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UNITED NATIONS WAR CRIMES COMMISSION

(Research Office)

PRESS NEWS SUMMARY No. IV.

(For internal circulation in the Commission)

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I.

PUBLIC RELATIONS

(Contributed by the Public Relations Officer)

The news of the arrival of Mr. Justice Mansfield, Judge of the Supreme Court of Queensland, after a journey by air of less than four days from Australia, to assume his duties as Australian Government Representative with the UNWCC., was published in the leading British Sunday papers on December 16th.

The War Crimes Exhibition had been visited by 28,864 people up to Saturday evening, December 15th. The notices in the Press (copies of some of which have been circulated separately to the Commission), upon the opening of the Exhibition, included appreciative references to the speeches delivered by Lord Wright and by M. Teitgen, the French Minister of Justice.

Notices regarding the Commission's 15th List of War Criminals, issued on October 25th last, appeared in the American Press, via Reuter.

Arrangements have been made with the United Nations Information Organisation to ensure that adequate coverage is given to the Commission's activities in broadcasting from various stations in Europe.

"UNIO" assembles material on United Nations activities and the B.B.C. uses this material in regular transmission. Prague radio is also experimenting in a special service on these lines; and other stations, notably Paris, Copenhagen, Oslo and Stockholm are regularly supplied. Any material supplied to these states by the UNWCC. will be used for these radio programmes and in the UNIO monthly digest of International Affairs, which has a circulation of about 2,500; when occasion permits it will also be used in the UNIO News Bulletin, which has a circulation of about 9,000.

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II.

S U M M A R Y   O F   E V E N T S .

A U S T R I A .

3.12.45. The Vienna radio announced that the first list of 300 names drawn up by the Austrian Commission for the trial of war criminals included the following: Dr. APOLD, former Director-General of the Alpine Montan Gesellschaft; Ing. BLASCHKE, former Mayor of Vienna; BRUNNER I and II, heads of the Vienna Jewish Emigration Office; EIGRUBER, former Gauleiter of Upper Austria; +FISCHEBOECK, Dr. Hans, Minister of Commerce in the Government which negotiated the Anschluss; FRAUENFELD, Alfred and Eduard; GLAISE-HORSTENAU; + GLOBOTSCHNIK, Odilo, former Gauleiter of Vienna; GOTZMANN, Dr. Leo, former Police Chief of Vienna; +HABICHT, Theodor, underground Landesinspekteur for Austria; HOFER, Franz, former Gauleiter of Tyrol; HUBER, Gestapo Chief of Vienna; HUEBER, a member of the Anschluss Government; +KALTENBRUNNER, Dr. Ernst, SS-General; +MALZACHER, Dr. Hans, Director-General of the Berghuette; MENGHIN, Dr. Oswald, former Minister for Education and University Professor; Ing. NEUBACHER; Dr. NEUMAYER; PROKSCH, Alfred; RAFFELS-BERGER, Walter; RAINER, the former Gauleiter of Carinthia; REINTHALLER, SS-General; RESCHNY, SA-General; Dr. RINTELEN; SCHARITZER, Karl; SCHMIDT, Dr. Guido; +SEYSS-INQUART; Dr. - TAFF; +UIBERREITER, Siegfried; WEIDENHAMMER, Rudolf, industrialist.

[ Names marked + appear in the Lists of the U.N.W.C.C. ]

5.12.45. Another list of 85 war criminals wanted for trial, published in the Austrian Press, includes Prince Waldeck Pyrmont, former SS. and Police leader in Wehrkreiss IX. (This name appears in Charges Nos. 1056/Fr/G/490 and 1791/Cz/G/21 filed with the U.N.W.C.C.)

B E L G I U M .

6.12.45. The Associated Press reported that nine Germans had been handed over to the Belgian authorities charged with mass murders during the German offensive in the Ardennes in December 1945. It is alleged that these men herded 21 civilians, 19 men and two women into a small barn at Renardmont-lez-Stavelot. They then turned machine-guns on their victims, and the barn was soaked in petrol and set on fire.

The farmer, his wife and their two children, who witnessed the atrocity were then set upon too, and murdered in cold blood.

Schmidt, a former commandant of the Breendonck Concentration Camp was found hiding in The Netherlands, and, after being identified by the Belgian witness, Paul Levy, was handed over to the Belgian authorities for trial.

C A N A D A .

11.12.45. The trial of Brigadeführer Kurt Meyer by a Canadian military court on five charges involving the illegal execution of Canadian prisoners of war began at Aurich in Germany on December 10th, 1945.



(The charge against this defendant was filed with the Commission in June 1945: No. 948/C/G 1).

The defendant pleaded not guilty. The Prosecutor, Colonel MacDonald, said that the defendant was responsible "both directly and indirectly" for the murder of 41 Canadian prisoners of war killed by men under his command near Caen; witnesses from one of Meyer's own units—the 15th Reconnaissance Motor-cycle Company—would say that, during their training, Meyer had told them, more than once: "My unit takes no prisoners; I don't care what others do, my Company takes no prisoners." The alleged killings consisted of mass-shootings, in which as many as nine were killed at a time, and also of individual murders of wounded soldiers.

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

27.11.45. The Prague radio announced: "Colonel Ecer has arrived in Prague by air. He will take back to Nuremberg the protocols of K.H. Frank's depositions. Following the decision that Frank shall not appear before the International Court even as a witness, it has become necessary to submit in writing his depositions concerning the defendants at the Nuremberg trial. Frank's trial in this country will be conducted in the same manner as the Nuremberg trials, since the International War Crimes Commission has recognised Czechoslovak views on the conduct of justice. Czechoslovak and Polish observers at the International Court were recently asked how they wished to participate in the trials. The United States Prosecutor Jackson, who according to Dr. Ecer, is the 'Backbone' of the whole Court, made it plain that even were a defendant acquitted by the International Court, he would be handed over to the country where he had pursued his activities. This is important for us, especially regarding Neurath."

8.12.45. The Prague radio announced: Dr. Ecer, the Czechoslovak delegate to the U.N.W.C.C., spoke on the Nuremberg trial at a public meeting in Lucerna Hall, Prague, yesterday. He explained the principles on which the procedure is based and said he was convinced that the small nations, especially our Republic, would be given a chance to come forward as direct plaintiffs.

#### D E N M A R K .

4.12.45. The Kalundborg radio stated: "Denmark is still not represented at Nuremberg, but official circles there say that an invitation was sent to the Government's appointed observer, Professor Hurwitz, as soon as the name was received from the State Department at Washington. In this connection, Professor Hurwitz informs the Radio News Service that, in the first place, no invitation has been received, and secondly, that the Minister of Justice has asked him to work on the Committee concerning the revision of the Treason Acts. Professor Hurwitz cannot, therefore, for the time being go to Nuremberg but he expects to leave after Christmas."

#### G E R M A N Y .

5.12.45. A B.U.P. message from Berlin stated that 30 I.G. Farben-Industrie chiefs were likely to be charged before an international court with planning aggressive warfare. Each of the four Occupying Powers was submitting lists of industrialists, who would be put on trial.



GERMANY (Cont.)

- 7.12.45. The Berlin radio, in a talk entitled: "The Allied Council Acts", said that the Allied Control Council's laws No. 8 and No. 9, dealing respectively with the banning of military training and the seizure of I.G. Farbenindustrie, had a political connection; for monopoly capitalism, as represented by I.G. Farbenindustrie, always backed militarism. The Nuremberg trial would be followed by a second war criminals' trial, at which representatives of German monopoly capital would be among the chief defendants. "We are convinced," it said, "that I.G. Farbenindustrie representatives will be among them, and we hope that Herr Hugenberg, still free to-day, will not be absent."
- 12.12.45. The "Berliner Zeitung" of December 11th demanded a German-organised series of trials, to deal with six groups of criminals: Generals, who knew the truth, but ruthlessly prolonged the war; commanders of pockets who compelled garrisons to fight on hopelessly; officers of summary courts who sentenced thousands of Volksturm to death; commanders of "youth brigades"; provincial Nazi leaders who spread "lying propaganda" that the war was not lost; Volksturm leaders who directed the "scorched earth" policy.

HUNGARY.

- 8.12.45. The Hungarian Minister of Justice was officially informed by the Allied Control Commission in Hungary that no demand for the extradition of Bardossy (former Premier, sentenced to death at Budapest for treason) would be made by the International Tribunal at Nuremberg. Meanwhile, Bardossy's attorney has appealed against the sentence, pointing out that Bardossy had not been found guilty of military offences against Yugoslavia.
- 9.12.45. Ferenc Szalasi, Premier of Hungary during the German domination of that country, was sentenced to death by the People's Court.

- 22.11.45. In a broadcast from The Hague the Dutch Prime Minister, Mr. Schemerhorn, explained the organisation of The Netherlands War Crimes Commission, consisting of a central authority with sub-commissions at Amsterdam, Rotterdam and all the provincial capitals. Citizens were urged to report to the burgomasters war crimes of which they had been witnesses.

(For a fuller account of this speech see Commission Document C.159 circulated on December 10th 1945.)

- 13.12.45. The trial for treason of Anton Mussert who styled himself "Führer" of the Netherlands, took place at The Hague before a special court (November 27th-28th). Sentence of death was announced on December 13th.

UNITED KINGDOM.

- 6.12.45. The Glasgow "Evening News" reported that no less than 500 (sic) war crimes trials were pending within the next few months in the British zone. Among them would be a sensational case against the staffs of two children's "mercy-killing" institutions at Helmstadt, where it is alleged that about 500 infants from Eastern Europe were murdered.



UNITED KINGDOM (Cont.)

10.12.45. Other approaching trials announced in the Press are those of Ernst Tanneberger, former salt-mine manager, who is to be tried in Celle on a charge of inciting German workers to maltreat foreign workers. Dr. Helmut Jung, a former German army doctor was to be arraigned at G8thingen on December 14th for cruelty to British prisoners of war.

1.12.45. After the announcement of the verdict in the Dulag Luft ("Sweat Box") trial at Wuppertal (see Press Summary No. III), it was stated in Court/by a U.S. officer, who had interrogated some of the defendants last summer, that they had informed him of the murder by the Germans of five R.A.F. men who took part with Wing-Commander Gibson (missing since September 1944) in the famous raid on the M8hne Dam, in May 1943.

14.12.45. At Oslo two officials of the Gestapo were sentenced to death by shooting for the murder of four British airmen who had baled out over Stavanger in 1942.

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The Belsen Sentences.

14.12.45. Erich Zoddell, sentenced to imprisonment for life at the Belsen trial on November 17th, was executed on a previous sentence of death for the murder of a Polish girl. The latter sentence had been confirmed, but execution had been postponed so that Zoddell might be arraigned in the Belsen trial.

9.12.45. Field Marshal Montgomery confirmed the sentences passed on November 17th on 30 persons found guilty of crimes in the Belsen Camp. The appeals of Josef Kramer and seven other defendants against the death sentence were rejected. Press messages observed that, under Regulation 12 of the Royal Warrant for the trial of War Criminals, the British Secretary for War had power to commute or mitigate punishments, though it was not likely to be exercised. Three of the condemned did not appear.

6.12.45. The Press reported that the French prosecution staff at Nuremberg wished to call Josef Kramer, ex-Commandant of Belsen, sentenced to death on November 17th, as a witness to substantiate the affidavits of other concentration camp commanders, which, they believed, would be challenged by the defence. The "Daily Mail" quoted an officer of the French prosecuting staff as saying that they had affidavits by Ziereis, late commandant of Mauthausen camp, and his assistant, Adolf Zutter, but that both of them had been killed by the inmates of that camp when it was liberated. The "Sunday Times" correspondent at B.A.O.R. headquarters wrote that Field Marshal Montgomery was opposed to the summoning as witnesses of persons under sentence of death.

14.12.45. Josef Kramer, and the other ten criminals condemned to death, were hanged at Hamelin on December 13th.



UNITED KINGDOM (Cont.)

In the House of Commons the Attorney-General was asked:  
"In view of the ruling given at the Belsen trial, that being a member of a concentration camp staff did not constitute a war crime, to state what machinery of justice existed to deal with such persons. ...."  
Mr. Lawson, replying for the Attorney-General, said that "any such statement by the Judge Advocate was an expression of his own opinion, and could not be regarded as a ruling binding on any subsequent Court. The machinery for dealing with the persons referred to depended on action by the International Military Tribunal of Nuremberg, which was being asked to declare that the S.A., S.S., Gestapo and other bodies were criminal organisations. If that were done, members of concentration camp staffs could be tried before international or occupational courts."

[This statement was briefly referred to in No. 2 of this Series, page 8, and is now given in full.]

2.12.45. In the "Sunday Times" an "Army Officer" who attended the Belsen trial wrote:

"May I attempt to relieve the uneasiness recorded by one of your readers at what he described as the leniency of the sentences? Some of the evidence was revealed as mere hearsay, which normally is inadmissible in a British Court but was admitted at Luneberg and given such weight as the Court thought fit. In the cases referred to, it is clear that the main allegations were not proved to the satisfaction of the Court.

"I cannot agree ..... that 'where specific crimes could not be proved the prisoners were self-condemned by the mere fact of their being camp guards at Belsen since none but the criminally brutal could or would hold such positions.'

"Some of the accused were themselves internees, others had arrived there only a few days before we entered and had no choice in the matter at all, while one, I believe, worked in the camp after we arrived. To hold that these should share the responsibility for the condition in which they found the camp is surely not just."

The writer concluded that "the trials bring home to the Germans that they are now living in a world where justice, though, inexorable, is free and impartial."

9.12.45. Sir Walford Selby in the "Sunday Times" considered the above-quoted "Army Officer's" conclusion to be "exactly right." ..... "The procedure which is being followed," Sir Walford Selby said, "has been decided upon after full and careful deliberation by the highest and most qualified authorities in the Allied countries, and it does appear to me expedient that while the whole question is sub judice, the less criticism there is of the procedure of the tribunals, and of the decisions to which they may come, the more likely are we to be able to achieve our main purpose, namely, as a result of these trials provide ourselves with a real and tangible guarantee against any repetition of developments which led to earlier wars—the destruction of such guarantee; sufficiently solid in their time, as were incorporated in the Treaty of Versailles."

29.11.45. G.A. Lanczy, D.Pol., writing in the "Patriot," said, in part:  
"The war trials conducted and finished last week in the British Zone of occupied Germany were certainly fair in form and substance..... Also, the Prosecutor did his very difficult legal job with much tact and objectivity."



There is one thing, however, which seems to have been neglected: insistence of generally accepted Press etiquette, i.e., not to report on the cases far in advance of their hearing in a manner prejudicial to justice, for the Press did its best to turn public opinion against the accused long before they appeared in dock. Pressure from outside, in fact became so strong that verdicts seemed to become foregone conclusions."

- 5.12.45. The Belgrade radio quoted a telegram sent by the Jews in Yugoslavia to the British Government: "The Association of Jewish Religious Communities of the Federal People's Republic of Yugoslavia has learnt with indignation and grievous disappointment of the verdict passed at Luneberg against the Fascist criminals from Belsen camp. In the name of 10,000 survivors and of the 70,000 Yugoslav Jews wiped out by the Nazi Fascist criminals, we protest against the unjust leniency of this verdict, which is also an insult to innumerable innocent victims. We demand a just and strict revision of it, and the severest punishment of all Fascist criminals."
- 3.12.45. The Press reported from Hamburg that "for having ordered that no Allied prisoners be taken in an attack on a hill near Vernon in August 1944, Lieutenant Karl Heinz Kniep and Hans Wichmann, an N.C.O., were sentenced on December 2nd to three years' imprisonment by a War Crimes Tribunal sitting at Hamburg. When the hill was taken, it was found to be unoccupied, so no harm was done, but the court found that the issue of such orders constituted a war crime."

#### The Ruhr Industrialists.

- 2.12.45. With reference to the arrest of 76 steel magnates, Press reports mention the name of Karl EBERHARDT, chief armaments sales director, in addition to those given in Press Summary No. 3. A senior intelligence officer who took part in the arrests said:
- "The weight of German heavy industry was behind the Nazi Party even before its accession to power, and the authority and destructive ambition of the party before and during the war years were to a very large extent derived from the existing strength and ambition of German industry."
- 7.12.45. An Associated Press message from Iserlohn said that "four more German industrialists had been arrested in the Ruhr by the British Field Security Police, following the weekend round-up of the steel magnates. See No. 3 of this Series. They were held for interrogation pending the detention in custody of some, and the charging of others as war criminals. Three other industrialists on the British list were said to be still at large; a fourth was in a German hospital."

#### NORWAY.

- 12.45. The trial of Gestapo officials before a mixed British-Norwegian court at Oslo for murdering the crew of the M.T.B. 345 (see Press Summary No. 3) resulted in one death-sentence, six sentences of imprisonment, and two acquittals.



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UNITED STATES.

- 23.11.45. The American News Service in Germany reported the execution at Landsberg prison on November 19th, after a trial by an American military commission, of three Germans for murdering American airmen, viz.: Ernest Waldermann for the murder of an airman at Haimbuck on December 2nd, 1944; Wilhelm Haffner for a similar murder on December 12th, 1944; and Albert Bury, police chief of Langenselbold.
- 26.11.45. The same news service reported that, on the date in question, there were 60 cases, expected to last three months, on the dockets of the War Crimes Courts of the Western Military District at Ludwigsburg; the fourth trial was then in progress. One German had been sentenced to death and two to imprisonment. Two had been acquitted. Most of these cases, the message stated, concerned the killing or beating of Allied airmen; the former category are tried by a General Court able to pass a death sentence; the latter by an "intermediate court" able to award imprisonment up to ten years.
- A case which may—the report stated—"prove an important precedent" was dealt with on November 23rd, was that of Ludwig Schardt, of the Volksturm, who admitted killing three American airmen, but pleaded superior orders. (It appears that in this case the court gave some weight to his plea as he was sentenced only to life imprisonment.)
- 28.11.45. The same News Service announced that an "intermediate" war crimes court, on Monday 26th November, had convicted and sentenced to imprisonment for one year, Werner Pornklewicz, a resident of Hastenbech, who was accused of beating a captive Allied airman. The pilot, who parachuted near Hastenbech in March 1944, was held under armed police guard. The accused beat him about the head and shoulders with a lath while the guards held him helpless.
- 8.12.45. The "Daily Telegraph" reported that August Kobus, former Nazi Mayor of Freilassing, Bavaria, was sentenced to death by an American military court in Ludwigsburg for shooting a wounded American pilot.

The Dachau Trial.

- 13.12.45. This trial, which began on November 15th (See No. 3 of this Series) ended on December 12th, when all the forty defendants were found guilty. The President of the court said: "The evidence convinced the court that Dachau Concentration Camp subjected its inmates to killings, tortures, and indignities to an extent that necessitates the indictment of every one, high and low, who had anything to do with its conduct." Thirty-six of the defendants were then sentenced to be hanged, including Martin WEISS, Commandant, Drs. SCHILLING, WITTELER and HINTERMAYER, who conducted medical experiments.
- 13.12.45. A Press message from New York states that Richard DRAUZ, a minor official of the Nazi party, was sentenced by a Military Government court at Dachau to be hanged for killing a handcuffed American airman. The principal witness against him was Heins Enders, who had already been sentenced to death for killing four others of a group of six airmen murdered on March 24th.



THE FAR EAST.

JAPAN.

10.12.45. "The Times" reported from Tokyo that TOJO, former Prime Minister, and members of his Cabinet would be tried there in January. Mr. Keenan, United States special prosecutor, who had recently arrived at Tokyo, told the Press that the death penalty would probably be demanded for Tojo and "the men who set in motion the mechanism which made the dropping of bombs inevitable."

"A number of the accused," will," he said, "undergo several trials, having judges from the various countries where they were alleged to have committed crimes against humanity." Mr. Keenan added that "other Allied nations ..... had been invited to send General MacArthur ..... the names of the representatives they wanted on the bench or among the prosecutors."

6.12.45. General MacArthur ordered the arrest of Prince Konoye<sup>+</sup>, former Prime Minister. Among eight other leading Japanese arrested was Koichi Kido, described as the Emperor's right-hand man during the war. Yushio Kodama, who is to be tried as a war criminal has admitted that he made £60,000,000 out of the war.

1.12.45. Lieut.-General HALL, commander 8th U.S. Army, announced that the first war crimes trial in Japan would open at Yokohama on December 13th. About 300 Japanese were to be tried before military commissions of five to eight members.

10.12.45. A list of 57 Japanese whose arrest was ordered by General MacArthur includes the commander of the Cabanatuan Camp in the Philippines.

SOUTH PACIFIC.

9.12.45. "The Times" reported from Melbourne that the biggest trial so far held in the Pacific area would begin at Labuan on December 10th. Seventy Japanese would appear to answer joint charges on ill-treatment of interned persons at Kuching, where 1400 white men, women, and children died of neglect and ill-treatment.

A Morotai Court, after 20 minutes' deliberation, found Lieutenant Tanaka and Private Fujisaki guilty of the murder of an Australian airman on Talfa Island on March 23rd. Fujisaki told the Court, on oath, how he was ordered from the ranks by Tanaka and bayoneted the airman.

On December 8th an Australian military court sentenced to death by shooting 20 Japanese and Formosan guards, including Sergeant-Major Tsuroo Sugnio, found guilty of the massacre of 46 prisoners of war at Miri (Sarawak). This was the third trial in the Miri massacres series.

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+ Prince Konoye has since committed suicide.



III.

THE TRIAL OF THE MAJOR WAR CRIMINALS.

Progress of the Trial;  
Points of interest noticed by the  
Press and Radio; Press comments.

COUNT II OF THE INDICTMENT

The American prosecutors' survey of Count I (conspiracy) was interrupted on December 4th to allow Sir Hartley Shawcross to open the British case on Count II (crimes against peace) before returning to England for the Joyce appeal. The British Attorney-General accordingly made a detailed survey of Count II, in a speech of 24,000 words, setting forth the diplomatic background of the aggressive wars launched by the Nazis; the case was supported by over 200 documents.

On December 5th Mr. Alderman, the U.S. deputy prosecutor resumed his survey of the betrayal of the Munich pact (Count I); Sir David Maxwell-Fyfe then continued with Count II, and dealt with the question of broken treaties and the attacks on Poland, Denmark, Norway, Belgium and Holland, which was then further elaborated by the British deputy prosecutors. The British case was completed on December 7th. The U.S. deputy prosecutors then continued with Count I and dealt (December 10th) with the collaboration of Germany and Japan.

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- 7.12.45 Lord Justice Lawrence, President of the Tribunal, announced that it would take a recess from December 21st to January 2nd. Defence Counsel had asked for a three weeks adjournment to enable them to study the documents.
- 8.12.45 After hearing Hess's statement that his loss of memory had been simulated, the Court ruled on December 2nd that it found no reason whatever why he should not stand his trial. An American psychiatrist, who had Hess under observation, stated, in conversation, that his memory was now indeed normal.
- 11.12.45 Ernst Kaltenbrunner, former head of the Security Police and RSHA, who had hitherto been prevented from appearing in court by a cerebral haemorrhage, took his place in the dock and pleaded "not guilty".
- 4.12.45 As a result of tests carried out in the prison the defendants at the Nuremberg trial were graded by a psychologist, in the following order, as regards their intelligence: Schacht (in the genius class); Seyss-Inquart; Goering; Doenitz; Papen; Frank; Fritzsche; Schirach; Ribbentrop; Keitel; Speer; Jodl; Rosenberg; Neurath; Frick; Funk; Sauckel; Hess; Streicher.
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Among points of law or procedure noticed by the daily press or radio were the following:

- 5.12.45 In his opening address Sir Hartley Shawcross dismissed a likely point of the defence - that it was England and France that declared war in 1939 - by arguing that, in attacking Poland in violation of the Kellogg Pact, Germany had violated her obligation towards all the signatories of that pact.



- 5.12.45. In the same address the British Attorney-General said that "only two points adopted by the tribunal could in any way be called innovations. These were that a State could be responsible for crimes committed in its name, and that individuals could be held responsible for a crime committed on behalf of the State. 'If this is an innovation, it is one which we are prepared to defend and to justify. It is a salutary legal rule that persons who, in violation of the law, plunge their own and other countries into an aggressive war, do so with a halter around their neck.'"
- 2.12.45. On December 1st Dr. Stahmer, Goering's Counsel, submitted "that the defendants should be entitled to question the witnesses, contending that the terms of the charter governing the trial made this permissible. Justice Jackson opposed the application. The defendants, he pointed out, were given the right to conduct their own cases or have the assistance of counsel, and all had chosen counsel. The hearing would, he declared, become a performance rather than a trial if this sort of thing were to be allowed. The Court refused the application, but said that the defendants would be allowed to give evidence and make statements at the end of the trial.
- 4.12.45. On December 3rd, Dr. Stahmer objected to the admission of affidavits by SS-General Gottlob Berger and by Naujocks of the SD, who had made them at Nuremberg during the past fortnight, and argued that the witnesses themselves should be available for cross-examination. The President allowed the objection, and told the defence that they could call these witnesses if they wished.
- 5.12.45. A Press report from Nuremberg said that payments of RM 2,000 per month would be paid by the Court to each of the defence counsel. This sum would be charged against Reparations; but, if nothing was obtainable from that source, the expense would have to be borne by the exchequers of the Four Powers.
- 10.12.45. Lord Justice Lawrence said that when the prosecution had completed its case, each defendant would be allowed to state what witnesses he wished to call and what their evidence would cover; he warned the defence counsel, however, that this would not be an opportunity for speeches; during the defence each defendant would be allowed to make one speech.
- 5.12.45. Referring to a criticism in the U.S. "Army Journal" to the effect that the prosecution was seeking to establish "a principle of international law under which professional military leaders were subject to conviction as war criminals because of service in high commands or on general staffs, Justice Jackson pointed out that "in his opening statement, he had made it clear that German militarists were not being charged with having served their country, but with mastering it and driving it to war; not with fighting a war but with promoting one. They were not being tried because they belonged to a profession, but for the crime of planning an aggressive war."
- 1.12.45. With reference to the request signed by Dr. Cyprian and other Polish delegates for Poland to be admitted as "amicus curiae" to the Nuremberg trial (see Press Summary No. 3), the Warsaw radio announced that the question would be decided by the Tribunal and all the prosecution representatives; the Secretary-General of the U.S. Tribunal, General Mitchell, had promised support. If Poland should meet difficulties from the Tribunal or the prosecutors, they would be caused only by the fear of prolonging the trial, especially if other States should request the same favour.



- 6.12.45. The Polish P.A.P. representative at Nuremberg declared:  
"The Polish drama is emerging ever day more clearly at the trial.....  
In view of Poland's special position and great losses, she has demanded  
participation in main proceedings, at least in those where Frank is  
concerned. .... To allow Poland to take direct part in the trial  
would not only satisfy the Polish people but also guarantee that the  
crimes committed on Polish territory were fully substantiated."  
[ See also under Czechoslovakia, page 3.]

PRESS COMMENTS ON THE NUREMBERG TRIAL.

- 1.12.45 The "Law Times" writing on the subject of the Speaker's ruling on  
November 22nd that members of the international tribunal sitting at Nurem-  
berg, were, as regards comment in the House, protected to the same extent  
as British judges, observes that there are two rules of the House which  
apply to proceedings in British courts: (1) that reflections on judges of  
the superior courts can only be made by a substantive motion; (2) that  
matters which are sub judice are not the subject of discussion in the  
House. "The Speaker indicated that it would be worse than invidious, and  
indeed improper, not to extend the protection afforded to the British  
members of the Tribunal by the first rule to their colleagues who represent-  
ed the three other Allied nations. As to the second rule, the Tribunal was  
one in which British judges participated, 'and,' the Speaker went on, 'we  
have the same interest in seeing that nothing is done here to disturb its  
judicial atmosphere as we have in the case of British courts - indeed per-  
haps, a greater interest, since the eyes of the world are upon this new  
and difficult procedure of international justice, and the consequences of  
ill-advised interference might be incalculably mischievous.'"

- 1.12.45 Referring to Justice Jackson's opening address, Mr. P. de Mendelssohn  
writes in the "New Statesman and Nation":

"In style, phrasing and delivery, Justice Jackson's 25,000 word  
statement has the genuine, inspiring ring of Mr. Roosevelt at his best,  
and it made a tremendous impression on all who heard it, including . . .  
Goering. The speech ranks, without . . . exaggeration, among the great  
documents of our age. As a legal exposé it has few equals; as a politic-  
al document it stands alone . . ."

In regard to the German attitude the same writer says:

"They (the Germans) take the view that the present trial has 'no legal  
basis in international law, but is a procedure based on new penal law which  
was created only after the act,' and they argue that, while they fully  
favour the creation of such a new international law for the sake of future  
law and security in the world, the present defendants will have to be let  
off unless they can be proved guilty of crimes punishable under laws in  
force at the time of their commission. Nobody, they contend, has ever  
thought of incriminating statesmen, generals and economic leaders for  
using force. They imply that therefore it cannot be done now; that even  
as recently as San Francisco no rule of law was created to enable an inter-  
national court to punish persons who launch an unjust war. They deliber-  
ately ignore the fact that it is one of the chief purposes of this trial,  
although not its only one, to create such a law."



Mr. Mendelssohn goes on to quote Sir David Maxwell Fyfe's statement that the trial is the "logical application to the international field of what has long been applied on the national field. What is punishable under national law is logically punishable also under international law, and the International Tribunal is thus seen as the natural corollary to national tribunals, in that the crimes committed concern several nations and are not limited to one country."

On the question of conspiracy he says:

"Ingenious and correct as the charge of conspiracy is, its limitations became visible as soon as the presentation of the evidence began. The strictly legal approach to a political issue restricted the object of the prosecution to the Nazi Party, and logically took for its starting point the foundation of the Party under Hitler in 1920, thereby ignoring a large number of other factors and tendencies which made their contribution to the final catastrophe."

- 2.12.45. In the "Sunday Dispatch" Lord Vansittart writes that he had been alarmed by the length of the Belsen Trial, and had feared that, allowing for the larger scale of the Nuremberg issues, a trial of the major war criminals would be protracted to a length which might blunt their effect and retard other trials. He now admits, however, that the magnitude and thoroughness of the revelations brought forth at Nuremberg makes its proceedings a valuable historic record, and he hopes that they will convince the world, including some Germans, of what the Allies were really up against.
- 6.12.45. The "Weekly Review" complains that the accused are continually pilloried in a way that would not be permitted in England. This method of reporting it deplores when "it is directed against members of the accused who, so far as the general public is aware, have committed no greater crime than obedience to an admittedly vile Government. Keitel, von Papen, Schacht, for example, may be criminals, but we do not recall the publication of any crimes committed by them—unless it be a crime to give support to one's country when it is ruled by a vicious Government.<sup>+</sup> But could it not be a dangerous precedent to introduce such a charge into international law?"
- 3.12.45. "Time and Tide", discussing the opening of the British case, writes that Sir Hartley Shawcross argued that the violation of the Kellogg Pact and kindred instruments was against the law. "But what law? — was it against the law of the German Reich? And is there yet—effectively—any other than national law? There has been no authoritative answer to that question such as ends controversy, and as such an answer can hardly be obtained from the present bench, in the very nature of things the controversy will go on."
- 7.12.45. A correspondent of "The Friend" writes, in part: "In spite of all the legal care taken to ensure a proper defence and a fair trial, the blunt fact remains that the Tribunal is not a Court of Justice as that term is used in Britain, France and America. It is a Military Court of the prisoners' enemies, exclusively; the judges being British, American, French and Russian."
- 8.12.45. "The Economist" regrets that public attention tends to be deflected from the pattern that the prosecution is following by side issues, and that too little attention is paid to the careful plan emerging from counsel's speeches. "Proof", the article continues, "is being built up on a common criminal intention. The case seems to be that this intention, originally evolved by two or three men, was, owing to the scale of their

<sup>+</sup> See, in this connection, Justice Jackson's observation on page 11 (5.12.45).



operations, by about 1938 such common property that economists, diplomats, armament manufacturers and so on were party to it. They had to be admitted to the conspiracy because they had to know why operations of such magnitude were required of them. It now seems possible that the prosecutions net can be woven in a mesh sufficiently fine to catch even Dr. Schacht."

- 3.12.45. Dorothy Thompson, the American journalist, writes in the "Yorkshire Post": "Justice Jackson bases his case on natural law, the state of public consciousness and conscience. Much law has been Judge-made. The conscience of mankind is against aggressive war. This universal sense that aggressive war is a crime must, he argues, become law by establishing the precedent that individuals who conspire or assist to make it shall be held personally responsible. 'Only persons commit crimes.' ..... I am not impressed in this case by arguments against ex post facto law. Sometime, somewhere, a supreme tribunal must fix responsibility for acts committed in the name of States that, were they private, would send any man to the gallows."

She expresses, however, her dismay at Justice Jackson's observation that "If these defendants should succeed, for any reason, in escaping condemnation of this tribunal, those who are American held prisoners will be delivered up to our Continental Allies." This, she observes, 'is judgment in advance of hearing. It throws doubt on the jurisdiction of the tribunal itself.'

- 7.12.45. In its "Nuremberg Notebook", "Neue Zeit" states that the many readers' letters received reflect the interest the public is taking in the Nuremberg proceedings. These letters express deep consternation at the incriminating documents submitted by the prosecution and, at the same time, the public's sense of justice is manifested in the refusal to consider the defendants already guilty. "Our political judgment on the Nuremberg Defendants is something completely different from the judgment to be passed by the Court. During recent House of Commons debates a point was made not to anticipate sentences to be passed by the Nuremberg Court. Sir Hartley Shawcross also made it perfectly clear that the proceedings constitute jurisdiction, and not a dictate of the victors. 'Right is Right' is a glibly repeated Hitler-phrase. What we in Germany need above all is the faith in the might of eternal justice prevailing over injustice."
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The German Press at first gave front page positions to the Nuremberg Trial, though latterly it has been relegated to the inner pages. Justice Jackson's speech was carried in fairly full extracts by all papers; some even spread the speech over two issues. The following figures are typical of the space allotted to the trial reports: Frankfurter Rundschau - 7 p.c. of total space; Wiesbaden Kurier - 60 p.c.; the average of the remainder ranges between 20 and 30 p.c. There was no trace of uniformity in the reports; this shows that there has been no regimentation of the licensed papers by the Occupying Power.



IV.

LEGAL LITERATURE.

(Contributed by E. SCHWELB, Legal Officer)

Lord WRIGHT: War Crimes under International Law.

Law Quarterly Review, January, 1946, page 1.:-

Lord Wright deals in this paper with more or less all legal problems facing any lawyer engaged in the problem of war crimes. He says of the International Military Tribunal established by the Four Power Agreement of August 8th 1945 that it is intended to act under International Law. It is clearly to be a judicial tribunal, constituted to apply and enforce the appropriate rules of International Law. The three classes of persons which the Charter of the I.M.T. specifies (in Article 6) are war criminals; the acts mentioned in classes (a), (b) and (c) (crimes against peace, violations of the laws and customs of war, crimes against humanity) are crimes, not because of the agreement of the four Governments, but the Governments have scheduled them as coming under the jurisdiction of the Tribunal because they are already crimes by existing law. On any other assumption the Court would not be a court of law but a manifestation of power. The principles which are declared in the Agreement are not laid down as an arbitrary direction to the Court, but are intended to define and do, in Lord Wright's opinion, accurately define what is the existing International Law on these matters.

As to war crimes, stricto sensu, there is undoubtedly a system of laws of war and, ancillary to that system, the recognised right of military commanders to create military courts to enforce that branch of International Law. Hall makes the test of jurisdiction to punish for the violation of the law, the fact that the offender has fallen into the belligerent's hands. The whole position is very fully explored by Chief Justice Stone in the judgment of the Supreme Court of the United States in the "Saboteurs" case, Ex p. Quirin.

Dealing with the usual objections against the idea of punishing individual violators of the laws and customs of war, Lord Wright dismisses the allegations that the law relied on is retrospective, or uncertain, or not sufficiently specified. These objections fail if the "laws and customs of war are a standard certain to be found in books of authority and in the practice of nations." (Scott and Lansing, Minority Report of the Commission of Responsibilities, 1919). A criminal cannot exculpate himself on the ground that he was ignorant of the law which affects him.

It is no answer to the law that it is being enforced by the victorious belligerents against the vanquished. Someone must act as policeman if law is violated. That the stronger may sometimes in fact be substituting power for justice is, no doubt, a calamity when it happens, but this possibility is not relevant to the argument when what is being sought is justice, not revenge. A criminal is not entitled to be tried by a neutral court. All he is entitled to is a trial on fact and law conducted on the principles of elementary justice.

As to the plea of superior orders as a defence, the true view is, in Lord Wright's opinion, that if what is ordered is a crime, which is or ought to be a crime manifest to the subordinate soldier or Government agent, he cannot justify his obedience. Even if the criminality of the order is not reasonably obvious, the plea would not be a defence though it might go to extenuation.



The defence of the immunity of heads of States is based on one or both of two obsolete and exploded fallacies. Both the sovereign State and its head are, in war conditions, subject to penal measures. The imagined rule of immunity is illogical, for even its extreme supporters admit that it does not apply to heads of State who are captured, or who surrender, or who have abdicated. In the last resort the defence can only be supported on the lines of a personal immunity, like the divine right of kings, eloquently claimed by certain royal personages in Shakespeare.

Lord Wright quotes Professor Trainin's work on Hitlerite Responsibility under the Criminal Law, particularly the author's conclusion that all the Hitlerite criminals are liable, without exception, "from the lance-corporal in the army to the lance-corporal on the throne". Crimes do not cease to be crimes because planned and organised on an unparalleled magnitude. Nor do they cease to be crimes against the law of war because they are also crimes against the moral law or the elementary principles of right and wrong.

It is with these considerations in his mind, that Lord Wright approaches the question of the "crime against peace". There are two approaches to it:-  
1) the concrete method, starting from the actual violations of the laws of war in a totalitarian conflict, and tracing the responsibility up to the originators of the whole scheme.  
2) the more abstract argument resting upon the very nature of war as a thing evil in itself. To initiate a war of aggression is the chief of war crimes, the accumulated evil of the whole. Here, again, Lord Wright adopts Professor Trainin's definition: "the basic prescriptions of any international communion is the existence of peaceful relations between States. The direct and most dangerous form of offence against peace is the attack of one State on another. Unjust aggression is therefore the most dangerous international crime".

It is not easy at first sight to understand why an unjust war is not a crime under International Law. The question is whether the offence has achieved the status of being forbidden by law. The banishment of Napoleon I to St. Helena by the executive action of the Allies may be taken in some sort to create a precedent for the similar executive action for the punishment of deposed or of abdicated sovereigns. However, the punishment of heads or other members of Governments or national leaders for complicity in the planning and initiative of aggressive or unjust war has not yet been enforced by a Court as a matter of International Law. But between 1918 and the commencement of the second World War, the Covenant of the League of Nations and the Kellogg-Briand Pact were signed and adhered to. There seems no room for doubt that the latter intended to declare war to be an illegal thing. The Pact of Paris is not only a solemn Treaty, it is also evidence of the acceptance by the civilised nations of the principle that war is illegal. It may be that before the Pact this principle was simply a rule of morality, a rule of natural as contrasted with positive law. The Pact converts the moral rule into a positive rule of law, binding on individuals. International Law has progressed as it is bound to progress if it is to be a living and operative force in these days of widening sense of humanity.

An international Court, faced with the duty of deciding if the bringing of aggressive war is an international crime, is entitled and bound to hold that it is.



The Treatment of War Crimes and Crimes Incidental to the War by "Judex".

(Reprinted from the Bulletin of International News,  
Royal Institute of International Affairs.)

"Judex", a distinguished member of the United Nations War Crimes Commission, contributed in February and March, 1945, a series of articles to the Bulletin of International News, published by the Royal Institute of International Affairs, which have now been reprinted as one pamphlet.

"Judex" distinguished between: I. war crimes proper, viz., violations of the laws of war; II. the punishment of Quislings, traitors and the like, and III. the punishment for the waging of an aggressive war. The learned author deals shortly, but very lucidly with the treatment of war crimes after the last war ("The Precedents of 1914-1922") and goes on to analyse the "present situation", giving an outline of the work done during World War II, both on an official and on an unofficial level. Of particular interest is the chapter on the punishment of Quislings, because this aspect of the problem has so far been neglected by the relevant literature.

In his paper, which was published before the end of the war and long before the Four-Power Agreement of 8th August 1945, the author sums up as follows:

"Hitler could be sentenced to death as a common criminal for any one of the crimes which he has ordered—but if this were done, he would be whitewashed, in the eyes of posterity, of all his crimes except that one. The same applies to all other arch-criminals.

It is essential for the future peace of the world that would-be imitators of these men should know that the United Nations have irrevocably decided to punish with death an act of aggression as well as grave violations of the laws of war.

It is important that the arch-criminals be charged with the whole of their misdeeds, including the gross outrages upon the law of nations and international good faith that brought about the war, the part which they took in organising and ordering violations of the laws of war, and the part they took in carrying out the policy of oppression and extermination of the peoples of occupied countries.

So long as condign punishment is imposed, the method by which this is brought about is of lesser importance. There is as much justification for trying them for all these misdeeds as for punishing them by means of a political decision; a political decision would be more expedient, but it is erroneous to believe there would be no legal basis for punishment by trial by an international court; on the international level the substantive law prohibiting aggression and violations already exists, but the machinery would have to be set up and the procedure agreed upon.

Whether punishment is imposed judicially or politically, in either case some sort of body or machinery will have to be entrusted with the duty of determining responsibilities and apportioning punishment to each individual, since to punish whole categories en bloc without some investigation of their guilt would be contrary to the traditions of the peoples of the United Nations.

It is very possible that, rather than create some new judicial organ, it would be more convenient to charge some existing body with the duty of preparing the reasons for political decisions imposing punishment upon the individuals described in the Moscow Declaration as "criminals whose offences have no particular geographical location". The United Nations War Crimes Commission has up to the present abstained from making any public statements about its activities, but those who know something of the work that it has done consider that this has been of considerable importance, particularly in proposing



constructive solutions for some of the most difficult of the problems referred to in this article. The War Crimes Commission appears to be the qualified and naturally indicated body to undertake this task."

In comparing this summary with what actually has been decided in the Four-Power Agreement and what is actually being given effect to in the Nuremberg trial, one will see that though the procedure eventually adopted differs from Judex's proposals, in substance his ideas have been accepted by the United Nations.

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"NUREMBERG: BEFORE AND AFTER." By C.K.A.

("Truth," 23.11.45.)

This article is not a legal treatise and was not published in a legal periodical. It is mentioned here because the initials suggest a leading Oxford scholar and University teacher of law (a former Professor of Jurisprudence in the University of Oxford) as the author.

C.K.A. says he has not found a single person who doubts that the Nazi riff-raff ought to be dealt with rigourously; on the other hand he has met very few people and hardly any lawyers who believe that a "trial" is the proper or expedient method.

The following is a summary of the author's objections:

1. A trial, in which the issue is a foregone conclusion is not, to English notions, a judicial process at all, but a public demonstration masquerading as a trial and to that extent, detrimental to the whole British conception of impartial justice. The author refers to many treason trials of "high offenders" whose real crime in most cases was that they had incurred royal displeasure. These were not really trials, but mere pompous preliminaries to a sentence, conducted in a manner which nowadays pains and astonishes us. The writer believes that future generations will reward the Nuremberg trials with the same disavowal, not to say shame.
2. The indictment consists largely of charges which, whatever International lawyers may say, are quite unknown and unprecedented to counsel practising in English courts.
3. The English Bar has standards of its own which are not always understood in other countries. British counsel for the defence in Belsen are receiving abusive and threatening letters from persons who do not understand the principles of English advocacy and they are also being vilified in the Russian Press with the usual restraint and courtesy of that nation.
4. One of the reasons constantly urged for these trials is that they will deter the Nazis of the future. People who use this argument vastly underestimate the gigantic capacity of the human mind for self-deception. There is a considerable danger that the accused at Nuremberg, far from serving as warning examples, may acquire a dignity and an importance out of all proportion to their essential emptiness. Though there is no danger that the Nuremberg trials will descend to the depths of the Laval affair, it is a significant fact that trial and execution brought to one of the most cynical rogues in Europe a certain sympathy which no single word or action of his life could ever have won him.

The writer does not express an opinion on the correctness or incorrectness of resolutions of the practising profession concerning standards of professional conduct. Having obviously in mind the recommendation of the English Bar Council that English barristers should not take up the defence of the accused at Nuremberg, he says that as one who values our national principles of justice and seems them in danger from various causes to-day, he can only be thankful that our high traditions of advocacy are not going to be compromised in this imbroglio.