

N-5825
UNCLASSIFIED

LAW INSTITUTE, ACADEMY OF SCIENCE, U.S.S.R.

THE CRIMINAL RESPONSIBILITY
OF THE HITLERITES

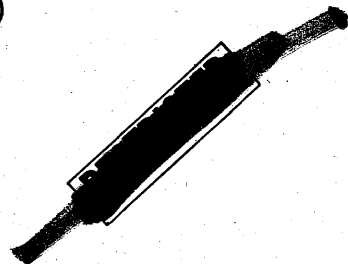
By

Professor A. N. Trainin

Edited by

A. Y. Vishinsky, Member of the Academy

(Translated)



Legal Publishing House NKU, USSR

Moscow - 1944

UNCLASSIFIED

UNCLASSIFIED

LAW INSTITUTE, ACADEMY OF SCIENCE, U.S.S.R.

THE CRIMINAL RESPONSIBILITY
OF THE HITLERITES

By

Professor A. N. Trainin

Edited by

A. Y. Vishinsky, Member of the Academy

(Translated)

Legal Publishing House NKU, USSR

Moscow - 1944

UNCLASSIFIED

UNCLASSIFIED

CONTENTS

Chapter	Page
1. War in Defense of the Fatherland and the Problem of International Responsibility under Criminal Law	1
2. German Crimes in the First World War and the Treaty of Versailles	16
3. The Concept of International Crime	30
4. Classification of International Crimes	47
5. Crimes of the Hitlerites Against Peace	55
6. War Crimes of the Hitlerites	61
7. The Perpetrator of an International Crime. Hitlerites as Perpetrators of International Crimes	98
8. Complicity of the Hitlerite Clique in International Crimes	109
9. Jurisdiction over Cases Involving Hitlerite Crimes	123
10. Calling the Hitlerites to Account	127
11. Mutual Assistance of Countries in Combatting International Crimes	131

UNCLASSIFIED

UNCLASSIFIED

WAR IN DEFENSE OF THE FATHERLAND AND THE PROBLEM
OF INTERNATIONAL RESPONSIBILITY UNDER CRIMINAL LAW.

I

The war into which the world was plunged by Hitlerite Germany is one of the greatest upheavals in the history of mankind. History has known bloody wars, making millions of human victims; but the scope of the present war and the methods used by the Hitlerites are without precedent. "The Hitlerite Army," it is pointed out in Comrade V. M. Molotov's note of January 6, 1942, "is not waging the usual kind of war, but a war of banditry. It is bent on the annihilation of all the peace-loving nations standing in the way of the criminal ambition of the German Fascists to rule other nations, the whole world."

The monstrous peculiarity of the Hitlerite war methods lies in the fact that enormous masses of people, millions of them, armed according to the latest technical ideas, systematically and in an organized fashion, engage in piratical raids, annihilate the population of seized territories, rob and destroy cities and villages, plunder and destroy the cultural wealth of nations.

Prolonged and intense efforts of all mankind will be necessary to remedy the destruction wrought by the Hitlerites. These efforts can be fruitful only if the end of this war is the end of all attacks upon the independence, the liberty, and the very existence and cultural development of all nations.

On the

UNCLASSIFIED

UNCLASSIFIED

On the eve of two great events, the end of the second World War and the victory of the liberty-loving peoples of the world, a stable fundamental principle of international relations and international cooperation must be the basis of the agreement, which will undoubtedly be an agreement of an unusual character, just as this war was an unusual one, and which must be final. The preparation of such a peace agreement is an immense and difficult problem.

In the solution of this problem, the criminalists must not be left in the background: a series of documents of the greatest political importance attests to the fact that when the peace-loving nations bring their charges against conquered Germany, there will inevitably arise among the many difficult post-war problems the problem of the criminal responsibility of the Hitlerites for their misdeeds. Among these documents is one of the highest importance: Comrade Stalin's declaration written on December 4, 1941 setting forth the principle of the "punishment of the Hitlerite criminals."

In Comrade Molotov's first note of November 25, 1941 to all governments with which the Soviet Union has diplomatic relations, regarding the atrocities committed by the German troops, there appears the following: "The Soviet Government places full responsibility for these inhuman acts, perpetrated by the German troops and civilian forces, on the criminal Hitlerite Government of Germany." In Comrade Molotov's note of April 27, 1942 the same definite idea is set forth: "The Hitlerite Government and its accomplices shall not escape the grim responsibility or the punishment that they deserve for all

UNCLASSIFIED

UNCLASSIFIED

for all their unheard-of crimes committed against the people of the USSR and against all liberty-loving peoples."

A new statement of the Soviet Government of October 14, 1942 gave the question of the criminal responsibility of the Hitlerite clique particular significance and importance. It is said in this statement that: "The Soviet Government considers it absolutely necessary to bring to trial without delay before a special international tribunal and to punish with all the severity of criminal law all the ringleaders of Fascist Germany who, during the course of the war, have already fallen into the hands of the states which are fighting Hitlerite Germany."

In accordance with the position of the Soviet Government on the question of the criminal responsibility of the Hitlerites for their criminal acts on Soviet soil on order of the Presidium of the Supreme Soviet of the U.S.S.R. of November 2, 1942, created: "The Extraordinary Government Commission for the determination and investigation of the crimes committed by the German-Fascist invaders and their accomplices and of the damage caused by them to citizens, collective farms, cooperative organizations, government enterprises and institutions of the U.S.S.R." The order declares that for all "the criminal acts committed by the German-Fascist invaders and for all the material damage caused by them..... the criminal Hitlerite Government, the German Army Command and their accomplices bear full criminal and material responsibility."

Demands for bringing to trial and punishing the Hitlerite criminals are put forward and are supported by all liberty-loving peoples. By the publication of a special declaration the representatives of Belgium,

Czechoslovakia,

UNCLASSIFIED

~~CONFIDENTIAL~~

UNCLASSIFIED

Czechoslovakia, the French Committee of National Liberation, Greece, Luxembourg, Holland, Norway, Poland and Yugoslavia made known their firm determination to carry out, "through an organized law court, the punishment of those who are guilty and responsible for these crimes (violence against civilian populations. - A.T.) whether these crimes were ordered by them, performed by them personally or whether they participated in them in any way." *

Furthermore, in Roosevelt's speech of August 1942 there appear the words: "Justice requires that they (the German-Fascist invaders. - A.T.) should be warned that the time will come when they will have to go before the courts of the very nations which they are now oppressing, and answer for their acts."

In his speech before the House of Commons on September 8, 1942, Churchill said: "When the hour of liberation strikes in Europe, and it will strike inevitably, it will also announce the hour of retribution. I would like also to stress the unreserved support of the English Government and Parliament of the solemn words which were recently spoken by the President of the United States - those who are guilty of Nazi crimes, shall be brought before the courts of those nations where their atrocities were committed so that it will be a solemn warning for the future and so that future generations can declare: - all those who commit the same [crimes] again, shall die." **

The declarations of the various governments and leaders of liberty-loving peoples were also expressed in the
statements

* Izvestia, January 15, 1942.

** Pravda, December 20, 1942.

UNCLASSIFIED

~~CONFIDENTIAL~~

UNCLASSIFIED

statements of Stalin, Roosevelt and Churchill, published in Moscow on November 2, 1942, exactly a year after the creation of the Extraordinary Government Commission. In this historical document the heads of the governments of the three biggest anti-Hitlerite coalition states proclaimed: "Whenever an armistice is proposed to any country by Germany, the German officers, soldiers and members of the Nazi Party who were responsible for the above-mentioned atrocities, murders and executions or who participated in them voluntarily, shall be sent to the countries in which they committed their monstrous crimes so that they can be tried and punished according to the laws of these liberated countries and of the free governments which shall be formed there."

The question of the criminal responsibility of the Hitlerites for the crimes that they have committed is therefore of the greatest importance; it has become a very pressing problem, as the monstrous crimes of the Hitlerite butchers have aroused the most burning and unquenchable hatred, thirst for severe retribution in the hearts of all the honest people of the world, the masses of all liberty-loving peoples. The serious attention of theorists and practitioners of criminal law should of course, be drawn to this question.

II

Unfortunately, the problems of international criminal law have not been discussed very extensively: there is no clear definition of the fundamental meaning of international criminal law or international crime. No orderly system of institutes of international criminal law is recognized.

In the

UNCLASSIFIED

UNCLASSIFIED

In the literature all problems of international criminal law usually boil down to one question - that of jurisdiction. In the special monograph entitled "Das internationale Strafrecht" ["International Criminal Law"] Roland defines the subject of international criminal law as follows: "International criminal law treats of the effects of national criminal laws in the international field." The whole monograph is consequently devoted to a discussion of questions of jurisdiction - universal, territorial, personal and real jurisdiction.

To the question of jurisdiction some authors have added the question of extradition of criminals and other forms of reciprocal aid between states in the battle against general crime.*

In 1910 questions of international criminal law were discussed at the same time by two important international gatherings of jurists: The International Council of Criminalists in Brussels and the International Penal Congress in Washington. But these groups did not study the fundamental problem of international criminal law either (the conception of international crime, its punishment, etc.); they discussed the same problems of the extradition of criminals, the severity of the sentence, etc.

* As, for example, Korkunov in the article "The building of international criminal law" in the "Zhurnal grazhdanskoy i ugolovnoy prava", January 1889. In "An investigation of the extradition of criminals" (1882), A. Stieglitz had already greatly restricted the problem. The author wrote: "The simplest aspect of violations of law that have an international character is the flight of a person who has performed some violation of law in one country to another country for the purpose of evading pursuit and thus escaping punished for the violation that has been performed" (page 1).

The work of Bar is devoted to the questions of jurisdiction and the extradition of the offenders. These questions are discussed in it very fully ("Das internationale Privat- und Strafrecht", 1862, pp. 504-607).

UNCLASSIFIED

UNCLASSIFIED

etc.*

The World War of 1914-1918 shook previous international relations to their foundations. Even then Germany brutally broke the laws and customs of war many times. Naturally, this intensified the interest in the problems of international criminal law; periodic international conferences were convened in various countries for the unification of criminal legislation in the capitalistic states. Such conferences took place in Brussels in 1926, in Warsaw in 1927, in Paris in 1931, etc. Some problems of international criminal law were discussed at these conferences, such as, for example, the problem of combatting terrorism. But these conferences were convened for a political purpose and the organizers of these conferences (the Rumanian Professor Pella and others) were not aiming at the combatting of real international crimes but the organization of a peculiar united criminal front against the Soviet Union. The theoretical progress of the unification conferences was very slight**

The extremely weak study of the problem of international criminal law was, of course, not accidental. It was due to the general nature of the international legal relations in the imperialistic era.

The policy of aggressive imperialistic supremacy, a constant threat to peace, a policy systematically giving ample scope for the use of force in the sphere of international relations, naturally could not contribute to the development and strengthening of international law as a system of rules protecting the liberty, independence and sovereignty of nations.

But it

* See P. E. Liublinsky's "Questions of international criminal law before meetings of criminalists", (Ministry of Foreign Affairs News, 1912, vol. 2).

** For details, see our work: "Criminal intervention", 1935.

UNCLASSIFIED

UNCLASSIFIED

But it would be a serious mistake to draw the general conclusion from this fact that the introduction of the problem of international criminal law was inopportune or fruitless: this would be to disregard the difficulty and complexity of international relations.

A few years before the beginning of the present war A. Y. Vishinsky wrote, with respect to the problem of international criminal law: "Doesn't the question of the creation of an international criminal code or, at least, the adoption of some system of defining international crimes, that is, crimes requiring a joint, voluntary, united, compulsory international reaction for the purpose of fighting them and overcoming them seem utopian? Doesn't the question of the creation of such a system seem utopian in view of the present international relations, saturated with the rising electric storm of war, strained to the utmost, heated by the rapacious desires of all the international bandits?" *

To these questions A. Y. Vishinsky gave very definite answers: "Notwithstanding, indeed, the extreme difficulty of the international situation, notwithstanding the dispersion of the adherents of the idea of an international criminal code, notwithstanding the efforts - tenacious and protected efforts - of a considerable number of bourgeois jurists to prevent the use of criminal law remedies in the fight for peace, notwithstanding, finally, the stubborn efforts of the reactionary and, above all, of the Fascist jurists, carrying

- - - - -

* See the preface to our work "The preservation of peace and criminal law", 1937, page 4.

UNCLASSIFIED

UNCLASSIFIED

carrying out the wishes of their masters, to substitute for the fight for peace, the fight against democracy, communism, and peace, criminal law must be utilized for defencing peace, must be mobilized against war and against the instigators of war."

It is thus on the basis of the analysis of the international situation that A. I. Vyshinsky wrote in 1937 before the Second World War, before Hitlerite Germany's perfidious attack on the Soviet Union, before Hitler's transformation of war into organized banditry. Therefore, even then it was imperative to consider not just one of the tendencies of the historical process - the collision of imperialistic interests, the daily struggle in the field of international relations and the futility of international law, - the tendency reflecting the policy of the aggressive nations in the imperialistic era. But it was also imperative to consider another tendency which was parallel and opposite to the former -- the struggle for peace and the liberty and independence of nations, a tendency in which was reflected the policy of a new and powerful international factor -- the socialist state of the toilers, the U.S.S.R. The present great war has given the latter tendency extraordinary scope and enormous power. The tremendous political victory of the U.S.S.R. and of all liberty-loving nations and the great political and moral defeat of Hitlerism is due to this fact.

The Soviet Union constantly and unfailingly plays the part of protector of the sovereignty and equal rights of great and small nations. During this second World War, liberty-loving

UNCLASSIFIED

UNCLASSIFIED

liberty-loving peoples, at the cost of tremendous sacrifices and the greatest upheavals, have come to recognize more and more the necessity for building, after the destruction of Hitlerism, international relations on the bases defended by the Soviet Union.

Liberty-loving nations have agreed that they "respect the right of all nations to choose their own form of government and will strive to attain complete cooperation among all nations in the economic field in order to guarantee a higher standard of living, economic development and social security."

On page 3 of the "Treaty of alliance in the war against Hitlerite Germany and her associates in Europe and of collaboration and mutual assistance thereafter" concluded between the U.S.S.R. and the United Kingdom of Great Britain on May 26, 1942, there appears the following: "1. The High Contracting Parties declare their desire to unite with other like-minded States in adopting proposals for common action to preserve peace and resist aggression in the post-war period. 2. Pending the adoption of such proposals, they will after the termination of hostilities take all the measures in their power to render impossible a repetition of aggression and violation of the peace by Germany or any of the States associated with her in acts of aggression in Europe."

These proposals were solemnly confirmed in the "Declaration of Four Nations on General Security" proclaimed in Moscow on October 30, 1943. In this declaration the governments of the United States of America, Great Britain, the Soviet

UNCLASSIFIED

the Soviet Union and China jointly declare:

"...4. That they recognize the necessity of establishing at the earliest practicable date a general international organization based on the principle of the sovereign equality of all peace-loving states, and open to membership by all such states, large and small, for the maintenance of international peace and security.

5. That for the purpose of maintaining international peace and security pending the re-establishment of law and order and the inauguration of a system of general security, they will consult with one another and as occasion requires with other members of the United Nations with a view to joint action on behalf of the community of nations.

6. That after the termination of hostilities they will not employ their military forces within the territories of other states except for the purposes envisaged in this declaration and after joint consultation.

7. That they will confer and co-operate with one another and with other members of the United Nations to bring about a practicable general agreement with respect to the regulation armaments in the post-war period."

Just as earlier, in the period of full play of imperialistic plundering, the weakness of international legal principles hindered the development of a system of measures to prevent the violation of international law, now, on the contrary, the strengthening of the laws which are the basis of international relations must consequently lead to the strengthening of the battle against all the elements which dare, through fraud, terror and insane ideas

upset

UNCLASSIFIED

UNCLASSIFIED

upset international legal order. That is why there is an indissoluble organic tie between the beginning of the creation of a new system of international legal relations and the fight against the Hitlerite crimes and against the international misdeeds of the aggressors.

In accordance with these new ideas, facilitating in all ways the process of development and strengthening of these new ideas, reflecting the constant policy of the U.S.S.R., Soviet juridical thought is obliged to forge the right form for these new relations, to work out a system of international law and, as an indissoluble part of this system to dictate to the conscience of nations the problem of criminal responsibility for attempts on the foundations of international relations.

Naturally, the very question of the criminal responsibility of the Hitlerites for the crimes that they have committed is no "problem": Comrade Stalin's instructions, the Soviet Union's declarations on this subject and the declarations of all the other liberty-loving nations have categorically decided that the Hitlerites must and shall bear full responsibility for their crimes.

The Soviet Union gave an example of what this responsibility would be when it pilloried before the eyes of the Soviet people and all other liberty-loving nations the Hitlerite murderers who were exposed at the proceedings of the Kharkov trial and who paid with their lives for the crimes that they committed. The court's sentence, an act of great justice, punishing the Hitlerite criminals with death, showed the whole world the grim determination of those who

were

UNCLASSIFIED

UNCLASSIFIED

were fighting for their liberty and the independence of nations not only to fight this war to the finish but also to avenge themselves sternly on the German-Fascist butchers and murderers. This example inspired the people of other nations who saw in these acts of Soviet justice the confirmation that the retribution awaiting the Hitlerite criminals would not stop at mere threats but that the will of the people would be expressed in stern but just acts.

The example of the Kharkov trial met with sympathetic response from abroad. Thus, the paper "Alte Retablicker" ? wrote on December 21, 1943:

"Three Germans and one Russian, tried by a military tribunal, have been hung at Kharkov. During the occupation they committed crimes against the civilian population which nothing can atone for."

"By this act the Soviet Union, carrying out the warning given by the United Nations to the war criminals, has once again set a useful example.

"Hitlerite Fascism has plunged the world into a dreadful and merciless war, a war of annihilation. In some countries, such as Greece, Poland and Russia, the extermination of the populations has been systematic at times. In other countries, such as, for example, in France, the Nazis have tried to take cover behind civilized behavior; the slogan of the Nazis was to win popularity by correct behavior. But when the hostility of the French toward these efforts at collaboration became perfectly obvious, when the benefits derived from these efforts were exhausted or were unattainable, barbarism took the upper hand. The soil of France was strewn with thousands of corpses, punished patriots,

UNCLASSIFIED

~~RESTRICTED~~

UNCLASSIFIED

patriots, hostages taken at random and children who died of starvation.

"Many argue about whether these just punishments will curb these monstrous crimes. Some think that retaliation will not help, and will only arouse the rage of the butchers. But this is not a question of retaliation. It is a question of justice. There is no greater encouragement to crime than freedom from punishment, as the murderers hope that after the final victory the warnings will not be carried out. Now that the defeat of Germany is obvious even to the Germans, the prospect of the general and individual responsibility, naturally, gives at least some of the criminals food for thought.

"However, this prospect will be realized by the Hitlerite criminals if they are sure that the warnings will be carried out. Therefore the punishment of the four in Kharkov was in this respect much better than empty threats repeated thousands of times. Besides the three murderers of the invading army, there was another one, the fourth, who was punished for his guilt. He was a traitor, a Russian who worked for the invaders of his country. This case is also a valuable example. We must not forget it when we think of the French patriots who are now being tortured by the Gestapo butchers and their Petainist accomplices."

The most serious problem and the honorable obligation of the Soviet jurists is to give legal expression to the demand for retribution for the crimes committed by the Hitlerites.

In the interest of the future elucidation of this question

UNCLASSIFIED

~~RESTRICTED~~

UNCLASSIFIED

question it is necessary first of all to study the historical precedents: the experience of the fight against the crimes of the German forces in the first World War.

UNCLASSIFIED

UNCLASSIFIED

Chapter Two

GERMAN CRIMES IN THE FIRST WORLD WAR
AND THE TREATY OF VERSAILLES

I

In previous wars Germany had already used invariably a "strategy" of cruelty and destruction.

" General indignation," wrote Marx regarding the conduct of the Germans in the Franco-Prussian War of 1870, "was aroused by the way the war was conducted: the system of requisitions, burning of villages, shooting of partisans, seizure of hostages....." *

Engels wrote regarding the Franco-Prussian War of 1870: "The bombardment of a city (Strasbourg. -A. T.), with an independent citadel commanding it, is in itself a senseless and useless cruelty The Germans say that it is imperative for them to capture the city without delay for political reasons. They intend to keep it for themselves after the conclusion of the peace. But if this is so, the bombardment, the cruelty of which has never been equalled, was not only a crime but also a serious mistake. Also, what a fine way to win the sympathy of the inhabitants of the city doomed to annexation, to set the city on fire and to kill a great number of its inhabitants with explosive shells!" **

"The fact is," says Engels elsewhere, "that the bestiality and cruelty of the Prussians, instead of
crushing
- - - - -

* Marx and Engels, Writings. Vol. XXVI, page 80.

** Marx and Engels, Writings, Vol. XIII, ch. II, page 89;
Engels: "Remarks on the War", Vol. XVII, page 89.

UNCLASSIFIED

UNCLASSIFIED

crushing the resistance of the people, redoubled their energy. . . ." *

Proportionately to the development of the greedy and rapacious nature of German imperialism and the growth of the destructive military technique, the blood-thirsty and destructive "Prussian" tendencies of German imperialism became greater and greater. As early as 1900, long before the first World War, William II expressed these tendencies in a cynical address to the German soldiers who were being sent to the Chinese front:

"When you clash, remember - do not give any mercy and do not take any prisoners. Those who fall into your hands must die. Just as a thousand years ago the Huns under the leadership of Attila earned themselves a name which is still terrifying in tradition and history, thus the name 'Germans' shall become so famous through you that a thousand years from now not one Chinese will dare look askance at a German."

Fourteen years went by and the piratical nature of German imperialism became even more evident. In his letter to the Austrian Emperor Francis-Joseph, written on one of the first days of the war of 1914-1918, William II wrote: "Everything must be drowned in blood and fire, it is indispensable to kill men, women, children and old people, not a single house must be left, not a single tree. With such terroristic methods, which are the only ones that can intimidate such a degenerate people as the French, the war will be over in less than two months, whereas if I take humane considerations into account, the war will last several years." **

The criminal

* Engels, "The War Situation in France", page 191.

** The newspaper "Figaro", November 20, 1919.

UNCLASSIFIED

UNCLASSIFIED

The criminal methods - or, to be more correct, the piratical methods - of waging the war of 1914-1918 which were recommended by William II were practiced to a great extent. Just as now, in 1914-1918, plunder, arson and murder were committed upon the orders of the war leaders.*

Professor Bedier, who studied a great number of diaries found on German soldiers, drew a picture of the systematic crimes committed by the Germans in the war of 1914-1918, on the basis of these German eye-witness accounts.** Special commissions of inquiry, created during those years in Belgium, France, England and Russia investigated and determined many cases of murder and torture of peaceful citizens, prisoners of war and wounded, and of destruction of private and public buildings.

The President of the Extraordinary Commission of Inquiry which was created in Russia at that time, Senator Krivtsov, began his account of the crimes committed by the German hordes with the following words: "The "exploits" of the German troops are gathered here as if focused by a lens: their shooting of peaceful inhabitants, their imprisonment of clergymen and officials, their disregard of private individuals, their pillaging of the property of the peaceful population, of soldiers and officers, the rape of women and girls and other crimes refute the conception of conscience and ethics of our neighbors who boast of being the possessors of the highest culture."***

Already

* William Loubat: "Le droit des gens et la guerre 1914", Revue Politique et Parlementaire", 1915, vol. LXXIII, page 31.

** Bedier, "Les Crimes allemands d'apres des témoignages allemands", 1915.

*** Diary 7, 1916, page 1.

UNCLASSIFIED

UNCLASSIFIED

Already in 1914-1918 the Germans* forcibly sent peaceful inhabitants to Germany and took hostages.**

The premeditated and systematic crimes of the Germans were stressed in the Belgian Commission of Inquiry's reports: "What is most astounding about these crimes is that they are not isolated acts. Cruelties were repeated and left a bloody trail in all the provinces. They represent the premeditated realization of a system which is contrary to both the voice of conscience and to the formal position of international law." ***

The Versailles Treaty and the indissolubly connected St. Germain and Neuilly Treaties did not overlook the methods used by the German bandits in the War of 1914-1918. The question of criminal responsibility for the crimes committed by William and his associates was dealt with, in particular, in part 7 -- "Penalties" -- of the Versailles Treaty: "The Allied and Associated Powers publicly arraign William II of Hohenzollern, formerly German Emperor, for a supreme offense against international morality and the sanctity of treaties. A special tribunal will be constituted to try the accused, thereby assuring him the guarantees essential to the right of defense. . . . In its decision the tribunal will be guided by the highest motives of international policy, with a view to vindicating the solemn

- -- -- --
- * A. Mérignhac, "De la sanction des infractions du droit des gens", "Revue générale de droit internat publique, 1917, January-February, page 262.
 - ** Quotation of the text of one of the German High Command's notices at that time in Namur (Belgium): "All streets will be occupied with German guards, who will take 10 hostages from each street. If there are any attacks in a street, 10 hostages will be shot." ("Rapports sur la violation du droit des gens en Belgique", 1915, page 23).
 - *** "La violation du droit des gens en Belgique", 1915, page 8. A great number of concrete examples of the crimes committed by the Germans in Belgium in the War of 1914-1918. See also "L'Allemagne et le droit".

UNCLASSIFIED

UNCLASSIFIED
-20-

solemn obligations of international undertakings and the validity of international morality. It will be its duty to fix the punishment which it considers should be imposed.

The Allied and Associated Powers will address a request to the Government of the Netherlands for the surrender to them of the ex-Emperor in order that he may be put on trial."

In Article 228 of the Versailles Treaty the Allied and Associated States were granted the right to arraign before a military tribunal and other bodies the Kaiser's associates, guilty of acts contrary to the laws and customs of war.

The provisions of the St. Germain Peace Treaty signed with Austria on September 10, 1919 and of the Neuilly Treaty made with Bulgaria, were very similar to the above-quoted provisions of the Versailles Treaty. Thus, Article 173 of the St. Germain Treaty reads: "The Austrian Government recognizes the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons shall, if found guilty, be sentenced to punishment laid down by law. This provision will apply notwithstanding any proceedings or prosecutions before a tribunal in Austria or in the territory of her allies." In neither agreement - the St. Germain and the Neuilly Treaties - is there any provision regarding the responsibility of William. Besides this, in the St. Germain Treaty the territorial changes in Austria are taken into account.

"The provisions of Article 173 to 175, provides Article 176 of the St. Germain Treaty -- apply similarly to the Governments of the States to which territory belonging to the former Austro-Hungarian Monarchy has been assigned, insofar as concerns persons accused of having committed

acts

UNCLASSIFIED

UNCLASSIFIED

acts contrary to the laws and customs of war who are in the territory or at the disposal of the said states. If the persons in question have acquired the nationality of one of the said states, the Government of such State undertakes to take, at the request of the power concerned and in agreement with it, all the measures necessary to ensure the prosecution and punishment of such persons."

Thus the St. Germain Treaty established that a change of nationality, i.e., the change from Austrian citizenship to another, does not absolve from criminal responsibility persons who are guilty of violating the laws and customs of war. In this case the guilty were not brought to trial in the states concerned but were to be tried in their new native country. The Neuilly Peace Treaty in the first section of Part V - "Prisoners of war and graves"-- supplementing Part VI, providing penalties, as in the Versailles Treaty, contains instructions regarding the powers of an Inter-Allied Commission for inquiry and control. According to Article 113 of the Neuilly Treaty this Commission is set up, in particular, for "establishing criminal acts punishable by the penalties referred to Part VI Penalties of the present Treaty, committed by Bulgarians against the persons of prisoners of war or Allied and Associated nationals during their captivity."

The above-mentioned provisions of the Versailles, St. Germain and Neuilly Treaties attempted to settle, together with other difficult problems which were created by the 1914-1918 war, the question, which is unusual in the history of international agreements, regarding the criminal responsibility

UNCLASSIFIED
~~RESTRICTED~~

UNCLASSIFIED

responsibility of the government and military leaders who "outraged international morality" and who committed acts which were "contrary to the laws and customs of war".

What were the real results of these efforts?

II

In their note dated January 15, 1919, the Allied Powers requested Holland to surrender the former German Emperor William II for trial according to the provisions of Article 227 of the Versailles Treaty. This note referred to William's violation of international agreements and the high principles of international morality. In its reply Holland, not objecting to the law, justice and high principles of international morality, informed the Allied Powers that it intended in this case to apply its own laws and traditions. "According to these laws and traditions -- said the note -- Holland has always been a refuge for those who were defeated in international conflicts. Holland sees no reason why she should make an exception in the case of the former German Emperor William II." *

Holland's refusal exhausted the question of the criminal responsibility of the heads of the German Government for what was recognized in the Versailles Treaty as the "supreme offense against international morality and the sanctity of treaties." It is true that after Lloyd George's declaration in March 1921 that "the principles of the whole Versailles Treaty are based on the thesis that the whole responsibility for the war falls on Germany", in

German

- - - - -

* Regarding the juridical arguments of Holland see below in connection with the analysis of the meaning of the principle: "nullum crimen, nulla poena sine lege".

UNCLASSIFIED

UNCLASSIFIED

German nationalist circles a rumor was circulated that "the ex-Kaiser is ready to accept the summons and to make an explanation before an international tribunal for the purpose of elucidating the question of the responsibility for the war."* However this rumor turned out to be "highly exaggerated". William had no intention to leave the territory of hospitable Holland.

In the end, the international trial of William II of Hohenzollern, so triumphantly announced in the Versailles Treaty, existed only on the pages of this treaty. The real trial of William, guilty of the greatest crimes of the war, was not taken into account by the leaders of peace politics at that time: they were more interested at that time in curbing revolutionary passions which were awakened with renewed force by the four-year imperialistic war, than in the organization of a trial of the emperor, guilty of the most villainous crimes of the war.

The efforts to organize a trial of William's associates, who were just as guilty of violating the laws and customs of war, were also fruitless. On February 3, 1920, the French Prime Minister Millerand sent to the chairman of the German Peace Delegation in Paris, Baron Lensner a letter with a list of persons to be surrendered to the Allied Powers according to Article 228 of the Versailles Treaty. England demanded 98 persons, among whom was Admiral Tirpitz, France demanded 344, among whom was Hindenburg, Belgium demanded 51, Rumania: 41, among whom was Mackensen, Italy: 39. The Allied Powers asked Germany to surrender

- - - - -

* "Izvestia", March 8, 1921.

UNCLASSIFIED

UNCLASSIFIED

to surrender 890 persons in all and among them the former Reichschancellor Bethman-Holweg, Ludendorf, Crown Prince Ruprecht, Herzog Württemberg and others. Although Baron Lensner received from Berlin, a few days before the return of the note to the Allies on January 31, a categorical order to accept and transmit to Berlin such a note if it were received, Lensner returned the letter to Millerand.

Parallel to the diplomatic negotiations, a strong movement was born in Germany against the extradition of the persons named in the Allied Powers' list. Officially and unofficially, Germany declared that an extradition law would be necessary and that a majority could not be obtained in the Reichstag to pass it. In search of a compromise, Germany adopted a law on December 19, 1919 determining responsibility for crimes connected with the war. The law provided for the arraignment before the Supreme Court at Leipzig of the persons accused of war crimes. Interested powers were given the right to participate in these trials as observers.

Germany's efforts were not without results: the victorious powers appeared more to blame in the questions before the court and regarding criminal responsibility.

In a note dated February 16, 1920 the Allied Powers announced that "they have carefully examined the communication which was addressed to them by the German Government stating the serious consequences, as much political as economic, which in order to carry out the Treaty of Versailles would be involved by putting into operation of the provisions contained in Articles 227-230 respecting the surrender of Germans accused of having violated the laws and customs of war."

UNCLASSIFIED

Further

UNCLASSIFIED

Further on in this same note it was said: "The Allies take note of the declaration made by the German Government that it is prepared at once to commence penal proceedings in the Supreme Court at Leipzig against all persons accused of violating the laws and customs of war."

This was an obvious capitulation of justice by the victorious powers before the German war criminals, before organizers, inspirers and protectors. This was a shameful rejection of the trial of the war criminals, a shameful agreement between the accusers and judges and the offenders and accused. This was unheard of in its cynicism which recognized the irresponsibility of war criminals, an unheard of mockery of the many thousands of people who fell in this war, victims of the most terrible crimes. The results of such a "policy" according to which the German bandits and murders were to be tried by Germans in their own so-called trials were not long in coming. Germany cleverly exploited the situation, deciding correctly that the victorious powers were not interested in the realization of a real trial or punishment. Germany showed no haste in holding the hearings before the Leipzig Imperial Court.* In March 1921 according to a telegram from the Post in London: "The Solicitor General announced in the House of Commons that until now none of the German violators of the laws of war have been brought to trial in Germany."**

However,

* It is characteristic that at that time when the League of Nations was being organized, defeated Germany was preaching consideration for the weaker powers: "The interests of the weakest power are just as sacred as the interests of the strongest power", wrote the German newspaper ("Hamburger Echo", January 5, 1918.

** "The Petrograd News", March 8, 1921.

UNCLASSIFIED

~~UNCLASSIFIED~~

However, it was naturally not possible to drag out this affair forever and in May 1921, the Leipzig court heard at last the case of the former under-officer Heine (?) accused of cruelty towards English prisoners of war in the Munster prison camp. A special British commission followed the trial. Heine was sentenced to 10 months in prison.*

Another "war criminal", Mueller, was sentenced to 5 months in prison.** After this the case of General Stenger was heard in Leipzig in the presence of the French Mission on June 29, 1921. General Stenger was accused of having given orders on August 16, 1914 to shoot French soldiers who were prisoners. "After today, ordered General Stenger, no more prisoners must be taken. All prisoners, wounded and not wounded must be killed. . . Not a living enemy must remain after us."*** Notwithstanding the fact that this lamentable order was definitely established at the trial, the court exonerated Stenger**** because no written order for the shooting (Brigadbefehl) was produced, although they did not deny the oral evidence and despite several German witnesses.***** After this France recalled its mission from Leipzig.

The Leipzig court studied several cases of captains of German submarines accused of having sunk Allied hospital ships. The submarine captain Neuman was accused of having torpedoed, on May 26, 1917, in the Mediterranean Sea an English warship, on board which were 632 sick men. The president of the court explained that "if Neuman had knowingly committed the crime it would have constituted murder (Mord)"

* "Deutsche Allgemeine Zeitung", May 27, 1921.

** "Isvestia", June 1, 1921.

*** A. Mèrignhac et E. Lemonon, Droit des gens et la guerre de 1914-1918, vol. II, p. 594.

**** "Vossische Zeitung", July 7, 1921.

***** "Kölnische Zeitung", July 5, 1921.

~~UNCLASSIFIED~~

UNCLASSIFIED

(Mord)** Neuman referred to the order of the German Admiralty issued on April 8, 1917 to sink every hospital ship if it was not within a determined channel. The Imperial Court exonerated Neuman just as they did the submarine Captain Kuhman who sank the English hospital ship, "Dover Castle".**

Dittmar and Voldt were accused of having torpedoed an English hospital ship on June 27, 1918 upon orders of the submarine commander. The court recognized that the ship was "objectively torpedoed in violation of international law". Dittmar and Voldt were also found guilty of having shot at a life-boat lowered from the sinking ship. Both of the accused were sentenced to 4 years in prison.

In its decision of the Neuman case the Imperial Court declared that charges would be brought against the offenders of the Admiralty who gave the orders to sink hospital ships. "It is probable, wrote the Ivestia, that Admiral Holzendorf and Admiral von Benke will be brought to trial. This will be the first attempt to prosecute higher ranking officers as war criminals."*** However the reference to the prosecution of the Admiralty officers for their responsibility was made only in order to exonerate the submarine captains Neuman and Kuhman. None of the higher officers of the Admiralty were brought to trial.

The Imperial Court decided in the same way the case of the three soldiers who were tried for pillage in Belgium.

All these

- - - - -
* "Kölnische Zeitung", July 5, 1921.
** "Ivestia", June 7, 1921.
*** "Ivestia", June 11, 1921.

UNCLASSIFIED

UNCLASSIFIED

All these facts show very clearly that the criminal responsibility of war criminals in the practice of international law and, in particular, of criminal law was pure fiction. In fact, the real war criminals and violators of the laws of war were not held criminally responsible and the question, as seen in its history, was not seriously considered in the first World War.

It is extremely important to note that the factual refusal to prosecute for criminal responsibility the offenders and criminals of the 1914-1918 was followed in spite of the fact that many American and French statesmen solemnly declared the necessity of bringing to trial and punishing the persons who were guilty of the most terrible crimes against humanity. Thus, the Secretary of State of the U.S.A. Lansing declared before the signature of the Versailles Treaty: "Those guilty of the terrible crime committed against humanity will not be forgotten."* Clemenceau's declaration was in the same vein: "Our duty is to transform victory into the triumph of humanity".** In a note addressed to Germany the French Government wrote: "The executors and organizers of the crimes will be held morally, criminally and materially responsible."***It was stated in the Belgian Commission of Inquiry's report: "It is not sufficient to set in the pillory of history those who are guilty of the cruelties which were committed: they must be apprehended, brought to trial and given a punishment commensurate with their offense."****

The crimes

* "Vorwärts", October 13, 1918.

** "Nationalzeitung", October 4, 1918.

*** "Le Temps", October 6, 1918.

**** "La violation du droit des gens en Belgique", No. 4, page 40.

UNCLASSIFIED

UNCLASSIFIED

The crimes committed by the German troops in the first World War were the subject of scientific conferences. Thus, the "Societe generale des prisons" repeatedly discussed at their meetings in 1915 and 1916 the question of the criminal responsibility of the German militarists for the crimes that they committed. In a special message to the Entente Governments this organization requested that steps be taken to find and to punish the persons guilty of war crimes and their associates.*

However, neither the declarations of statesmen nor the voice of popular opinion expedited the actual punishment of the guilty.

The close collaboration of the anti-Hitlerite coalition of the U.S.S.R., England and the U.S.A. and the complete unanimity with which the three great powers repeatedly warned the German-Fascist invaders regarding their grim responsibility, is the best guarantee that this time the mistakes of the victors of the war of 1914-1918 will not be repeated. The whole Nazi clique with Hitler at its head will receive the punishment they deserve.

* Revue pénitentiaire et de droit penal, no. 4, p. 361.-TC

UNCLASSIFIED

~~RESTRICTED~~
UNCLASSIFIED

Chapter Three

THE CONCEPT OF INTERNATIONAL CRIME

I

Questions of international criminal law have been studied very little, as was shown above.* Even after the war of 1914-1918, showing the great importance of the problem of the responsibility of the aggressor, of the responsibility for the violation of the laws and customs of war, juridical thought has continued to wander in formal, unrealistic abstractions. This is borne out by the ideas, points of view and discussions prevailing in the literature of various countries on international law. This is borne out first of all by the very definition of international crime which learned jurists attempt to formulate.

Professor Pella gives the following definition of international crime: "International crime is the act or the absence of an act, subject to a punishment which is proclaimed and applied in the name of the community of nations." This so-called "formal" definition of crime, well-known in the national criminal legislation of capitalistic states, does not reveal the nature of the criminal offense but only brings to the attention of states some kind (the kind is uncertain) of act. The mechanical transposition into the field of international criminal law of a formal definition inevitably lacks real meaning.

Indeed, the long-standing practice in the existing national legislative codes fills in the gaps in the theory and formalism of the law: it is generally known from experience what particular acts constitute crimes according to national

* For further details on international criminal law see two of our works: "Criminal Intervention", 1936 and "Preservation of Peace and Criminal Law," 1938.

UNCLASSIFIED

national criminal law, regardless of any special theoretical definitions. The problem is quite different in the field of international law: here there is no experience, no tradition, no prepared formulae of crime or of punishment. This is a field in which criminal law is only beginning to penetrate, where the understanding of crime is only beginning to take form.

What is the theoretical and practical value of the formula: "the act or the absence of an act subject to a punishment", if the basic problem in this sphere lies in the determination of what offenses constitute international crimes and of the penalties to be imposed according to the particular international jurisdiction?

On page 5 of the "Basic principles of international criminal law", Professor Pella wrote: "It is desirable that in the general part of the preliminary project of the international criminal code the factual, moral and legal elements of an international offense be clearly defined". Would the problem be solved in any way if we confined ourselves to Professor Pella's formula and defined the international offense as "the act or the absence of an act subject to a punishment proclaimed and applied in the name of the community of nations"? The problem would obviously not be solved.

Professor Saldana (?) although following a slightly different approach was also going beside the point. This opinion, "an offense can be considered international when it is an offense of which the sociological and anthropological elements are dispersed among various states and races." The indication which Saldana (?) considers characteristic

UNCLASSIFIED

UNCLASSIFIED

characteristic of an international offense does not correspond to the category of formal juridical principles provided by criminal law: it is in this that Saldana's definition differs from that of Pella. But this territorial and geographical indication (it is the general defect of Pella's and Saldana's definitions) does not characterize a crime but only the place of its commission.

According to Saldana's definition, any crime becomes international if the place of its commission or even if complicity in the crime took place on the territory of several states. If, for example, the weapon of the burglary was obtained in Belgium and the burglary was committed in France, then, according to Saldana, the burglary becomes an international offense. Similarly, abuse of authority and rape and even disorderly conduct might easily become an international offense if the commission of these acts or the complicity in these acts took place on the territory of different states.

Consequently, the concept of an international offense, as a particular kind of infringement upon the sphere of international relations, disappears completely, being dissolved in the mass of crimes provided against in national laws and committed on the territory of different states.

It is true that in foreign literature one can find attempts of various kinds to define the concept of international crime without the aid of formal criterions but with concrete material: with conventions against various crimes. As you know, there are a series of international conventions against various aspects of crime: a convention for the suppression of traffic in opium, a convention for limiting the manufacture

UNCLASSIFIED

UNCLASSIFIED

the manufacture and regulating the distribution of narcotic drugs, a convention on slave trade, a convention on the circulation of obscene publications, a convention on white slave traffic, a convention on counterfeiting. "Here (that is when one speaks of combatting slavery, white slavery, etc. - A.T.) says Barandon, one can speak of international crimes on a juridical plane, as the nature of these crimes is described in international conventions although these crimes are punishable according to national legislation and national courts.** In this way, in the opinion of Barandon, the inclusion of a crime in an international convention automatically transforms this crime into an international one.

On such matters as this it is in principle easy to form an unbiased opinion.** In reality, the selection of this or some other crimes as the object of the provisions of international conventions is necessitated, to be sure, not by theoretical considerations concerning the nature of international crimes, but by various political motives: the interests of one country or a group of countries in the combat against a given crime, material facilities for organization of such combat, and other reasons of that nature. For these agreements the series of international offenses covered by international agreements naturally cannot be complete, nor absolutely uniform.

Thus the conventions may cover infringements of

personal

- - - - -

* "Das Kriegsverhätungsrecht", 1933, S. 260.

** To be sure, the possibility is not precluded that the combatting of international crimes be regulated by conventions. Thus, for example, conventions to combat terrorism were contemplated before the war. The number of such conventions will doubtless increase, but the mere fact that such an offense has been included in international conventions does not change that offense into an international one.

UNCLASSIFIED

~~SECRET~~

UNCLASSIFIED

personal rights (acts of enslavement), violations of morality (acts involving pornographic literature), offenses against the monetary system (counterfeiting) and others. The conventions, as we see, protect interests of various kinds. On the same point: what criterion can be taken for the various categories of international offenses such as /distribution of/ pornographic literature and crimes against the person, counterfeiting and pandering? Even if such particular criteria are taken as special dangers or the special international significance of some crime or another, this does not greatly clarify the matter. Questions are bound to arise: why, for example, should acts connected with pornographic literature appear in the list of important international offenses that call for international regulation, while at the same time the manipulations of stock exchange speculators, let us say, remain outside such regulations? Or: why pandering an international offense, while bandits, murderers and speculators are left to national legislation?

In the absence of a uniform concept of international crime, it is impossible to answer such questions. Any offense may or may not be included in the list of international crimes for various reasons and on various grounds.

Because of their juristic nature and because of their factual significance, conventions for certain common criminal offenses appear to be one of the various forms of reciprocal support for criminal law by governments having in view a realistic combat against crime. This reciprocal action of governments is not a loss of practical attributes, but it

is not

UNCLASSIFIED

~~SECRET~~

UNCLASSIFIED

is not connected directly with the problem of international crimes: the complete lack of international significance of conventions in the course of events may include conventions for the more effective combatting of different crimes taken singly.

To be sure, the most advisable thing would be in the first place to put on a rational plane the combat against international crimes. But in view of the extraordinary complexity of the international situation, not only is the lack of identity between foreign theories emphasized, but in fact there is an evident difference between the two things: on the one hand, there are international conventions, and on the other hand there are international crimes: acts covered by international conventions are not viewed as international crimes, while things that are undeniably international crimes are not included in those conventions.

II

Somewhat different from the attempts to give a definition of international crime that have been cited, but directly connected with them, are the attempts to classify certain acts as criminal, made in Article 16 of the League of Nations Covenant. According to that article, "should a Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall ipso facto be deemed to have committed an act of war against all other Members of the League". Therefore "they undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between
their

UNCLASSIFIED

UNCLASSIFIED

their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not."

In addition to these measures for an economic and financial boycott of the State resorting to war in violation of the Pact of the League of Nations, Article 16 provides for other very severe penalties. "It shall be the duty of the Council", Article 16 of the Covenant also reads, "to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League." In this way Article 16 provides very severe economic and military sanctions with respect to a State resorting to war in violation of the Covenant of the League of Nations. Of course, the question arises as to whether, if no resort to war is made contrary to the Covenant of the League, but there is a transgression, the sanctions contemplated in Article 16 of the Covenant are applicable thereto.

Many theoretical answers to this question can be given. Prof. Kunz, for example, sees as the peculiarity of Article 16 of the Covenant of the League of Nations that it "anticipates violations and provides for the application of sanctions!"* In his work "Measures against War and Problems of Guilt", Cohn says: "In Article 16 there is actually a rule of criminal law Article 16 contains a general threat and endeavors at the same time to suppress all violations of law separately, in harmony with the general and special preventive

* "L'article XI du pacte de la Société des Nations", "Recueil des cours", 1931, p. 577.

UNCLASSIFIED

UNCLASSIFIED

preventive measures of international criminal law."

Otto Bruck defends this view with special emphasis:

"Article 16 contains a whole system of sanctions. This is 'the criminal code' of the League of Nations".*

In this way, in the opinion of the theorists named, international crime was contemplated in Article 16 of the Covenant of the League of Nations in the form of aggressions, in violation of that Covenant, and international punishment, in the form of the economic, military and other sanctions established in Article 16 for aggression of that kind.

It is true that Article 16 gave the League of Nations real power to summon the aggressor to reply. Article 16 indicated a means for the establishment of a single front of peace-loving nations against Fascist aggressors; in the system of these means a decided role could be assigned to the courts, if any question should arise as to the responsibility of given instigators of aggression. However, as is well known, in virtue of the political tendencies that prevailed in the League, Article 16 not only did not receive wide support, but the powers of this article were not applied, nor those possibilities that really were contained in it. At the time of its appearance, Article 16 showed some inert paragraphs. They were not roused to life even by the thunder of cannon on the territory of a Member of the League - China.

Not until 1935 were there two cases when the League made an attempt to apply Article 16, namely: to the conflict between Bolivia and Paraguay and to the attack by Italy on
Abyssinia

* "Les sanctions en droit international", 1933, page 101.

UNCLASSIFIED

UNCLASSIFIED

Abyssinia.* But in both cases it was only a demonstration, lacking in resolute action by the larger powers in the League of Nations to put into practice the actual measures of combat against the aggressors against whom Article 16 provided the League with weapons. Thus Article 16 of the Covenant of the League of Nations turned out; such was its "criminal code."

In this way the theoretical attempts to establish a concept of international offenses were hardly successful. The problem of establishing that concept still remains insoluble.

III

The system of monstrous crimes, characteristic for the Hitlerite methods of warfare, divulged to the world the futility and the helplessness of the formal construction of international crime by the prewar jurisprudence. The conception of international crime and the combatting of international crimes should be henceforth constructed on the basis of experiences of the "Fatherland defense war", on principles imbued with a real solicitude for the strengthening of the peaceful cooperation of the nations.

An international crime is an original and complex phenomenon. It differs in quality from the numerous crimes

- - - - -

* For details of these conflicts see our publication "Defense of Peace and the Criminal Law", 1937, page 22.

UNCLASSIFIED

UNCLASSIFIED

crimes provided for by the national criminal legislations such as theft, pillage, rape, murder, etc. Of course, all these crimes differ considerably one from the other: it is impossible to confuse theft with rape or swindling with mayhem. However, notwithstanding the fundamental differences between these crimes, they are all connected by one common basic characteristic: these crimes are infringements upon social relations existing within a given country. An international crime has special characteristics. There can be easily indicated also a large number of other characteristics by which international offenses differ from other crimes, as by the bases of responsibility, by the jurisdiction, and by the very classification of the criminal acts. However, all these characteristics result from another fundamental particularity which determines the original quality of the nature of international crime. This particularity, due to which an international offense extends beyond the circle of general crimes, consists in the following:

The epoch when governments and peoples lived isolated or practically isolated from each other is long past. The capitalistic system specially developed and complicated relations between individual nations. A steady international association has developed. Despite the conflicting interests of various nations, despite the difference in patterns of the political systems of countries, this international association, forms innumerable threads connecting peoples and countries and represents, in fact, a great economic, political and cultural value.

An international crime, and this constitutes its originality and distinguishes it from crimes as they are viewed in

UNCLASSIFIED

UNCLASSIFIED

in national laws, is an attempt against the above-mentioned most important achievement of human society, an attempt against the association between countries, between peoples, against the connections which constitute the basis of relations between nations and countries. An international crime is directed toward the deterioration, the hampering and the disruption of these connections. The perpetrators of such crimes delay the movement of trains, ships, people, freight, circulating between nations; they try to create obstacles, and to set up one country against another, one people against another. With complete authority it is therefore possible to mention here international, inter-governmental offenses (*delicts des gens*). Consequently, international crimes should be defined as infringements on the bases of international association.

Such are the substantive characteristics of international crime.

From a formal point of view, every crime is a punishable act (or failure to act), punishable attempt against certain property rights, the use of which is given or regulated in a given society by its economic and political relations. Likewise, an international crime is inconceivable without connection with punishment. However, even in connection with punishment, an international crime is distinctive because of its deep-seated particularities.

Since the time of Anselm Feuerbach and Beccaria, representatives of the classic school of criminal law, advocates of the progressive ideas leading to the power of the bourgeoisie, it is considered as generally recognized that every crime and every punishment requires the existence of

an

UNCLASSIFIED

UNCLASSIFIED

an appropriate law: "nullum crimen, nulla poena sine lege" (there is no crime, no punishment, which is not provided by law). How can this principle be applied to international crimes? In solving this problem, it is necessary first of all to consider that the understanding of "lex" is not homologous in the spheres of national and international law: "lex" in the sphere of national law is a resolution of the legislative branch of the government clad in proper form; however, in the international sphere there has not been, nor is there at present, a legislative body which would be above countries and would be competent to issue laws binding on individual countries.

The legal regime of international relations rests on altogether different legal bases. In the international sphere the basic source of law and, in that sense, the only law-creating act is a treaty, i.e., an agreement, obligatory for each country which has adhered to this treaty (*pacta sunt servanda* - treaties must be observed). It was not without reason that even before the war the German press, with menial servility, was trying to undermine the obligation and the force of international agreements. In the pages of the official organ of the institution which had assumed the name of "Academy of Law", Prof. Simmons was not ashamed to come out with the following reasoning: "Because the States accepted for themselves, by voluntary agreements, the rules of their conduct, they themselves are also the final judges to decide if they can recognize these rules for a long time, or due to changed conditions, they will regulate in a new way the vital rights of the nation."*

This

- - - - -

* "Deutsche Juristenzeitung", 1933, No. 6.

UNCLASSIFIED

~~RESTRICTED~~
UNCLASSIFIED

This "academic" attempt to create anarchy in international relations is in sharp and obvious contradiction to the basic principles of international law.

Addressing the League of Nations in 1938 in connection with the severing of diplomatic relations between the U.S.S.R. and Uruguay, Comrade Litvinov said: "Only a State not bound by any international obligations can arbitrarily do what it wants and is absolutely sovereign. Every international obligation restricts the right of a sovereign State to act always as it desires."

In the U.S.A., the obligation of international agreements is directly expressed in the Constitution: Article VI, Section 2 of the American Constitution reads: "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land."

In connection with instructions from our legislative power, international conventions should formally indicate the following conditions: although international conventions regulating the laws and customs for waging war do not contain special directions for concrete criminal sanctions for violations of these laws and customs, the very principle of criminal responsibility (and this must be strongly emphasized) for similar violations is clearly expressed in the conventions.

First of all in this respect Article 56 of The Hague Convention of October 18, 1907, deserves consideration; Article 56 says: "The property of municipalities, that of institutions dedicated to religion, charity and education, the arts

UNCLASSIFIED

~~RESTRICTED~~

UNCLASSIFIED

the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings." In this way The Hague Convention not only prohibits the destruction under the rules for the conduct of war; in addition, it indicates that such destruction "should be made the subject of legal proceedings", that is, it involves the pointing out of the perpetrators.

Furthermore, Article 29 of the Geneva Convention of 1929 treats with great precision of the criminal responsibility for the violation of the rules established by it regarding the treatment of the wounded and sick ["of armies in the field"]: "The Governments of the High Contracting Parties whose penal laws may not be adequate, shall likewise take or recommend to their legislatures the necessary measures to repress in time of war all acts in contravention of the provisions of the present Convention". Here, consequently, the criminal responsibility for the violation of the rules regarding the treatment of the sick and wounded was definitely established by a convention.

Thus, according to the direct provisions of The Hague and Geneva Conventions, as seen in the citations from these conventions, the criminal responsibility for the violation of the customs and laws of war appears not only possible but also obligatory.

The "Washington Conference on the Limitation of Naval Armaments and Far Eastern Questions", of 1922 contributed a certain amount of light on the question of criminal

responsibility

UNCLASSIFIED

UNCLASSIFIED

responsibility for the violation of international agreements. According to Article III of this convention: "The Signatory Powers, desiring to ensure the enforcement of the humane rules of existing law declared by them with respect to attacks upon and the seizure and destruction of merchant ships, further declare that any persons in the service of any Power who shall violate any of these rules, whether or not such person is under orders of a governmental superior, shall be deemed to have violated the laws of war and shall be liable to trial and punishment as if for an act of piracy and may be brought to trial before the civil or military authorities of any Power within the jurisdiction of which he may be found."

The significance of international agreements as sources of criminal law was expressed in the Treaty of Versailles. What would not have been the political significance and what would not have been the practical results of the Versailles provisions? Because of the undoubted part played by this treaty as a historic precedent in the sphere of international relations, international treaties appear adequate bases not only for the settlement of political and economic problems, but also for determining criminal responsibility for "offenses against international morals and the sanctity of treaties", for "having committed acts in violation of the laws and customs of warfare" (Articles 227 and 228 of the Treaty of Versailles), that is, for determining criminal responsibility for international offenses.

Some political and juridical circles have undertaken to dispute the grounds for the criminal responsibility of

Wilhelm II,

UNCLASSIFIED

UNCLASSIFIED

Wilhelm II, adducing the facts that criminal law has no retroactive force and that offenses committed in the period from 1914 to 1918 cannot be judged on the basis of a treaty that went into effect in 1919. Thus, in a note replying to the demand of the Allies for the surrender of Wilhelm, the Netherlands Government wrote: "Article 227 of the Treaty of Versailles came into effect on January 10, 1920 and has not appeared in the list covering criminal acts contemplated by the laws of the Netherlands or treaties concluded by them. This new offense was not contemplated prior to that time by the legislation of the countries demanding the surrender".

"The first requirement for surrender", the Netherlands Government continued, "is that a crime because of which extradition is requested be a violation of laws or treaties". "No one can be punished otherwise than on the basis of laws already adopted and published; therefore what is asked of the Netherlands is to cooperate in a procedure which runs counter to the very idea of justice".*

This argument is defective: if the Treaty of Versailles is an adequate legal basis for the trial of Wilhelm and his accomplices (their responsibility for the crimes committed in 1914-1918 is directly admitted in the treaty) it is thus in itself the basis for the acknowledgment of the retroactive effect of those provisions of the Treaty of Versailles and consequently for the elimination in a given case of such discussion of the retroactive effects of the law.

Lastly, we must consider that international offenses,
primarily

* A. Merignhac and E. Lomonon, Droit des gens et la guerre de 1914-1918, Vol. II, p. 572.

UNCLASSIFIED

UNCLASSIFIED

primarily those which are connected with violations of the laws and customs of warfare (killing of the wounded and of prisoners of war, compulsion of peaceable citizens and others) appear at the same time as acts punishable by the criminal codes of the various nations. Banditry, murder, rape, arson, etc., are classified in the criminal codes of the whole world as infamous crimes.

The punishability of international crimes is based on these things, keeping in view the principle of "nullum crimen sine lege". With regard to these international offenses, an attack on the bases of international society must be determined as punishable.

UNCLASSIFIED

UNCLASSIFIED

Chapter Four

CLASSIFICATION OF INTERNATIONAL CRIMES

I

An international crime is a punishable infringement on the bases of international association.

Such is the generic definition of international crimes. Every generic conception lives in its species. An international crime as an infringement on the bases of international association also exists in reality and concretely expresses itself in its various species. What are these species? Peaceful relations between countries are a basic surmise of any international association. Peace is the greatest social value and therefore infringement on peace constitutes the first group, the first species of international offenses.

Of course, real democracy turns out to be the most dependable guard of democracy. Therefore the fuller and deeper democratic principles in government are extended, that much easier it would be for the latter to counteract all kinds of war instigators. However the criminal law also must be mobilized for the struggle for peace.

Peace can be destroyed directly or placed under a threat by various kinds of criminal action. In relation with this, infringements on peace manifest themselves in various forms. A direct and most dangerous form of infringement of peace appears to be the attack on one country^{by}/another, i.e. aggression,* which explodes peace directly

* It is obvious, that just wars for liberation are not comprised here.

UNCLASSIFIED

UNCLASSIFIED 48-

directly and presses war upon people. Aggression therefore is the most dangerous international crime. In the interest of the struggle for peace the repression of crime must fall not only on those guilty of perpetrating an aggression, but also on those who attempt to stir up the flame of war and prepare an aggression. The following must be included among activities preparing the ground for aggression: concluding of blocks and agreements, with aggressive aims (as for example the Axis agreements between Germany and Italy), violation of treaties which serve the cause of peace, provocation of international conflicts by all possible means, propaganda of aggression.

In 1927 the Universal Peace Congress in Athens adopted the following resolution on the combat of propaganda of military aggression: "Considering that war is a calamity which creates a serious danger not only for nations at war, but also for the material and moral interests of the whole world, that therefore every instigation to war is, like piracy, slave-ownership, and other analogous acts, which are included in the jurisdiction of international conventions, an international crime, the Congress draws the attention of Governments on the necessity of including in the criminal code of every nation the establishment of a criminal responsibility for crimes against peace; and particularly for the direct stimulation of public opinion in order to provoke an invasion of the territory of a foreign country, the borders of which are generally recognized, whether this act has been committed in conferences or in a public speech or

whether

UNCLASSIFIED

UNCLASSIFIED

whether it has been committed by means of distribution of printed matter or pictures directed to the same end."

The question of criminal responsibility for propaganda of aggression was discussed in the Inter-Parliamentary Congresses of 1924, 1928, 1930, and 1932. In April 1932 the Legal Commission of the Inter-Parliamentary Union recognized as necessary the establishment of a criminal responsibility "for direct public instigation by any means of the invasion (or any other kind of armed aggression) by one country of the territory of another country". In 1931 the International Union of Attorneys had also adopted a resolution requiring the introduction into the legislation of various countries of criminal responsibility for public propaganda for an aggressive war.

Usually the word is an instrument of propaganda. But the German Fascism, preparing an aggression against the whole world, brought into action another, a more "decisive" instrument--terrorism, used by the Hitlerites as a method of provocation to war.

There exists a double connection between Fascist terrorism and the policy of military aggression: Organizers of terrorism aim to instigate inner-political (domestic) complications, in another country in order to weaken the strength of its defense; and at the same time the Fascist aggressors aim to bring about international complications by means of assassinations of political leaders.

The assassination in 1934 in Marseille of the Yugoslav King, Alexander, and the French Minister of Foreign Affairs, Bartou, committed by the hirelings of the German-

Fascists
UNCLASSIFIED

~~CONFIDENTIAL~~
UNCLASSIFIED

Fascist aggressors served as a cause for the preparation by the League of Nations of an international convention to combat terrorism. The Council of the League formed a Committee composed of representatives of 11 nations, including one representative of the Soviet Union. The project of the convention was worked out, accepted, and adopted by various governments. But the cumbersome apparatus of the League moved very slowly: while the committees, commissions, and sub-commissions were discussing the question, the Fascist terrorists covered with blood huge areas of the world.

In the interests of strengthening peace, terrorism as a method of provoking war should be declared an international offense. Close to terrorism as a instrument of provocation of international conflicts is the support of armed bands, which might lead to the same sad results as terrorism itself in international life. Such, for example, are the organizations of armed bands of emigrants for infiltration of foreign territory, the permission to organize military or military-like organizations for the combat of other countries, and so forth.

The so-called "fifth columns", which Fascist Germany was arming and supporting in various countries, are the most sinister examples of the organizations of bands threatening the peace of the world.

Such is in their basic outlines the nature of the activities which as infringements on peaceful international relations must form the first group of international offenses i.e. crimes against peace.

II All

UNCLASSIFIED
~~CONFIDENTIAL~~

UNCLASSIFIED

II

All peoples, all countries, huge masses of population are interested in the preservation of peace. But under conditions of society composed from antagonistic classes often, too often peace gives up its place to war. If wars occur under contemporary conditions and are unavoidable, measures for the regulation of laws and rules of warfare are indispensable, a certain legal regime in war is necessary. International agreements exist and operate in connection with this (The Hague and Geneva Conventions and others); they are attempts to restrain the elements of war, to bring the war within certain limiting regulations, which determine the treatment of the civil population, of war prisoners and of the wounded.

The Geneva Convention of July 6, 1906 charges the nations at war to take good care of the sick and wounded warriors. Article 1 of this Convention reads: "officers, soldiers and other persons officially attached to armies who are sick or wounded, shall be respected and cared for without distinction of nationality, by the belligerent in whose power they are." Article 3: "After every engagement the belligerent who remains in possession of the field of battle shall take measures to search for the wounded and protect the wounded and dead from robbery and ill treatment".

Article 6 of the Geneva Convention provided for protection of sanitary formations: "Mobile sanitary formations (i.e. those which are intended to accompany armies in the field) and the fixed establishments belonging to the sanitary service shall be protected and respected by belligerents".

UNCLASSIFIED The

UNCLASSIFIED -52-

The Geneva Convention of July 27, 1929 confirmed and partly developed these regulations. Thus, Article 1 of the 1929 Convention reads: "Officers, soldiers, and other persons officially attached to the armies, who are wounded or sick shall be respected and protected in all circumstances; they shall be humanely treated and cared for without distinction of nationality by the belligerent in whose power they are."

Article 3 of this Convention reads: "After every engagement the belligerent who remains in possession of the field of battle shall take measures to search for the wounded and the dead and to protect them from robbery and ill-treatment."

Aiming to utilize the peaceful population for furnishing assistance to the sick and wounded warriors, the countries signatory to the Geneva Convention of 1929 provides in Article 5: "The military authority may make an appeal to the charitable zeal of the inhabitants to receive and, under its supervision to care for, the wounded or sick of the armies, granting to persons responding to such appeal special protection and certain facilities."

The Hague Convention, concluded on October 18, 1907, regulates the relation of belligerent nations toward prisoners of war and civil population. Article 6 of a special annex to this Convention, entitled: "Regulations respecting Laws and Customs of War on Land", reads: "The State may utilize the labor of prisoners of war according to their rank and aptitude, officers excepted. The task shall not be excessive and shall have

no connection

UNCLASSIFIED

UNCLASSIFIED

no connection with the operation of the war."

The Hague convention dwells specially on the regulation of the question of protection of personal belongings of the civil population and of cultural values.

Articles 46 and 47 of "The Regulations respecting Laws and Customs of War on Land", reads: "Family honor and rights, the lives of persons and private property...must be respected. Private property cannot be confiscated." "Pillage is formally forbidden".

Article 27 of the same "Regulations" refers to the protection of public buildings and cultural values "In sieges and bombardments all necessary steps must be taken to spare as far as possible, buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected..."

As we see, certain rather quite limited restrictions are set to the unrestrained arbitration in time of war. Violations of these rules and customs of warfare, the transformation of war into an organized state ~~banditry~~ constitutes the second group, a second species of international crimes, directly connected with war.

UNCLASSIFIED

~~SECRET~~

54-
UNCLASSIFIED

Thus the following classification of international crimes can be worked out:

First group: Interference with peaceful relations between nations:

1. Acts of aggression,
2. propaganda of aggression,
3. conclusion of agreements with aggressive aims,
4. violation of treaties which serve the cause of peace,
5. provocation designed to disrupt peaceful relations between countries,
6. terrorism,
7. support of armed bands ("fifth column")

Second group: Offenses connected with war:

1. offenses against war prisoners, wounded and sick soldiers,
2. offenses against the life, health, honor and property of the civil population,
3. destruction of towns and villages,
4. destruction and looting of material and cultural values.

As seen from the above enumeration, with the exception of terrorism, which has served as the basis for a draft of a convention, none of the international crimes has been covered by international conventions.

This enumeration of international crimes is certainly not exhaustive. The whole domain of international criminal law is yet in the stage of formulation and development, and particularly and especially requires a further study of the whole concept of international crimes. The circle of punishable international crimes will expand simultaneously with the complication and stabilization of the ways and forms of international association. The post-war organization of the world will probably introduce new forms of communication between countries, and, in the sphere of economics,

UNCLASSIFIED

~~SECRET~~

UNCLASSIFIED

economics, the supplying and purveyance of raw materials, fuel, restoration of the destroyed economic life, etc.

In conformity with this, the question of new forms of offenses against the basis of international association might arise: offenses against the economic basis of international association.*

The victory of the liberty-loving nations over Hitler's Germany and Hitlerism, the development and strengthening of democracy in all countries, and a consistent and unvarying peace policy will secure an organized and determined fight against all the enumerated kinds and other kinds of international crimes, undermining the foundation of international association.

Chapter Five

CRIMES OF THE HITLERITES AGAINST PEACE

Mérignhac, one of the investigators of the German evil-doings, wrote: "The behavior of the Prussians in 1870-71 already attracted attention to their psychology. Their excesses of 1914, 1915 and 1916 went far beyond the expectations which could be drawn from the Franco-Prussian war.** On the basis of the experience of this "War in defense of the Fatherland," it is possible to add to these words, that in comparison with the monstrous evil-doings of the Hitlerite armies in this war, the excesses of 1914-1918 appear like the timid experiments of novice cut-throats.

The

* On the other hand, independently of the coordinated suppression of international crimes, conventions for the suppression of separate crimes which are not international crimes (for instance for the suppression of traffic in opium, etc.), but which require coordinated action for their suppression are quite possible.

** A. Mérignhac, "De la Sanction des infractions au droit des gens." Revue générale de droit international public. January - February 1917, page 6.

UNCLASSIFIED

UNCLASSIFIED

The system of National banditry organized and put into effect by Hitlerite Germany, manifests itself in systematic and mass infringements upon the bases of human social life, upon the relations between nations and states, upon the physical existence of whole Nations.

It has been indicated above that international crimes are classified into two groups:

1. Crimes against peace.
2. Crimes connected with war.

In order to make a systematic study of the monstrous crimes committed by the Hitler Government command and its agents, it is necessary to review the solid mass of Hitler's evil-doings in conformity with this grouping.

Let us consider first the crimes of the Hitlerites against peace. Expressing the interests and longings of the most rapacious and piratic imperialists, - the German Nazis, - Hitlerite Germany based its foreign and domestic policies on the seizure of foreign territories and on the pillaging of other nations. In the book "Mein Kampf" written by Hitler in 1923, long before his coming into power, the "Führer" wrote: "We National Socialists definitely point our finger toward the territories located to the East. We now turn to the policy of new territorial conquests in Europe." And further: "When speaking of conquering new lands in Europe it is evident that in the first place we have in mind only Russia and the Border states dominated by her." Much later, in 1930, in an interview with Otto Strasser, Hitler stated: "Russia must be eradicated from the list of European countries."

Thus

UNCLASSIFIED

UNCLASSIFIED

Thus rapacious aggression and seizure of foreign lands constitutes the Hitlerites' foreign policy program. With the seizure of power by Hitler this program of pillage attained its maximum development. Preparations for aggression assumed in Germany, a "total" form: the permanent personnel of the army was feverishly brought up to full strength, all industry was militarized, by means of a special ministry of propaganda a violent and furious propaganda of aggression was instigated, armed bands were organized for military purposes in other countries ("fifth column"), etc. Also exclusively for military purposes, Hitlerite Germany was concluding "non-aggression" and "friendship" pacts, using these pacts as a smoke-screen for covering up the military preparations and treacherous aggression.

In 1935 Hitler was assuring his listeners: "The Reich Government states that it will fulfil all the obligations ensuing from treaties concluded by free accord, even in cases when the treaty had been concluded before his coming to power." In fact, Hitler made no distinction between the treaties concluded before and after his seizure of power, - with equal cynicism he violated both.

On August 7, 1928 the so-called Briand-Kellogg Pact was concluded in Paris. It consisted of only three articles and a declarative introduction. The Nations which concluded this treaty stated their disapproval of war. They proclaimed: "Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made Convinced that all changes in their relations with one another should be sought only by pacific means The High Contracting Parties

UNCLASSIFIED

UNCLASSIFIED

Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.**

The High Contracting Parties, to quote articles 1 and 2 of the Briand-Kellogg Pact "condemn recourse to war for the solution of international controversies" and "agree that the settlement or solution of all disputes or conflicts of whatever nature or whatever origin they may be which may arise among them, shall never be sought except by pacific means."

Germany adhered to this pact of her own free will and without exception. The Hitlerite Government, however, violated it treacherously.

After the coming to power of the Fascist Government, Germany concluded many peace treaties; more than once did Hitler proclaim his adherence to peace. How were these treaties and declarations fulfilled? The facts testify to this.

In a treaty concluded with Austria on July 11, 1936, Hitlerite Germany confirmed that she recognizes "complete sovereignty of Austria." A little more than a year and a half passed and Austria was seized by the Hitlerites.

The tempo of the Hitlerite aggression was constantly increasing. On September 27, 1938, Hitler wrote to Chamberlain: "I repudiate the idea of any attack on Czechoslovak territory," and only four days later the Fascist German troops invaded Czechoslovakia and occupied the Sudeten region.

In June

* Supporting any act directed toward the protection of peace, the Soviet Union adhered to the Briand-Kellogg Pact on October 24, 1929.

UNCLASSIFIED

UNCLASSIFIED

In June 1939, Hitler was proclaiming: "The relations of Germany with Yugoslavia, soundly based, imbued with confidence from now on, when by the course or historic events we have become neighbors with borders forever determined, not only will secure a lasting peace between the two peoples and States, but also will become a pacifying element for our continent, seized by a nervous excitement."

Two years had not passed before Hitler "pacified" the "nervously excited continent"; on April 6, 1941, the Fascist armies attacked Yugoslavia.

Hitler's perfidity manifested itself with special force in the relations between Germany and the U.S.S.R. Within a period of less than one month, two treaties, having the same aim, the strengthening of peaceful relations between the two countries, had been concluded between our country and Germany: a ten-year non-aggression pact concluded on August 23, 1939 and a friendship pact signed on September 28 of the same year.

Addressing the Reichstag on September 1, 1939 after the conclusion of the Soviet-German treaty, Hitler said: "I would like to state here that this political decision is of a great importance for the future, and that it is final. Russia and Germany fought each other in the World War. That should not and will not happen a second time." Two years had not elapsed before "that" happened; despite the two treaties, despite Hitler's solemn assurances, Germany treacherously attacked the Soviet Union.

To what extent Germany was preparing for war under the cover of declarations and treaties, long before the beginning of military action, can be judged by the acts of international

criminal

UNCLASSIFIED

UNCLASSIFIED -60-

criminal legislation directly connected with the problem we are concerned with.

Long before the war there was issued in Germany a series of orders regulating criminal justice under war-time conditions. For example: the order concerning special criminal legislation in wartime (Kriegssonderstrafrechts-ferordnung) and the order concerning the judicial system and legal procedure of the courts martial under wartime conditions (Kriegsstrafverfahrensordnung). It is extremely characteristic that both of these orders were issued on August 17, 1938, but published one year later on August 26, 1939.* The Hitler laws as well as the ammunition and guns were being prepared in advance and hidden until the moment of open aggression.

Thus Hitler's aggression, which already has taken tens of millions of human lives, the aggression which converted the blooming lands of Europe into a "desert zone," is not only the most bloody one, but also the most treacherous and the most plundering aggression in the world. If Hitler and his clique had only accomplished a treacherous plundering aggression, their crime against humanity and against the nations and states thrown into the horrors of the second World War would be already colossal. However, as is commonly known, Hitlerite Germany went much farther: having criminally exploded the world, the Hitlerites transformed war into an elaborately thought out system executed according to plan, a system of militarized banditry.

* "Reichsgesetzblatt," 1939, Vol. 1, no. 147.

UNCLASSIFIED

UNCLASSIFIED

Chapter Six

WAR CRIMES OF THE HITLERITES

In accordance with the existing system of state banditry which characterizes Hitlerite Germany, the inner policy of terror manifested itself in feverish preparation for war and in systematic provocations to armed conflict. Using every method to undermine peace throughout the world, Hitlerite Germany, through its present system of implacable governmental banditry, has turned its destructive machine against culture and civilization, against the accumulated material wealth of the nations.

Germany, as the Second Reich, quite of its own accord subscribed to the Hague and Geneva Conventions defining the laws and customs of warfare, but the Hitlerites just as freely made these Conventions, signed by Germany, an object of mockery and derision.

For a systematic examination of the war crimes of the Hitlerites, their crimes must be divided into the following four basic groups:

1. Crimes against prisoners of war and against sick and wounded soldiers.
 2. Crimes against peaceful citizens: a) murder and violence, b) institution of a slave-labor regime and taking "into captivity", c) pillage.
 3. Destruction of cities and other inhabited places.
 4. Destruction and demolition of cultural treasures.
- Consideration of the separate groups indicated above.

1. Hitlerite Crimes Against Prisoners of War and Against Sick and Wounded Soldiers.

In 1902 the German general staff published "Customs of War on Land", in which the treatment of prisoners

of war
UNCLASSIFIED

UNCLASSIFIED

-62-

of war discussed as follows: "The exclusive aim of military captivity would appear to be the prevention of prisoners' further participation in a war. A state should do everything that is necessary to keep its prisoners from any such further participation.....Prisoners may be given moderate work according to their common circumstances. Work shall not be excessive and shall be useful from the standpoint of health. In any event, it should not be prejudicial to the health nor must it be of a degrading character. Neither should it directly aid in the war operations against the prisoner's country....Although prisoners of war lose their freedom, they do not lose their rights. In other words, a soldier becomes a prisoner only through an act of mercy on the other side the latter having the right to disarm him".

Thus did the German general staff state its views on the basis of the Hague Convention of 1899. In 1907 a new convention was made at the Hague which emphasized still more the significance of those principles respecting prisoners and wounded soldiers.

Furthermore, in the German law on judiciary systems and on judicial procedure in military courts in time of war (Law of August 17, 1938), in the part which discusses judicial procedure with respect to work by prisoners of war (part E, paragraphs 73-75), direct reference is made to the Geneva Convention of 1929. It states in the subtitle of this part: "On the basis of the provisions of July 27, 1929, ratified by Germany on February 21, 1934,* in spite of the general omissions in their

* Reichsgesetzblatt, 1939, No. 147

UNCLASSIFIED

UNCLASSIFIED

in their stipulations, they specifically and concisely provide for the care of sick and wounded soldiers. The Conventions provide that "the belligerent into whose hands prisoners of war have fallen is bound to maintain them". In Article 23 of the Hague Convention of 1907 it is categorically prescribed: "....It is forbidden..... (c) to kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion;(e) to employ arms, projectiles, or material calculated to cause unnecessary suffering".

Independently of the concrete stipulations of the Hague Convention "Respecting the Laws and Customs of War on Land", in regard to procedure which belligerents must commonly observe, the said Convention states at the same time: "Until a more complete code of the laws of the war has been issued, the high contracting parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience".

Has Hitlerite Germany, in its conduct of the war, really fulfilled, and is it now fulfilling, its obligations with respect to laws and customs in accordance with the principle of humanity and culture?

True, it is not possible nor is it necessary in this work to give an exact inventory of all the innumerable crimes committed by the Hitlerites; data concerning these

UNCLASSIFIED

~~SECRET~~
UNCLASSIFIED 64-

these outrages are published in the notes of Comrade Molotov, in communications of the Special Governmental Commission and in the daily press. However, certain facts illustrating the character and extent of the monstrous crimes of the Hitlerites should be presented; not to give factual material would involve legal deductions in an inadmissible abstraction from reality.

We set down certain facts attesting to the brutal treatment by the Hitlerites of prisoners of war and sick and wounded soldiers.

After the occupation of the village of Lutovna Duminichkovo, Smolensk region, in the Ukraine, in this village were found 37 bodies of Red Army soldiers taken prisoner and killed by the Germans. It has been definitely established that most of the Red Army soldiers were brutally tortured to death. Six German soldiers built a bonfire under a tree. The prisoners were hanged to the tree with rope and were burned (pieces of the rope remained on the birch tree). The eyes of seven were smashed out, the ears and noses of four were cut off, and, of the remaining ones, fingernails were drawn out, fingers twisted out of joint and arms and legs fractured.*

In the cemetery of the city of Kozelsk, Smolensk region, there were discovered in a shelter the bodies of fourteen Red Army soldiers abandoned in disorder. Traces of cruel tortures were found on the bodies.

*From the paper of April 2, 1942 ("Brutal German-Fascist Captures, Army Release People's Defense Commissariat, U.S.S.R., 1942, Summary 4, page 44).

UNCLASSIFIED

~~SECRET~~