At the beginning of its discussion on the vast evidence obtained by the Nuremberg Trial, the I.N.T. deemed it necessary, first of all, to point out that the verdict to be passed upon by no means be the result of arbitrary judicial opinion.

In its judgment the I.N.T. was guided by the international agreement of August 3, 1945 concerning the establishment of an International Tribunal, by the Charter and in particular by Article 6 of the Charter for the definition of the crimes in the case. These provisions, declared the Tribunal, "are binding upon the Tribunal in the law to be applied to the case." But the I.N.T. did not confine itself to a formal recognition of the Charter's legal validity. It thought necessary to emphasise that this international agreement is not a manifestation of the arbitrary will of the victors, but is the natural result of their right, as recognised by international agreements.

"The exercise 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 those countries to legislate for the occupied territories has been recognised by the Allied powers."

International law found its expression in the Charter and the Charter itself.

1) "International law. Further, the I.N.T. refers to the point of view of Nuremberg, September 1946, Vol. 5, No. 2, p. 782.
2) "Ibid., p. 107."
view is the effect that the victorious nations are not acquirers of power, but are representatives of principles of law which they implement.

In establishing an International Tribunal, the victorious nations did not go beyond the limit of their rights. Each of these nations was entitled independently to call the accused before justice in specially created local courts. The defendant may not object to international jurisdiction. The only right they may claim is "to receive a fair trial on the facts and law."

In the first place the IMT takes the charge of "committing specific crimes against peace by planning, preparing, initiating and waging war of aggression against a number of other States." This charge, in the Tribunal's opinion, is closely connected with the charges contained in Count One of the Indictment which "charges the defendants with conspiring or having a common plan to commit crimes amounting to aggression against peace." Therefore, the Tribunal found it appropriate to discuss these two charges together and to define aggressive war as a crime.

"War is essentially an evil thing...To initiate a war of aggression, therefore, is not only an international crime; it is the only domestic crime, differing only from other war crimes in that it contains within itself the accumulated evil of the whole." 3)

Discussing the seizure of Austria and Czechoslovakia, the attack on Poland, the invasion of Rumania and Norway, Belgium, the Netherlands, Luxembourg, the

3) Ibid., p. 177
4) Ibid., p. 80,
aggression against Yugoslavia, Greece, USSR, and the war against the United States, the ICTY reaches the conclusion that all these acts were of exclusively aggressive nature. The first acts of aggression by the Tribunal were in the seizure of Austria and Czechoslovakia, and the first war of aggression...is the war against Poland began on the 1st September 1939. For the Tribunal there is no doubt that

"continually planning, with aggressive war as the objective, had been established." However, the Tribunal found guilty only 3 defendants in preparing this plan and in participating in conspiracy. The ICTY rejected the arguments of the defense to the effect that conspiracy is incompatible with dictatorship and that dictatorship on the strength of its authority and power, covers all its followers.

"Hitler could not make aggressive war by himself," declared the Tribunal. "he had to have the co-operation of abasement, military leaders, diplomats, and business men. When they, with knowledge of his aims, gave him their co-operation, they made themselves parties to the plan he had initiated.* All his henchmen and collaborators had to be found guilty, for they knew that they were doing. The relation of leader and follower does not exclude responsibility here any more than it does in the comparable tyranny of organized criminal crime."
The defendants can find no justification by claiming that in invading the
fourteen million, preparing, initiating and waging a war of aggression the DEF violated
the principle of non pacto belli. In analysing the international treaties and
conventions -- to which we referred in Chapter I -- the Tribunal concludes that

"The law of war is to be found not only in treaties, but in the
custom and practice of states, which gradually attained universal
recognition, and from the general principles of justice applied by the
jurisdiction practised by military courts. This law is not static,
but by continual evolution follows the needs of a changing world."

The DEF denied the defendants the right to regard themselves as hosts of States
and to claim extraterritoriality for acts of State committed by them. After analysing
the corresponding articles of the Versailles Treaty and referring to the decision of
the Supreme Court of the United States, the Tribunal reached the following conclusions
which will occupy a place of honor in the annals 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." 1

7) Ibid., p. 109
8) Ibid., p. 112
9) Ibid., p. 112.
And not satisfied with this general definition, the Tribunal thought it necessary to indicate that even if there exists an international regulation protecting, under certain circumstances, heads of State, this regulation cannot be applied in cases which are considered 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."

But, as is known, Count One (of the Indictment) charges the defendants not only with the conspiracy to commit aggressive acts, but also to commit war crimes and crimes against humanity. The Trial does not share the point of view of the Indictment contrary to the spirit of Art. 6 of the Charter dealing with conspiracy only in connection with crimes against peace.

"The Tribunal will therefore disregard the charges in Count One (of the Indictment) that the defendants conspired to commit war crimes and crimes against humanity, and will consider only the element plan to prepare, initiate and wage aggressive war.

The situation of the Jews in Nazi Germany was illustrated not only in a special Chapter "Persecution of the Jews," but prominent place was given to it in other sections of the judgment as well.

The IJF recognized that from the very beginning of the creation of the Nazi Party, anti-Semitism occupied a prominent place in Nazi ideology and propaganda. The Party
denied Jews the right of citizenship and held them responsible for the 1933 defeat.

This exercise to Jews was led by racial theory elevating the superiority of the
and blood
German race. With the Nazi occasion to power, "persecution of the Jews became
official State policy." The Tribunal reminds the April 1, 1933 boycott and refers to
racial legislation restricting the activities of Jews in the Civil Service, in the
legal profession, in journalism and in the armed forces. In September 1935, the
Nuremberg Laws were passed, the most important effect of which was to deprive Jews of
German citizenship.

Referring to the aforementioned special chapter on the persecution of the Jews,
the EJF states that this part of the indictment "has been proved in the greatest detail
before the Tribunal, and describes them as an act of consistent and systematic
iniquity on the greatest scale." [1] (Italicics added). In order to prove the con-


[1] "Idem., p. 62
[2] "Idem., p. 128
The Tribunal also established that the Nazi Party preached anti-Semitism throughout its history. This preaching of anti-Semitism transformed itself into propaganda which by means of the press and other press organs was permitted to "discriminate against the Jews." 14)

After the pronouncement of a series of decrees restricting not only the civil rights of the Jews but also destroying their family life, by 1938, the Nazi policy towards the Jews had reached the stage where it was directed towards the complete exclusion of Jews from German life. Furthermore, the Tribunal established that pogroms were organized by the German Government and that they took the form of looting of Jewish property, arrest of outstanding Jewish leaders and setting synagogues on fire. Then followed the imposition of a penalty of one billion marks, the seizure of Jewish assets and a number of restrictive measures; at the same time, the setting up of ghettos was provided for and the wearing of the yellow badge prescribed by an order of the Security Police.

The Tribunal also established a direct connection between depriving Jews of their political rights and atrocities. Speaking of the abuse perpetuated by Nazi the Tribunal came to the conclusion that "the exclusion of the Jews from membership of the race of German blood was to lead to the atrocities against the Jewish people." 15

14) H.R., p. 127
15) H.R., p. 2879
But, continued the Tribunal, no matter how "secret and impressive" persecution of the Jews was in the pre-war period, it cannot be compared with the policy of the Germans in the occupied territories. At the beginning of the war there were introduced anti-Jewish measures, ghettos, compulsory registration, slave labor, and the compulsory wearing of the yellow star with the Star of David. But as early as winter of 1939 a plan of the final solution was elaborated and in one of Hitler's speeches delivered in 1939 he named of this plan. The Tribunal regards as proved: the organization of a special Department within the Supreme for that purpose; the head of the Department was appointed Eichmann. After the invasion of the U.S.S.R., the plan of final solution began to materialize. Special detachments - Einsatzgruppen of the security police - were assigned for that purpose. The Army collaborated closely in the extermination of Jews. The Tribunal deals with particular detail on the tragedy of the Warsaw Ghetto and is of the opinion that "these atrocities were all part and parcel of the policy inaugurated in 1933."

Admitting a large variety of methods in the extermination of Jews, the DEF believes that except of the "final solution" was the gathering of Jews from all German occupied Europe to concentration camps. On the basis of evidence presented during the trial, the Tribunal

15) "Ann. 9, 129
16) "B. 7, 179
17) "B. 7, 179"
confirms that in Auschwitz alone 4,500,000 Jews were exterminated and 300,000
perished as a result of sickness and privations; moreover, that beating, starvation
and killing were general. The Tribunal also dealt with so-called medical experi-
ment on living persons and the selling of women’s hair for filling of entrances, as well
as collecting golden teeth and bridges of the victims, using of human fat for the
manufacture of soap, and the like. The Tribunal also took into consideration the
international mission of the Germans in the extermination of Jews in Hungary and
Austria.

On the whole, the E.C. drew an exhaustive picture of the crimes perpetrated
against the Jewish people, making ample use of all evidence submitted to the Tribunal,
such as documents, affidavits, and testimonies of witnesses. In this connection,
the factual description of the Jewish tragedy included in the E.C. judgment is an
invaluable document for the historians who will study this dismal chapter. The
judgment is also a document of extraordinary value in that it gives the definition of
aggressive war and its preparatory stages. The questions solved by the Tribunal about
the application of war as a state policy and the responsibility of heads of States will
occupy a place of honor in international law as precedents in judicial history.

18) Ibid., p. 129
19) See Chapter “Government General.”
But if we should make an analysis of the final conclusions of the Tribunal and evaluate the verdict which is bound to subject a multitude of facts to the narrow frame of legal terms, then the verdict of the Tribunal might evoke some doubts. It appears to us not as integral, monolithic and consistent as might be expected from an International Tribunal in which outstanding jurists of the four big powers took part under the brilliant chairmanship of Sir Lachenault.
The first doubt arising out of the analysis of the ICTY judgment is whether Article 6 of the Charter has been interpreted correctly in the part limiting conspiracy to crimes against peace only. Unquestionably, this article has an unhappy wording. While listing, in points a), b) and c), the terminating acts, the Charter only in point d), referring to planning, preparation, initiation or urging of a war of aggression, speaks alternatively about “or participation in a common plan of conspiracy for the accomplishment of any of the foregoing.”

However, the definition of conspiracy is given not in point a) but in the closing paragraph of this article which has no numerical order. This fact alone indicates that the paragraph refers to the entire this article and includes also crimes mentioned in points b) - war crimes and c) - crimes against humanity, and not only crimes against peace (p.a). This closing paragraph, embracing all crimes listed in Article 6, speaks of the responsibility of persons 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.  

70) Trial of War Criminals. Department of State, Washington, 1925, p. 36.
71) Id., p. 174.
The latter reference clearly indicates that conspiracy includes any of the crimes listed in Article 6.

In his report to the President (June 7, 1945), Justice Jackson clearly states that no individual offenses but the entire criminal policy of Naziism is covered by the statute.

"...to proceed against the top officials and organizations responsible for originating the criminal policies..."

A few pages further, referring to the rule of liability, Justice Jackson establishes that

"...all who participate in the formulation or execution of a criminal plan involving multiple offenses are liable for each of the offenses committed and responsible for the acts of each other. All are liable who have joined, ordered, procured, or counseled the commission of such acts..."[27]

U.S.

To refer to the authority of Justice Jackson not as Chief Prosecutor but as one of the originators of the Nuremberg Agreement of August 2, 1945 concerning the establishment of the I.L.Y. In the Preface to the above mentioned book, Justice Jackson stated that when President Truman approved and released his Report of June 7, 1945, it became

"...the first authoritative and definitive public announcement of the progress of the United States... and becomes a sort of bond new by which all subsequent proposals were secured."[28]

That is why his interpretation of Article 6 of the Charter, which found its re-

flection both in the indictment and in the speeches, must be regarded as authentic.

By limiting the concept of conspiracy as originally punishable only to the

participation in preparing and waging of an aggressive war, the ICT -- if consistent --

should have considered all crimes against humanity, and in particular against Jews,
as separate acts not connected with one another, and committed by certain individ-

uals. Yet, while describing crimes against the Jewish people, the ICT (as we can

from the fragment) pictured them as planned and systematic acts of the Government

and Party implementing their governmental and Party policy. This governmental

policy, whose basic principle was the Party program -- a fact recognized by the ICT

itself -- is conspiracy or even plan to commit crimes against humanity to which

Article 6 of the Charter refers, contrary to the interpretation of the Tribunal.

On the basis of judicial proof the Tribunal had to admit that even direct actions

such as the April, 1939 deporta and the November, 1938 pogroms were organized and

carry out by the Government and were by no means acts of individuals not connected

with one another by a special plan. Furthermore, the Tribunal had to recognize that

the entire racial ideology was based on the idea of German domination as a master

33) The Nuremberg Case as Presented by Robert H. Jackson, New York, 1947, 

Chapter II, p. 267.
case, and that all prosecutions against Jews represent an act of consistent and systematic immunity on the greatest scale. But going to the Tribunal's interpretation of Article 6, the overwhelming picture drawn by the Prosecution whereby, against the background of Nazi ideology, crimes against peace, crimes against humanity and war crimes were committed, one sees not only a breach in the perspective of the whole case but also the defendants sitting in the prisoners' dock (with the exception of eight who found guilty in conspiracy against peace) become individuals who acted in special fields assigned to them. This is in direct conflict with the statements made by each of the defendants as to Hitler's authority when they — as Party members — strictly obeyed as their Führer, implementing his instructions.

The second question which arises devolves on the correctness of the answers given by the IG to what kind of action were included in the conception of preparing, planning and initiating a war of aggression and the time when the criminal commission will in ensuing crimes against peace found its final and actual realization.

While listing crimes against peace, the Charter establishes the following order in the development of the criminal acts: planning, preparation, initiation.

Count One of the Indictment — The Common Plan or Conspiracy

Count one, with diverse other persons, during a period of years preceding 8th May, 1945, participated as leaders, organizers, instigators or co-conspirators in the formulation or execution of a common plan or conspiracy to commit, or which involved the coordination of, crimes against peace, war crimes and crimes against humanity, as defined in the Charter of this Tribunal, and, in accordance with the provisions of the Charter, are individually responsible for their own acts and for all acts committed by any persons in the execution of or of such plan or conspiracy.
or raging of a war of aggression. Such an order is logically correct, for the
first step consists in establishing the general intention (planning); then the pos-
sibility as to its implementation are taken into account and then one proceeds to
the material realization of the preparatory measures of both economic and strategic
nature. In other words, the conviction that a certain conflict or conflicts could not be solved other than by military force. The I.T.T. did
recognize the existence of such a determination by stating that it

"the history of the Nazi regime shows that Hitler and his followers
were only prepared to negotiate on the terms that their demands were
satisfied, and that force would be used if they were not." (Admiral Stark)

Yet in its judgment the I.T.T changed the logical order indicated in the Charter
and placed in the first line "Preparation for aggression." The I.T.T. does not include
into this category any economic facts proving preparation for war, but solely quotes
from Mein Kampf as a confirmation of the fact that as early as 1933 Hitler already
viewed the possibility of aggression. The I.T.T justifies its reference to Mein Kampf
by the fact that this book

"was a mere private diary... Its importance lies in the un-
avoidable attitude of aggression revealed throughout its pages."
But forgetting, however, the definition of the convention "preparing" for a war of aggression, established by the ICT, the latter states the following in the Chapter entitled "Who have us to the German Plan of Aggression":

"...it is clear that planning and preparation had been carried out in the most systematic way all through the history. Planning and preparation are essential to the making of war,"

Obviously in this case the ICT means not Hitler's ideology but concrete preparatory measures. The Tribunal explains that

"...the planning, to be original, must not rest merely on the declaration of a party program, such as were found in the twenty-five points of the Nazi Party, announced in 1920, or the political affirmations expressed in "Mein Kampf" in later years."

However, this absolutely correct conclusion did not prompt the Tribunal to examine the best material admitted by the Prosecution in the matter of planning and preparation for war, which consisted not in mere declarations but in concrete acts necessary for the waging of a successful war.

Despite the fact that in the descriptive part of the judgment, under the Chapter "Measures of Re-Armament," the Tribunal enumerates in detail all those measures and given a brilliant summary of the lengthy explanations made by the members of the U.N. Prosecution (Mr. Thomas S. Dodd - Off. Tr. pp. 270 ff. - and Mr.

27) Here the ICT follows the order established in arts. 6 of the Chapter
29) Alleged Re- arm.
concerning the economic, strategic and political preparation for war, the Tribunal - in the closing post - elected an evaluation of the arguments and evidence submitted. It is absolutely unclear whether they were discussed by the Tribunal and, if so, why they were reported. Some of the evidence the Prosecution found proof of the following: the necessity to lay a secure financial foundation for the building of armaments; the appointment of Czebals as coordinator for war materials and foreign exchange; the setting up of a War Council; Czebals's demand that all measures are to be considered from the standpoint of an assured victory; the establishment of the Four Year Plan, whose task consisted in preparing an industry for war needs; the passing of a secret Reich Defense Law, under which reasons were appointed Plenipotentiary General of the War Economy, and many other measures testifying to the aspersion and costly war preparations.

In each of these acts, taken individually, is not sufficient for the definition of planning and preparations of an aggressive war, then, taken as a whole, they unpardonable speak of conspiracy or means plan designed for that purpose. Their criminal nature is emphasized even more, if one takes into consideration the way in which Hitler himself and his henchmen contemplated these measures.
Mr. Dodi, member of the Dodi Prosecution, referred to in this connection to General Thorne's speech, among other things, stated as follows:

\[\text{Thorne's speech, among other things.} \]

... (text continues)

The ICTY quotes Hitler's speech in which he said: "..." (italics ours).

The Prosecution, while making no distinction between the exceptions of 'planning' or 'preparation,' nevertheless subdivided the preparatory period into three phases and established that the first phase covered the period from 1935 to 1936 (ICTY, p. 339). In the concluding part of the judgment, the ICTY dealt neither with the arguments nor with the documentary evidence submitted by the Prosecution. Therefore, the conclusion reached by the ICTY that the criminal plan becameripe only in November 1937 does not follow from the examination of all data available.

We shall deal here with the initial period of the criminal activities in preparing for war, for it is in direct connection with crimes against humanity as required from the Charter and the Judgment. The establishment of the date of the

(footnotes follow)

We shall confine ourselves to stating the general idea of the Prosecution without entering into a detailed discussion of the proof submitted, since the question of crimes against peace does not constitute the object of our study. This question interests us only in connection with crimes against humanity. A full analysis of crimes against peace with indication of all data see the book of Peter H. Radcliffe, The Nuremberg Documents, London, 1966.
initial period in preparatory for our will, at the same time, being the establishment of the date when the charges for crimes against humanity may be levied.

In essence, crimes against humanity coincide with crimes generally called war crimes. By comparing points b) and c) of Article 6, one must see that the criminal acts listed to those points (except special violations of the rule on war conduct) are similar. The basic difference consists only in that war crimes are recognized as crimes against individuals and property perpetrated during the war against the civilian population in occupied territories and against neutrals of war, while crimes against humanity crimes were committed prior to or during the period of an aggressive war, irrespective of whether they were committed with the latter. They also address persecutions on political, racial or religious grounds carried out in connection with aggressive war, with misunderstanding occurred in drafting point c of Article 6, which would have.

Robinson clarifies in his article The Nuremberg Tribunal: Crimes Against Humanity.

Originally, after listing crimes, such as murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, we put a parenthesis which divided this part of the article from the other part concerning consequences on political, racial or religious ground in connection with any crimes within the jurisdiction of the Tribunal.* R.Y.

30) Jacob Robinson, Congress Record, October 25, 1945
With nearly two months after the Council met in London, on August 8, 1944, a discrepancy was discovered between the Russian text and the English and French versions. In the Russian text, after the next page there was a column in the English and French version, a sentence. On the line of the protocols of October 10, 1945, it was recognized that the proper punctuation mark was a comma. By the substitution of the sentence through a comma a restrictive interpretation was given to the expression "criminal acts against humanity." 30

Dr. Robinson rightly remarks that by the substitution of the sentence through a comma, instead of the originally suggested two types of crimes — war unpunishably detained (without any relationship with preparing or carrying aggressive war), where, existence only if there is such a relationship, the Charter establishes that both types will be regarded as crimes only if there is such a connection. Therefore, Dr. Robinson rightly concludes that

"crimes against peace and war crimes, both of which have an independent existence, crimes against humanity are 'accompanying' or 'resulting' crimes to the first two if committed in connection with or as elements of the crimes of aggressive war or violations of laws and customs of war."

The judgment also puts on the same level the conception of war crimes and crimes against humanity, dividing them only according to the type of the commission of crimes and subjecting the latter to criminal punishment if a connection with aggressive war is established.

Apparently, deciding the existence of such a connection, the authors of the Charter proceeded from the general consideration that the entire Real policy of the United Nations War Crimes Commission, in his "Report on the Hearing of the Nuremberg Judgment" (London, October 20, 1946) daily underlines humanism to kind of by-product of war. 31

30) "...crimes against humanity are "crimes against humanity" or kind of by-product of war."
31) "...crimes against humanity are "crimes against humanity" or kind of by-product of war."

both in its internal and external manifestations, was pursuing and aim only —
aggression designed to conquer territories, driving 36 of the local population
by means of terror and extermination. Persuasion as usual and political grounds
had the purpose of destroying the nation of Russia and of all those on whom the
crowd could not count: ethnic hatred expected Russia. This case were
indicates that the author of the Charter had in mind conspiracy embedding all
fields of Nazi criminal activities, and not only planning and waging of aggressive
war.

Although the judgment recognizes the existence of political and racial perse-

cution before the war and points out that "the persecution of Jews during the
period (i.e., before the war of 1939) is established beyond all doubt" it nonethe-
tless states that "it has not been satisfactorily proved that they were done in
connection with, or in connection with, any such crisis" (i.e., planning, preparing or
waging an aggressive war). Therefore, the Tribunal cannot make a peremptory

decision that the acts before 1939 were crimes against humanity within the meaning of the
36
Charter." (Section one)

This part of the judgment also suffers from inaccuracy and vagueness.

1946, Vol. 6, No. 2, p. 121.
...when accused of crimes against humanity, the Tribunal refers to acts committed "before the outbreak of war." Was the Tribunal again make a restrictive interpretation of Article 6 of the Charter, despite the fact that it is clearly indicated there that crimes against humanity also include persecutions or political, racial or religious grounds in connection with, or in connection with, acts within the jurisdiction of the Tribunal. As is known, crimes falling within the jurisdiction of the Tribunal include not only crimes but also planning and preparation for an aggressive war. Therefore, the Tribunal ought to have examined these acts not in connection with the outbreak of war but in connection with those preparatory stages which the prosecution referred to. If, for example, leaving Jews from military service has no direct connection with one or another military operation, it has at any rate a connection with the creation of a monopoly army blindly obeying to the Fuhrer. The Tribunal itself repeatedly raised the question of the objectives which the Nazis pursued in their anti-Jewish persecution. While speaking of depopulation of Jews of their political and economic rights, the JIT states that "In this way the influence of Jewish elements on the affairs of Germany was extinguished, and one more potential source of opposition to Nazi policy was rendered powerless."
In another place, speaking of the demand for a national army to which the Jews were not to be admitted, the Tribunal reached the conclusion that this demand was due to recall to memory of Phòng song of the inmost possible scale, and ultimately to war.

In connection with the historical visualization of the German people, the Tribunal again returned to the question of the purpose of setting Germans according to their racial characteristics.

Thus we now stand inevitably, or at the very least, highly probable, if these purposes were to be accomplished, the German people, therefore, will all their resources, were to be organized as a great political-military army, attended to obey without question any policy decreed by the Führer.

In order to avoid any further quoting from the judgment, we shall confine ourselves to the last quotation which is significant as principles.

"In their determination to remove all sources of opposition, the Nazi leaders turned their attention to the trade unions, the churches and the Jews." [30]

Here, as we see, the Tribunal, on the basis of factual evidence rightly concluded that the persecution of Jews was one of the means of fighting opposition which was in the way of Nazi basic objectives; this fight began from the very first days of Hitler's accession to power. These parts of the judgment are not only illustrating the situation which prevailed in Germany and have not only a descriptive character for a better enlightenment of the crimes. They are conclusions reached by the trial which, however, were not used by the Tribunal in the final judgment.

[30] Ibid., p.79
[31] Ibid., p.86
[32] Ibid., p.81
In the meantime the I.T.T., while considering that there was not sufficient proof as to the connection between crimes against humanity and crimes against peace committed prior to the war, did not clarify in what this insufficiency consisted. Nor did it take the arguments of the Prosecution to the effect that Hitler regarded the creation of a world's nation according to the formula - Concentration Camps, Gas Centres, One People (the Volk, i.e. Slav, etc. peoples), necessary for the successful waging of war, and for that purpose the economic and physical elimination of Jews as members of an alien race - were not convincing, or while recognizing the correctness of that standpoint, the Tribunal considered that the evidence submitted in itself was not convincing. In this connection no clear-cut pictures in given and there are gaps which the Prosecution was unable to fill. As both done the Tribunal ought to have emphasized the weak points of the evidence and explanations presented by the Prosecution. Taking into consideration that the Nuremberg Trial is the first such of the International Tribunal on question unparallelled in history, one might have expected that such light would be thrown on the question of causes directly given against humanity within the framework of the Charter - which is a question of principle and has not been investigated much as yet. There certainly was a need for such an authoritative clarification, and this need was not satisfied. For to say that
still does not want to give a definition to a new legal concept which is to enter into international practice. The UN should clearly and precisely define the nature of aggression to be established — a chronological one — coinciding in their of their conviction with preparing and raging aggressive war — or the connection was to be that of cause and effect. In other words, crimes against humanity were to be related to crimes against peace just as a cause is related to its effect.

Consequently, it must be proved that crimes against humanity were to pursue definite measures referring to the tactics and strategy of the war itself.

Yet, though we do not find a precise answer to those conditions, one may draw some general conclusions from the final judgment. The very implication of the insufficiency of proof shows that had the proof been available the UN would have classified the racial and political persecutions committed before the outbreak of war as crimes against humanity.

Refusing to make a "general declaration," the UN, while describing the criminal activities of the defendants and the criminal nature of some organizations, charged them with crimes against humanity perpetrated before September 1, 1939.

[41] NARA, p. 131

Thus, Göring has been described as "the creator of the oppressive programme against the Jews and other races, at home and abroad." The ICTY states that Göring persecuted Jews, particularly after the 1938 pogrom, and not only in Germany proper but in the conquered territories as well.

"At those countries fell before the German Army, he extended the Reich's anti-Semitic laws to them: the Reichsjudenstatut for 1937, 1939, and 1941 contains several anti-Jewish decrees signed by Göring."

The Tribunal also indicates the interest shown by Göring in the 'complete annihilation of the Jewish question' and the role he played in it. He is also charged with the imposition of a billion Mark fine on Jews.

Fritz von Hahn, the Tribunal describes as "always rabidly anti-Semitic," was found guilty for having "drafted, signed, and administered many laws designed to expel Jews from German life and economy." The Tribunal particularly stresses his role in promulgating the Nürnberg Laws and other laws barring Jews from the professions and introducing the confiscation of Jewish property. Without dwelling on the question of the connection of these crimes with crimes against humanity, the Tribunal thought it necessary to mention the decree signed by Fritz in

in 1943 "after the mass destruction of Jews in the East, which placed them 'outside the law' and handed them over to the Gestapo." 

44) Likewise, Revent Polak is charged, as Reich Protector of Bohemia and Moravia, with terrorism and deportation of Jews.

The Tribunal charges Funk with "participation in the program of economic discrimination against the Jews" and refers to the role he played during the meeting of November 12, 1938 under Goering's chairmanship, when the question of the solution of the Jewish problem was discussed. The Tribunal also refers to Funk's suggestion of "removing Jews from all business activities" as well as to his speech of November 12, 1938, when he described the pogrom organized by the Government as a "flagrant violation of the dignity of the German people." At the same time, the Tribunal also deals with crimes against humanity committed by Funk after the outbreak of war, and his role in deporting at the Reichsbank of golden rings recovered from the murdered Jews.

Although a considerable part of crimes against humanity was committed by Cuno-Feuerberg after the outbreak of the war with Poland, the Tribunal dealt with his activities in Austria after the annexation and charges that he "instituted a program of confiscating Jewish property. Under his regime Jews were forced to emigrate, were sent to concentration camps and were subject to pogroms."
It is interesting to note that/whatever Zygar-Ingmar's activities in Austria the Tribunal merely speaks of "activities in Austria," whereas referring to his role in Poland and Holland (i.e., during the war) the Tribunal refers to his "criminal activities." It is difficult to say whether there is a slip or a deliberate omission of the word "criminal" in regard to Zygar-Ingmar's role in Austria. There are frequently inaccuracies to be found in the judgment.

Van Beurden is charged with introducing racial legislation in Czechoslovakia and barring Jews from leading positions in Government and business. As is known, these measures were introduced prior to September 1, 1939.

Of utmost interest are the charges made against Streicher, whose position in this trial must be regarded as exceptional. The only charge made against him in common with other defendants was that of participating in conspiracy. After the Tribunal restricted the scope of inquisitional conspiracy, Streicher was indicted on one count only—crimes against humanity—resulting from his anti-Semitic activities. The Tribunal passed in review his activities of 25 years of speaking, writing and preaching hatred of the Jews and described him as "widely known as 'Hitler's Rabbi One.'" Streicher's task consisted, stated the Tribunal, of that by systematically and consistently "infected the German mind with the virus..."
of anti-Semitism, and incited the German people to active persecution." The Tribunal also states that "Der Stürmer," each issue of which reached a circulation of 600,000 in 1935, was filled with anti-Semitic articles which were not only harmful and disgusting. For did the Tribunal overlook the role played by Streicher in the April 1933 boycott as well as in the destruction of synagogues in 1938? In order to include Streicher into the category of major war criminals, whose activities were not confined to one country only, the I.J. quite rightly points to Streicher's influence beyond Germany's borders. In analyzing the contents of all the articles published by "Der Stürmer," the Tribunal refers to a leading article appeared in the September, 1933 issue, which termed the Jew a "parasite and a pest, not a human being, but a parasite, an enemy, an evil-doer, a disseminator of disease who must be destroyed in the interest of mankind." But particular attention the Tribunal devoted to articles published by "Der Stürmer" between August 1941 and September 1944, of which 12 were written by Streicher himself. The Tribunal further states that with knowledge of the extermination of the Jews in the Occupied Territory, this defendant continued to write and publish his propaganda of death. and submits evidence that, contrary to Streicher's assertion, he was well informed of Hitler's decision to exterminate Jews. Of utmost interest is the
final conclusion of the I.C.T.

"Strachwitz's incitement to murder and extermination at the time when Jews in the East were being killed under the most horrible conditions clearly constitutes incitement on political and racial grounds in connection with war crimes, as defined by the Charter, and constitutes a crime against humanity."

Unquestionably the question arises that had not this incitement resulted in the murder of Jews, would the Tribunal recognize this hatred propaganda as racial and political grounds as crimes against humanity, if this propaganda had a connection with crimes against peace?

Also, it is not clear whether Strachwitz would have been found guilty had the Tribunal not been in possession of his articles referring to the war period and the Tribunal had to discuss only the question of his guilt on the basis of his earlier articles where the demand for the extermination of Jews was voiced.

The vague lack of clarity and uncertainty we find in the part of judgment dealing with the accusation of core organizations as criminal, discussing the responsibility of the "Leadership Corps of the Nazi Party," the Tribunal establishes the

"...the machinery...was used for the widespread dissemination of Nazi propaganda...to keep a detailed check on the political attitudes of the German people."

As far as this activity was carried out in Germany proper, the I.C.T. does not regard it as criminal. "Not the Leadership Corps," continued the Tribunal. They also
used for similar steps in Austria, Czechoslovakia and occupied territories. Here these measures were designed for extermination of the local population and were therefore to be regarded as criminal according to points b) and c) of Article 6.

Discussing the part the Leadership Corps played in the persecution of the Jews, the judgment refers to its participation in organizing the November 1938 pogroms...

"...and in the economic and political discrimination against the Jews, which was put into effect shortly after the Nazi came into power." (5) The Tribunal also mentioned the part played by the Leadership Corps in preventing the truth about the extermination of the Jews from becoming publicly known. Declaring the Leadership Corps as a criminal organization, the Tribunal states that

"The group declared criminal cannot include, ...persons who had ceased to hold positions, ...prior to September 1, 1939." (5)

This limitation as to the period of activities in a criminal organization is repeated in all cases when discussing the activities of all organizations found by the Tribunal as criminal, and notably the Gestapo (die geheime Staatspolizei), SD (Sicherheitsdienst des Reichswohlfahrt), and SS (die Schutzstaffel der NSDAP).

Referring to the role of these organizations in the pre-war period, the ICTY declares them as criminal on the strength of their activities after the outbreak of the war.

(5) P.2. 134
(6) P.2. 136
The Tribunal calls particular attention to the activities of the SS, which the Nazis attempted to keep secret,

but its criminal programs were so widespread, and involved slaughter on such a gigantic scale, that the criminal activities must have been widely known.

The INR further agrees of the SS as an organization demanding blind obedience and concludes that the criminal activities of the SS resulted from principles followed by the members of their staff composed of "the elite of National Socialism", who were brought up on the idea of domination of Germans as a master race.

This mystic and fanatical belief in the superiority of the Nordic German developed into the thing accepted and even desired of other races which led to criminal activities of the type outlined above, being considered as a matter of course if not a matter of pride.\(^{252}\)

But if this elite of Nazis left the ranks of SS prior to September 1, 1939, then, according to the INR judgment, it was not held responsible. This statement, which appears in the concluding part of the INR judgment concerning the question of the criminal nature of organizations, apparently results from the necessity to restrict, as far as possible, the number of prospective defendants, which otherwise would reach a catastrophic figure of several million persons.

The INR consistently followed its point of view as to lack of connection between crimes against humanity committed before the outbreak of the war and war crimes. But as we saw above, the organization of the 1939 pogrom was found

\(^{252}\) \textit{Ibid.}, p. 142
\(^{253}\) \textit{Ibid.}, p. 142
criminal by the Tribunal. Yet, when discussing the responsibility of the members of organizations declared as guilty, the discussion centers not around their activities, but, first of all, around the time when the members left the organizations. A person who committed a criminal act before September 1, 1939 and lived until that date was no longer a member of the organization, will not be held responsible, while a person who committed the same crime before September 1, 1939, but remained a member of the organization after that date, without taking any active part, may be held responsible for his previous activities.

But out of the analysis of the judgment another positive fact follows:

universally, namely, the recognition by the Tribunal of the defendants responsibility for crimes against humanity committed toward Jews, German subjects residing in Germany proper or in occupied territories. This fact results unequivocally from the judgment concerning Goering and Ribbentrop where the defendants were indicted on crimes perpetrated both in Germany and beyond its borders.

A third positive conclusion is the extension of the concept of persecution on racial, political or religious grounds by including not only acts of violence but also legislative and administrative measures designed to bring about political, legal and economic oppression of the minorities.

54) A series of discriminatory laws were passed, which limited the offices and professions permitted to Jews; and restrictions were placed on their family life and their rights of citizenship, The Nuremberg Trial: Germania: Official Text of the Proceedings, Federal Trials Division. December, 1946, Vol. 6, No. 2, p. 127.
To be sure, none of these principles was declared by the ICTY explicitly. The Tribunal gave an authoritative explanation of any of these questions, which might have served as a basis for its concrete conclusions. But the judgment not infrequently refers to racial legislation, generally termed as "discriminatory law," and the persecution of Jews before the outbreak of war is defined as "severe and oppressive."

If by defining the responsibility for racial persecution before the war the Tribunal felt bound by the interpretation of Article 6(c) of the Charter, the establishment of persecution of the Jews after September 1, 1939 offered the Tribunal the possibility to brand the activities of each of the defendants — directed toward extermination of the Jews — as crimes against humanity.

Thus the Tribunal found that Ribbentrop "played an important part in Hitler's "final solution" of the Jewish question," dealing with his activities directed to deportation of Jews, the Tribunal concludes that Ribbentrop "also assisted in carrying out criminal policies particularly those involving the extermination of the Jews." 337

In the judgment concerning Kaltenbrunner we find an interesting conclusion by the Tribunal to the effect that Jews "and other non-Jews thought to be ideologically..."
Insults to the Nazi system were reported to the SS, which had then transferred to a concentration camp and murdered" (italics mine). It thus results that the Tribunal found convincing the Prosecution's contention that the persecution of the Jews was also ideological in nature, i.e., active elimination of any opposition harmful to Naziism. The Tribunal also found that

Under its direction (SS), approximately six million Jews were murdered, of which two million were killed by Himmler's and other units of the Security Police.\(^57\)

Instructing Ribbentrop's claim that he was unaware of this, the Tribunal calls attention to the fact that

"...he exercised control over the activities of the SS, was aware of the crimes it was committing, and was an active participant in many of them."\(^58\)

Ribbentrop was found responsible "for a system of organized plunder of both public and private property," among which, as is known, first place occupied Jewish property in occupied territories. He is also accused of having ordered the segregation of Jews which ultimately led to confinement in ghettos. The Tribunal also found that his subordinates were Zapp's subordinates.

"Engaged in mass killings of Jews, and his civil administrators in the East considered it necessary for cleaning the Eastern Occupied Territories of Jews was necessary."\(^59\)
As we see, the Tribunal dealt neither with his literary activities nor with his anti-Semitic and teaching of racial theory, remaining faithful to the principle that the Nazis are held responsible for their deeds and not for their ideas, not matter how horrible they are.

Referring to Frank's activities, the Tribunal established that on the territory where 2 1/2 to 3 million Jews lived in 1933, about 180,000 were alive in January, 1944.

Jews were forced into ghettos, subjected to discriminatory laws, deprived of the food necessary to avoid starvation, and finally systematically and brutally exterminated.

In this part of the judgment we emphasize that the Tribunal regards submission to discriminatory laws as an independent element making part of crimes against Humanity.

Finally, describing the criminal activities of Frank, the Tribunal charges him with extending the Rassenhygiene laws to the Eastern territories annexed to the Reich, as well as with persecution of the Jews not only in Germany but beyond its frontiers. He participated in solving the question of deportation and one of the opinion that the Jewish question could be solved not by emigration but by applying ruthless force to the special camps in the East. On 1 July 1943 he signed an ordinance withdrawing Jews from the protection of the law courts and placing them under the exclusive jurisdiction of Minister's Gendarmerie.

(1) NDLR, p. 249.
(2) NDLR, p. 179.
Nine defendants charged with crimes against humanity committed by their forces were sentenced to death: one (Funk) to life imprisonment; one (Schirach) to 20 years imprisonment; and the 90 year old Neurath to 15 years imprisonment.

The I.G. did not recognize the General Staff as a criminal group. One of the reasons was the consideration that the term "Staff" meant something more than this collection of military officers..." For the moral evaluation of the General Staff made by the Tribunal will remain an indelible stain on the German ways.

"They have been responsible in large measure for the atrocities and suffering that have fallen on millions of men, women and children. They have been a disgrace to the honorable profession of arms. Without their military guidance the aggressive ambitions of Hitler and his fellow Nazis would have been academic and sterile. Although they were not a group falling within the scope of the Charter, they were certainly a ruthless military caste. The contemporary German militarism flourished briefly with the recent ally, National Socialism, as well as no better than it had in the generations of the past."

The statement that the General Staff is responsible for the fate of millions of men, women and children is enough and does not require any further elaboration.

But the judgment does not stop on this point. "The truth is," concludes the Tribunal,

"they actively participated in all these crimes or at least acquiesced, witnessing the commission of crimes on a scale hitherto and more shocking than the world has ever had the misfortune to know." (Italian case)

63) Trial, p. 126
64) Trial, p. 125
65) Trial, p. 127
The German Army, which, in the words of Nissin themselves, is a Volksstreich, also has a historical and moral responsibility for crimes against humanity - for crimes against the Jewish people.

Even if the judgment of the IMT has certain inaccuracies and contradictions, this still does not lessen the moral bearing of this historic document on the history of international relations. The inaccuracies must be ascribed to the gigantic work carried out by the IMT. In the course of nearly ten months, daily, except the Christmas holidays, the judges were conforming in public or closed sessions, solving innumerable legal problems and studying documentary evidence. Official transcripts of the sessions embrace about 35,000 pages legal size. The documentation has been published thus far in 6 large volumes, each about 1,000-1,200 pages. The judges had to study this vast material in an exceedingly short period of time - one month after the termination of the trial. The speed reached was perhaps not by the IMT at the expense of exactitude, but even as it stands at present - and we refer only to one part of the judgment, namely, crimes against humanity - it is an invaluable contribution.

The first blow has been dealt to the theory of government sovereignty which, however, is by no means principle about the limitation of power of States on the decision of actions toward their own citizens. Though the judgment confines its answer to the special structure of the Charter and puts crimes against humanity
in direct connection with crimes against peace and war crimes, yet it establishes the principle of criminal responsibility for certain acts or for perpetration on political or racial grounds under conditions provided for by the Charter. The further development of this principle, until it is recognized as an absolute norm, is not the concern of the Tribunal but of an international organization. The Tribunal also established that no punishable acts in this case are considered not only acts of violence but also so-called "legislative acts." The criminal have opened for conflict of laws in the evaluation of the authority and significance of foreign laws, if they are contrary to the requirements of international concept of right and justice. The procedure of courts, whereby the authority of foreign laws, including those recognized if the States were internationally recognized, must be revised. This trial gave an illustrative lesson to the effect that might may triumph over arbitrariness and that there are no great ones on the earth when an international tribunal cannot call to account if their acts constitute a threat to peace. The ICJ also showed that a Tribunal can rise above the sea of political passions and manifest the utmost objectivity where, it would appear, one cannot remain objective. Repudiating the racial theory on racial grounds and considering that the theory of master race was responsible for all the monstrous crimes, the Tribunal not only by a single word or act, but perhaps disrupted the quiet and solemn atmosphere which reigned during the trial.
and by which the entire judgment was issued. The first time in history the fate of
a government was decided by the judgment of a criminal court. This judgment should
lay not only as a heavy toehold on the grave of Mexico, but should also be taken
as a cornerstone for the establishment of new international relations whose task it is
to protect the rights and honor of so-called "peoples without a State."