LONDON AGREEMENT OF 8 AUGUST 1945

WHEREAS the United Nations have from time to time made declarations of their intention that war criminals shall be brought to justice;

AND WHEREAS the Moscow Declaration of 30 October 1943, on German atrocities in Occupied Europe stated that those German officers and men and members of the Nazi Party who have been responsible for or have taken a consenting part in atrocities and crimes will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free Governments that will be created therein;

AND WHEREAS this Declaration was stated to be without prejudice to the case of major criminals whose offences have no particular geographical location and who will be punished by the joint decision of the Governments of the Allies;

NOW THEREFORE the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic and the Government of the Union of Soviet Socialist Republics (hereinafter called "the Signatories") acting in the interests of all the United Nations and by their representatives duly authorized thereto have concluded this Agreement.

Article 1. There shall be established after consultation with the Control Council for Germany an International Military Tribunal for the trial of war criminals whose offences have no particular geographical location whether they be accused individually or in their capacity as members of organizations or groups or in both capacities.

Art. 2. The constitution, jurisdiction and functions of the International Military Tribunal shall be those set out in the Charter annexed to this Agreement, which Charter shall form an integral part of this Agreement.

Art. 3. Each of the Signatories shall take the necessary steps to make available for the investigation of the charges and trial the major war criminals detained by them who are to be tried by the International Military Tribunal. The Signatories shall also use their best endeavours to make available for investigation of the charges against and the trial before the International Military Tribunal such of the major war criminals as are not in the territories of any of the Signatories.

Art. 4. Nothing in this Agreement shall prejudice the provisions established by the Moscow Declaration concerning the return of war criminals to the countries where they committed their crimes.

Art. 5. Any Government of the United Nations may adhere to this Agreement by notice given through the diplomatic channel to the Government of the United Kingdom, who shall inform the other signatory and adhering Governments of each such adherence.

Art. 6. Nothing in this Agreement shall prejudice the jurisdiction or the powers of any national or occupation court established or to be established in any Allied territory or in Germany for the trial of war criminals.

Art. 7. This Agreement shall come into force on the day of signature and shall remain in force for the period of one year and shall continue thereafter, subject to the right of any Signatory to give, through the diplomatic channel, one month's notice of intention to terminate it. Such termination shall not prejudice any proceedings already taken or any findings already made in pursuance of this Agreement.

IN WITNESS WHEREOF the undersigned have signed the present Agreement.

DONE in quadruplicate in London this eighth day of August 1945, each in English, French and Russian, and each text to have equal authenticity.

(Here follow signatures)

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL

I : CONSTITUTION OF THE INTERNATIONAL MILITARY TRIBUNAL

Article 1. In pursuance of the Agreement signed on 8 August 1945, by the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic and the Government of the Union of Soviet Socialist Republics, there shall be established an International Military Tribunal (hereinafter called "the Tribunal") for the just and prompt trial and punishment of the major war criminals of the European Axis.

Art. 2. The Tribunal shall consist of four members, each with an alternate. One member and one alternate shall be appointed by each of the Signatories. The alternates shall, so far as they are able, be present at all sessions of the Tribunal. In case of illness of any member of the Tribunal or his incapacity for some other reason to fulfil his functions, his alternate shall take his place.

Art. 3. Neither the Tribunal, its members nor their alternates can be challenged by the prosecution, or by the Defendants or their Counsel. Each Signatory may replace its member of the Tribunal or his alternate for reasons of health or for other good reasons, except that no replacement may take place during a trial, other than by an alternate.

Art. 4.
(a) The presence of all four members of the Tribunal or the alternate for any absent member shall be necessary to constitute the quorum.
(b) The members of the Tribunal shall, before any trial begins, agree among themselves upon the selection from their number of a President, and the President shall hold office during that trial, or as may otherwise be agreed by a vote of not less than three members. The principle of rotation of presidency for successive trials is agreed. If, however, a session of the Tribunal takes place on the territory of one of the four Signatories, the representative of that Signatory on the Tribunal shall preside.
(c) Save as aforesaid the Tribunal shall take decisions by a majority vote and in case the votes are evenly divided, the vote of the President shall be decisive; provided always that convictions and sentences shall only be imposed by affirmative votes of at least three members of theTribunal.

Art. 5. In case of need and depending on the numbers of the matters to be Lied, other Tribunals may be set up; and the establishment, functions and procedure of each Tribunal shall be identical, and shall be governed by this Charter.

II : JURISDICTION AND GENERAL PRINCIPLES

Art. 6. The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.
The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there
shall be individual responsibility:
(a) ' Crimes against peace: ' namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
(b) ' War crimes: ' namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
(c) ' Crimes against humanity.- ' namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

Art. 7. The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.

Art. 8. The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

Art. 9. At the trial of any individual member of any group or organization the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization. After receipt of the Indictment the Tribunal shall give such notice as it thinks fit that the prosecution intends to ask the Tribunal to make such declaration and any member of the organization will be entitled to apply to the Tribunal for leave to be heard by the Tribunal upon the question of the criminal character of the organization. The Tribunal shall have power to allow or reject the application. If the application is allowed, the Tribunal may direct in what manner the applicants shall be represented and heard.

Art. 10. In cases where a group or organization is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein before national, military or occupation courts. In any such case the criminal nature of the group or organization is considered proved and shall not be questioned.

Art. 11. Any person convicted by the Tribunal may be charged before a national, military or occupation court, referred to in Article 10 of this Charter, with a crime other than of membership in a criminal group or organization and such court may, after convicting him, impose upon him punishment independent of and additional to the punishment imposed by the Tribunal for participation in the criminal activities of such group or organization.

Art. 12. The Tribunal shall have the right to take proceedings against a person charged with crimes set out in Article 6 of this Charter in his absence, if he has not been found or if the Tribunal, for any reason, finds it necessary, in the interests of justice, to conduct the hearing in his absence.

Art. 13. The Tribunal shall draw up rules for its procedure. These rules shall not be inconsistent with the provisions of this Charter.

III : COMMITTEE FOR THE INVESTIGATION AND PROSECUTION OF MAJOR WAR CRIMINALS

Art. 14. Each Signatory shall appoint a Chief Prosecutor for the investigation of the charges against and the prosecution of major war criminals.
The Chief Prosecutors shall act as a committee for the following purposes:
(a) to agree upon a plan of the individual work of each of the Chief Prosecutors and his staff,
(b) to settle the final designation of major war criminals to be tried by the Tribunal,
(c) to approve the Indictment and the documents to be submitted therewith,
(d) to lodge the Indictment and the accompanying documents with the Tribunal,
(e) to draw up and recommend to the Tribunal for its approval draft rules of procedure, contemplated by Article 13 of this Charter. The Tribunal shall have power to accept, with or without amendments, or to reject, the rules so recommended.
The Committee shall act in all the above matters by a majority vote and shall appoint a Chairman as may be convenient and in accordance with the principle of rotation: provided that if there is an equal division of vote concerning the designation of a Defendant to be tried by the Tribunal, or the crimes with which he shall be charged, that proposal will be adopted which was made by the party which proposed that the particular Defendant be tried, or the particular charges be preferred against him.

Art. 15. The Chief Prosecutors shall individually, and acting in collaboration with one another, also undertake
the following duties:
(a) investigation, collection and production before or at the Trial of all necessary evidence,
(b) the preparation of the Indictment for approval by the Committee in accordance with paragraph (c) of Article 14 hereof,
(c) the preliminary examination of all necessary witnesses and of the Defendants,
(d) to act as prosecutor at the Trial,
(e) to appoint representatives to carry out such duties as may be assigned to them,
(f) to undertake such other matters as may appear necessary to them for the purposes of the preparation for and conduct of the Trial.
It is understood that no witness or Defendant detained by any Signatory shall be taken out of the possession of that Signatory without its assent.

IV : FAIR TRIAL FOR DEFENDANTS

Art. 16. In order to ensure fair trial for the Defendants, the following procedure shall be followed:
(a) The Indictment shall include full particulars specifying in detail the charges against the Defendants. A copy of the Indictment and of all the documents lodged with the Indictment, translated into a language which he understands, shall be furnished to the Defendant at a reasonable time before the Trial.
(b) During any preliminary examination or trial of a Defendant he shall have the right to give any explanation relevant to the charges made against him.
(c) A preliminary examination of a Defendant and his Trial shall be conducted in, or translated into, a language which the Defendant understands.
(d) A Defendant shall have the right to conduct his own defence before the Tribunal or to have the assistance of Counsel.
(e) A Defendant shall have the right through himself or through his Counsel to present evidence at the Trial in support of his defence, and to cross-examine any witness called by the Prosecution.

V : POWERS OF THE TRIBUNAL AND CONDUCT OF THE TRIAL

Art. 17. The Tribunal shall have the power:
(a) to summon witnesses to the Trial and to require their attendance and testimony and to put questions to them,
(b) to interrogate any Defendant,
(c) to require the production of documents and other evidentiary material,
(d) to administer oaths to witnesses,
(e) to appoint officers for the carrying out of any task designated by the Tribunal including the power to have evidence taken on commission.

Art. 18. The Tribunal shall:
(a) confine the Trial strictly to an expeditious hearing of the issues raised by the charges,
(b) take strict measures to prevent any action which will cause unreasonable delay, and rule out irrelevant issues and statements of any kind whatsoever,
(c) deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any Defendant or his Counsel from some or all further proceedings, but without prejudice to the determination of the charges.

Art. 19. The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence which it deems to have probative value.

Art. 20. The Tribunal may require to be informed of the nature of any evidence before it is offered so that it may rule upon the relevance thereof.

Art. 21. The Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof. It shall also take judicial notice of official governmental documents and reports of the United Nations, including the acts and documents of the committees set up in the various Allied countries for the investigation of war crimes, and the records and findings of military or other Tribunals of any of the United Nations.

Art. 22. The permanent seat of the Tribunal shall be in Berlin. The first meetings of the members of the Tribunal and of the Chief Prosecutors shall be held at Berlin in a place to be designated by the Control Council for Germany. The first trial shall be held at Nuremberg, and any subsequent trials shall be held at such places as the Tribunal may decide.

Art. 23. One or more of the Chief Prosecutors may take part in the prosecution at each Trial. The function of any Chief Prosecutor may be discharged by him personally, or by any person or persons authorized by him.
The function of Council for a Defendant may be discharged at the Defendant's request by any Counsel professionally qualified to conduct cases before the Courts of his own country, or by any other person who may be specially authorized thereto by the Tribunal.

Art. 24. The proceedings at the Trial shall take the following course:
(a) The Indictment shall be read in court.
(b) The Tribunal shall ask each Defendant whether he pleads "guilty" or " not guilty."
(c) The Prosecution shall make an opening statement.
(d) The Tribunal shall ask the Prosecution and the Defence what evidence (if any) they wish to submit to the Tribunal, and the Tribunal shall rule upon the admissibility of any such evidence.
(e) The witnesses for the Prosecution shall be examined and after that the witnesses for the Defence. Thereafter such rebutting evidence as may be held by the Tribunal to be admissible shall be called by either the Prosecution or the Defence.
(f) The Tribunal may put any question to any witness and to any Defendant, at any time.
(g) The Prosecution and the Defence shall interrogate and may cross-examine any witnesses and any Defendant who gives testimony.
(h) Defence shall address the court.
(i) The Prosecution shall address the court.
(j) Each Defendant may make a statement to the Tribunal.
(k) The Tribunal shall deliver judgment and pronounce sentence.

Art. 25. All official documents shall be produced, and all court proceedings conducted, in English, French and Russian, and in the language of the Defendant. So much of the record and of the proceedings may also be translated into the language of any country in which the Tribunal is sitting, as the Tribunal considers desirable in the interests of justice and public opinion.

VI : JUDGMENT AND SENTENCE

Art. 26. The judgment of the Tribunal as to the guilt or the innocence of any Defendant shall give the reasons on which it is based, and shall be final and not subject to review.

Art. 27. The Tribunal shall have the right to impose upon a Defendant, on conviction, death or such other punishment as shall be determined by it to be just.

Art. 28. In addition to any punishment imposed by it, the Tribunal shall have the right to deprive the convicted person of any stolen property and order its delivery to the Control Council for Germany.

Art. 29. In case of guilt, sentences shall be carried out in accordance with the orders of the Control Council for Germany, which may at any time reduce or otherwise alter the sentences, but may not increase the severity thereof. If the Control Council for Germany, after any Defendant has been convicted and sentenced, discovers fresh evidence which, in its opinion, would found a fresh charge against him, the Council shall report accordingly to the Committee established under Article 14 hereof for such action as they may consider proper, having regard to the interests of justice.

VII : EXPENSES

Art. 30. The expenses of the Tribunal and of the Trials shall be charged by the Signatories against the funds allotted for maintenance of the Control Council for Germany.

Nuremberg Rules of Procedure
(Adopted 29 October 1945)

Rule 1. Authority to Promulgate Rules.

The present Rules of Procedure of the International Military Tribunal for the trial of the major war criminals (hereinafter called "the Tribunal") as established by the Charter of the Tribunal dated 8 August 1945 (hereinafter called "the Charter") are hereby promulgated by the Tribunal in accordance with the provisions of Article 13 of the Charter.

Rule 2. Notice to Defendants and Right to Assistance of Counsel.

(a) Each individual defendant in custody shall receive not less than 30 days before trial a copy, translated into a language which he understands, (1) of the Indictment, (2) of the Charter, (3) of any other documents lodged with the Indictment, and (4) of a statement of his right to the assistance of counsel as set forth in sub-paragraph (d) of this Rule, together with a list of counsel. He shall also receive copies of such rules of procedure as may be adopted by the Tribunal from time to time.

(b) Any individual defendant not in custody shall be informed of the indictment against him and of his right to receive the documents specified in sub-paragraph (a) above, by notice in such form and manner as the Tribunal may prescribe.

(c) With respect to any group or organization as to which the Prosecution indicates its intention to request a finding of criminality by the Tribunal, notice shall be given by publication in such form and manner as the Tribunal may prescribe and such publication shall include a declaration by the Tribunal that all members of the named groups or organizations are entitled to apply to the Tribunal for leave to be heard in accordance with the provisions of Article 9 of the Charter. Nothing herein contained shall be construed to confer immunity of any kind upon such members of said groups or organizations as may appear in answer to the said declaration.

(d) Each defendant has the right to conduct his own defense or to have the assistance of counsel. Application for particular counsel shall be filed at once with the General Secretary of the Tribunal at the Palace of Justice, Nuremberg, Germany. The Tribunal will designate counsel for any defendant who fails to apply for particular counsel or, where particular counsel requested is not within ten (10) days to be found or available, unless the defendant elects in writing to conduct his own defense. If a defendant has requested particular counsel who is not immediately to be found or available, such counsel or a counsel of substitute choice may, if found and available before trial be associated with or substituted for counsel designated by the Tribunal, provided that (1) only one counsel shall be permitted to appear at the trial for any defendant, unless by special permission of the Tribunal, and (2) no delay of trial will be allowed for making such substitution or association.

Rule 3. Service of Additional Documents.

If, before the trial, the Chief Prosecutors offer amendments or additions to the Indictment, such amendments or additions, including any accompanying documents shall be lodged with the Tribunal and copies of the same, translated into a language which they each understand, shall be furnished to the defendants in custody as soon as practicable and notice given in accordance with Rule 2 (b) to those not in custody.

Rule 4. Production of Evidence for the Defense.

(a) The Defense may apply to the Tribunal for the production of witnesses or of documents by written application to the General Secretary of the Tribunal. The application shall state where the witness or document is thought to be located, together with a statement of their last known location. It shall also state the facts proposed to be proved by the witness or the document and the reasons why such facts are relevant to the Defense.

(b) If the witness or the document is not within the area controlled by the occupation authorities, the Tribunal may request the Signatory and adhering Governments to arrange for the production, if possible, of any such witnesses and any such documents as the Tribunal may deem necessary to proper presentation of the Defense.

(c) If the witness or the document is within the area controlled by the occupation authorities, the General Secretary shall, if the Tribunal is not in session, communicate the application to the Chief Prosecutors and, if they make no objection, the General Secretary shall issue a summons for the attendance of such witness or the production of such documents, informing the Tribunal of the action taken. If any Chief Prosecutor objects to the issuance of a summons, or if the Tribunal is in session, the General Secretary shall submit the application to the Tribunal, which shall decide whether or not the summons shall issue.

(d) A summons shall be served in such manner as may be provided by the appropriate occupation authority to ensure its enforcement and the General Secretary shall inform the Tribunal of the steps taken.

(e) Upon application to the General Secretary of the Tribunal, a defendant shall be furnished with a copy, translated into a language which he understands, of all documents referred to in the Indictment so far as they may be made available by the Chief Prosecutors and shall be allowed to inspect copies of any such documents as are not so available.

Rule 5. Order at the Trial.

In conformity with the provisions of Article 18 of the Charter, and the disciplinary powers therein set out, the Tribunal, acting through its President, shall provide for the maintenance of order at the Trial. Any defendant or any other person may be excluded from open sessions of the Tribunal for failure to observe and respect the directives and dignity of the Tribunal.

Rule 6. Oaths; Witnesses.

(a) Before testifying before the Tribunal, each witness shall make such oath or declaration as is customary in his own country.

(b) Witnesses while not giving evidence shall not be present in court. The President of the Tribunal shall direct, as circumstances demand, that witnesses shall not confer among themselves before giving evidence.

Rule 7. Applications and Motions before Trial and Rulings during the Trial.

(a) All motions, applications or other requests addressed to the Tribunal prior to the commencement of trial shall be made in writing and filed with the General Secretary of the Tribunal at the Palace of Justice, Nuremberg, Germany.

(b) Any such motion, application or other request shall be communicated by the General Secretary of the Tribunal to the Chief Prosecutors and, if they make no objection, the President of the Tribunal may make the appropriate order on behalf of the Tribunal. If any Chief Prosecutor objects, the President may call a special session of the Tribunal for the determination of the question raised.

(c) The Tribunal, acting through its President, will rule in court upon all questions arising during the trial, such as questions as to admissibility of evidence offered during the trial, recesses, and motions; and before so ruling the Tribunal may, when necessary, order the closing or clearing of the Tribunal or take any other steps which to the Tribunal seem just.

Rule 8. Secretariat of the Tribunal.

(a) The Secretariat of the Tribunal shall be composed of a General Secretary, four Secretaries and their Assistants. The Tribunal shall appoint the General Secretary and each Member shall appoint one Secretary. The General Secretary shall appoint such clerks, interpreters, stenographers, ushers, and all such other persons as may be authorized by the Tribunal and each Secretary may appoint

such assistants as may be authorized by the Member of the Tribunal by whom he was appointed.

(b) The General Secretary, in consultation with the Secretaries, shall organize and direct the work of the Secretariat, subject to the approval of the Tribunal in the event of a disagreement by any Secretary.

(c) The Secretariat shall receive all documents addressed to the Tribunal, maintain the records of the Tribunal, provide necessary clerical services to the Tribunal and its Members, and perform such other duties as may be designated by the Tribunal.

(d) Communications addressed to the Tribunal shall be delivered to the General Secretary

Rule 9. Record, Exhibits, and Documents.

(a) A stenographic record shall be maintained of all oral proceedings. Exhibits will be suitably identified and marked with consecutive numbers. All exhibits and transcripts of the proceedings and all documents lodged with and produced to the Tribunal will be filed with the General Secretary of the Tribunal and will constitute part of the Record.

(b) The term "official documents" as used in Article 25 of the Charter includes the Indictment, rules, written motions, orders that are reduced to writing, findings, and judgments of the Tribunal. These shall be in the English, French, Russian, and German languages. Documentary evidence or exhibits may be received in the language of the document, but a translation thereof into German shall be made available to the defendants.

(c) All exhibits and transcripts of proceedings, all documents lodged with and produced to the Tribunal and all official acts and documents of the Tribunal may be certified by the General Secretary of the Tribunal to any Government or to any other tribunal or wherever it is appropriate that copies of such documents or representations as to such acts should be supplied upon a proper request.

Rule 10. Withdrawal of Exhibits and Documents.

In cases where original documents are submitted by the Prosecution or the Defense as evidence, and upon a showing (a) that because of historical interest or for any other reason one of the Governments signatory to the Four Power Agreement of 8 August 1945, or any other Government having received the consent of said four signatory Powers, desires to withdraw from the records of the Tribunal and preserve any particular original documents and (b) that no substantial injustice will result, the Tribunal shall permit photostatic copies of said original documents, certified by the General Secretary of the Tribunal, to be substituted for the origfnals in the records of the Court and shall deliver said original documents to the applicants.

Rule 11. Effective Date and Powers of Amendment and Addition.

These Rules shall take effect upon their approval by the Tribunal. Nothing herein contained shall be construed to prevent the Tribunal from, at any time, in the interest of fair and expeditious trials, departing from, amending, or adding to these Rules, either by general rules or special orders for particular cases, in such form and upon such notice as may appear just to the Tribunal.

Transcript of Proceedings, 21st November, 1945

THE PRESIDENT: A motion has been filed with the Tribunal and the Tribunal has given it consideration. In so far as it may be a plea to the jurisdiction the Tribunal, it conflicts with Article 3 of the Charter and will not be entertained. In so far as it may contain other arguments which may be open to the defendants they may be heard at a later stage.

Now, in accordance with Article 24 of the Charter, which provides that, the indictment has been read in Court, the defendants shall be called upon plead guilty or not guilty, I direct the defendants to plead either guilty or not guilty.

DR. RUDOLF DIX (Counsel for defendant Schacht): May I speak to Your Lordship for just a moment?

THE PRESIDENT: You may not speak to me in support of the motion with I have just dealt on behalf of the Tribunal. I have told you so far as that motion is a plea to the jurisdiction of the Tribunal, it conflicts with Article 2 of the Charter and will not be entertained. In so far as it contains or may contain arguments which may be open to the defendants, those arguments may be heard hereafter.

DR. DIX: I do not wish to speak on the subject of a motion. As speaker for the defence I should like to broach a technical question and voice a request to this effect on behalf of the defence. May I do so? The defence counsel were forbidden to talk to the defendants this morning. It is absolutely necessary that the defence counsel should be able to speak to the defendants before the session. It often happens that after the session one cannot reach one's client at night. In all probability it might prove necessary to prepare matters overnight for the next morning which one wants to talk over with him. According to our experience it is always permissible for the defence counsel to speak to the defendant the session. The question of conferring between defence counsel and clients during sessions could be dealt with at a later date. At present I request, on behalf of the entire defence, that we be allowed to confer with our clients in the courtroom itself, into which they usually are brought at a very early hour. Otherwise we shall not be in a position to conduct the defence in an efficient and appropriate manner.

THE PRESIDENT: I am afraid that you cannot consult with your clients in the courtroom except by written communication. When you are out of the courtroom, security regulations can be carried out and you have, so far as those security regulations go, full opportunity to consult with your clients. In the courtroom we must confine you to written communications to your clients. At the end of each day's sitting, you will have full opportunity to consult with them in private.

DR. DIX: I shall discuss this with my colleagues of the defence and we should like if possible to return to this question.

DR. RALPH THOMA (Counsel for defendant Rosenberg): May I have the floor?

THE PRESIDENT: Will you state your name please.

DR. THOMA: Dr. Ralph Thoma. I represent the defendant Rosenberg. Yesterday my client gave me a statement as regards the question of guilt or innocence. I took this statement and promised him to talk with him about it. Neither last night nor this morning have I had an opportunity to talk with him; and, consequently, neither I nor my client are in a position to make a statement to-day as to whether he is guilty or not guilty. I therefore request an interruption of the trial so that I may speak with my client.

THE PRESIDENT: Dr. Thoma, the Tribunal will be prepared to adjourn for fifteen minutes in order that you may have an opportunity of consulting with your clients.

DR. THOMA: Thank you. I should like to make another statement. Some of my colleagues have just told me that they are in the same position as I, particularly ...

THE PRESIDENT: I meant that all defence counsel should have an opportunity of consulting with their clients; but I would point out to the

defence counsel that they have had several weeks preparation for this trial, and that they must have anticipated that the provisions of Article 24 would be followed. Now we will adjourn for fifteen minutes in which all of you may consult with your clients.

DR. THOMA: May I say something further in that respect, your Honour ?

THE PRESIDENT: Yes.

DR. THOMA: The defence asked whether the question of guilty or not guilty could only be answered with "yes" or "no" or whether a more extensive and longer statement could be made. We have obtained information on this point only the day before yesterday. I therefore had no opportunity to confer at length with my client on this matter.

THE PRESIDENT: One moment. The question will have to be answered in the words of Article 24 of the Charter, and those words are printed in italics:

"The tribunal shall ask each defendant whether he pleads guilty or not guilty."
That is what they have to do at that stage. Of course, the defendants will have a full opportunity themselves, if they are called as witnesses, and by their counsel, to make their defence fully at a later stage.

(A recess was taken.)

THE PRESIDENT: I will now call upon the defendants to plead guilty or not guilty to the charges against them. They will proceed in turn to a point in the dock opposite to the microphone.

THE PRESIDENT: Hermann Goering.

HERMANN GOERING: Before I answer the question of the high court whether or not I am guilty -

THE PRESIDENT: I announced that defendants were not entitled to make a statement. You must plead guilty or not guilty.

HERRMANN GOERING: I declare myself in the sense of the indictment not guilty.

THE PRESIDENT: Rudolf Hess.

RUDOLF HESS: No.

THE PRESIDENT: That will be entered as a plea of not guilty. (Laughter.)

THE PRESIDENT: If there is any disturbance in Court, those who make it will have to leave the Court.

THE PRESIDENT: Joachim von Ribbentrop.

JOACHIM VON RIBBENTROP: I declare myself in the sense of the indictment not guilty.

THE PRESIDENT: Wilhelm Keitel.

WILHELM KEITEL: I declare myself not guilty.

THE PRESIDENT: In the absence of Ernst Kaltenbrunner, the trial will proceed against him, but he will have an opportunity of pleading when he is sufficiently well to be brought back into court.

THE PRESIDENT: Alfred Rosenberg.

ALFRED ROSENBERG: I declare myself in the sense of the indictment not guilty.

THE PRESIDENT: Hans Frank.

HANS FRANK: I declare myself not guilty.

THE PRESIDENT: Wilhelm Frick.

WILHELM FRICK: Not guilty.

THE PRESIDENT: Julius Streicher.

JULIUS STREICHER: Not guilty.

THE PRESIDENT: Walter Funk.

WALTER FUNK: I declare myself not guilty.

THE PRESIDENT: Hjalmar Schacht.

HJALMAR SCHACHT: I am not guilty in any respect.

THE PRESIDENT: Karl Donitz.

KARL DONITZ: Not guilty.

THE PRESIDENT: Erich Raeder.

ERICH RAEDER: I declare myself not guilty.

THE PRESIDENT: Baldur von Schirach.

BALDUR VON SCHIRACH: I declare myself in the sense of the indictment not guilty.

THE PRESIDENT: Fritz Sauckel.

FRITZ SAUCKEL: I declare myself in the sense of the indictment, before God and the world and particularly before my people, not guilty.

THE PRESIDENT: Alfred Jodl.

ALFRED JODL: Not guilty. What I have done or had to do, I have a pure conscience form before God, before history and my people.

THE PRESIDENT: Franz von Papen.

FRANZ VON PAPEN: I declare myself in no way guilty.

THE PRESIDENT: Artur Seyss-Inquart.

ARTUR SEYSS-INQUART: I declare myself not guilty.

THE PRESIDENT: Albert Speer.

ALBERT SPEER: Not guilty.

THE PRESIDENT: Constantin von Neurath.

CONSTANTIN VON NEURATH: I answer the question in the negative.

THE PRESIDENT: Hans Fritzsche.

HANS FRITZSCHE: As regard this indictment, not guilty.

(At this point Hermann Goering arose in the prisoners' box and attempted to address the Tribunal.)

THE PRESIDENT: You are not entitled to address the Tribunal, except through your counsel, at the present time. I will now call upon the Chief Prosecutor for the United States of America.

MR. JUSTICE JACKSON: May it please Your Honour, the privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility. The wrongs which we seek to condemn and punish have been so calculated, so malignant and so devastating, that civilisation cannot tolerate their being ignored, because it cannot survive their being repeated. That four great

nations, flushed with victory and stung with injury, stay the hands of vengeance and voluntarily submit their captive enemies to the judgement of the law, is one of the most significant tributes that Power ever has paid to Reason.

This Tribunal, while it is novel and experimental, is not the product of abstract speculations nor is it created to vindicate legalistic theories. This inquest represents the practical effort of four of the most mighty of nations, with the support of seventeen more, to utilise International Law to meet the greatest menace of our times - aggressive war. The common sense of mankind demands that law shall not stop with the punishment of petty crimes by little people. It must also reach men who possess themselves of great power and make deliberate and concerted use of it to set in motion evils which leave no home in the world untouched. It is a cause of that magnitude that the United Nations will lay before Your Honour.

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

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

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

In justice to the nations and the men associated in this prosecution, I must remind you of certain difficulties which may leave their mark on this case. Never before in legal history has an effort been made to bring within the scope of a single litigation the developments of a decade covering a whole continent, and involving a score of nations, countless individuals, and innumerable events. Despite the magnitude of the task, the world has demanded immediate action. This demand has had to be met, though perhaps at the cost of finished craftsmanship. In my country, established courts, following familiar procedures, applying well-thumbed precedents, and dealing with the legal consequences of local and limited events, seldom commence a trial within a year of the event in litigation. Yet less than

eight months ago to- day the courtroom in which you sit was an enemy fortress in the hands of German S.S. troops. Less than eight months ago nearly all our witnesses and documents were in enemy hands. The law had not been codified, no procedures had been established, no tribunal was in existence, no usable courthouse stood here, none of the hundreds of tons of official German documents had been examined, no prosecuting staff had been assembled, nearly all of the present defendants were at large, and the four prosecuting powers had not yet joined in common cause to try them. I should be the last to deny that the case may well suffer from incomplete researches, and quite likely will not be the example of professional work which any of the prosecuting nations would normally wish to sponsor. It is, however, a completely adequate case to the judgement we shall ask you to render, and its full development we shall be obliged to leave to historians.

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

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

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

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

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

proving criminal acts and the responsibility of these defendants for their commission.

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

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

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

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

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

This war did not just happen - it was planned and prepared for over a long period of time and with no small skill and cunning. The world has perhaps never seen such a concentration and stimulation of the energies of any people as that which enabled Germany, twenty

years after it was defeated, disarmed and dismembered, to come so near carrying out its plan to dominate Europe. Whatever else we may say of those who were the authors of this war, they did achieve a stupendous work in organisation, and our first task is to examine the means by which these defendants and their fellow conspirators prepared and incited Germany to go to war.

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

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

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

I shall first take up the lawless road by which these men came to possess the power which they have so used. . .

I come to the discussion of terrorism and to preparation for the war.

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

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

Through the police formations that are before you accused as criminal organisations, the Nazi Party leaders, aided at some point in their basic and notorious purpose by each of the individual defendants, instituted a reign of terror. These espionage and police organisations were utilised to hunt down every form of opposition and to penalise every nonconformity. These organisations early founded and administered concentration camps - Buchenwald in 1933, Dachau in 1934. But these notorious names were not alone.

Concentration camps came to dot the German map and to number scores. At first they met with resistance from some Germans. We have a captured letter from Minister of Justice Gurtner to Hitler which is revealing. A Gestapo official had been prosecuted for crimes committed in a camp at Hohenstein, and the Nazi Governor of Saxony had promptly asked that the proceeding be quashed. The Minister of Justice in June of 1935 protested because, as he said, "In this camp unusually grave mistreatments of prisoners has occurred at least since Summer 1939. The

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prisoners not only were beaten with whips, without cause, similarly as in the Concentration Camp Bredow near Stettin until they lost consciousness, but they were also tortured in other manners, e.g., with the help of a dripping apparatus constructed exclusively for this purpose, under which prisoners had to stand until they were suffering from serious purulent wounds of the scalp." (787-PS)

I shall not take time to detail the ghastly proceedings in these concentration camps. Beatings, starvings, tortures, and killings were routine - so routine that the tormentors became blase and careless. We have a report of discovery that in Plotzensee one night, 186 persons were executed while there were orders for only 150. Another report describes how the family of one victim received two urns of ashes by mistake. Inmates were compelled to execute each other. In 1942, they were paid five Reichsmarks per execution, but on 27th June, 1942, S.S. General Glucke ordered commandants of all concentration camps to reduce this honorarium to three cigarettes. In 1943, the Reichs leader of the S.S. and Chief of German Police ordered the corporal punishment on Russian women to be applied by Polish women and vice versa, but the price was not frozen. "As a reward, a few cigarettes" was authorised. Under the Nazis, human life had been progressively devalued, until it finally became worth less than a handful of tobacco - Ersatz tobacco. There were, however, some traces of the milk of human kindness. On 11th August,1942, an order went from Himmler to the commandants of fourteen concentration camps that "only German prisoners are allowed to beat other German prisoners." (2189-PS).

Mystery and suspense was added to cruelty in order to spread torture from the inmate to his family and friends. Men and women disappeared from their homes or business or from the streets, and no word came of them. The omission of notice was not due to overworked staff; it was due to policy. The Chief of the S.D. and Sipo reported that, in accordance with orders from the Fuehrer, anxiety should be created in the minds of the family of the arrested person. (668-PS.) Deportations and secret arrests were labelled, with a Nazi wit which seems a little ghoulish, "Nacht und Nebel" (Night and Fog). (L,90, 833-PS.)

One of the many orders for these actions, gave this explanation:-

"The decree carries a basic innovation. The Fuehrer and Commander-in-Chief of the Armed Forces commands that crimes of the specified sort by civilians of the occupied territories are to be punished by the pertinent courts martial in the occupied territories only when (a) the sentence calls for the death penalty; and (b) the sentence is pronounced within eight days of arrest. Only when both conditions are met does the Fuehrer and Commander-in Chief of the Armed Forces hope for the desired deterrent effect from the conduct of punitive proceedings in the occupied territories. In other cases in the future, the accused are to be secretly brought to Germany, and the further conduct of the trial carried on here. The deterrent effect of these measures lies (a) in allowing the disappearance of the accused without a trace; (b) therein that no information whatsoever may be given about their whereabouts and their fate." (833-PS.)
To clumsy cruelty, scientific skill was added. "Undesirables" were exterminated by injection of drugs into the bloodstream, by asphyxiation in gas chambers. They were shot with poison bullets, to study the effects (L-103);

Then, to cruel experiments the Nazi added obscene ones. These were not the work of underling-degenerates, but of master-minds high in the Nazi conspiracy. On 20th May, 1942, General Field Marshal Milch authorised S.S. General Wolff to go ahead at Dachau Camp with so-called "cold experiments"; and four female gypsies were selected for the purpose. Himmler gave permission to carry on these "experiments" also in other camps (1617-PS). At Dachau, the reports of the "doctor" in charge show that victims were immersed in

cold water until their body temperature was reduced to 26 degrees centigrade (8.24 degrees Fahrenheit) when they all died immediately. (1618-PS.) This was in August, 1942. But the "doctor's" technique improved. By February, 1943, he was able to report that thirty persons were chilled to 27 to 29 degrees, their hands and feet frozen white, and their bodies "rewarmed" by a hot bath. But the Nazi scientific triumph was "rewarming with animal heat." The victim, all but frozen to death, was surrounded with the bodies of living women until he revived and responded to his environment by having sexual intercourse. (1616-PS.) Here Nazi degeneracy reached its nadir.

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

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

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

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

All these controls, from their inception were exerted with unparalleled energy and single-mindedness to put Germany on a war footing. We will show from the Nazis' own documents their secret training of military personnel, their secret creation of a military air force. Finally, a conscript army was brought into being. Financiers, economists, industrialists, joined in the plan and promoted elaborate alterations in industry and finance to support an unprecedented concentration of resources and energies upon preparations for war. Germany's rearmament so outstripped the strength of her neighbours that in about a year she was able to crush the whole military force of Continental Europe, exclusive of that of Soviet Russia, and then to push the Russian armies back to the Volga. These preparations were of a magnitude which surpassed all need of defence, and every defendant, and every intelligent German, well understood them to be for aggressive purposes.

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

The Charter of this Tribunal evidences a faith that the law is not only to govern the conduct of little men, but that even rulers are, as Lord Chief Justice Coke it to King James, "under God and the law." The United States believed that the law has long afforded standards by which a juridical hearing could be conducted to make sure that we punish only the right men and for the right reasons. Following the

instructions of the late President Roosevelt and the decision of the Yalta Conference, President Truman directed representatives of the United States to formulate a proposed International Agreement, which was submitted during the San Francisco Conference to the Foreign Ministers of the United Kingdom, the Soviet Union, and the Provisional Government of France. With many modifications, that proposal has become the Charter of this Tribunal.

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

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

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

I cannot, of course, deny that these men are surprised that this is the law; they really are surprised that there is any such thing as law. These defendants did not rely on any law at all. Their programme ignored and defied all law. That this is so will appear from many acts and statements, of which I cite but a few. In the Fuehrer's speech to all military commanders on 23rd November, 1939, he reminded them that at the moment Germany had a pact with Russia, but declared "Agreements are to be kept only as long as they serve a certain purpose." Later in the same speech lie announced "A violation of the neutrality of Holland and Belgium will be of no importance." (789-PS.) A Top Secret document, entitled " Warfare as a Problem of Organisation," dispatched by the Chief of the High Command to all Commanders on 19th April, 1938, declared that "the normal rules of war toward neutrals must be considered to apply on the basis whether operation of these rules will create greater advantages or disadvantages for the belligerents. (L- 211.) And from the files of the German Navy Staff, we have a "Memorandum on Intensified Naval War," dated 15th October, 1939, which begins by stating a desire to comply with International Law. "However," it continues, "if decisive successes are expected from any measure considered as a war necessity, it must be carried through even if it is not in agreement with International Law." (L-184) International Law, Natural Law, German Law, any law at all was to these men simply a propaganda device to be invoked when it helped and to be ignored when it would condemn what they wanted to do. That men may be protected in relying upon the law at the time they act is the reason we find laws of retrospective operation unjust. But these men cannot bring themselves within the reason of the rule which in some systems of jurisprudence prohibits ex post facto laws. They cannot show that they ever relied upon International Law in any state or paid it the slightest regard.

The Third Count of the Indictment is based on the definition of War Crimes contained in the Charter. I have outlined to you the systematic course of conduct toward civilian populations and combat forces which violates international conventions to which Germany was a party. Of the criminal nature of these acts at least, the defendants had, as we shall show, knowledge. Accordingly, they took pains to conceal their violations. It will appear that the defendants Keitel and Jodl were informed by official legal advisers

that the orders to brand Russian prisoners of war, to shackle British prisoners of war, and to execute Commando prisoners were clear violations of International Law. Nevertheless, these orders were put into effect. The same is true of orders issued for the assassination of General Giraud and General Weygand, which failed to be executed only because of a ruse on the part of Admiral Canaris, who was himself later executed for his part in the plot to take Hitler's life on 20th July, 1944.

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

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

Of course, it was, under the law of all civilised peoples, a crime for one man with his bare knuckles to assault another. How did it come about that multiplying this crime by a million, and adding fire-arms to bare knuckles, made it a legally innocent act ? The doctrine was that one could not be regarded as criminal for committing the usual violent acts in the conduct of legitimate warfare. The age of imperialistic expansion during the eighteenth and nineteenth centuries added the foul doctrine, contrary to the teachings of early Christian and International Law scholars such as Grotius, that all wars are to be regarded as legitimate wars. The sum of these two doctrines was to give war-making a complete immunity from accountability to law.

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

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

The re-establishment of the principle that there are unjust wars and that unjust wars are illegal is traceable in many steps. One of the most significant is the Briand-Kellogg Pact of 1928, by which Germany, Italy and Japan, in common with practically all nations of the world, renounced war as an instrument national policy, bound themselves to seek the settlement of disputes only by pacific means, and condemned recourse to war for the solution of international controversies. This pact altered the legal status of a war of aggression. As Mr. Stimson, the United States Secretary of State put it in 1932, such a war "is no longer to be the source and subject of rights. It is no longer to be the principle around which the duties, the conduct, and the rights of nations revolve. It is an illegal thing.. By t. we have made obsolete many legal precedents and have given the legal profession the task of re-examining many of its codes and treaties."

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

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

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

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

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

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

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

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

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

(1) Declaration of war upon another State; (2) Invasion by its armed forces, with or without a declaration of war, of the territory of another State; (3) Attack by its land, naval, or air forces, with or without a declaration of war, on the territory, vessels or aircraft of another State; and (4) Provision of support to armed bands formed in the territory of another State, or refusal, notwithstanding the request of the invaded State, to take in its own territory, all the measures in its power to deprive those bands of all assistance or protection.
And I further suggest that it is the general view that no political, military, economic or other considerations shall serve as an excuse or justification for such actions but exercise of the right of legitimate self-defence - that is to say, resistance to an act of aggression, or action to assist a State which has been subjected to aggression, shall not constitute a war of aggression.

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

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

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

The Charter also recognises individual responsibility on the part of those who commit acts defined as crimes, or who incite others to do so, or who join a common plan with other persons, groups or organisations to bring about their commission.

The principle of individual responsibility for piracy and brigandage, which have long been recognised as crimes punishable under International Law, is old and well established. That is what illegal warfare is. This principle of personal liability is a necessary as well as a logical one if International Law is to render real help to the maintenance of peace. An International Law which operates only on

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

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

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

Even the German Military Code provides that:-

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

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

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

Accused before this Tribunal as criminal organisations, are certain political police organisations which the evidence will show to have been instruments of cohesion in planning and executing the crimes I have detailed. Perhaps the worst of the movement were the Leadership Corps of the N.S.D.A.P., the Schutz-stappeln or "S.S.," and the Sturmabteilung or "S.A.," and the subsidiary formations which these include. These were the Nazi Party leadership, espionage, and policing groups. They were the real government, above and outside of any law. Also accused as organisations are the Reich Cabinet and the Secret Police, or Gestapo, which were fixtures of the Government but animated solely by the Party.

Except for a late period when some compulsory recruiting was done in the S.S. membership in all these militarised organisations was voluntary. The police organisations were recruited from ardent partisans who enlisted blindly to do the dirty work the leaders planned. The Reich Cabinet was the governmental faýade for Nazi Party Government and in its members legal as well as actual

responsibility was vested for the programme. Collectively they were responsible for the programme in general, individually they were especially reponsible for segments of it. The finding which we will ask you to make, that these are criminal organisations, will subject members to punishment to be hereafter determined by appropriate tribunals, unless some personal defence - such as becoming a member under threat to person or to family, or inducement by false respresentation, or the like be established. Every member will have a chance to be heard in the subsequent forum on his personal relation to the organisation, but your finding in this trial will conclusively estabiuish the criminal character of the organisation as a whole.

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

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

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

Among the nations which unite in accusing these defendants, the United States is perhaps in a position to be the most dispassionate, for having sustained the least injury, it is perhaps the least animated by vengeance. Our American cities have not been bombed by day and by night, by humans, and by robots. It is not our temples that have been laid in ruins. Our countrymen have not had their homes destroyed over their heads. The menace of Nazi aggression, except to those in actual service, has seemed less personal and immediate to us than to European peoples. But while the United States is not first in rancour, it is not second in determination that the forces of law and order be made equal to the task of dealing with such international lawlessness as I have recited here.

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

Twice we have held back in the early stages of European conflict in the belief that it might be confined to a purely European affair. In the United States, we have tried to build an economy without armament, a system of government without militarism, and a society where men are not regimented for war. This purpose, we know, now, can never be realised if the world periodically is to be embroiled in war. The United States cannot, generation after generation, throw its youth or

its resources on to the battlefields of Europe to redress the lack of balance between Germany's strength and that of her enemies, and to keep the battles from our shores.

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

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

But the ultimate step in avoiding periodic wars, which are inevitable in a system of international lawlessness, is to make statesmen responsible to law. And let me make clear that while this law is first applied against German aggressors, the law includes, and if it is to serve a useful purpose it must condemn, aggression by any other nations, including those which sit here now in judgement. We are able to do away with domestic tyranny and violence and aggression by those in power against the rights of their own people only when we make all men answerable to the law. This trial represents mankind's desperate effort to apply the discipline of the law to statesmen who have used, their powers of state to attack the foundations of the world's peace, and to commit aggressions against the rights of their neighbours.

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

While the defendants and the prosecutors stand before you as individuals, it is not the triumph of either group alone that is committed to your judgement. Above all personalities there are anonymous and impersonal forces whose conflict makes up much of human history. It is yours to throw the strength of the law behind either the one or the other of these forces for at least another generation. What are the forces that are contending before you?

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

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

But it points to the dreadful sequence of aggression and crimes I have recited, it points to the weariness of flesh, the exhaustion of resources, and the destruction of all that was beautiful or useful in so much of the world, and to greater potentialities for destruction in the days to come. It is not necessary among the ruins of this ancient and

beautiful city with untold members of its civilian inhabitants still buried in its rubble, to argue the proposition that to start or wage an aggressive war has the moral qualities of the worst of crimes. The refuge of the defendants can be only their hope that International Law will lag so far behind the moral sense of mankind that conduct which is crime in the moral sense must be regarded as innocent in law.

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

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

MOTION ADOPTED BY ALL DEFENSE COUNSEL

19 November 1945

Two frightful world wars and the violent collisions by which peace among the States was violated during the period between these enormous and world embracing conflicts caused the tortured peoples to realize that a true order among the States is not possible as long as such State, by virtue of its sovereignty, has the right to wage war at any time and for any purpose. During the last decades public opinion in the world challenged with ever increasing emphasis the thesis that the decision of waging war is beyond good and evil. A distinction is being made between just and unjust wars and it is asked that the Community of States call to account the State which wages an unjust war and deny it, should it be victorious, the fruits of its outrage. More than that, it is demanded that not only should the guilty State be condemned and its liability be established, but that furthermore those men who are responsible for unleashing the unjust war be tried and sentenced by an International Tribunal. In that respect one goes now-a-days further than even the strictest jurists since the early middle ages. This thought is at the basis of the first three counts of the Indictment which have been put forward in this Trial, to wit, the Indictment for Crimes against Peace. Humanity insists that this idea should in the future be more than a demand, that it should be valid international law.

However, today it is not as yet valid international law. Neither in the statute of the League of Nations, world organization against war, nor in the Kellogg-Briand Pact, nor in any other of the treaties which were concluded after 1918 in that first upsurge of attempts to ban aggressive warfare, has this idea been realized. But above all the practice of the League of Nations has, up to the very recent past, been quite unambiguous in that regard. On several occasions the League had to decide upon the lawfulness or unlawfulness of action by force of one member against another member, but it always condemned such action by force merely as a violation of international law by the State, and never thought of bringing up for trial the statesmen, generals, and industrialists of the state which recurred to force. And when the new organization for world peace

was set up last summer in San Francisco, no new legal maxim was created under which an international tribunal would inflict punishment upon those who unleased an unjust war. The present Trial can, therefore, as far as Crimes against Peace shall be avenged, not invoke existing international law, it is rather a proceeding pursuant to a new penal law, a penal law enacted only after the crime. This is repugnant to a principle of jurisprudence sacred to the civilized world, the partial violation of which by Hitler's Germany has been vehemently discountenanced outside and inside the Reich. This principle is to the effect that only he can be punished who offended against a law in existence at the time of the commission of the act and imposing a penalty. This maxim is one of the great fundamental principles of the political systems of the Signatories of the Charter for this Tribunal themselves, to wit, of England since the Middle Ages, of the United States since their creation, of France since its great revolution, and the Soviet Union. And recently when the Control Council for Germany enacted a law to assure the return to a just administration of penal law in Germany, it decreed in the first place the restoration of the maxim, "No punishment without a penal law in force at the time of the commission of the act". This maxim is precisely not a rule of expediency but it derives from the recognition of the fact that any defendant must needs consider himself unjustly treated if he is punished under an ex post facto law.

The Defense of all defendants would be neglectful of their duty if they acquiesced silently in a deviation from existing international law and in disregard of a commonly recognized principle of modern penal jurisprudence and if they suppressed doubts which are openly expressed today outside Germany, all the more so as it is the unanimous conviction of the Defense that this Trial could serve in a high degree the progress of world order even if, nay in the very instance where it did not depart from existing international law. Wherever the Indictment charges acts which were not punishable at the time the Tribunal would have to confine itself to a thorough examination and findings as to what acts were committed, for which purposes the Defense would cooperate to the best of their ability as true assistants of the Court. Under the impact of these findings of the Tribunal the States of the international legal community would then create a new law under which those who in the future would be guilty of starting an unjust war would be threatened with punishment by an International Tribunal.

The Defense are also of the opinion that other principles of a penal character contained in the Charter are in contradiction with the maxim, "Nulla Poena Sine Lege".

Finally, the Defense consider it their duty to point out at this juncture another peculiarity of this Trial which departs from the commonly recognized principles of modern jurisprudence. The Judges have been appointed exclusively by States which were the one party in this war. This one party to the proceeding is all in one: creator of the statute of the Tribunal and of the rules of law, prosecutor and judge. It used to be until now the common legal conception that this should not be so; just as the United States of America, as the champion for the institution of international arbitration and jurisdiction, always demanded that neutrals, or neutrals and representatives of all parties, should be called to the Bench. This principle has been realized in an exemplary manner in the case of the Permanent Court of International Justice at The Hague.

In view of the variety and difficulty of these questions of law the Defense hereby pray:

That the Tribunal direct that an opinion be submitted by internationally recognized authorities on international law on the legal elements of this Trial under the Charter of the Tribunal.

On behalf of the attorneys for all defendants who are present.

/ s / DR. STAHMER

EXCERPT FROM FINAL JUDGMENT

The jurisdiction of the Tribunal is defined in the Agreement and Charter, and the crimes coming within the jurisdiction of the Tribunal, for which there shall be individual responsibility, are set out in Article 6. The law of the Charter is decisive, and binding upon the Tribunal.

The making of the Charter was the exercise of the sovereign legislative power by the countries to which the German Reich unconditionally surrendered; and the undoubted right of these countries to legislate for the occupied territories has been recognized by the civilized world. The Charter is not an arbitrary exercise of power on the part of the victorious Nations, but in the view of the Tribunal, as will be shown, it is the expression of international law existing at the time of its creation; and to that extent is itself a contribution to international law.

The Signatory Powers created this Tribunal, defined the law it was to administer, and made regulations for the proper conduct of the Trial. In doing so, they have done together what any one of them might have done singly; for it is not to be doubted that any nation has the right thus to set up special courts to administer law. With regard to the constitution of the Court, all that the defendants are entitled to ask is to receive a fair trial on the facts and law.

The Charter makes the planning or waging of a war of aggression or a war in violation of international treaties a crime; and it is therefore not strictly necessary to consider whether and to what extent aggressive war was a crime before the execution of the London Agreement. But in view of the great importance of the questions of law involved, the Tribunal has heard full argument from the Prosecution and the Defense, and will express its view on the matter.

It was urged on behalf of the defendants that a fundamental principle of all law international and domestic is that there can be no punishment of crime without a pre-existing law. "Nullum crimen sine lege, nulla poena sine lege." It was submitted that ex post facto punishment is abhorrent to the law of all civilized nations, that no sovereign power had made aggressive war a crime at the time that the alleged criminal acts were committed, that no statute had defined aggressive war, that no penalty had been fixed for its commission, and no court had been created to try and punish offenders.

In the first place, it is to be observed that 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 neighboring 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. Occupying the positions they did in the Government of Germany, the defendants, or at least some of them must have known of the treaties signed by Germany, outlawing recourse to war for the settlement of international disputes, they must have known that they were acting in defiance of all international law when in complete deliberation they carried out their designs of invasion and aggression. On this view of the case alone it would appear that the maxim has no application to the present facts.

This view is strongly reinforced by a consideration of the state of international law in 1939, so far as aggressive war is concerned. The General Treaty for the Renunciation of War of 27th August, 1928, more generally known as the Pact of Paris or the Kellogg-Briand Pact, was binding on 63 nations, including Germany, Italy, and Japan at the outbreak of war in 1939. In the preamble, the signatories declared that they were:

"Deeply sensible of their solemn duty to promote the welfare of mankind; persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples should be perpetuated .... all changes in their relations with one another should be sought only by pacific means ..thus uniting civilised nations of the world in a common renunciation of war as an instrument of their national policy ...."

The first two articles are as follows:

"Article I. The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations to one another."

"Article II. The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or whatever origin they may be, which may arise among them, shall never be sought except by pacific means."

The question is, what was the legal effect of this Pact? The nations who signed the Pact or adhered to it unconditionally condemned recourse to war for the future as an instrument of policy, and expressly renounced it. After the signing of the Pact, any nation resorting to war as an instrument of national policy breaks the 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. As Mr. Henry L. Stimson, then Secretary of State of the United States, said in 1932:--

"War between nations was renounced by the signatories of the Kellogg-Briand Treaty. This means that it has become throughout practically the entire world ....an illegal thing. Hereafter, when nations engage in armed conflict, either one or both of them must be termed violators of this general treaty law .. We denounce them as law breakers."

But it is argued that the Pact does not expressly enact that such wars are crimes, or set up courts to try those who make such wars. To that extent the same is true with regard to the laws of war contained in the Hague Convention. The Hague Convention of 1907 prohibited resort to certain methods of waging war. These included the inhumane treatment of prisoners, the employment of poisoned weapons, the improper use of flags of truce, and similar matters.

Many of these prohibitions had been enforced long before the date of the Convention; but since 1907 they have certainly been crimes, punishable as offenses against the laws of war; yet the Hague Convention nowhere designates such practices as criminal, nor is any sentence prescribed, nor any mention made of a court to try and punish offenders. For many years past, however, military tribunals have tried and punished individuals guilty of violating the rules of land warfare laid down by this Convention. In the opinion of the Tribunal, those who wage aggressive war are doing that which is equally illegal, and of much greater moment than a breach of one of the rules of the Hague Convention. In interpreting the words of the Pact, it must be remembered that international law is not the product of an international legislature, and that such international agreements as the Pact of Paris have to deal with general principles of law, and not with administrative matters of procedure. The law of war is to be found not only in treaties, but in the customs and practices of states which gradually obtained universal recognition, and from the general principles of justice applied by jurists and practised by military courts. This law is not static, but by continual adaptation follows the needs of a changing world. Indeed, in many cases treaties do no more than express and define for more accurate reference the principles of law already existing.

The view which the Tribunal takes of the true interpretation of the Pact is supported by the international history which preceded it. In the year 1923 the draft of a Treaty of Mutual Assistance was sponsored by the League of Nations. In Article I the Treaty declared "that aggressive war is an international crime" and that the parties would "undertake that no one of them will be guilty of its commission" The draft treaty was submitted to twenty-nine states, about half of whom were in favor of accepting the text. The principal objection appeared to be in the difficulty of defining the acts which would constitute "aggression" rather than any doubt as to the criminality of aggressive war. The preamble to the League of Nations 1924 Protocol for the Pacific Settlement of International Disputes ("Geneva Protocol" after "recognising the solidarity of the members of the international community" declared that "a war of aggression constitutes a violation of this solidarity and is an international crime." It went on to declare that the contracting parties were "desirous of facilitating the complete application of the system provided in the

Covenant of the League of Nations for the pacific settlement of disputes between the States and of ensuring the repression of international crimes." The Protocol was recommended to the members of the League of Nations by a unanimous resolution in the assembly of the forty-eight members of the League. These members included Italy and Japan, but Germany was not then a member of the League.

Although the Protocol was never ratified, it was signed by the leading statesmen of the world, representing the vast majority of the civilized states and peoples, and may be regarded as strong evidence of the intention to brand aggressive war as an international crime.

At the meeting of the Assembly of the League of Nations on the 24th September, 1927, all the delegations then present (including the German, the Italian, and the Japanese), unanimously adopted a declaration concerning wars of aggression. The preamble to the declaration stated:

"The Assembly:

Recognizing the solidarity which unites the community of nations;

Being inspired by a firm desire for the maintenance of general peace;

Being convinced that a war of aggression can never serve as a means of settling international disputes, and is in consequence an international crime...."

The unanimous resolution of the 18th February, 1928, of twenty-one American republics at the Sixth (Havana) Pan- American Conference, declared that "war of aggression constitutes an international crime against the human species."

All these expressions of opinion, and others that could be cited, so solemnly made, reinforce the construction which the Tribunal placed upon the Pact of Paris, that resort to a war of aggression is not merely illegal, but is criminal. The prohibition of aggressive war demanded by the conscience of the world, finds its expression in the series of pacts and treaties to which the Tribunal has just referred.

It is also important to remember that Article 227 of the Treaty of Versailles provided for the constitution of a special Tribunal, composed of representatives of five of the Allied and Associated Powers which had been belligerents in the first World War opposed to Germany, to try the former German Emperor "for a supreme offense against international morality and the sanctity of treaties." The purpose of this trial was expressed to be "to vindicate the solemn obligations of international undertakings, and the validity of international morality" In Article 228 of the Treaty, the German Government expressly recognized the right of the Allied Powers "to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war"

It was submitted that international law is concerned with the actions of sovereign States, and provides no punishment for individuals; and further, that where the act in question is an act of State, those who carry it out are not personally responsible, but are protected by the doctrine of the sovereignty of the State. In the opinion of the Tribunal, both these submissions must be rejected. That international law imposes duties and liabilities upon individuals as well as upon States has long been recognized. In the recent case of Ex Parte Quirin (1942 317 US 1), before the Supreme Court of the United States, persons were charged during the war with landing in the United States for purposes of spying and sabotage. The late Chief Justice Stone, speaking for the Court, said:

"From the very beginning of its history this Court has applied the law of war as including that part of the law of nations which prescribes for the conduct of war, the status, rights, and duties of enemy nations as well as enemy individuals."

He went on to give a list of cases tried by the Courts, where individual offenders were charged with offenses against the laws of nations, and particularly the laws of war. Many other authorities could be cited, but enough has been said to show that individuals can be punished for violations of international law. Crimes against

international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.

The provisions of Article 228 of the Treaty of Versailles already referred to illustrate and enforce this view of individual responsibility.

The principle of international law, which under certain circumstances, protects the representatives of a state, cannot be applied to acts which are condemned as criminal by international law. The authors of these acts cannot shelter themselves behind their official position in order to be freed from punishment in appropriate proceedings. Article 7 of the Charter expressly declares:

"The official position of Defendants, whether as heads of State, or responsible officials in Government departments, shall not be considered as freeing them from responsibility, or mitigating punishment."

On the other hand the very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual state. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the state if the state in authorising action moves outside its competence under international law.

It was also submitted on behalf of most of these defendants that in doing what they did they were acting under the orders of Hitler, and therefore cannot be held responsible for the acts committed by them in carrying out these orders. The Charter specifically provides in Article 8:

"The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment."

The provisions of this article are in conformity with the law of all nations. That a soldier was ordered to kill or torture in violation of the international law of war has never been recognized as a defense to such acts of brutality, though, as the Charter here provides, the order may be urged in mitigation of the punishment. The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible.

United Nations International Law Commission

Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal

Principle I
Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.

Principle II
The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

Principle III
The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

Principle IV
The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

Principle V
Any person charged with a crime under international law has the right to a fair trial on the facts and law.

Principle VI
The crimes hereinafter set out are punishable as crimes under international law:

(a) Crimes against peace:

(i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;
(ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

(b) War crimes:

Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war, of persons on the Seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

(c) Crimes against humanity:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.

Principle VII
Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.