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You get some measure of satisfaction
in reading such as the following. There will
be no end to the debate. Regards Howard.*

Afterthoughts on Nuremberg

Trials Showed War Crimes Cannot Be Tried by Judicial Processes Without Injecting Spirit of Vengeance

By WILLIAM HENRY CHAMBERLIN

It is a common human failing to act in haste and regret at leisure. There was little articulate protest when the procedure for trying German and other Axis military, political and industrial leaders as war criminals was announced and put into effect. In the emotionally supercharged atmosphere of the war and immediate postwar years anyone who objected on grounds of legality or moral consistency to the Nuremberg trials ran the risk of being misrepresented as a sympathizer with the atrocities of nazism.

The formal trials of accused Axis war criminals were, we were assured by their advocates and apologists, a step forward in international law, an establishment of personal responsibility for acts of aggression, a deterrent of future wars. But in the cold grey light of the war's aftermath these assurances sound increasingly hollow and unconvincing. Facts which were known at the time and which have been laid bare in all their details subsequently give a strong aroma of hypocrisy to the Nuremberg proceedings.

We now know with certainty that Hitler's attack against Poland was closely coordinated with the Soviet attack against that unfortunate country, and with the Soviet overrunning of Latvia, Lithuania and Estonia. In view of this fact the presence of Soviet judges on the International Military Tribunal showed that, whatever was going on in Nuremberg, it was in no sense due process of law. For the first characteristic of law, as distinguished from vengeance or political expediency, is equal and impartial application against all offenders.

Russia Was Also an "Aggressor"

But no one drew up a bill of indictment against the Soviet Union for its invasion of Poland, carried out in close collusion with Hitler, for the mass deportations that followed this invasion, for the subjugation of the Baltic States, in violation of treaties of non-aggression, for the unprovoked attack on Finland. The reason for the differentiation is obvious. Germany was beaten and the Soviet Union was a powerful member of a victorious coalition. But a kind of "law" that holds good for the vanquished, but not for the victors is not law at all. It falls rather within the definition of vengeance or political expediency.

Supreme Court Justice Robert H. Jackson, who was chief United States prosecutor at Nuremberg, recently revealed the interesting fact that in preliminary inter-allied discussions of trial procedure the Russians wanted to define a "crime against the peace" as "aggression against or domination over other nations carried out by the European Axis." The American representatives refused to accept such a ludicrously selective definition. But the Russians did carry their point that it was beyond the competence of the Nuremberg tribunal to define aggression.

The reasoning behind the Soviet position was clear enough. It would have been im-

possible to frame any plausible definition of aggression that would not, by implication, have condemned Soviet acts of aggression and land grabs in Eastern Europe.

Another consequence of the Nuremberg verdicts is causing increasing concern in Britain, if one may judge from letters which have been appearing in representative British newspapers and magazines. The tribunal refused to accept the traditional justification of superior orders in the case of military officers who were charged either with planning aggressive war or with committing acts of unjustified cruelty. But this ruling strikes at the roots of military discipline. The line between moves of justifiable defense and acts of "aggression," which the tribunal failed to define anyway, is often thin and blurred and depends a good deal on the national sympathy of the individuals concerned.

Responsibility of Subordinate Officers

All advance war plans contain some element of aggression against the potential enemy. To be content with a purely passive defense, in the atomic age, would be an invitation to national suicide. It is a little difficult to see why German officers who obeyed the orders of their political and military superiors and drew up plans for offensive ground, air and naval operations should be punished when similar plans unquestionably exist in the war departments of all the more powerful victorious allies.

The Nuremberg prosecutions have been hailed as a victory for the principle that international law can and should be enforced against guilty individuals. But this principle, so long as national states remain in existence, is a doctrinaire fantasy. It is surprising that some men of intelligence and experience in international affairs should recommend it as something feasible.

Let us suppose there were an international convention prohibiting the use of atomic power for armaments. Convincing evidence is presented to the United Nations, or whatever international authority might be responsible for enforcing the convention, that a certain factory in country X is engaged in the manufacture of forbidden atomic weapons. Is it reasonable to suppose that it would be possible for the international authority to arrest the manager of the factory (who would unquestionably be acting on the orders of his government) and hale him before some tribunal, as some narcotics dealer might be arrested under the laws of a national state?

International law will be enforceable against individuals only when there are no more national states. And that prospect is very distant.

It should have been possible to deal adequately with perpetrators of horrible and abnormal crimes without introducing doubtful and dangerous precedents and degrading and distorting the whole conception of impartial law by using judicial forms to cover what was essentially a process of vengeance of victors over vanquished.