The President today sent the following letter to the Hon. Francis M. Biddle, United States Judge of the International Military Tribunal:

"Dear Judge Biddle:

I am profoundly impressed by your report, which I have studied with careful attention.

When the Nuremberg Tribunal was set up, all thoughtful people realized that we were taking a step that marked a departure from the past. That departure is emphasized in the verdict and the execution of the first war criminals and in your recommendations for the guidance of nations in dealing with like problems in the future. An untempted step coming out of Nuremberg is the formal recognition that there are crimes against humanity.

Your report is an historic document. It is encouraging to know that the element of the UNESCO is not in the fundamental principles of international law but over the horizon which should be cleared from conflicting evidence.

I am impressed by the change in point of view of the defendants and their lawyers from indifference and complacency to the extent to be a determination to fight for their lives. The fact that you and your colleagues could bring about this change in attitude is in itself a tribute to the judicial spirit and objectivity of the Tribunal.

I am satisfied that the defendants received a fair trial. I hope we have established for all that the prosecution that aggressive war is criminal and will be so treated. I believe with you that the judgment of Nuremberg adds another factor leading toward peace.

That progress will be furthered if this nation can establish a code of international ethical law to deal with all the aggressive purposes. The setting up of such a code as that which you proposed is clearly an enormous undertaking, but it deserves to be studied and weighed by the best legal minds of the world. It is a fitting task to be undertaken by the Congress of the United Nations. I hope that the United States, in line with your proposal, will recognize the principles of the Nuremberg Charter in the conduct of a moral condemnation of offenses against the peace and security of mankind. All of these recommendations bring into special prominence the importance of the decisions which lie in the future."
The President today sent the following letter to the Hon. Francis Middle, United States Judge of the International Military Tribunal:

"Dear Judge Middle:

I am profoundly impressed by your report, which I have studied with careful attention.

Then the Nurnberg Tribunal was set up, all thoughtful persons realized that we were taking a step that marked a departure from the past. That departure is emphasized in the verdict and the execution of the first war criminals and in your recommendations for the guidance of nations in dealing with like problems in the future. An unbroken gate closing out of Nurnberg is the formal recognition that there are crimes against humanity.

Your report is an historic document. It is encouraging to know that the defense of the Nuremberg trials was not at the fundamental principles of international law but over the Eisenhower dictum against from conflicting evidence.

I am impressed by the change in point of view of the defendants and their lawyers from indifference and apathy to the present in a determination to fight for their lives. The fact that you and your colleagues could bring about this change in attitude in itself a tribute to the judicial spirit and efficiency of the Tribunal.

I am satisfied that the defendants received a fair trial. I hope we have established for all the prepositions that aggressive war is criminal and will be so treated. I believe with you that the judgment of Nurnberg adds another factor tending toward peace.

That tendency will be furthered if the nations can establish a code of international criminal law to deal with all who wage aggressive war. The setting up of such a code as that which you presented is indeed an onerous undertaking, but it deserves to be studied and weighed by the best legal minds in the world. It is fitting that the United States should be responsible for the proceedings of the United Nations. I hope that the United States, in line with your proposals, will realize the principles of the Nurnberg Charter in the conduct of a new commission of offenses against the peace and security of nations. All of these recommendations bring into special prominence the importance of the decisions which lie in the future.

Sincerely yours,

Charles C. Ewing
Secretary to the President"
Since your work is completed I accept as of today your resignation as United States Member of the International Military Tribunal. You have been years of a judicial proceeding which has blasted a new trail in international jurisprudence and may change the course of history.

By your work you brought experience, great learning, a judicial temperament and a prodigious capacity for work. You have earned the thanks and the thanks of the Nation for this great service.

Very sincerely yours,

REX S. BURRUM

Fol lowing is the text of Judge Middle's report to the President:

Eddington, D. C.,
November 6, 1946.

Dear Mr. President:

You will remember that when I conferred with you after my return from Nuremberg you asked me to make a report to you on the International Military Tribunal for the punishment of the major war criminals as originally and to make recommendations for further action. This report and those recommendations I now have the honor to submit to you.

When you appointed me a little over a year ago, as the American Member of the Tribunal, you expressed your abiding interest in this, the first serious attempt to try those leaders of Germany who had been responsible for the horrors of war. You were the prime source of the appeals investigations which followed in the wake of that war.

You were particularly anxious, I remember, that no disagreement should arise among the four great nations who on August 1, 1945, had signed the London Agreement and Charter preceding for the trial, formulating the law and establishing the practice, a disagreement which might threaten the success of this significant experiment in the field of international justice. It was your hope that Nuremberg might serve as a working counsel for the world that four nations could achieve results in a specific field of endeavor. You realized the difficulties in trying the criminals after the second World War, and were fully aware of the difficulties that would be encountered. There were widely different views of law and practice to be reconciled. The three worst periods of trials and procedures. International law--the law and practice of nations--was itself a live and a continuously developing. It was practically impossible to reconcile the three worst periods with the modern and uncertain state.

It is, of course, for me to say whether justice was done by the judgment of Nuremberg. That judgment is not being discussed by me in these public relations of the United States and of the world. But I think I can say that the unity of action that you hoped for among the four nations a year ago has been well realized. The fundamental principle of international law enshrined by the Charter of Nuremberg was upheld unanimously in the opinion of the Tribunal by the four nations making the United States, United Kingdom, Republic of France and the U.S.S.R.

This unity resulted from a willingness by all four nations to co operate on invariable and desirable differences in points of view. This gave and takes. The success of the democratic process could not have been accomplished otherwise. Many months went by before mutual confidence between the nations, an essential condition to prospect and effective work, was established. It were not interrupted by other engagements. It did not adjourn. It ranged in Nuremberg for a year, until finally the job was done. And this stability, this day-by-day relationship, led toward the development of a habit of cooperation. The Tribunal, for instance, sat in public session for six hours every day.
Since your work was completed I accept as of today your resignation as United States Member of the International Military Tribunal. You have done years of judicial proceeding which has blazed a new trail in international jurisprudence and may change the course of history.

In your work you brought experience, great learning, a judicial temperament and a prodigious capacity for work. You have earned my thanks and the thanks of the Nation for this great service.

Very sincerely yours,

RICHARD N. DURYEA

Preliminary in the text of Judge Duryea's report to the

President:

[Handwriting]

Dear Mr. President:

You will remember that when I conferred with you after my return from Nuremberg you asked me to make a report to you on the International Military Tribunal for the punishment of the war criminals, and to make recommendations for further action. This report and these recommendations I now have the honor to submit to you.

When you appointed me, a little over a year ago, as the American Member of the Tribunal you expressed your aviding interest in this, the first serious attempt to try those leaders of Germany who had been responsible for its misdeeds. I saw in you the prime cause of the appeal to civilization which followed in the wake of this war.

You were particularly anxious, I remember, that no disagreement should arise among the four great nations when August 1, 1946, had signed the London agreement and Charter providing for the tribunal, formulating the law and establishing the practice, a disagreement which might prevent us from making this significant experiment in the field of international justice. It was your hope that Nuremberg might serve as a working council for the world of all four nations which might achieve results in a specific field of endeavor. You realized the failures in trying the criminals after the first World War, and were fully aware of the difficulties that would be encountered. There were various points of view and practice of nations — and indeed a large and a small group, and at the practical applications were many differences of laws and procedures. International law — the law and practice of nations — was indeed a large and a small group, and in its practical applications became somewhat sterile and academic, language difficulties were pronounced, the work was one in a tentative and uncertain state.

It is not, of course, for me to say whether justice was done by the Judgment of Nuremberg. That judgment is not being discussed by me in rival articles other than the British States and the world. But I think I can say that the unity of action that you hoped for among the four nations a year ago has been well realized. The fundamental principle of international law enunciated by the Judgment of Nuremberg was stated unanimously by the opinion of the tribunal by the four nations nations, the United States, United Kingdom, France and the N.J.A.

This unity resulted from a willingness by all four nations to so proceed on inevitable and desirable differences in points of view. This gives and takes, the success of the democratic process, could not have been accomplished any other. Many were the years before mutual confidence between the parties, an essential condition to prompt and effective work, was established. It were not interrupted by other enmities. It did not assume a range in Nuremberg for a year, until finally the job was done. And this stability, this day-to-day relationship, was under the development of a habit of cooperation. The Tribunal, for instance, met in public session for six hours every day.
Parenthetically I should like to add a word about the dissent of the U.S.S.R. The concepts I have made about the unacceptability of Nuremberg are not affected by the dissent of certain individual defendants, as, indeed, the judges of the U.S.S.R. were careful to point out. The dissent did not express any disagreement with the fundamental principles of international law, in which General Ribbentrop fully concurred in fact if not on those principles that he had the responsibility for his dissent. The dissent in a word was over the inferences which should be drawn from conflicting evidence. I personally believe that the differences - in the facts and not on the law - were extremely healthy.

It is unnecessary to establish a rule that no member of the Tribunal should talk to the press or give interviews. This was rigidly adhered to by all announcements were made through the General Secretary, and were announcements of the Tribunal, not of any individual member. Very soon we found that long constraint stifled our conferences in our minutes of the conclusions. On rare occasions a member would record his disagreement, giving the reasons. Those private sessions were held two or three times a week so as to deal currently with the constant flow of motions and applications.

Then I used the word "members" I mean to include the alternates. Except in the actual sitting in decision, which was the responsibility of the members under the Charter, the alternates took an active part at the private sessions, and I should like hence to express my gratitude to my associates - the fairness and courtesy of the British; the patience and cooperation of the representatives of the U.S.S.R.; the French sense of humor coupled with a warm feeling for human justice. The long judicial experience and sound common sense of my altimeter, Judge Parker, were of great assistance to me, and, indeed, to all of us.

It was interesting to find - what all of us so honestly felt - the change in the point of view of the defendants and their lawyers as the trial progressed. It that they were indifferent, stupid, helpless. But very soon, as the Tribunal made its mounts of the nations that were, frequently against the prosecution, and went to great lengths to obtain witnesses and documents were readily relevant to the defendants' case, this attitude changed: the defendants became determined to fight for their lives. But what had transpired to be a misleading analysis of the jurors that felt Hitler's sense to survive and his ultimate destruction - the objective meaning of this terrible chapter of history. This change was in itself a tremendous tribute to our concept of justice.

Well, basically, did Germany acquiesce? Within a year and a half after the war ended the major war criminals were tried and punished. Although the Judges were selected from the victorious allies, the trial was fair. This has been universally recognized. But of greater importance for a world that longs for peace is this: the Judgment has affirmed, judicially for the first time, the proposition that aggressive war is criminal, and it will be so treated. I do not mean that because of this interpretation will be lost for conquest will abandon our dream because the theory of conquest cannot be limited to protect them when they guide and lead, for that can only be discerned from analysis in context and significance. For longer today, member military justice makes clear the unjust violation of international law. Such a conclusion would be naivety. But the Judgment of Nuremberg does add another factor to those who seek to make peace. The is not outlawed by such pronouncements, but we learn a little better to accept it now as here, its horrors are told and often, and the aggressive war is thus branded as criminal, aggressive war must necessarily, now it is essential. For nations here at home to realize that it means the death not only of individual human beings, but of whole nations, not only with defeat, but in the same dignified and decorous civilized life that follows that defeat.
Parenthetically, I should like to add a word about the dissent of the D.S.B.B. The present I have made about the unavailability of Mr. Trenchard are not affected by the dissent in certain individual defendants, as, indeed, the judges of the D.S.B.B. were careful to point out. The dissent did not express any disagreement with the fundamental principles of international law, in which General Wilmot and I fully joined. In fact, it was on those principles that he based the reasoning for his dissent. The dissent in a word was over the influence with which should be drawn from conflicting evidence. I personally believe that the difference is in the facts and not on the law - was extremely healthy.

If at the beginning we established a rule that no member of the Tribunal should talk to the press or give interviews, this was rigidly adhered to in the entire case. There were no comments, no interviews. Very few of the Tribunal, indeed, of any individual member. We have been careful not to allow our impressions, or our conclusions, to be governed by the discussions that might occur in the course of the proceedings. Our decisions were made in private sessions, held two or three times a week, and we dealt currently with the constant flow of motions and applications.

I then use the word "members" to mean to include the alternates. Apart from the actual verdict in the case, which was the responsibility of the members under the Charter, the alternates took an active part at the private sessions, and I should like here to express my appreciation of that part played by the alternates in the way they carried out their task, in the manner with which they cooperated with the representatives of the D.S.B.B., the French sense of logic coupled with a sense of humor; the long judicial experience and sound common sense of my alternate, Judge Darby, were of the greatest assistance to me, and, indeed, to all of us.

It was interesting to find - what all of us so keenly felt - the change in the point of view of the defendants and their lawyers, as the trial progressed. At first they were indignant, emotional, hostile, but very soon, as the Tribunal ruled on the merits of the evidence that were frequently advanced, and not to great pains to obtain witness and documents were closely relevant to the defendants' case, this attitude changed; the defendants were now fighting for their lives. But we had to remember to be a careful and critical analysis of the facts that fell into the Chamber's hands, to weigh and to evaluate their ultimate conclusions - the supreme decision of this terrible chapter of history. This change was itself an indication of our common sense of justice.

Well, basically, did Germany accept? Within a year and a half after the war ended the major war criminals were tried and punished. Although the defendants were acquitted from the victorious allies, the tribunal was fair. This has been universally recognized. But of greater importance for a world that looks for peace in Europe, the judgment has furnished, judicially for the first time, the proposition that aggressive war is criminal, and will be so treated. I do not mean that because of this interpretation war will last for ever. It is only a step on the way to the realization that the theory of aggression cannot be tolerated by men as it was and long as men will ever be detached from seeking in war only.

Signature for deputy, military, military and whole are justified violation of international law. Such a conclusion would be made. But the judgment of commerce does add another factor to those which tend to peace. The war is not ended by such pronouncements, but one can learn a little better to conduct it than as ever, its horrors are told over and over again, and its aggregate evidence in these cases as original. Aggressive war was never recognized as it is. The nations have come to realize that it means the death not only of individual human beings, but of whole nations, not only with defeat, but in the same degradation and decay of civilized life that follows that defeat.
The conclusions of Dumburg may be ephemeral or may be significant. That depends on whether one takes the next step. It is not enough to set one great precedent that breeds an original aggressive war between nations. Clearer definition is needed. That this accepted law was not spelled out in legislation did not prejudice its existence or prevent its application, as we pointed out in our earlier discussion. But now that it has been so clearly pronounced and largely accepted, the times have come to make its scope and incidence more precise. Thus, in 1927 the Rules of Land Warfare adopted by the League Commission did not make specific laws as formulae for more effective application a definition of these practices which had been already observed for many generations by most civilized nations. These practices were not specifically named in the Convention. But thereafter they have always been punished as crimes.

In short, I suggest that the time has come to get about drafting a code of international criminal law. What extenuate aggressive war should be defined. Further methods of ending war entered, penalties fixed, procedure established for the punishment of offenders. I do not here consider, much thought would have to be given to such matters. But certain tentative principles have been set forth in this Convention, presented by four great powers, and adhered to, in accordance with Article 2 of the Agreement by 29 other governments of the United Nations. Aggressive war is made a crime—planning, preparation, initiation or waging of a war of aggression. The official or any official or any official assignment to be effective, must be applied to individuals.

I suggest therefore that immediate consideration be given to drafting such a code, to be adopted, after the most careful study and consideration, by the governments of the United Nations.

The Charter of the United Nations provides in Article 11 that the General Assembly shall initiate studies and make recommendations for the purpose of securing the progressive development of international law and its codification. According to this article the United States has already taken the initiative in placing upon the agenda of the Security Council making in the draft the principles of action. The time is therefore opportune for advancing the proposal that the United States in a state reaffirm the principles of the Charter in the context of a general formulation of the United Nations, and thereby bring into being the Council for the United Nations and the Security Council. It would in addition, afford an opportunity to strengthen the moratorium against lesser violations of international law and to utilize the experience of Dumburg in the development of these permanent practices and institutions upon which the effective enforcement of international law ultimately depends.

I am taking this opportunity to resign as the United States member of the International Military Tribunal and to accept your apology immediately. I want to thank you for the honor of being selected. For the scholarship and intelligence and help given me by the United States Army of Occupation in Germany which your order made immediately available.

With warm personal regards, believe me,

Respectfully yours,

FRANK RIPLEY
The conclusions of Hamburg may be ephemeral or may be significant. That depends on whether we take the next step. It is not enough to set one precedent that brands as original aggressive war between nations. Clearer definition is needed. That this accepted law was not spelled out in legislation did not preclude its existence or prevent its application, as we pointed out in our earlier text. But now that it has been so clearly proclaimed and largely accepted, the time has come to name its scope and incidence more precisely. Thus in 1929 the Rules of Land Warfare adopted by the Hague Convention did not so much create new law as formalize for more effective application a definition of those practices which had been already talked of in many generations by most civilized nations. Those practices were not specifically termed criminal by the Convention. But thereafter they have always been punished as crimes.

In short, I suggest that the blue has now come to set about drafting a code of international criminal law. To what extent aggressive war should be defined, further methods of regulating war entered, penalties fixed, procedure established for the punishment of offenders I do not here consider, much thought would have to be given to such matters. But certain arbitrary principles have been set forth in the Charter, especially by four great powers, and adhered to, in accordance with Article 5 of the Agreement by 20 other governments of the United Nations. Aggressive war is made a crime—planning, preparation, initiation or waging of a war of aggression. The official position of offenders in their governments is barred as a defense. And, when the war of a superior to the war of some few responsibility, though they may be considered in mitigation.

Per, as we pointed out in the Judgment, criminal acts are committed by individuals, not by those fictitious bodies known as nations, and law, to be effective, must be applied to individuals.

I suggest therefore that immediate consideration be given to drafting such a code, to be adopted, after the most careful study and consideration, by the governments of the United Nations.

The Charter of the United Nations provides in Article 13 that the General Assembly shall initiate studies and make recommendations for the purpose of... preparing the progressive development of international law and its codification. Pursuant to this Article the United States has already taken the initiative in placing upon the agenda of the General Assembly setting in the first the question of appropriate action. The time is therefore opportune for advancing the proposal that the United Nations as a whole reaffirm the principles of the Nuremberg Charter in the context of a general codification of offenses against the peace and security of mankind. Such action would perpetuate the vital principles that war of aggression is the supreme crime. It would, in addition, afford an opportunity to strengthen the worldwide against lesser violations of international law and to utilize the experience of Nuremberg in the development of those permanent precedents and institutions upon which the effective enforcement of international law ultimately depends.

I am taking this opportunity to resign as the United States member of The International Military Tribunal and am asking you now my resignation immediately effective. I want to thank you for the honor of being selected, for the able and intelligent help given me by the United States Army of Occupation in Germany which your order made immediately possible.

With warm personal regards, believe me,
Respectfully yours,

FRANCIS BURNS