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1919 Commission Report on War Responsibility (excerpts)

CHAPTER IV CONSTITUTION AND PROCEDURE OF AN APPROPRIATE TRIBUNAL

The fourth point submitted to the Commission is stated as follows:

The constitution and procedure of a tribunal appropriate for the trial of these offences (crimes relating to the war).

On this question the Commission is of opinion that, having regard to the multiplicity of crimes committed by those Powers which a short time before had on two occasions at The Hague protested their reverence for right and their respect for the principles of humanity,¹ the public conscience insists upon a sanction which will put clearly in the light that it is not permitted cynically to profess a disdain for the most sacred laws and the most formal undertakings.

Two classes of culpable acts present themselves:

- (a) Acts which provoked the world war and accompanied its inception.
- (b) Violations of the laws and customs of war and the laws of humanity.

(a) Acts which Provoked the World War and Accompanied Its Inception

In this class the Commission has considered acts not strictly war crimes, but acts which provoked the war or accompanied its inception, such, to take outstanding examples, as the invasion of Luxemburg and Belgium.

The premeditation of a war of aggression, dissimulated under a peaceful pretence, then suddenly declared under false pretexts, is conduct which the public conscience reproves and which history will condemn, but by reason of the purely optional character of the institutions at The Hague for the maintenance of peace (International Commission of Inquiry, Mediation and Arbitration) a war of aggression may not be

¹ See the declaration of Baron Marschall von Bieberstein, who, speaking at the Hague Conference of 1907 with regard to submarine mines, used the following expressions: "Military operations are not governed solely by stipulations of international law. There are other factors. Conscience, good sense, and the sense of duty imposed by the principles of humanity will be the surest guides for the conduct of sailors, and will constitute the most effective guarantee against abuses. The officers of the German Navy, I loudly proclaim it, will always fulfil in the strictest fashion the duties which emanate from the unwritten law of humanity and civilization."

considered as an act directly contrary to positive law, or one which can be successfully brought before a tribunal such as the Commission is authorized to consider under its terms of reference.

Further, any inquiry into the authorship of the war must, to be exhaustive, extend over events that have happened during many years in different European countries, and must raise many difficult and complex problems which might be more fitly investigated by historians and statesmen than by a tribunal appropriate to the trial of offenders against the laws and customs of war. The need of prompt action is from this point of view important. Any tribunal appropriate to deal with the other offences to which reference is made might hardly be a good court to discuss and deal decisively with such a subject as the authorship of the war. The proceedings and discussions, charges and counter-charges, if adequately and dispassionately examined, might consume much time, and the result might conceivably confuse the simpler issues into which the tribunal will be charged to inquire. While this prolonged investigation was proceeding some witnesses might disappear, the recollection of others would become fainter and less trustworthy, offenders might escape, and the moral effect of tardily imposed punishment would be much less salutary than if punishment were inflicted while the memory of the wrongs done was still fresh and the demand for punishment was insistent.

We therefore do not advise that the acts which provoked the war should be charged against their authors and made the subject of proceedings before a tribunal.

There can be no doubt that the invasion of Luxemburg by the Germans was a violation of the Treaty of London of 1867 and also the invasion of Belgium was a violation of the Treaties of 1839. These treaties secured neutrality for Luxemburg and Belgium and in that term were included freedom, independence and security for the population living in those countries. They were contracts made between the high contracting parties to them, and involve an obligation which is recognized in international law.

The Treaty of 1839 with regard to Belgium and that of 1867 with regard to Luxemburg were deliberately violated, not by some outside Power, but by one of the very Powers which had undertaken not merely to respect their neutrality, but to compel its observance by any Power which might attack it. The neglect of its duty by the guarantor adds to the gravity of the failure to fulfil the undertaking given. It was the transformation of a security into a peril, of a defence into an attack, of a protection into an assault. It constitutes, moreover, the absolute denial of the independence of states too weak to interpose a serious resistance, an assault upon the life of a nation which resists, an assault against its very existence while, before the resistance was made, the aggressor, in the guise of tempter, offered material compensations in return for the sacrifice of honor. The violation of international law was thus an aggravation of the

attack upon the independence of states which is the fundamental principle of international right.

And thus a high-handed outrage was committed upon international engagements, deliberately, and for a purpose which cannot justify the conduct of those who were responsible.

The Commission is nevertheless of opinion that no criminal charge can be made against the responsible authorities or individuals (and notably the ex-Kaiser) on the special head of these breaches of neutrality, but the gravity of these gross outrages upon the law of nations and international good faith is such that the Commission thinks they should be the subject of a formal condemnation by the Conference.

Conclusions

1. *The acts which brought about the war should not be charged against their authors or made the subject of proceedings before a tribunal.*
2. *On the special head of the breaches of the neutrality of Luxemburg and Belgium, the gravity of these outrages upon the principles of the law of nations and upon international good faith is such that they should be made the subject of a formal condemnation by the Conference.*
3. *On the whole case, including both the acts which brought about the war and those which accompanied its inception, particularly the violation of the neutrality of Belgium and Luxemburg, it would be right for the Peace Conference, in a matter so unprecedented, to adopt special measures, and even to create a special organ in order to deal as they deserve with the authors of such acts.*
4. *It is desirable that for the future penal sanctions should be provided for such grave outrages against the elementary principles of international law.*