



# EXCERPTS FROM OPENING STATEMENT BEFORE THE INTERNATIONAL MILITARY TRIBUNAL AT NUREMBERG

November 21, 1945

On November 21, 1945, in the Palace of Justice at Nuremberg, Germany, Justice Robert H. Jackson, Chief of Counsel for the United States, made his opening statement to the International Military Tribunal.

May it please Your Honors:

The privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility. The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated. That four great nations, flushed with victory and stung with injury stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason.

This Tribunal, while it is novel and experimental, is not the product of abstract speculations nor is it created to vindicate legalistic theories. This inquest represents the practical effort of four of the most mighty of nations, with the support of 17 more, to utilize international law to meet the greatest menace of our times-aggressive war. The common sense of mankind demands that law shall not stop with the punishment of petty crimes by little people. It must also reach men who possess themselves of great power and make deliberate and concerted use of it to set in motion evils which leave no home in the world untouched. It is a cause of that magnitude that the United Nations will lay before Your Honors.

In the prisoners' dock sit twenty-odd broken men. Reproached by the humiliation of those they have led almost as bitterly as by the desolation of those they have attacked, their personal capacity for evil is forever past. It is hard now to perceive in these men as captives the power by which as Nazi leaders they once dominated much of the world and terrified most of it. Merely as individuals their fate is of little consequence to the world.

What makes this inquest significant is that these prisoners represent sinister influences that will lurk in the world long after their bodies have returned to dust. We will show them to be living symbols of racial hatreds, of terrorism and violence, and of the arrogance and cruelty of power. They are symbols of fierce nationalisms and of militarism, of intrigue and war-making which have embroiled Europe generation after generation, crushing its manhood, destroying its homes, and impoverishing its life. They have so identified themselves with the philosophies they conceived and with the forces they directed that any tenderness to them is a victory and an encouragement to all the evils which are attached to their names. Civilization can afford no compromise with the social forces which would gain renewed strength if we deal ambiguously or indecisively with the men in whom those forces now precariously survive.



# EXCERPTS FROM OPENING STATEMENT BEFORE THE INTERNATIONAL MILITARY TRIBUNAL AT NUREMBERG

November 21, 1945

In justice to the nations and the men associated in this prosecution, I must remind you of certain difficulties which may leave their mark on this case. Never before in legal history has an effort been made to bring within the scope of a single litigation the developments of a decade, covering a whole continent, and involving a score of nations, countless individuals, and innumerable events. Despite the magnitude of the task, the world has demanded immediate action. This demand has had to be met, though perhaps at the cost of finished craftsmanship. To my country, established courts, following familiar procedures, applying well-thumbed precedents, and dealing with the legal consequences of local and limited events seldom commence a trial within a year of the event in litigation. Yet less than 8 months ago today the courtroom in which you sit was an enemy fortress in the hands of German SS troops. Less than 8 months ago nearly all our witnesses and documents were in enemy hands. The law had not been codified, no procedures had been established, no tribunal was in existence, no usable courthouse stood here, none of the hundreds of tons of official German documents had been examined, no prosecuting staff had been assembled, nearly all of the present defendants were at large, and the four prosecuting powers had not yet joined in common cause to try them. I should be the last to deny that the case may well suffer from incomplete researches and quite likely will not be the example of professional work which any of the prosecuting nations would normally wish to sponsor. It is, however, a completely adequate case to the judgment we shall ask you to render, and its full development we shall be obliged to leave to historians.

Before I discuss particulars of evidence, some general considerations which may affect the credit of this trial in the eyes of the world should be candidly faced. There is a dramatic disparity between the circumstances of the accusers and of the accused that might discredit our work if we should falter, in even minor matters, in being fair and temperate.

Unfortunately, the nature of these crimes is such that both prosecution and judgment must be by victor nations over vanquished foes. The worldwide scope of the aggressions carried out by these men has left but few real neutrals. Either the victors must judge the vanquished or we must leave the defeated to judge themselves. After the first World War, we learned the futility of the latter course. The former high station of these defendants, the notoriety of their acts, and the adaptability of their conduct to provoke retaliation make it hard to distinguish between the demand for a just and measured retribution, and the unthinking cry for vengeance which arises from the anguish of war. It is our task, so far as humanly possible, to draw the line between the two. We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well. We must summon such detachment and intellectual integrity to our task that this Trial will commend itself to posterity as fulfilling humanity's aspirations to do justice.



# EXCERPTS FROM OPENING STATEMENT BEFORE THE INTERNATIONAL MILITARY TRIBUNAL AT NUREMBERG

November 21, 1945

At the very outset, let us dispose of the contention that to put these men to trial is to do them an injustice entitling them to some special consideration. These defendants may be hard pressed but they are not ill used. Let us see what alternative they would have to being tried.

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If these men are the first war leaders of a defeated nation to be prosecuted in the name of the law, they are also the first to be given a chance to plead for their lives in the name of the law. Realistically, the Charter of this Tribunal, which gives them a hearing, is also the source of their only hope. It may be that these men of troubled conscience, whose only wish is that the world forget them, do not regard a trial as a favor. But they do have a fair opportunity to defend themselves—a favor which these men, when in power, rarely extended to their fellow countrymen. Despite the fact that public opinion already condemns their acts, we agree that here they must be given a presumption of innocence, and we accept the burden of proving criminal acts and the responsibility of these defendants for their commission.

When I say that we do not ask for convictions unless we prove crime, I do not mean mere technical or incidental transgression of international conventions. We charge guilt on planned and intended conduct that involves moral as well as legal wrong. And we do not mean conduct that is a natural and human, even if illegal, cutting of corners, such as many of us might well have committed had we been in the defendants' positions. It is not because they yielded to the normal frailties of human beings that we accuse them. It is their abnormal and inhuman conduct which brings them to this bar.

We will not ask you to convict these men on the testimony of their foes. There is no count in the Indictment that cannot be proved by books and records. The Germans were always meticulous record keepers, and these defendants had their share of the Teutonic passion for thoroughness in putting things on paper. Nor were they without vanity. They arranged frequently to be photographed in action. We will show you their own films. You will see their own conduct and hear their own voices as these defendants re-enact for you, from the screen, some of the events in the course of the conspiracy.

We would also make clear that we have no purpose to incriminate the whole German people. We know that the Nazi Party was not put in power by a majority of the German vote. We know it came to power by an evil alliance between the most extreme of the Nazi revolutionists, the most unrestrained of the German reactionaries, and the most aggressive of the German militarists. If the German populace had willingly accepted the Nazi program, no Storm-troopers would have been needed in the early days of the Party and there would have been no need for concentration camps or the Gestapo, both of which institutions were inaugurated as soon as the Nazis gained control of the German State. Only after these lawless innovations proved successful at home were they taken abroad.



# EXCERPTS FROM OPENING STATEMENT BEFORE THE INTERNATIONAL MILITARY TRIBUNAL AT NUREMBERG

November 21, 1945

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It is my purpose to open the case, particularly under Count One of the Indictment, and to deal with the Common Plan or Conspiracy to achieve ends possible only by resort to Crimes against Peace, War Crimes, and Crimes against Humanity. My emphasis will not be on individual barbarities and perversions which may have occurred independently of any central plan. One of the dangers ever present is that this Trial may be protracted by details of particular wrongs and that we will become lost in a "wilderness of single instances". Nor will I now dwell on the activity of individual defendants except as it may contribute to exposition of the common plan.

The case as presented by the United States will be concerned with the brains and authority back of all the crimes. These defendants were men of a station and rank which does not soil its own hands with blood. They were men who knew how to use lesser folk as tools. We want to reach the planners and designers, the inciters and leaders without whose evil architecture the world would not have been for so long scourged with the violence and lawlessness, and wracked with the agonies and convulsions, of this terrible war.

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The persecution policy against the Jews commenced with nonviolent measures, such as disfranchisement and discriminations against their religion, and the placing of impediments in the way of success in economic life. It moved rapidly to organized mass violence against them, physical isolation in ghettos, deportation, forced labor, mass starvation, and extermination. The Government, the Party formations indicted before you as criminal organizations, the Secret State Police, the Army, private and semi-public associations, and "spontaneous" mobs that were carefully inspired from official sources, were all agencies that were concerned in this persecution. Nor was it directed against individual Jews for personal bad citizenship or unpopularity. The avowed purpose was the destruction of the Jewish people as a whole, as an end in itself, as a measure of preparation for war, and as a discipline of conquered peoples.

The conspiracy or common plan to exterminate the Jew was so methodically and thoroughly pursued, that despite the German defeat and Nazi prostration this Nazi aim largely has succeeded. Only remnants of the European Jewish population remain in Germany, in the countries which Germany occupied, and in those which were her satellites or collaborators. Of the 9,600,000 Jews who lived in Nazi-dominated Europe, 60 percent are authoritatively estimated to have perished. Five million seven hundred thousand Jews are missing from the countries in which they formerly lived, and over 4,500,000 cannot be accounted for by the normal death rate nor by immigration; nor are they included among displaced persons. History does not record a crime ever perpetrated against so many victims or one ever carried out with such calculated cruelty.

You will have difficulty, as I have, to look into the faces of these defendants and believe that in this twentieth century human beings could indict such sufferings as



# EXCERPTS FROM OPENING STATEMENT BEFORE THE INTERNATIONAL MILITARY TRIBUNAL AT NUREMBERG

November 21, 1945

will be proved here on their own countrymen as well as upon their so-called "inferior" enemies.

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We charge that all atrocities against Jews were the manifestation and culmination of the Nazi plan to which every defendant here was a party. I know very well that some of these men did take steps to spare some particular Jew for some personal reason from the horrors that awaited the unrescued Jew. Some protested that particular atrocities were excessive, and discredited the general policy. While a few defendants may show efforts to make specific exceptions to the policy of Jewish extermination, I have found no instance in which any defendant opposed the policy itself or sought to revoke or even modify it.

Determination to destroy the Jews was a binding force which at all times cemented the elements of this conspiracy. On many internal policies there were differences among the defendants. But there is not one of them who has not echoed the rallying cry of nazism: "Deutschland erwache, Juda verrecke!" (Germany awake, Jewry perish!).

## Terrorism and Preparation for War:

How a government treats its own inhabitants generally is thought to be no concern of other governments or of international society. Certainly few oppressions or cruelties would warrant the intervention of foreign powers. But the German mistreatment of Germans is now known to pass in magnitude and savagery any limits of what is tolerable by modern civilization. Other nations, by silence, would take a consenting part in such crimes. These Nazi persecutions, moreover, take character as international crimes because of the purpose for which they were undertaken.

The purpose, as we have seen, of getting rid of the influence of free labor, the churches, and the Jews was to clear their obstruction to the precipitation of aggressive war. If aggressive warfare in violation of treaty obligation is a matter of international cognizance the preparations for it must also be of concern to the international community. Terrorism was the chief instrument for securing the cohesion of the German people in war purposes. Moreover, these cruelties in Germany served as atrocity practice to discipline the membership of the criminal organization to follow the pattern later in occupied countries.

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I dislike to encumber the record with such morbid tales, but we are in the grim business of trying men as criminals, and these are the things that their own agents say happened. We will show you these concentration camps in motion pictures, just as the Allied armies found them when they arrived, and the measures General Eisenhower had to take to clean them up. Our proof will be disgusting and you will



# EXCERPTS FROM OPENING STATEMENT BEFORE THE INTERNATIONAL MILITARY TRIBUNAL AT NUREMBERG

November 21, 1945

say I have robbed you of your sleep. But these are the things which have turned the stomach of the world and set every civilized hand against Nazi Germany.

Germany became one vast torture chamber. Cries of its victims were heard round the world and brought shudders to civilized people everywhere. I am one who received during this war most atrocity tales with suspicion and scepticism. But the proof here will be so overwhelming that I venture to predict not one word I have spoken will be denied. These defendants will only deny personal responsibility or knowledge.

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The third Count of the Indictment is based on the definition of War Crimes contained in the Charter. I have outlined to you the systematic course of conduct toward civilian populations and combat forces which violates international conventions to which Germany was a party. Of the criminal nature of these acts at least, the defendants had, as we shall show, clear knowledge. Accordingly, they took pains to conceal their violations. It will appear that the Defendants Keitel and Jodl were informed by official legal advisors that the orders to brand Russian prisoners of war, to shackle British prisoners of war, and to execute commando prisoners were clear violations of international law. Nevertheless, these orders were put into effect. The same is true of orders issued for the assassination of General Giraud and General Weygand, which failed to be executed only because of a ruse on the part of Admiral Canaris, who was himself later executed for his part in the plot to take Hitler's life on July 24, 1944.

The fourth Count of the indictment is based on Crimes against Humanity. Chief among these are mass killings of countless human beings in cold blood. Does it take these men by surprise that murder is treated as a crime?

The first and second Counts of the Indictment add to these crimes the crime of plotting and waging wars of aggression and wars in violation of nine treaties to which Germany was a party. There was a time, in fact, I think the time of the first World War, when it could not have been said that war-inciting or war making was a crime in law, however reprehensible in morals.

Of course, it was, under the law of all civilized peoples, a crime for one man with his bare knuckles to assault another. How did it come that multiplying this crime by a million, and adding fire arms to bare knuckles, made it a legally innocent act? The doctrine was that one could not be regarded as criminal for committing the usual violent acts in the conduct of legitimate warfare. The age of imperialistic expansion during the eighteenth and nineteenth centuries added the foul doctrine, contrary to the teachings of early Christian and international law scholars such as Grotius, that all wars are to be regarded as legitimate wars. The sum of these two doctrines was to give war-making a complete immunity from accountability to law.

This was intolerable for an age that called itself civilized. Plain people with their earthy common sense, revolted at such fictions and legalisms so contrary to ethical principles and demanded checks on war immunities. Statesmen and international



# EXCERPTS FROM OPENING STATEMENT BEFORE THE INTERNATIONAL MILITARY TRIBUNAL AT NUREMBERG

November 21, 1945

lawyers at first cautiously responded by adopting rules of warfare designed to make the conduct of war more civilized. The effort was to set legal limits to the violence that could be done to civilian populations and to combatants as well.

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## The Law of Individual Responsibility:

The Charter also recognizes individual responsibility on the part of those who commit acts defined as crimes, or who incite others to do so, or who join a common plan with other persons, groups or organizations to bring about their commission. The principle of individual responsibility for piracy and brigandage, which have long been recognized as crimes punishable under international law, is old and well established. That is what illegal warfare is. This principle of personal liability is a necessary as well as logical one if international law is to render real help to the maintenance of peace. An international law which operates only on states can be enforced only by war because the most practicable method of coercing a state is warfare. Those familiar with American history know that one of the compelling reasons for adoption of our constitution was that the laws of the Confederation, which operated only on constituent states, were found ineffective to maintain order among them. The only answer to recalcitrance was impotence or war. Only sanctions which reach individuals can peacefully and effectively be enforced. Hence, the principle of the criminality of aggressive war is implemented by the Charter with the principle of personal responsibility.

Of course, the idea that a state, any more than a corporation, commits crimes, is a fiction. Crimes always are committed only by persons. While it is quite proper to employ the fiction of responsibility of a state or corporation for the purpose of imposing a collective liability, it is quite intolerable to let such a legalism become the basis of personal immunity.

The Charter recognizes that one who has committed criminal acts may not take refuge in superior orders nor in the doctrine that his crimes were acts of states. These twin principles working together have heretofore resulted in immunity for practically everyone concerned in the really great crimes against peace and mankind. Those in lower ranks were protected against liability by the orders of their superiors. The superiors were protected because their orders were called acts of state. Under the Charter, no defense based on either of these doctrines can be entertained. Modern civilization puts unlimited weapons of destruction in the hands of men. It cannot tolerate so vast an area of legal irresponsibility.

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I am too well aware of the weaknesses of juridical action alone to contend that in itself your decision under this Charter can prevent future wars. Judicial action always comes after the event. Wars are started only on the theory and in the confidence that they can be won. Personal punishment, to be suffered only in the event the war is



# EXCERPTS FROM OPENING STATEMENT BEFORE THE INTERNATIONAL MILITARY TRIBUNAL AT NUREMBERG

November 21, 1945

lost, will probably not be a sufficient deterrent to prevent a war where the warmakers feel the chances of defeat to be negligible.

But the ultimate step in avoiding periodic wars, which are inevitable in a system of international lawlessness, is to make statesmen responsible to law. And let me make clear that while this law is first applied against German aggressors, the law includes, and if it is to serve a useful purpose it must condemn aggression by any other nations, including those which sit here now in judgment. We are able to do away with domestic tyranny and violence and aggression by those in power against the rights of their own people only when we make all men answerable to the law. This trial represents mankind's desperate effort to apply the discipline of the law to statesmen who have used their powers of state to attack the foundations of the world's peace and to commit aggressions against the rights of their neighbors.

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While the defendants and the prosecutors stand before you as individuals, it is not the triumph of either group alone that is committed to your judgment. Above all personalities there are anonymous and impersonal forces whose conflict makes up much of human history. It is yours to throw the strength of the law back of either the one or the other of these forces for at least another generation. What are the real forces that are contending before you?

No charity can disguise the fact that the forces which these defendants represent, the forces that would advantage and delight in their acquittal, are the darkest and most sinister forces in society—dictatorship and oppression, malevolence and passion, militarism and lawlessness. By their fruits we best know them. Their acts have bathed the world in blood and set civilization back a century. They have subjected their European neighbors to every outrage and torture, every spoliation and deprivation that insolence, cruelty, and greed could inflict. They have brought the German people to the lowest pitch of wretchedness, from which they can entertain no hope of early deliverance. They have stirred hatreds and incited domestic violence on every continent. These are the things that stand in the dock shoulder to shoulder with these prisoners.

The real complaining party at your bar is Civilization. In all our countries it is still a struggling and imperfect thing. It does not plead that the United States, or any other country, has been blameless of the conditions which made the German people easy victims to the blandishments and intimidations of the Nazi conspirators.

But it points to the dreadful sequence of aggressions and crimes I have recited, it points to the weariness of flesh, the exhaustion of resources, and the destruction of all that was beautiful or useful in so much of the world, and to greater potentialities for destruction in the days to come. It is not necessary among the ruins of this ancient and beautiful city with untold members of its civilian inhabitants still buried in its rubble, to argue the proposition that to start or wage an aggressive war has the moral qualities of the worst of crimes. The refuge of the defendants can be only their



# EXCERPTS FROM OPENING STATEMENT BEFORE THE INTERNATIONAL MILITARY TRIBUNAL AT NUREMBERG

November 21, 1945

hope that international law will lag so far behind the moral sense of mankind that conduct which is crime in the moral sense must be regarded as innocent in law.

Civilization asks whether law is so laggard as to be utterly helpless to deal with crimes of this magnitude by criminals of this order of importance. It does not expect that you can make war impossible. It does expect that your juridical action will put the forces of international law, its precepts, its prohibitions and, most of all, its sanctions, on the side of peace, so that men and women of good will, in all countries, may have "leave to live by no man's leave, underneath the law."