

'Worst Crime of All'

It is aggressive war, says Justice Jackson; we must teach a lesson to those who plan it.



Marshal Hermann Goering.



Robert Ley.



Julius Streicher.



Alfred Rosenberg.



Col. Gen. Gustav Jodl.



Franz von Papen.

Here are six German leaders, indicted as major war criminals, shown after their capture by Allied soldiers. The background picture is a pre-war scene of Nuremberg.

LONDON (By Wireless).

FOR the first time in history four of the world's dominant nations have recognized the principle that to plot or launch a war of aggression is a crime for which individuals may be convicted and punished. This is, perhaps, the most significant feature of the agreement signed in London on Aug. 8, 1945, for their respective Governments by *LAW* Jowitt, the Lord Chancellor of England; by M. Robert Falco, a judge of the Cour de Cassation, the highest court of France; by Maj. Gen. L. T. Nikitchenko, Vice President of the Supreme Court of the Union of Soviet Socialist Republics, and by me on behalf of the United States.

Another significant principle recognized in this agreement is that racial or religious persecutions by a Government against its own people, under some circumstances, may rise to the magnitude of crimes against international society. This brings a new force to the support of civil liberties and minority rights. But although the gain here is easily understood, many persons nevertheless are unaware why a recognition of the criminality of precipitating an aggressive war should be news.

The average layman will say, "Has it not always been a crime to start a war

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of aggression? Why make ado about agreement on so obvious a thing?" And most laymen will be shocked to learn that the international law of the nineteenth and early twentieth centuries did not regard a war—even one of flagrant aggression—as a crime. All wars were "legal," and no one could be made to answer at law for causing them. During the period of empire building international law, which consists largely of the agreements and treaties, and customs of sovereign states, came to reflect the practices of that period.

THERE had been an abandonment of the distinction between just and unjust wars which characterized the preaching of Grotius and of many early international law scholars. As a consequence, international law was of little account as a force in condemning aggressive wars or in punishing their perpetrators.

The ghastly way in which life has been extinguished and the earth ravaged by this war speaks ill for the nineteenth-century conception of international law. One needs only to go through Europe to-

day, as I have done, to realize the deadly consequences of defeat or even invasion.

If there are to be future wars we have got to win them. The consequences of defeat are unthinkable. There is no alternative but to win. And we can win only by being better killers, by killing more and killing more quickly than the enemy, by killing with less risk to ourselves.

For the fact is obvious that modern war has become more and more a struggle between whole populations, not between armies alone. The issue is which shall be subjugated and which will survive. The workman at the lathe and the housewife in the kitchen are each a part of the war-potential, differing only in function from the men under arms. The course of any future war is likely to be to kill and maim the enemy and to destroy all that shelters him and all that he lives by not only in the field but at home.

THERE is little prospect that the savagery of future warfare can be greatly mitigated by efforts to make war like cricket, a game to be played by certain rules and conventions. The stakes are too

high. There is a great deal of force in the view that the rules of warfare, to the extent that they foster the idea that there is an honorable and legal way to conduct a war, may be a positive detriment to the peace of the world.

No one, least of all myself, would argue that violations of the rules of warfare are not crimes in war or that the victor is not entitled to punish them. But if these crimes were all that were involved in the present case I should not feel that the pursuit of the perpetrators meant much to the peace of the world.

IF it were still no crime to launch a war of aggression, then it would be doubtful whether there ought to be any war crimes at all. To institute a war is to set in motion the forces of murder and destruction. To invade another country is to embark on a course of killings, destruction and brutalities as planned objectives. If there is to be no responsibility upon those who start this chain of whole evils, it seems unequal justice to punish those who commit isolated offenses.

It must be recognized that there is a fundamental difference of outlook between the average European and the average American on the (Continued on Page 45)

'Worst Crime of All'

(Continued from Page 9)

measures to be taken to deal with the evils of war. It is the European viewpoint which has long prevailed in shaping the world's attitudes toward war. The European outlook is in general pessimistic and passive. It views war as not only inevitable but a natural part, and indeed the ultimate expression, of competitive forces. Despite the conceded progress in international organization made at San Francisco, this underlying attitude is not greatly changed.

I REGRET to say that I find little in Europe to encourage the hope that it will not be the breeding ground for future wars. One of the leading European jurists recently said to me:

"After the last war everybody expected lasting peace. After this war no one does."

I quoted these words to one high in the councils of a different country, and he turned to me with a surprised look and asked:

"Don't you expect another war?"

Many realistic Europeans believe that Europe's scanty resources, and heavy populations, and tariff walls, and multitudes of competing nationalities, with long and deeply harbored hatreds, are provocations to war so great that they cannot long be resisted.

Europe, of course, is not without earnest and influential statesmen and scholars who are as devoted to the cause of outlawing aggressive war as any American. But their social and political environment is more skeptical and inert than is the American temper. European peoples are more conscious than Americans that they are caught and carried along by the streams of history. They are somewhat fatalistic in accepting its trends as inevitable, and are easily convinced that "the more things change the more they are the same." Their endeavor, individually and collectively, is directed to fitting themselves comfortably and advantageously into the scheme and tradition of an existing order of things.

They are less obsessed than Americans with ambition to reform the world and have less confidence in their ability to do so. Hence, there is more disposition to accent future wars as natural and to be expected. With this philosophy as a major premise there is much to be said, for the series of attempts, expressed in various international conventions, to make the conduct of war as humane as possible.

THE outlook of most Americans, on the other hand, is not defeatist but challenging. It refuses to concede that war is either natural or inevitable. It believes that war can and should be outlawed because it is the worst crime of all, leading to and encompassing all the others. On the basis of this American philosophy it is insufficient to make criminal what are merely extreme means of waging war. If war is legally permitted at all, it must be for

the purpose of winning. If the alternative is total victory or total defeat, and surely there is no longer a middle ground, it is delusive to expect a nation to use all means of battle except those which make the difference between victory and defeat.

THE real crime is planning and making war, not merely in failing to be chivalrous in its conduct, and the efforts of civilization should be directed toward its complete outlawry. Unless that effort succeeds it is hard to conceive of any human endeavor that is going to have lasting meaning.

The pursuit of ways to bolster the peace of the world has a most practical bearing on the future of the United States. Too many Americans, now that victory is here, will again live in a fool's paradise. Europeans are more realistic, and it is hard to say that their pessimism is not better sense than some of our optimism. A look at the world as it is shatters the illusion that the millennium is here.

Europe is now a continent without a war, it is also a continent with nothing that can be called a peace. Its cities from the Zuider Zee to the Volga River are in ruins. It was difficult for us to find a court house standing in Germany in which a trial could be held. The people of much of continental Europe, conqueror and conquered, are hungry, feverish and sullen. They are shabbily and inadequately clothed. Numberless families are homeless or far from their homes. Cities face the winter without fuel. Men of combat age have been killed or maimed.

As Foreign Minister Bevin recently pointed out, the people of those countries have been taught to disobey and to oppose the authority of the enemy occupying forces, and now it is "difficult to bring back a general acceptance of law and order as a natural thing." Although Europe today stands in need of everything, it is not so long ago, Mr. Bevin said, that there were "constant appeals to the people to produce as little as possible in order to hamper the work of the occupying forces." Now, they are slow to reverse the directions. "They were suddenly asked to acquire once more habits of work, energy and discipline."

NO state of affairs could offer more opportunity and temptation to those who seek power by capitalizing bitterness and unrest. It is little wonder that the new Labor Foreign Secretary of Britain warns: "One thing must be aimed at resolutely, however, and that is to prevent the substitution of one form of totalitarianism for another."

Although the task of the Allied Control Commission in establishing a social and political organization to govern this anarchic mass is staggering, yet it is encouraging to observe the intelligent and effective contribution which is being made by the

(Continued on Page 46)

'Worst Crime of All'

(Continued from Page 45)

American representative and staff.

In this explosive situation, quiescent only because resources are short and flesh so weary, the United States is not everywhere regarded so favorably as it regards itself. On the one hand, the war is often attributed to our failure adequately to support the last peace and, on the other, it is our power which is blamed for so much destruction.

The plain fact is that if the peace of the world breaks down, we must not rely on allies but on our own power to save us from defeat, and under modern conditions it is only a little less disastrous to the economic and social system to win a war than to lose one. All that we have and are depends on keeping the peace.

THE United States has long taken a leading part in advocating an international law which will outlaw aggressive war. The Kellogg-Briand pact of 1928, signed by Germany, Italy and Japan, as well as by the United States and practically all the nations of the world, purports to do this. By it those nations renounced war as an instrument of policy and bound themselves to seek the settlement of disputes only by pacific means and condemned recourse to war. Both before and after this historic pact there were repeated and responsible declarations by the leading nations that aggressive warfare is a crime.

But these pacific obligations were given only lip service by the Axis powers. Although signatory to the non-aggression treaties, they cynically embarked upon a career of aggression. Japan invaded Manchuria, Italy conquered Abyssinia, and aside from a few statesmen, such as Secretary Stimson, the world looked on with folded hands. Meanwhile, Hitler, on Jan. 30, 1933, became Chancellor of Germany and brought into power a group of men who did not accept the principle that there must be no resort to war as an instrument of policy. On the contrary, they adopted a long-range policy which they knew could be made effective only by war, and accordingly they proceeded to prepare for and to launch war. The plans came nearer to success than the world will readily believe, now when Germany's collapse is so complete.

NO one who knows how slow are the processes of evolution in the law will expect that a single instrument accepting aggressive war-making as criminal, or a single trial under it, will prevent wars. But by signing the agreement of Aug. 8, which recognizes the outlawry of aggressive war and provides for punishment of individuals who plot it, the responsible leaders of European peoples have joined us in at last exchanging the shadow for the substance. That is a tremendous step forward in international law.

It should be made clear that the instrument we have signed

does not contemplate an inquiry into the causes of the war. Whether Hitlerism was the sole cause of the war does not concern us, nor will there be any effort to apportion out responsibility for underlying conditions which caused the war. The questions of its ultimate causes is the riddle for history.

WHATEVER may have been the considerations that caused the defendants to plan and to launch the war, the doctrine of this agreement is that the planning and launching of an aggressive war is illegal, irrespective of any political, economic or other reasons for which justification is sought. The international tribunal established under the agreement is not required to go into the question whether Germany had real or fancied grievances. It need decide only whether an aggressive war was in fact launched.

The conditions that prevail in the world clearly impose upon us a duty to ourselves and our posterity to keep America so powerful that she can win any war that may start, and an equal duty never to flag or alter in the task of substituting pacific methods in place of war in the settlement of international grievances. Certainly we cannot doubt that the only way to make peace more secure is to substitute a rule of law for the rule of lawless force and international anarchy.

Nor can we doubt that if we are to preserve civilization this change must proceed rapidly in view of the great strides being made in the art of destruction. We have achieved a capacity to destroy in minutes all that is useful or beautiful in a world that has been building over the centuries. We are not the only people who may bring forward new inventions to make devastation more complete and rapid. The peril of war ought universally to be recognized and every effort directed to its prevention. That effort must succeed or we shall sink into utter despondency as to any enduring progress.

IF we can root out of men's thinking the idea that all wars are legal, and if we can substitute the conviction that aggressive war is criminal, at last we will have mobilized the forces of law on the side of peace. And if we give to all men in positions of power over the lives of people and the policy of nations an object-lesson that the making of aggressive war is the way to the prisoner's dock, we may somewhat change the psychology of statesmanship.

Too long, in too many parts of the world, it has been a crime to advocate peace in the midst of war. It is time that it became a crime to make war when the world so needs peace.

Only if we do this will we give real meaning to this war. Only in this way can we justify the casualties we have suffered and the destruction and wretchedness that we have caused.