

THE INDICTMENT

The Charter divides the crimes over which the Tribunal is given jurisdiction into three categories: (a) "Crimes Against Peace", (b) "Conventional War Crimes" and, (c) "Crimes against Humanity". While this division is followed in the Indictment, it will be contended that the basic justification for all of them is the same. It is that breaches of International Law, whether established by custom or treaty, are crimes for which the personal responsibility lies not only upon the humbler individuals who actually commit specific breaches of the laws of war. That has always been recognized, but on the same legal principle it lies also upon those in higher positions who by their decisions bring about breaches of International Law and Treaties. The time has come to put into action this principle which has been boldly asserted and firmly established. The indictment involves no new law.

The charges are divided into three Groups.

In each case the charges are laid under the Charter of the Tribunal, which is a restatement of international law, and in the case of Group Two, also under the domestic laws of the countries concerned including Japan.

Group One: The charges are laid both under Article 5 (a) and 5 (b) of the Charter. All the Counts allege wars both of aggression and in violation of International Law, treaties, agreements and assurances. On the facts of this case it will be contended that the distinction is immaterial. The first five Counts charge conspiracies to wage such wars; the first comprehensively covering the whole plan as one conspiracy, the remaining four dealing separately with various phases of it as it is alleged to have developed.

Counts 6 to 17 inclusive charge the Defendants with the crime of planning and preparing such war separately against each Nation.

Counts 18 to 26 inclusive charge the crime of initiating such wars separately against certain parties.

Counts 27 to 36 inclusive charge the crime of waging such wars separately against certain parties.

Group Two: The charges of murder are laid under all the paragraphs of Article 5 of the Charter. It will be contended that the intentional killing of a human being without lawful justification is murder by the law of every civilized country including Japan, by whose law even the intention is unnecessary. Lawful belligerency, i. e., fighting a war of defense according to the laws of war, is such a justification, but Counts 37 and 38 allege that the belligerency of Japan was unlawful because it was in breach of treaties and aggressive in nature; in Count 37, owing to the absence of a declaration of war, and in Count 38, by reason of breaches of treaties forbidding such aggression. Counts 39 to 43 inclusive apply these contentions to specific instances of murder, in the various surprise attacks made on December 7th-8th, 1941.

Count 44 charges a conspiracy to procure or permit wholesale murder of prisoners of war and civilians on land and sea. Counts 45 to 50 inclusive are specific charges of murder in some of the most notorious of such cases, the "Rape of Nanking", and other cities in China. Counts 51 and 52 contain similar

charges with regard to attacks on territories of the U.S.S.R. Examples of such wholesale murders during the wars which began in December 1941, are too numerous to be made the subject of separate Counts.

It may seem strange to include charges of murder in an Indictment before an International Tribunal. But it is high time, and indeed was so before this war began, that the promoters of aggressive, ruthless war, and treaty-breakers should be stripped of the glamour of national heroes, and exposed as what they really are—plain, ordinary murderers.

Group Three: The charges are laid under paragraphs (b) and (c) of Article 5 of the Charter, and it will be contended that paragraph (b) is adequate to cover them all. They allege conspiracy to commit and the actual commission of large numbers of breaches of the laws and customs of war, contained in or proved by the practice of civilized nations and the various Conventions governing the conduct of hostilities, the treatment of prisoners of war, and of persons and property in occupied territories. It appears that those who framed the Conventions never contemplated the possibility of such outrages as are alleged against Japan in the conduct of her wars from 1931 to 1945, and dealt with under the charge of murder in Counts 44 to 52 inclusive. So far as they are referred to in this Group they have to be dealt with under such mild phrases as appear in the Conventions, e. g., "inhumane treatment", "failure to respect individual life", etc.

The Defendants named in these Counts are alleged to be responsible for all these atrocities both because they initiated the policies which led to them, sometimes directly ordered their commission, and in all cases recklessly neglected the duty which lay upon them to take adequate steps to prevent them, in spite of numerous warnings.

In the Particulars of Breaches under this Group in Appendix D, it is alleged that Japan habitually violated almost every Article of the Conventions, and every known law of war.

There are five Appendices. Appendix A gives, under ten subject-heads, an outline of the story which will be related to the Tribunal with regard mainly to the charges in Group One. Appendix B gives the text of the principal Articles of Treaties which it is alleged that Japan violated in the course of wars which she planned, prepared, initiated and waged between 1931 and 1945. Appendix C gives a list of Assurances similarly alleged to have been broken. Appendix D gives an outline of the main laws of war, Conventions and assurances alleged to have been violated by Japan in the charges in Group Three, as well as the Particulars of Breaches above mentioned. Appendix E gives as against each individual Defendant particulars of the principal grounds on which he is included in the Indictment, based mainly on the positions which he held and the activities with which he was connected during the period, especially during 1941

It should be clearly understood that the omission of any name from the Indictment in no sense implies that the individual is exonerated from complicity in the charges, or may not be charged hereafter. For convenience and clarity in presenting the case it was found necessary to limit the numbers in this trial. Many of the principals are already dead. One, General TERAUCHI, has been omitted solely on the ground that his mental and physical condition makes it impossible to try him. But the Indictment includes the survivors of those who, on the evidence at present available, appear to have the major responsibility for most of the phases and activities which contributed to the crimes alleged against Japan.