November 13, 1946.

CJ: The following letter of the President to Hon. Francisiddle, United States Judge of the International Military Tribunal, and the text of Judge Hribb’s report to the President, sent IN TRUST IN CONFIDENTIAL HAND.

With reference to all editions of newspapers appearing on the days of

November 13, 1946, and December 17, 1946, and the same hour of release applies to radio announcers and news broadcasters.

Please exercise care to avoid premature publication or radio announcement.

CHARLES G. ROUS
Secretary to the President

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

"Dear Judgeiddle:

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

Then the Nuremberg Tribunal was set up, all thoughtful persons realized that we were taking a step that marked a departure from the past. This departure is emphasized in the verdict and the execution of the first war criminals and in the recommendations for the guidance of nations in dealing with like problems in the future. An unexpected gain 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 attempt of the Hribb was not at the fundamental principles of international law but over the inference that should be drawn from conflicting evidence.

I am impressed by the degree of insight of the defendants and their lawyers from indifference and acquiescence to the extent 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 moral 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 Nuremberg adds another factor to the world’s peace.

That tendency will be fostered if the nations can establish a code of international civil law to deal with all international 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 high moral and the world. It is a fitting task to be undertaken by the Conference of the United Nations. I hope that the United Nations, in line with your proposals, will recognize the principles of the Nuremberg Charter in the conduct of a general 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 Miller, United States Judge of the International Military Tribunal:

"Dear Judge Miller:

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

When the Nuremberg 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 similar problems in the future. An unprecedented step coming out of Nuremberg is the formal recognition that there are crimes against humanity.

Your report is a historic document. It is encouraging to know that the dictates of the Hague were not so the fundamental principles of international law but the reforms, which should be drawn from conflicting evidence.

I am impressed by the courage in point of view of the defendants and their lawyers from indifference and apathy to the veto as 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 prevention that aggressive war is criminal will be so treated, I believe with you that the judgment of Nuremberg adds another factor leading toward peace.

That Nuremberg will be forgotten if the nations cannot establish a code of international criminal law to deal with all such aggressive wars. The setting up of such a code as that which you propose 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 reinforce the principles of the Nuremberg 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."
Since your work is completed I accept as of today your resignation as United States Member of the International Military Tribunal. You have been a years of a judicial proceeding which has plowed 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,

H.E. S. BURIAH

Pekin, in the text of Judge Middlet’s report to the President:

[Handwritten note:]

November 9, 1946.

Dear Mr. President:

You will recollect 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 war criminals and to make recommendations for further action. This report may fill recommendations I may 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 Western war and who were the prime cause of the appalling bloodshed which followed in the wake of that war.

You were particularly anxious, I recollect, that no disagreement should arise among the four great nations. So on August 7, 1946, I signed the London agreement and Charter providing for the trial, formulating the law and establishing the practice, a disagreement which might prevent or retard this significant experiment in the field of international justice. It was your hope that Nurnberg might serve as a working council for the world of hot four nations could 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 - was indeed a hope and a requirement, and had in its practical application become almost sterile and academic, because difficulties over procedure, 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 not being discussed by me in secret today; the four great nations of the world. But I think I can say that the unity of nations that you hoped for among the four nations a year ago has been well realized. The fundamental principle of international law guaranteed by the Judgment of Nurnberg were stated unanimously by the opinion of the Tribunal by the four nations nations, the United States, the United Kingdom, the United States, the French and the British.

This unity resulted from a willingness by all four nations to co-operate on an inevitable and desirable differences in points of view. This goal was not, the success of the democratic process, could not have been accomplished over night. Many weeks went by before actual discussion between the members, a essential condition to swift and effective work, was established. It were not interrupted by other events. We did not adjourn, we regretted in Nurnberg for a year, until finally the job was done. And this stability, this day-to-day relationship, has resulted in the development of a habit of cooperation. To the Tribunal, for instance, act 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 seen years of a judicial proceeding which has claimed a new trial in international jurisprudence and may change the course of history.

As your work brought experience, great learning, a judicial temperament and a progressive capacity for work. You have earned my thanks and the thanks of the nation for this great service.

Very sincerely yours,

R. S. BUNAU

P.S. The text of Judge Biddle's report to the President:

Buddington, D. C.,
November 9, 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 Nazi war criminals and to make recommendations for further action. This report contains 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 it, the first serious attempt to try those leaders of Germany who had been responsible for 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 that on August 7, 1946, 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 Nuremberg might serve as a working council for the world of evil four nations could achieve results in a specific field of endeavor. You realized the difficulties in trying the criminals after the first trial, and were fully aware of the difficulties that would be encountered. There were serious points of law and practice to be reconciled, too, their practical administration became enormous details and minutiae, language difficulties were presented, the trials taking one in a cumulative 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 here. I have been asked to submit the report of the Tribunal, and that is what I do.

I believe 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 Nuremberg were stated yesterday in the opinion of the Tribunal by the four nations making the United States, the United Kingdom, the Soviet Union, and the French.

This unity resulted from a willingness by all four nations to go forward in unbreakable and durable differences in points of view. In this case and others, the success of the democratic process, could not have been accomplished save by this. Many years went by before mutual confidence between the nations, an essential condition to prompt and effective work, was established. It was not interrupted by other agreements. It did not flounder in Nuremberg for a year, until finally the case 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 High Court. The facts I have made about the unavailability of the defendants are not affected by the dissent of certain individual defendants. As, indeed, the judges of the High Court were careful to point out, the dissent did not express any disagreement with the fundamental principles of international law, in which General Ridgeway fully concurred in fact, it was on those principles that he based the reasoning for his dissent. The dissent was in a word over the inference which should be drawn from conflicting evidence. I personally believe that the differences in the facts and not on the law—were extremely healthy.

At the beginning of this address a rule that no member of the Tribunal should talk to the press or give interviews 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 some complaints were made that announcements not of the Tribunal were not immediately 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. Those private decisions were held two or three times a week so as to deal currently with the constant flow of motions and applications.

Then I wanted to include the alternates, except in the actual voicing of the decisions, 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 gratitude to my alternates—the fairness and courtesy of the Britons; the patience and cooperation of the representatives of the High Court; the French sense of humor coupled with a warm feeling for human justice. The long judicial experience and sound common sense of my alternates, Judge Parker, were of the greatest assistance to me, and, indeed, to all of us.

It was interesting to see—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, resentful, 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 more recently relevant to the defendants’ case, this attitude changed. The defendants became more active, more hostile. The alternates on the other hand, were more inclined to see and hear their ultimate obstruction—the agitator’s power of this terrible chapter of history. This change was in itself a definite tribute to our court of justice.

Well, basically, had Germany remained 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 hopes for peace in this new epoch is the judgment of the International Military Tribunal, known as the Nuremberg Tribunal, based on the Charter of the United Nations and the Judgment of Nuremberg and its decisions, as a basis for the prevention of future aggressions, and for peace, freedom, and justice throughout the world. The concept of international law, such a conclusion would have to be made, is not only given to the world, but in the judgment of the International Tribunal, is universal jurisdiction over the world. The concept of international law, such a conclusion would have to be made, a world of international law, such a conclusion would have to be made, a world where all nations, not only those with whom we are at war, can live in peace, and where the principles of justice, freedom, and democracy are upheld and the rule of law is respected.
Parenthetically I should like to add a word about the dissent of the S.S.S.R. The contents I have made about the unanimity at Würzburg are not affected by the dissent on certain individual defendants, so, indeed, the judges of the S.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 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 the differences in 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 this restraint limited if our conferences 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 as so to deal currently with the constant flow of motions and applications.

Then I use the word "members" to mean to include the alternates. Except in the actual writing in decisions, which was the responsibility of the counsel under the Charter, the alternates took an active 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 S.S.S.R.; the French sense of humor coupled with a keen feeling for human justice. The long judicial experience and sound common sense of my alternates, judges 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. It first they were indignant, entitled, hostile. But very soon, as the Tribunal relied on the merits of the nations that were, frequently against the prosecution, and we went to great pains to obtain witnesses and documents even remotely relevant to the defendant's case, this attitude changed. The defendants home board for proposals as a stand for our clients, turned into a pondering analysis of the means that fell to Hitler's hand to snare and his ultimate destruction — the objective meaning of this terrible chapter of history. This change was in itself an intuitive tribute to our circuit of justice.

What, basically, did Germany 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. Now of greater importance for a world that looks for peace is this: the judgment has confirmed, 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 with last for coup de grace will abolish our only because the theory of aggression cannot be limited to protect them when they guilty and long or to us ever be discerned from achieving in under and magnify for long society. Peace, security, sureness under a law can only illustrate violations of international law. Such a conclusion would be naive. Yet the judgment does add another factor to those with long-term value. This is not limited by such pronouncements, but can serve a little better to effect it shown as here, its horrors are told day after day, and its aggressive armory is thus branded as original aggressive war was never recognized now it is ordained. The nations here 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 defeat.
The conclusions of Hamburg may be ephemeral or may be significant. That depends in whether we take the next step. It is not enough to lay one great precedent that breeds a criminal aggression war between nations. Clearer definition is needed. That this accepted law was not spelled out in legislation does not prejudice its existence or prevent its application, as we pointed out in our case dealt in the judgment. But now that it has been so clearly pronounced and largely accepted, the time has come to mark its scope and incidence more precisely. Thus in 1941 the role of land warfare adopted by the Hague Convention did not as such create new law as formulated 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 barred as criminal by the Convention. But thereafter they have always been punished as crimes.

In short, I suggest that the time has now come to get about drafting a code of international criminal law. To what extent aggressor war should be defined, further methods of waging war entered, penalties fixed, procedure established for the punishment of offenders is not here considered, much thought would have to be given to such matters. But certain salutary principles have been set forth in the Charter, enunciated by four great powers, and adhered to, in accordance with Article 2 of the Agreement to 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 portion of defendants in their governments are held as a defense. And order of the government or of such superior as not free from such 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 States provides in Article 13 that "the General Assembly shall initiate studies and make recommendations for the purpose of progressively developing 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 nothing in the Fort the possibility of appropriate action. This is therefore now the proper time for advancing the program that the United Nations as a whole reaffirm the principles of the Hamburg Charter in the conduct of a general codification of aggressor against the peace and security of mankind. Such action would perpetuate the vital principles that war of aggression in the aggregate crime. It would, in addition, afford an opportunity to strengthen the sanctions against lesser violations of international law and to utilize the experience of Hamburg 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 not to resign without, by the United States Army of Occupation in Germany which your order is now immediately effective.

With warm personal regards, believe me,
Respectfully yours,

FRANK RIBBETZ
The conclusions of Durban may be ephemeral or may be significant. That depends on whether or not the next step is to be successful. That means that one great precedent that brand as criminal aggressive war between nations. Clearer definition is needed.

That this accepted law was not spelled out in legislation, does not prejudice its existence or prevent its application, as we pointed out in our earlier note to the judgment. But now that it has been so clearly admitted and largely accepted, the time has come to make its scope and incidence more precise. Thus in 1920 the Rules of Land Warfare adopted by the Hague Conference did not so much create new law as formulate for more effective application a definition of those practices which had been already used by many generations by most civilized nations. These practices were not specifically termed criminal by the Convention. But thereafter they have always been prohibited as crimes.

In short, I suggest that the time has now come to set about drafting a code of international criminal law, so that what are aggressive war should be defined, further methods of using 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 axiomatic principles have been set forth in the Charter, stated by four great powers, and adhered to, in accordance with Article 2 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 offense of territories in their government 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 these fictitious bodies known as nations, and also to be effective, must be applied to individuals.

I suggest therefore that immediate consideration is 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, among other things, 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 action in the form of the declaration 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 a crime, and crimes. It would, in addition, afford an opportunity to strengthen the machinery 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 further that you may re-appoint me 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 Coramum in Germany which your order made immediately effective.

With warm personal regards, believe me,

Respectfully yours,

FRANCIS BISHELY