

'Nuremberg International Tribunal sentences chief Nazi leaders to death' from Le Monde (1 Octobre 1971)

Caption: Twenty-five years after sentences were handed down at the Nuremberg International Military Tribunal, the French newspaper Le Monde looks back on the unfolding of the trial at which the main leaders of the Nazi regime were judged.

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Twenty-five years ago

Nuremberg International Tribunal sentences chief Nazi leaders to death

‘... death by hanging.’

On 1 October 1946, Lord Geoffrey Lawrence, President of the International Military Tribunal in Nuremberg, pronounced eleven sentences of death by hanging in a discreet and gentle manner that the journalists recognised as the ultimate in British ‘understatement’. The prisoners arrived separately in a lift situated behind the dock, flanked by guards in white helmets. A third guard handed them the headphones for the interpretation. Only Rudolf Hess refused to use them. The guard had to tap him on the shoulder to bring him back to reality. Once back amongst his co-detainees, he proudly shrugged off the sentence handed down on him with a demented laugh.

In the pressroom, the loudspeaker transmitted the subdued tones of Lord Lawrence, and each time there was a mad rush of journalists towards the telephones and telex machines. A 12th prisoner was sentenced to hang, but in absentia: it was Martin Bormann. At last, the 406th session was adjourned, but this time, *sine die*, ‘indefinitely’. It was left to the Russian judge to make known his disagreement concerning the acquittals of Schacht, von Papen and Fritsche, and the sentencing of Rudolf Hess to life imprisonment, an unjustified leniency, in his eyes. A fortnight later — Goering having poisoned himself with cyanide in his cell — the other ten condemned men were hanged in the prison gymnasium. The bodies were then carried to the cemetery in Munich, incinerated under the names of invented American airmen, victims of a fictitious plane crash, and their ashes were scattered in the River Isar. Four years later, this hasty conclusion to the proceedings had a postscript worthy of this historic trial: Master Sergeant Woods, the gaoler who had carried out the executions, was himself killed while trying out an electric chair. A fitting end to the life of a conscientious professional ...

The first hearing, which had taken place on 20 November 1945, had been preceded by negotiations between the representatives of the four prosecuting nations so difficult that, on several occasions, they had nearly collapsed. Everything to do with this trial is memorable and has a significance far beyond its immediate impact. Let us simply recall that, on the evening of 29 November 1943, in Tehran, Stalin invited Roosevelt, Churchill and their closest colleagues to the Soviet Embassy. There, he declared that, once the war had been won, 50 000 German officers and technicians must be physically exterminated in order to destroy any future German military potential. Roosevelt replied with heavy-handed humour that he thought 49 000 would be sufficient, but Churchill made his disapproval known.

The difficult task for Prosecutor Jackson

However, *Uncle Joe’s* radical proposal — a sinister reminder of the slaughter of 11 000 Polish officers at Katyn — found an echo, several months later, in the proposals of Cordell Hull and Morgenthau, according to whom war criminals should be shot without trial. Roosevelt at first agreed with this argument but later rallied to the idea of a big international trial. However, it was Truman who gave life to this project by nominating as Chief Prosecutor for the United States, Robert H. Jackson, the Supreme Court Judge. An exalted mission but one fraught with difficulties. This trial must on no account become a parody of justice, and the judicial hazards that the scrupulous Jackson foresaw were many and far-reaching; above all, there was the fundamental principle that, in any judicial proceedings, for there to be a crime, and the consequent punishment, there must be a law already in existence (*nullem crimem, nulla poena sine lege*).

But, leaving behind the theory and going into the detail of the crimes committed, the difficulties increased yet again. Despite his desire for impartiality, Jackson had to avoid the repercussions of the condemnation of an act committed not only by the Germans but by the Allies as well. Thus it was difficult, in the heart of a town — Nuremberg — reduced to rubble by the US Air Force, to blame the Luftwaffe for the bombing of civilian targets. Equally, the idea of a war of aggression had to be abandoned. Two examples showed that this line of attack would be far too favourable to the defence. First there was Poland, attacked simultaneously by the Germans and the Russians in a secret agreement, and then Norway, which the French

and the British were preparing to occupy when they were out-manoeuvred by the Germans.

Discussions with the Soviets were none the less eased, in a manner of speaking, by a major advantage that the Americans held over them. Should there be total disagreement, there would be no international trial, and each country would judge the prisoners they held.

Since there had been an automatic tendency to try and escape to the West, most of the major war criminals were in the hands of the Americans; the Soviets held only Admiral Raeder and the radio commentator Hans Fritzsche, a meagre haul. Thus, with a final banging of fists on the table, the last difficulty was settled: the venue for the trial. The Soviets wanted it to be in Berlin, but the West insisted on Nuremberg, a town situated in the American occupied zone.

The journalists who flooded in from all over the world, in a town where the Nazi Party Congress had been held each year and which had been the capital of anti-Semitism, were struck by the unreal sight of the court house which stood practically intact amidst the ruins. 'I have the impression', said the Soviet judge Nikitchenko to his American colleague Biddle, 'that your bomber pilots were already thinking about the trial: they spared only the court house. You Americans, you think of everything.' Actually, the Americans were in charge of all the logistics, an overwhelming task in a country in complete chaos. The transport and distribution alone of the 1 100 tonnes of documents used in the trial needed a convoy of lorries and an army of archivists and secretaries. The provision of food, heating, accommodation, the organisation of interpreters (the trial took place simultaneously in four languages), the convening and reception of witnesses from all four corners of Europe, etc., gave birth to a kind of artificial city in the midst of the ruined town.

In their individual cells, the former masters of the Third Reich reacted to the situation according to their own temperament. Conscious of having to be the big star of the show that was in preparation, Goering, deprived of morphine, having lost 35 kilos, unrecognisable, gathered round him the other prisoners, meeting each day in the canteen, and tried to make them adopt a common line ('Not one word against Hitler!'). But there were weaknesses. The stupid and cowardly Streicher was held in solitary confinement. Schacht, who had spent 18 months in a concentration camp, did not appreciate being associated with the Nazi set. On 25 October, Robert Ley — former head of the Labour Front — hanged himself using a towel attached to the handle of the lavatory cistern in his prison cell. From then on, a guard watched over each detainee day and night.

The prisoners were asked to undergo intelligence tests in use in the American army. This produced a curious spectacle: former powerful men, covered in medals and oozing confidence, queuing up excitedly to prove their intellectual prowess to their gaolers. To their great chagrin, they were all outclassed by the performance of the oldest and least sure of all of them, Dr Hjalmar Schacht, who had an IQ of 143.

The 216 days of debate left an impression of tedium, interspersed with sensational or tragicomic moments. Soon the accused were wearing sunglasses, on the pretext that the glare from the floodlights tired their eyes; in fact, they did this so that they could sleep without being noticed by the guards, and more than one judge must have envied them their ruse. Rudolf Hess, who had feigned amnesia, suddenly recovered his memory and belittled his lawyer by admitting that he had just been pretending. Then, in the middle of the courtroom, he started to do the physical exercises that he was unable to do in his tiny cell. There was a moment of general mirth in the dock when a bit of evidence on tape recalled the joyful reaction Goering had had when he learned by telephone of the success of the Anschluss. But the next day, the showing of a film on the concentration camps caused panic and discord among the accused. 'I must at least try and stop them incriminating each other,' said Goering, who was still insisting on assuming 'command', and everyone heard him shout 'Schweinehund!' ('bastard!') to Bach-Zelewski, the former SS officer who had come to the witness stand to confirm that the fight against the partisans in Russia was only an excuse for the extermination of the Slavs and Jews. The judges demanded a translation, and the former Supreme Hunter of the Reich was then deprived of tobacco and exercise for 15 days.

But discord was rife not only among the accused. The Cold War had started between East and West. Churchill was only making a statement of fact when he proclaimed, on 5 March 1946, in Fulton, Missouri, his famous words: 'From Stettin on the Baltic to Trieste on the Adriatic, an Iron Curtain has descended

across the Continent.’ The clothing worn by the judges was in fact enough to show the diversity of the courtroom: officer’s uniform for the two Soviets, gowns for the six Westerners, with the addition of a lace ruffle for the French. It was as if, for some, this was a civilian trial and for others a simple court martial. Vishinsky, the prosecutor at the Moscow trials, was given a cool reception by the Westerners.

The difficulties encountered by the prosecutors in their interrogation of the accused poisoned the atmosphere. The President’s questions to Ribbentrop on the secret paragraphs of the German-Soviet pact provoked a protest from Rudenko. The Soviets’ careless raising of the issue of the Katyn Massacre, for which they wanted the accused to take the blame, brought forth evidence that was disastrous for the reputation of the prosecution. Goering, who knew his facts by heart, gave Jackson a hard time and talked without stopping for three days, occasionally glancing at a small piece of card on which he had written: ‘Take it slowly. Breathe. Stay calm. Stand up straight.’ The press was unanimous: the prosecutor was no match for the ex-Field Marshal.

Not until the French indictment were any punishments talked about. It was straightforward: ‘In our view,’ said Charles Dubost, ‘the least guilty among the accused deserves the death penalty.’ General Rudenko took up the theme of ‘death for all’ with even more vehemence.

The sentencing procedure followed a pattern fixed by the law. For a guilty verdict, there had to be a majority of three votes (to one). Consequently, supposing the two English-speaking judges opposed their Soviet colleague, it was the French judge (Donnedieu de Vabres) who had the final say. This was how three acquittals and seven life sentences were adopted, against the wishes of the Soviet judge.

The theory of ‘history in the making’

A quarter of a century later, it is difficult to sum up what is left of the Nuremberg trials. Its least impressive but most tangible result is of a documentary nature. In concrete terms, there are forty-two volumes of interrogations and documents, an irreplaceable monument, an unending wealth of resources not only to the historian but also to the psychologist and even to the novelist. It represents the crudest form of ‘history in the making’, written in the heat of the moment, without perspective, in the manner common to many historians and journalists since 1946.

With regard to the philosophy behind the trial, the complexity of its nature can be seen by the fact that one is tempted to make two diametrically opposed complaints about the process: cynicism and naivety. Cynical, Nuremberg certainly was, for it is unthinkable that conquerors should be allowed to condemn the conquered in the name of ethics or justice, as if guilt was by some miracle only applicable to the weak. ‘Our only crime was to have lost the war,’ repeated Goering to whomever would listen.

It was said often enough at the time that the trial would have been better if it had been carried out by neutral countries. But was this idea realistic? The inquiry into war crimes would therefore have had to extend to all warring countries, and we should have seen in the dock, between Hess and Kaltenbrunner — Truman for Hiroshima, Stalin for Katyn, Churchill for Dresden and de Gaulle for the massacres of the Constantine region. A satisfying hypothesis for the heart and soul but obviously utopian. Nevertheless, the Nuremberg trial does make this suggestion constantly, enough to demonstrate the utopian nature of the process, which is perhaps its most powerful and enduring aspect.

Nuremberg did force into people’s minds an idea that will not easily be erased. It sounded the death knell for the lack of personal responsibility of the soldier obeying orders. No one now can be unaware that disobedience makes for strength of character in an individual. By accepting the role of a killing machine, the soldier loses all human dignity and runs the risk of the death penalty.

At the very moment when the debates were taking place, certain military establishments were aware of this. Jackson was violently attacked in an article in the army newspaper *Stars and Stripes*, taken from the *Army and Navy Journal*. In his indictment of the German army, he was accused of undermining the principles of the army, be it American or German. A fruitless protest. We know now that insubordination is a basic duty

in an unjust war. It is such for the American soldier in the Vietnam War or the French soldier in Algeria. Without Nuremberg, there would doubtless be fewer cases of desertion and insubordination among GIs.

Here we touch on what is most revolutionary about the philosophy behind Nuremberg. For the first time, the princes who govern us have broken the tacit understanding whereby, whatever the outcome of a conflict, the victors spare the losers, and it is only the poor who bear the brunt of the suffering. Even after Waterloo, there was no one in the courts of Europe who seriously called for the head of the Corsican perjurer. However, the Allies did want to investigate the case against William II in 1918, and only Holland refused to extradite him. In fact, the spectacle would have been incredibly cynical: Poincaré sentencing the Kaiser as a war criminal; Maurice Barrès — why not? — playing the surrogate judge.

In 1945, the Allies took that step, apparently oblivious to the formidable repercussions that violating this unwritten law would have for them and their successors. The notion which they killed off was that the Head of State and anyone to whom he delegates a modicum of power becomes immediately, as if by magic, untouchable, blessed with qualities called innocence, immunity and infallibility. Goering was appealing to this notion when he wrote, complaining about the conditions of his detention: ‘Colonel Andrus (prison commandant) should not forget that we have our place in history. Whether we have acted well or badly, we are nevertheless part of history, and he is nothing.’ Certain parts of the Memoirs of de Gaulle, speaking of those who have ‘met with history’, seem to echo this line of thinking.

The Nuremberg trial served one very useful purpose, if only to demystify the political and military leader and to invest him with a duty of honesty — the absence of which would be punished by the courts.

Michel Tournier