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Literal Translation  
of  
Opinion  
on  
Indictment No. 1 Before the  
International Military Tribunal

by

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To be able to take a position as to the indictment against the first 24 war criminals, one should first clarify the prerequisite spiritual conditions of the indictment. There are two ways in which the conqueror might act against the conquered. The conqueror might, just as the Romans did after the Third Punic War, echoing on the might of the facts, deal with the conquered at will. But the conqueror might also, pointing to a higher moral, establish an idea which can serve as a common measure for both the conqueror and conquered. There is no doubt that in this indictment the first alternative is ruled out, and that the second is adopted.

The conquerors entered the war because necessity forced them, and because liberty and human dignity were in danger of being lost forever. The war against Hitler and against National Socialism was less a war between nations, but rather a war of ideologies. It was a crusade. The indictment is right in establishing that National Socialism was a criminal terror domination. It is obvious that crimes have to be punished even if they are not offences in the narrow criminal sense, but are offenses against rules of law, which, when not repressed would draw humanity in an ocean of barbarism. Therefore, not hate and vengeance, but justice is the leit-motive of the charge. The International Military Tribunal is, therefore, not an expression of the power of the Allies, but the

power of the Allies is the servant of the idea of justice. Such an opinion calls for a heavy punishment of all those whose participation in the aims and methods of the criminal terror domination of National Socialism can be established beyond doubt. But it also calls for an acquittal of all those whose mistaken politics might have helped National Socialism to get to power, but whose intention was not the realization of the criminal terror domination of National Socialism. An unjust sentence of conviction will do more harm in the world than an unjustified acquittal. In no case should the democracies repeat the mistakes of the peoples court of the Third Reich to punish a doctrine. The idea of justice demands that only acts and not opinions, that only those guilty and not innocents should be sentenced.

It would not do to look at the punishment of the criminal Nazis only under the emotional influence of the present. The consideration *sub specie aeternitatis* should guarantee that even after 50 years humanity will consider the Jurisprudence of the International Military Tribunal as being in harmony with Justice.

He who knew National Socialism will feel it to be completely justified that starting with the opening part of the Indictment, individual organizations and not only natural persons have been named as defendants. ¶ The main part of the Indictment falls into four counts. In Count I a division, convincing, and consistent with the Law of Nations is made between crimes against Peace, War Crimes and Crimes against Humanity. The weight of Count I is put on the evidence

that National Socialism was a conspiracy. (III) Count IV adds the history of National Socialism starting with the organization of the totalitarian domination over Germany, going through the internal politics, economics and external politics to the page leading to the aggression up to the preparation of the war against the U. S. A. This evidence is convincing. It would have been, in my opinion, advantageous that the building up of a National Socialistic conspiracy aimed first at the subjugation of the German people, then of Europe, and finally the world should have been developed in a stronger way. This would have better expressed that it isn't a question for some four conquering nations to punish one conquered nation, but that the "criminality" is the objective sought to be attained without considering which nation would have to suffer in consequence.

Count II, Crimes Against Peace, is good and handled in a plausible way.

In order to be able to appraise Count III, War Crimes, I would have to be in a position to check the various allegations contained in it. As a whole, they make a good impression. But, my feeling of justice obliges me to draw the attention on one point. On Page 18, it is alleged that in September 194, in Katyn Forest, 925 Polish officers were executed by the Nazis. This is not true. I was myself, at that time, in Katyn and was an eye witness to the discovery of the Polish officers' graves. According to this, there is no doubt that

the Polish officers have been captured and shot by the Russians. This undeniable fact is known, not only by thousands of ex-German soldiers and officers, but also by many Polish priests, English Officers and non-German physicians of European nations. The democracies would very much jeopardize their good cause in advancing a provable untrue affirmation. I recommend therefore to strike this point. As against this, the Indictment misses the three following orders of Hitler:

- a.) Shooting of all captured Russian Commisars.
- b.) Shooting of all captured Russian soldiers so far as they were members of the Communist Party.

Both are clear offenses against the laws of nations.

Count IV contains Crimes Against Humanity. The ~~putting~~<sup>piecing</sup> together is good but one-sided. It is right that Crimes against Germans are here made the object of the Indictment. But it could provoke the involuntary impression of being one-sided when, on page 26, the Social Democrat Brietscheid, and the Communist Thalmann, are named as victims of this crime, but such first-class men like General Schleischer, General von Bredow and Director of Ministry Klausung, the Leader of the Catholic Action are omitted. In this connection, all the murders related to the 20th of June 1934, should also be mentioned. It further also occurs to me that the murder by 44 men of 7,000 Russian Nationals of Hebrew Faith committed in 1941 in Bovvissow has not been mentioned despite that, especially in this case, protests were lodged

by German Military Quarters leading to important inter-German discussions. An Appendix A is added to the Indictment containing the 24 names of the first lot of defendants. The formulation of the charges against these 24 persons are too schematic and not concrete enough to convey a convincing effect. Already, starting with Goering the question is begging the answer, why the Reichstag's file staged by himself is not made the object of a charge. For one who knows National Socialism, the selection of the 24 defendants is not evident. Men like Schacht, Papen, Krupp, and Neurath, cannot be named together (the same ~~day~~) with the other defendants. Who knows them knows also that they were not Nazis, knows also that their politics was false and wrotten, knows that never more will they be allowed to play a political role, but knows also that they are no criminals, knows that they didn't want the war, knows that Papen had the intimate wish to double-cross Hitler and put him against the wall, knows that contrary to the affirmation contained in the Indictment Schacht was not Minister up to 1945, but that he retired before and so actively demonstrated his <sup>repentance</sup> ~~regrets~~. The charge against these personalities seem to me to stand on weak legs. Concerning both military groups (Keitel, Jodl, Raeder and Doenitz), the objection can be discounted that they as soldiers had to obey orders. But this is right only up to a certain point. Because the former Prussian and later German military law did never admit blind obedience. The soldier was not exempt of responsibility if he had or should have recognized the criminal character of the order. Besides, according

to German military law, the Chief Commanders of the Wehrmacht armies and the Chiefs of the General Staff assumed by their signature the co-responsibility for the context of their orders, so that they were not only executive organs without their proper will.

Annex B to the Indictment contains charges against 6 organizations. This inspires some reserve insofar as summary charges might <sup>often</sup> contain some injustice against some individuals.

Concerning the Reichs Cabinet, I would limit the charges to the ministers who did not retire and who participated in the decision which justified the murders of June 30, 1934. As to the charges against the General Staff as such, I consider them to the extent unjustified as they do not ~~mean~~ <sup>refer only to</sup> the leading heads since 1938. Because apart from these the General Staff was the nucleus of the resistance against Hitler and his criminal intentions.

The enumeration in Appendix C of the breaches of international treaties by Hitler and his confederates seems to be good and complete.

I wish in conclusion to suggest that following personalities should not be indicted but brought before the Court as witnesses against the criminal National Socialism.

- 1) Schacht
- 2) Papen
- 3) Neurath
- 4) Gritzbach
- 5) Ambassador Paul Schmidt
- 6) Prince Philipp von Hessen
- 7) General Hossbach

8) General von Funck

I am convinced that the declarations of the persons above mentioned would in the most efficient way indict National Socialism, and that many real Nazis could receive the deserved punishment.