

DRAFT

The foregoing discussion creates a framework against which the basic problems which will arise on the collapse of Germany should be considered. To this end it may be useful to review briefly what Germany has done and what the United Nations propose to do after the German war machine has been broken down and internal Nazi resistance has been overcome. It will then be possible to determine what legal barriers, if any, exist in international law which would prevent the United Nations from carrying out their war objectives in the post war period after the battle has been fought and won. The following quotation is helpful in obtaining some prospectus with reference to the nature of the problem with which the United Nations will have to deal:

"In spite of the explicit regulations of established customs, and of the clear dictates of humanity, Germany and her allies have piled outrage upon outrage * * *. Murders and massacres, tortures, shields formed of living human beings, collective penalties, the arrest and execution of hostages, the requisitioning of services for military purposes, the arbitrary destruction of public and private property, the aerial bombardment of open towns without there being any regular siege, the destruction of merchant ships without previous visit and without any precautions for the safety of passengers and crew, the massacre of prisoners, attacks on hospital ships, the poisoning of springs and of wells, outrages and profanations without regard for religion or the honor of individuals, the issue of counterfeit money reported by the Polish Government, the methodical and deliberate destruction of industries with no other object than to promote German economic supremacy after the war, constitute the most striking list of crimes that has ever been drawn up to the eternal shame of those who committed them."

These words do not date from 1939. They were written by the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties appointed by the Preliminary Peace Conference in 1919. At that time, the horrified people of the world believed they had seen all of which the German "Herrenvolk" is capable. They did not reckon on the "improvements" which a pathological mentality coupled with industrial ingenuity and resources can devise in two decades. They could not envisage the commission of crimes so brutal and so hideous as to make pale the atrocities committed in Belgium in 1914, shocking though they were. They could not foresee the birth of "total war," war between nations and between races, war engineered not only to destroy the armed forces of the enemy but also to destroy whole nations and classes of people within nations.

For five years, the Nazis have pursued their program of mass extermination with a brutality and methodical ruthlessness unparalleled in the history of mankind. They have conducted their military operations with flagrant disregard of all law, of all principles of decency among men. They have caused incalculable injury, and have inflicted ghastly suffering on millions of unarmed and helpless human beings. They have murdered by means of mass executions, by burning people to death in huge incinerators, by burying people alive, by poisoning them, by systematized starvation of occupied Europe, by the use of lethal vans and asphyxiating chambers. They have committed mayhem. They have committed arson. They have abducted young girls and deported them to brothels for the use of German soldiers. They have arrested thousands of civilians for forced labor under slavery conditions. They have tortured prisoners of war. They have taken hostages by the thousands, and have massacred them for the deeds of others under their theory of "collective responsibility." They have aroused latent prejudices and have incited men to kill their fellow men. They have expelled and transplanted civilian populations, robbed them of their property, and deprived them of their means of existence. They have pillaged and razed whole cities.

The Commission appointed by the Preliminary Peace Conference in 1919 thought that they had seen "the most striking list of crimes that has ever been drawn up." That list has now become antiquated and inadequate in the light of the barbarism and the magnitude of the atrocities committed by the Nazis during this war.

The very scale and scope of the destruction and loss of lives which may be attributed to Germany in this war is such as to numb the human imagination. Who can visualize 60 million dead? Who could conceive of the hundreds of millions of human beings whose lives have been gravely affected? Although it may not be possible to fully grasp the cost of this war in terms of human values, it is possible to foresee that the death, horror and destruction of this war may be small compared to what might happen in another war 25 years from now.

Within the above frame of reference let us consider what must be the two principle objectives of the United Nations after termination of hostilities:

1. To make certain that all those who shared the guilt shall shall the punishment; and
2. To take such steps as, in the discretion of the United Nations, to make Germany incapable of embarking on a third World War in the feasible future.

Considering the nature and sources of international law and particularly the limited extent to which rules of warfare have developed

and considering the unprecedented totality of the present war and the unparalleled methods of waging it, let us examine whether the war aims of the United Nations are consistent with the general principles of international law and whether there are any specific rules or general principles which are clearly applicable and relevant to the present situation as to have the effect of restraining or frustrating the carrying out of the principle objectives for which this war is being fought. The mere statement of the question suggests almost inescapably that there can be only one appropriate answer.

It is submitted that there are no specific rules of international law (in treaties, conventions or usages) which would prevent the United Nations from carrying out their objectives of punishing war criminals and rendering Germany incapable of embroiling the world in a third World War. It is submitted further that under the recognized principles of international law there is only one limitation upon the actions of the United Nations in carrying out their objectives. That limitation is that they do so in accordance with the general principles of humanity.

These conclusions are based on the following considerations:

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1. That the authorities and precedents and conventions and usages all deal with and place some restrictions upon the activities of an occupant of an area. In this capacity, as an occupant, it is perfectly sound to place some limitations on an occupying force particularly in view of the fact that such force may be ousted by a superior force as the tides of war change. The publicist and precedent convention, etc., deal with this temporary occupant and they also deal with the other extreme which is the annexation of the conquered territory. There is nowhere, however, any limitation on carrying out the objectives of the war after the termination of hostilities without annexation.

On the other hand, there is ample authority and precedent for the principle that the objectives for which a war was fought may be carried out in the postwar period. From the nature of international law and the manner in which it grows and the circumstances under which precedents are set it would be inconceivable that any other conclusion could be reached. Wars themselves can hardly be regarded as moral affairs -- they are highly immoral. Yet, as far back as history is recorded there have been wars and the victors have, in fact, carried out the objectives for which the wars were fought.

Just as it would be absurd, in the absence of some international or universal agreement to say that war as such was illegal, it would have been even more absurd to say that after having fought the war it was illegal to enjoy the fruits. The limitation which is placed upon the victor by international law is that he accomplish his purpose as humanely as possible and in a manner consistent with the standards of morality, justice and civilization extant at the time.

2. International law has been admitted, even by the narrow school of positivists, to include any worldwide sentiment which the peoples of the world were willing to enforce. All international law, basically, is founded upon the standards of justice, morality and equity that exist at a particular time.

In this respect it should be noted that the position of the United Nations is unique in that the term "United Nations and world opinion" are practically co-terminus. If the principal civilized nations of the world agree upon a program for dealing with Germany who shall say that the program formulated does not conform with existing standards of equity, justice, morality and humanity?

3. (Pact of Paris.)