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CAUTION: The following letter of the President to Hon. Francis Biddle, United States Member of the International Military Tribunal, and the text of Judge Biddle's report to the President, MUST BE HELD IN CONFIDENCE UNTIL RELEASED.

NOTE: Release is for all editions of newspapers appearing on the streets NOT EARLIER THAN 8:00 P.M., E.S.T., today, Tuesday, November 12, 1946. The same hour of release applies to radio announcers and news broadcasters.

Please exercise care to avoid premature publication or radio announcement.

CHARLES C. ROSS
Secretary to the President

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

"Dear Judge Biddle:

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

When 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 Nazi war criminals and in your recommendations for the guidance of nations in dealing with like problems in the future. An undisputed gain coming 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 dissent of the USSR was not on the fundamental principle of international law but over the inferences which should be drawn from conflicting evidence.

I am impressed by the change in point of view of the defendants and their lawyers from indifference and skepticism at the outset to 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 time the proposition 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 fostered 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 recommend is indeed an enormous undertaking, but it deserves to be studied and weighed by the best legal minds the world over. It is a fitting task to be undertaken by the governments of the United Nations. I hope that the United Nations, in line with your proposal, will reaffirm the principles of the Nurnberg Charter in the context of a general codification 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.

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Since your work is completed I accept as of today your resignation as United States Member of the International Military Tribunal. You have been part of a judicial proceeding which has blazed a new trail in international jurisprudence and may change the course of history.

To 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,

HARRY S. TRUMAN"

Following is the text of Judge Biddle's report to the President:

"Washington, D. C.,
November 9, 1946.

Dear Mr. President:

You will remember that when I conferred with you after my return from Nurnberg you asked me to make a report to you on The International Military Tribunal for the punishment of the major Nazi 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 abiding interest in this, the first serious attempt to try those leaders of Germany who had been responsible for launching the war and who were the prime cause of the appalling atrocities 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 7, 1945, had signed the London Agreement and Charter providing for the trial, formulating the law and establishing the practice, a disagreement which might prevent or obstruct this significant experiment in the field of international justice. It was your hope that Nurnberg might serve as a working example for the world of how four nations could achieve results in a specific field of endeavor. You recalled the failures in trying war criminals after the first World War, and were fully aware of the difficulties that would be encountered. There were four different systems of law and practice to be reconciled, with their varying points of view and procedures. International law - the law and practice of nations - was indeed a base and a background, but had in its practical application become somewhat sterile and academic. Language difficulties were presented, the whole thing was in a tentative and uncertain state.

It is not, of course, for me to say whether justice was done by the Judgment of Nurnberg. That Judgment is now being discussed by the informed public opinion 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 principles of international law enunciated by the Judgment of Nurnberg were stated unanimously in the opinion of the Tribunal by the four member nations, 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 compromise on inevitable and desirable differences in points of view. This give and take, the essence of the democratic process, could not have been accomplished over night. Many weeks went by before mutual confidence between the members, an essential condition to prompt and effective work, was established. We were not interrupted by other engagements. We did not adjourn. We stayed in Nurnberg for a year, until finally the job was done. And this stability, this day-to-day relationship, made easier the development of a habit of cooperation. The Tribunal, for instance, sat in public session for six hours every day.

Since your work is completed I accept as of today your resignation as United States Member of the International Military Tribunal. You have been part of a judicial proceeding which has blazed a new trail in international jurisprudence and may change the course of history.

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Parenthetically I should like to add a word about the dissent of the U.S.S.R. The comments I have made about the unanimity at Nurnberg are not affected by the dissent on 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 Nikitchenko 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 inferences which should be drawn from conflicting evidence. I personally believe that this difference - on the facts and not on the law - was extremely healthy.

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. Any announcements were made through the General Secretary, and were announcements of the Tribunal, not of any individual member. Very soon we found that less constraint existed if our conferences were not minutely recorded. We therefore kept only a brief record in our minutes of the decisions. On rare occasions a member would record his disagreement, giving the reasons. These private sessions were held two or three times a week so as to deal currently with the constant flow of motions and applications.

When I use the word "members" I mean to include the alternates. Except in the actual voting in decisions, which was the responsibility of the members under the Charter, the alternates took as active a part at the private sessions. And I should like here 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 logic coupled with a warm feeling for human justice. The long judicial experience and sound common sense of my alternate, Judge Parker, were of the greatest assistance to me, and, indeed, to all of us.

It was interesting to feel - 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 indifferent, skeptical, hostile. But very soon, as the Tribunal ruled on the merits of the motions that arose, frequently against the prosecution, and went to great pains to obtain witnesses and documents even remotely relevant to the defendants' case, this attitude changed: the defendants began to fight for their lives. And what had threatened to be a sounding board for propaganda or a stage for martyrdom, turned into a searching analysis of the years that felt Hitler's rise to power and his ultimate destruction - the objective reading of this terrible chapter of History. This change was in itself an instinctive tribute to our concept of Justice.

What, basically, did Nurnberg accomplish? 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 formulated, 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 men with lust for conquest will abandon war simply because the theory of sovereign immunity cannot be invoked to protect them when they gamble and lose; or that men will ever be discouraged from enlisting in armies and fighting for their country, because military orders no longer can justify violations of established international law. Such a conclusion would be naive. But the Judgment of Nurnberg does add another factor to those which tend towards peace. War is not outlawed by such pronouncements, but men learn a little better to detest it when as here, its horrors are told day after day, and its aggressive savagery is thus branded as criminal. Aggressive war was once romantic; now it is criminal. For 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 slow degradation and decay of civilized life that follows that defeat.



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The conclusions of Nurnberg may be ephemeral or may be significant. That depends on whether we now take the next step. It is not enough to set one great precedent that brands as criminal aggressive wars 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 some detail in the Judgment. But now that it has been so clearly recognized and largely accepted, the time has come to make its scope and incidence more precise. Thus in 1907 the Rules of Land Warfare adopted by the Hague Convention did not so much create new law as formulate for more effective application a definition of those practices which had been already outlawed for many generations by most civilized nations. These practices were not specifically termed criminal by the Convention. But thereafter they have always been punished as crimes.

In short, I suggest that the time has now come to set about drafting a code of international criminal law. To what extent aggressive war should be defined, further methods of waging war outlawed, 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 salutary principles have been set forth in the Charter, executed by four great powers, and adhered to, in accordance with Article 5 of the Agreement by 19 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 defendants in their governments is barred as a defense. And orders of the government or of a superior do not free men from responsibility, though they may be considered in mitigation.

For, 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.

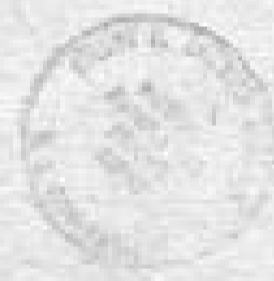
The Charter of the United Nations provides in Article 13 that "the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification." Pursuant to this Article the United States has already taken the initiative in placing upon the Agenda of the General Assembly meeting in New York 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 Nurnberg Charter in the context of a general codification of offences against the peace and security of mankind. Such action would perpetuate the vital principle that war of aggression is the supreme crime. It would, in addition, afford an opportunity to strengthen the sanctions against lesser violations of international law and to utilize the experience of Nurnberg in the development of those permanent procedures 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 that you make my resignation immediately effective. I want to thank you for the honor of being appointed, for the admirable and intelligent help given us by the United States Army of Occupation in Germany which your orders made immediately available.

With warm personal regards, believe me,

Respectfully yours,

FRANCIS BIDDLE"



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