doing. .... To have the world see for the first time in completely documented form the whole extent of Jewish martyrdom in Europe is not one of the least services rendered the world and the Jewish people by the International Military Tribunal at Nuremberg.

Film on Nuremberg Trial.

Moscow radio announced (25.11.46): The Central Studio of Documentary Films has released a new documentary film, "The Trial of the Nations", about the Nuremberg trial. The producer is Stalin Laureate Karmen. In a review published in "Pravda", Zaslavsky quotes the words with which the film ends: "Let the Nuremberg trial serve as a grim warning to all inflamers of a new war."

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I T A L Y.

BRITISH TROOPS IN ITALY.

Trial of Generals von Mackensen and Maelzer.

The trial of von MACKENSEN, former C.-i.-C. in Italy, and MALZER, ex-governor of Rome, opened on 18.11.46, before a British Military Court, with General Playfair as President.

The accused were charged with responsibility for the massacre of 335 Italians, including a 14-year-old boy, in the Ardeatine caves during the Nazi occupation of Rome. They pleaded not guilty.

Colonel HALSE, chief prosecutor, said that both defendants had made statements that the killings were done as a reprisal for the killing of 32 German soldiers in Rome, by a bomb, and von MACKENSEN had assumed full responsibility for issuing the order. The hostages were to be taken from among persons in jail accused of offences against the German State punishable by death, or 15 years' imprisonment, even if they had not yet been tried. Of the hostages actually put to death, only four were persons condemned to execution; 17 were serving long terms; 174

7c-9

ITALY (Cont.)

BRITISH TROOPS IN ITALY

Trial of Generals von Mackensen and Maelzer (Cont.)

were in custody for crimes against the Germans, and 57 "had committed no other crime except that of being Jews."

Colonel KAPPLER of the SD., giving evidence, said that he had drawn up the lists and organised the massacre. The victims were marched into the cave in squads of five; they were ordered to kneel at the back of the cave, and the Germans shot them in the head. Finally, the entrance to the quarry was blow up to form a mass grave.

Von MACKENSEN, giving evidence, said that the German military law allowed the shooting of hostages as a reprisal if they were already held as hostages, but he admitted that in this case there were no hostages. He maintained, in his defence, that he gave KAPPLER an order to shoot only those already sentenced to death, even if very few such people were available, and then to send in a report saying ratio of 10 to one (320 Italians for the 32 Germans killed) had been despatched, even if they had not.

In this connection The Times correspondent wrote that: "Colonel KAPPLER, in cross-examination used the Nazi expression 'worthy of death'; MACKENSEN used the words 'condemned to death'. But during the conference between KAPPLER and MACKENSEN at which the massacre was planned it seems that the first phrase was used and that phrase includes almost anyone under arrest for any offence against the Wehrmacht, even before trial."

Field-Marshal KESSELRING, who also gave evidence, said that reprisals in general and the shooting of members of occupied countries were not prohibited by any international law and were therefore admissible as a "last resort", but he was surprised at the order to shoot hostages in the ratio of 10 to one.

On November 30th the Court found both defendants guilty and sentenced them to be shot. The sentences were subject to confirmation by General Sir J. HARDING, the British C.i.-C. in Italy.

Commenting on the trial the Manchester Guardian wrote: Unfortunately the right of reprisal, which undoubtedly exists, has never been properly defined, though it could be generally taken that the reprisal for a violation of one of the rules of war--such as a civilian attack on occupying troops most surely is--ought not to be excessive. It should be in proportion to the offence which provoked it, and this the massacre in a Roman cave was not. Further, it had all the objectionable qualities which cling to most acts of reprisal; it was directed haphazard, and many of the Italians killed were not in the smallest degree connected with the bomb throwing.

The Release of SS. Colonel Dollmann (see No. XX of this Digest, p. 7).

The Rome correspondent of the Manchester Guardian (17.11.46) referred to this incident as follows:

"Colonel DOLLMANN, alleged commander of the SS. in Rome during the German occupation, was recognised last week by an Italian he had tortured. The Italian got his persecutor arrested. At the police station, DOLLMANN produced an identity card, issued by the Allied headquarters under an Italian name and forbidding any authorities to arrest or question the holder. DOLLMANN was released. The Rome Press

I T A L Y (Cont.)

The Release of SS. Colonel Dollmann. (Cont.)

is furious about this, and the "Rome Daily American" says DOLLMANN was employed by the American Office of Strategic Services in return for the guarantee of safe conduct. Demonstrations against the Allies on account of DOLLMANN are expected."

P O L A N D.

Forthcoming Trials.

The Commission was informed by Dr. CYPRIAN that the following trials were pending:

17.12.46, at Warsaw: Trials of ex-Governor FISCHER; Gestapo Chief MEISINGER; SS. Colonel DAUME; and Fischer's deputy, LEIST.

January 1947, at Warsaw: Trial of Rudolf HOESS, ex-commandant of Auschwitz camp.

Probably in March, 1947, probably at Danzig: Trial of FOSTER, ex-Gauleiter of Danzig.

Subsequently in 1947, at Cracow: Trial of Josef BUEHLER, Hans Frank's deputy.

At Cracow: trial of Auschwitz camp guards (about 150 defendants).

At Torun, and in other towns: trial of Dachau camp guards.

(For other information concerning recent Polish war crimes legislation see document A.27.)

Transfer of war criminals to Poland.

Radio Warsaw reported the arrival of successive batches of war criminals in Poland:

11.11.46: 200 members of the staff of Auschwitz camp; among these were the deputy commandant, the crematorium manager, and the camp doctor, and General STEIN, ex-chief of the Danzig police.

25.11.46: A transport of 141 war criminals handed over by the U.S. authorities.



DC-9

S P A I N.

Escape of Lazar.

The Times correspondent reported from Madrid (22. 11. 46):  
One of the most notorious Nazis in Spain, the former Press  
attaché, Hans LAZAR, whose name figures high on the deportation list  
of wanted Germans in this country, has slipped through Allied hands  
by escaping from hospital to an unknown destination. LAZAR, though  
a Jew of Balkan origin, was an extremely influential member of the  
German Embassy staff. He was largely responsible for the strong  
hold obtained by the Germans over the Spanish Press.

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THE FAR EAST ...

DC-9

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S P A I N.

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THE FAR EAST ...

T H E F A R E A S T.

THE INTERNATIONAL MILITARY TRIBUNAL AT  
TOKIO.

Tojo admits responsibility.

Reuter reported (18.11.46) that according to a document submitted by the prosecution, General Hideki TOJO, war-time Prime Minister of Japan, admitted, under interrogation, that as senior member of the Cabinet he had been "chiefly responsible" for Japan's war against Great Britain and America.

A writer in the Sunday Sun (24.11.46), describing the trial, said: The prosecution has called comparatively few witnesses and relies mainly on documentary material. Every effort is being made to end the trial before Christmas. But the defence plans to produce several hundred witnesses. Often for days proceedings are extremely dull. But again and again the trial is interrupted by dramatic incidents. Thus, for instance, the protest of counsel for the defence, who declared that the court was "overstepping the bounds of international law," caused an uproar. While the foreign correspondents have given up reporting regularly on the trial, the Japanese Press is publishing long reports day by day. And it seems that the Japanese are watching the trial with great interest.

H O N G K O N G.

The Lisbon Maru case.

Agency messages from Hongkong reported that Shigeru KYODA, master of the Japanese ship Lisbon Maru, who battened down the ship's hatches on prisoners of war before the vessel was torpedoed, was sentenced to seven years' imprisonment.

Case of a Canadian-born Japanese.

The Times reported from Hongkong (27.11.46): an extraordinary situation has arisen on connection with the conviction and sentencing to death in May last by a military tribunal of an interpreter to the Japanese forces named INOUE, accused of war crimes. INOUE appealed on the ground that he was born in Canada and was a British subject. South-East Asia Command has upheld the appeal and annulled the trial. INOUE was rearrested the same day and charged in the British court with high treason.

S I N G A P O R E.

Burma "Death Railway" Case.

Reuter reported from Singapore (3.12.46) that sentence of 10 years' imprisonment was passed by the War Crimes Tribunal on General ISHIDA, former Japanese Chief of Staff, found guilty of using Allied prisoners of war to build the Burma-Siam "Death Railway." Two of General ISHIDA's subordinates, Colonels NAKAMURA and ISHII, were sentenced to death by hanging, although the court recommended mercy for NAKAMURA.



DC-9

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THE FAR EAST (Cont.)

CHINA.

Arrests in Japan.

At the 31st meeting of the Far Eastern Sub-Committee at Nanking on 1.10.46, the Chairman, Dr. LIU CHIEH, reported that as a result of the speedy repatriation of the Japanese from China, only a small number of Japanese War Criminals on the Sub-Commission's lists have been arrested so far and that the Chinese Government will soon instruct its representative at Tokio to approach the Headquarters of the Supreme Commander of the Allied Powers for help in arresting those Japanese War Criminals listed by the Sub-Commission. (See Document SM.31).

At the 32nd meeting on 15.10.46, the Sub-Committee classified cases No. 1056-1091 and supplementary Charges 561, 881, 895 and 1008. There were altogether 97 names out of which two were classified as "C", thus leaving 95 names for Sub-Commission's list, No. 19.

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XXI  
Suppl

4th December, 1946.

UNITED NATIONS WAR CRIMES COMMISSION.

SURVEY OF LEGAL LITERATURE.

Supplement to No.XXI of the War Crimes News Digest.

Edited by Egon Schwelb, Legal Officer.

This Survey is being circulated in advance of  
No.XXI of the War Crimes News Digest, issued by the  
Research Office of the United Nations War Crimes  
Commission.

Contents of this Issue:

Lord Wright:	"The Meaning of the Nuremberg Trial.	Page 1.
N.S.March:	"Some Aspects of the German Legal System under National Socialism. "	Page 1.
Murray C. Bernays:	"Nuremberg. Its vindication of Western justice, its profound lessons in moral leadership, and its deterrence to future aggression. "	Page 2.
Raphael Lemkin:	Letter to the Editor of the "New York Times" on: Genocide before the United Nations.	Page 4.

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Lord Wright: THE MEANING OF THE NUREMBERG TRIAL.  
"The Listener", Vol.XXXVI, No.933,  
(28th November 1946), p.735.

This article by the Chairman of the United Nations War Crimes Commission is a reproduction of his broadcast delivered in the Third Programme of the B.B.C. on 22nd November, 1946. The text of the broadcast has been circulated to members of the Commission as Doc.A.24.

N.S.March: SOME ASPECTS OF THE GERMAN LEGAL SYSTEM  
UNDER NATIONAL SOCIALISM.  
Law Quarterly Review, Volume 62 (October  
1946,) page 366.

This Article is a supplement to, and to some extent a qualification of, the article by Professor A.H.Campbell on "Fascism and Legality" which appeared in the Law Quarterly Review, volume 62, page 141, and which was mentioned in "Survey of Legal Literature" of 13th May 1946, (Supplement to War Crimes News Digest, No.XI).

The following passage, describing the methods of controlling the judges, may be of particular interest to the United Nations War Crimes Commission which very often has had to deal with so-called "judicial crimes".

" A comparatively mild form of direction was contained in the 'Judges' Notes' (Richterbriefe), issued once a month by the Ministry of Justice to all judges and public prosecutors in Germany. These notes summarized and commented on recent decisions, both criminal and civil. The novelty lay in the fact that the comment was official. As far as criminal cases were concerned, the comments were mainly directed to adequacy of punishment. More specific direction was given to the presiding judges and sometimes to all the judges of the Sondergerichte, who were periodically summoned to a conference at the Oberlandesgericht of their district. At such conferences the Generalstaatsanwalt might add his comments to those of the Oberlandesgerichtspräsident on general policy governing verdict and sentences. Criticism of past judgments in Richterbriefe and at conferences in the Oberlandesgericht, however, did not achieve the results desired by the political authorities. Judges were therefore given a hint before the trial of official expectations in regard to individual cases. Every week the presiding judge had to send a short summary of all cases to be heard in the following week to the Oberlandesgerichtspräsident of the district. This summary was called the "preview" (Vorschau). Before the trial the Oberlandesgerichtspräsident informed the Landesgerichtspräsident what punishments were expected in higher circles to be inflicted in the forthcoming cases; the Landesgerichtspräsident duly informed the presiding judges of the Sondergerichte in order that official circles might not be disappointed. However, it seems that they sometimes were, because it was found necessary to introduce a "review" (Nachschau) as well as a Vorschau. This was a summary of all judgments delivered by the Sondergericht during the previous week, and was presumably used to check the extent to which earlier instructions had been obeyed. "

Murray C. Bernays: NUREMBERG. ITS VINDICATION OF WESTERN JUSTICE. ITS PROFOUND LESSONS IN MORAL LEADERSHIP. AND ITS DETERRENCE ON FUTURE AGGRESSION. Survey Graphic, East Stroudsburg, Pa. and New York, November 1946, page 390.

In the "Survey of Legal Literature", Supplement to War Crimes News Digest No. XI, an article by Murray C. BERNAYS on the Legal Basis of the Nuremberg Trial, which appeared in "Survey Graphic" of January 1946, and in the "Readers Digest" of March 1946, was reviewed. Now, after the promulgation of the Judgment of the International Military Tribunal, but before he had before him the full text of the judgment, the author comments on the Nuremberg Judgment.

"Nuremberg became possible", Mr. Bernays says, "because Americans uncompromisingly rejected the submissive fatalism that war is inevitable.

" Right up to August 8, 1945, when the Four Power Pact was signed at London for the creation of an International Tribunal, canny compromises were still being proposed to the United States delegation, intended to avoid the flat declaration that aggressive war is a crime. Our representatives stood their ground; and Nuremberg came into being, not as a drab police court for the trial of some deflated thugs, but as a tribunal for the clear cut affirmation that when the moral sense of mankind condemns conduct in international relations, the organized justice of mankind can punish it. "

The entire concept of an International Tribunal to try these war criminals and to try them for the crime of aggressive war, originated with the United States War Department.



" It was the General Staff which first put forward, then tenaciously fought for, the proposition which Justice Robert H. Jackson prosecuted with moving eloquence, that "the crime which comprehends all lesser crimes, is the crime of making unjustifiable war".(\*) It had been the War Department's insistence which carried conviction to the White House in 1944 and early 1945, got it established as U.S. policy that after victory the initiators of aggression would be prosecuted for that crime along with the others they had committed, and ultimately got it written into the Charter of the International Tribunal. Contrast this record with that of the German General Staff, which, though not convicted as a criminal aggregation, was found by the Tribunal to have been led and largely staffed by an aggregation of criminals who were "a disgrace to the honorable profession of arms".

This lesson needs no labouring. Armies are not dangerous - but the spirit of conquest is. Not by outlawing weapons, but by outlawing their misuse, will we achieve safety. "

At the outset a clear policy, the author points out; was laid down by the United States Government, was adhered to firmly by the U.S. representatives who got it accepted in advance by the others of the Four Powers.

The American negotiators held their basic points:

- "--the principle of international law that aggressive war is a crime for which violators, including even heads of state, must bear individual responsibility;
- the principle of criminal justice that any declaration of guilt must be arrived at by that mode of trial, and under those safeguards to the accused, which are compatible with the established Western traditions of due process. "

After having dealt with the objection that a tribunal of victors could never give the vanquished a fair trial, the author states:

" The Nuremberg verdict is impressive in its selectivity, both in declaring guilt or innocence among the defendants, and in assessing degrees of guilt among those convicted. It is impressive in the integrity of the reasoning by which the results were arrived at. Even as condensed in the press, I have never read, either in the American or in the English Law Reports, a judicial opinion which more closely analysed the facts, more scrupulously weighed their import. Deeply rooted traditions of justice animating the Western democracies had prevailed. What the court condemned was not the defeated enemy, but the cruel criminality of the conduct of responsible leaders.

Even the defects alleged against the verdict tend to buttress the manifest fairness which dictated it. I regard as political the Soviet criticism that all the accused should have been convicted and all hanged. On the basis of the partial facts available at this writing, there would appear to be substantial grounds for the acquittal of von Papen and Fritzsche; that of Schacht I find it hard to understand. All this, however, is beside the ultimate point. "

Here it may be stated that the transcript of the Soviet Judge's dissenting opinion does not confirm the author's statement that he wanted all the accused hanged. The Soviet member of the Tribunal dissented as far as the sentences on the individual defendants were concerned, only from the sentence of life imprisonment imposed upon the defendant Rudolf Hess, and, of course, from the acquittal of Schacht, Papen and Fritzsche.

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(\*) Report of Justice Jackson to the President, June 7, 1945.

"The critics of Nuremberg", Mr. Bernays says, "prove too much and miss the vital point. Nuremberg made three contributions towards deterring future aggression. It bound the civilized nations of the world in a formal compact which reaffirms the criminality of aggressive war, and it set the precedent actually of punishing individuals who are guilty of initiating and waging aggression. Further, it changed the moral atmosphere of conquest. No longer is conquest a brave adventure or a romantic fulfillment - it is recognized in international law for what it is, and stamped as murder."

Raphael Lemkin: LETTER TO THE EDITOR OF THE NEW YORK TIMES  
ON GENOCIDE BEFORE THE UNITED NATIONS.  
New York Times, 8th November, 1946.

The following letter contains information on a resolution brought forth by the representatives of Cuba, India and Panama to the United Nations Assembly:

"The representatives of Cuba, India and Panama to the United Nations Assembly have brought forth a resolution which calls upon the United Nations to study the problem of genocide and to prepare a report on the possibilities of declaring genocide an international crime and assuring international co-operation for its prevention and punishment and also recommending, among others, that genocide should be dealt with by national legislation in the same way as other international crimes.

In connection with this resolution a considerable interest has arisen as to the definition of this crime. It should be noted that genocide is directed against a human group as an entity and the actions involved affect individuals not in their individual capacity but as members of the group. A human group can be destroyed through different means ranging from mass killings to the disintegration of its spiritual resources.

#### Basic Elements of Crime.

However, for purposes of international legislation the definition must be limited to more basic elements, such as killings, mayhem, and biological devices, as, for example, sterilization. One should also limit oneself to such acts which are serious enough to be of international concern. Only acts undertaken habitually and systematically and deriving from an organized plan or conspiracy should be included.

If an individual offender kills a member of another race or religion on his own it might be left up to the jurisdiction of the courts of the state concerned. However, if it appears that the act is a result of an elaborated plan to wipe out larger numbers of people only because of their religious affiliations or ethnical origin, such an act should be qualified as the international crime of genocide. Thus genocide as an international crime boils down to the physical and biological destruction of the national, racial, ethnical and religious groups.

A crime is international when not only one country but the community of nations is concerned in its prevention and punishment. Such crimes which exist in international law under the name of *delicta juris gentium* give the right to other states to punish criminals for acts committed outside their territory; for example: piracy, trade in slaves, drug traffic, etc.

It seems inconsistent with our concepts of civilization that selling a drug to an individual is a matter of worldly concern, while gassing millions of human beings might be a problem of internal concern. It seems also inconsistent with our philosophy of life that abduction of one woman for prostitution is an international crime while sterilization of millions of women remains an internal affair of the state in question.

International Concept.

The concept of genocide thus is based upon existing and deeply felt moral concepts. Moreover, it uses as its elements well defined and already existing legal notions and institutions. What we have to do is to protect great values of our civilization through such accepted institutions adjusted to a formula of international law which is ever progressing. Because of lack of adequate provisions and previous formulation of international law, the Nuremberg Tribunal had to dismiss the Nazi crimes committed in the period between the advent of Nazism to power and the beginning of the war, as "revolting and horrible as many of these crimes were", to use the expression of the Nuremberg Judgment.

It is now the task of the United Nations to see to it that the generous action of the three member states should be transferred into international law in order to prevent further onslaughts on civilization which are able to frustrate the purposes of the Charter of the United Nations.

The representative of the United States at the Steering Committee of the Assembly moved for the inclusion of genocide in its agenda. "



XXII

No. XXII.

December 31st, 1946.

UNITED NATIONS WAR CRIMES COMMISSION  
(Research Office)

WAR CRIMES NEWS DIGEST

[NOTE: The above title replaces that of Press News Summary  
used in the early numbers of this series.  
(For internal circulation to the Commission.)- R.O.]

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## SUMMARY OF EVENTS

### EUROPE

#### AUSTRIA.

##### Demand for Surrender of Eigruber.

The Times (14.12.46) reported from Vienna that the Austrian Minister of Justice had asked the authorities to extradite for trial by a people's court the former Gauleiter of Upper Austria, EIGRUBER, who was sentenced to death by an American military court last year, but had not yet been executed. It is alleged that in May, 1945, EIGRUBER ordered the destruction by dynamite of priceless art treasures looted from all over Europe by the Wehrmacht and hidden in the salt mines in Bad Aussee. Among them were van Eyck's Ghent altar-pieces, since restored to Belgium, treasures from Monte Cassino, old masters from public galleries, private collections, and churches in Italy, France, Holland, and Belgium, old manuscripts, books, antique furniture, precious carpets, sculptures, gold, silver and jewelry. Most of the "deposits" were labelled the property of Hermann GÖRING. When General Patton's army approached at the end of April, 1945, EIGRUBER gave orders that the entire salt mountain must be blown up; the treasures must not fall into the hands of the Allies. Attempts to destroy the treasures first by mines, and afterwards with flame-throwers fortunately miscarried.

[Note: EIGRUBER was sentenced to death, together with some 60 officials of the Mauthausen concentration camp, by a court sitting at Dachau in April, 1945. - R.O.]

#### CZECHOSLOVAKIA

##### The Trial of Tiso, Mach and Durcansky.

(See No. XXI of this Digest, p. 1.)

The trial was continued (11.12.46 - 20.12.46) after the court had refused a request by counsel for DURCANSKY (who was said to be in America) for a postponement. MACH pleaded not guilty to all counts except deportation of Jews, but he maintained that he knew nothing of their fate. TISO admitted that Slovak workers had been deported to Germany, but pleaded that, as President of Slovakia, he was not a member of the government and had no influence in such matters. He admitted that the Vatican had asked his government to stop the cruel treatment of the Jews. He also admitted visiting HITLER at Salzburg, when he received orders to solve the Jewish problem in the German way, and having presided over a Cabinet meeting which instituted forced labour camps for Jews.

MACH admitted (20.12.46) having taken part in the creation of an internment camp at Humene where French and Yugoslav soldiers were interned, though Slovakia was not at war with France or Yugoslavia. The trial was adjourned till January 3rd, 1947.

C Z E C H O S L O V A K I A (Cont.)

Trial Statistics in Czechoslovakia.

The National and People's Courts of Czechoslovakia, during the hearing of 89,000 war crime cases, had found 19,378 persons guilty between January 6th, 1946, and the end of October. Of these, 362 were hanged; 426 sentenced to life imprisonment; 13,543 given prison sentences totalling 101,248 years. The remainder were set free.

Death Sentence. on Dr. Marquert.

An Agency message from Prague (12.12.46) reported that Dr. Walter MARQUERT, former staff doctor at the Nazi prison of Kaunice College, Brno, Czechoslovakia, was sentenced to death by the Brno People's Court on that day for killing prisoners with his own hands and refusing medical aid to sick prisoners.

Surrender of War Criminals by the U.S.A.

Reuter reported (15.12.46) from Prague that Gestapo men who took part in the destruction of Lidice had been handed over to the Czechoslovak War Crimes Commission by the United States occupation authorities in Germany on the previous day.

Surrender of War Criminals by the British.

Reuter reported from Prague (20.12.46) that the Czechoslovakia War Crimes Investigation Commission had obtained the transfer of 19 war criminals from the British occupation zone in Germany.

D E N M A R K.

Gunnar Larsen Case.

The Kalundborg radio reported (29.11.46): Gunnar LARSEN was asked in Court to-day whether he would like to make a statement in connection with the Prosecution's surprise that the British Legation had allowed Gunnar LARSEN to remain in Vestre Prison for eleven months without taking action. Gunnar LARSEN said that action was taken by British quarters, but that Christmas MOELLER had pointed out to the British Minister, Randall, that this would be regarded as British interference in Danish affairs.

F R A N C E.

Surrender of General RAMCKE.

An Agency message from Paris (14.12.46) reported that General Bernhard RAMCKE, Rommel's "right-hand man" in the desert and commander of the fortress at Brest at the time of the Allied invasion, had been handed over by the British to the French military authorities to face trial on charges of ordering the burning of Brest.