

Twilight of Nazism: The Controvertible Case of Rudolf Hess and the Law

West Berlin—Spandau fortress is located in the British sector of West Berlin near the confluence of the Havel and Spree rivers and but a few kilometers north of the memorable sports stadium where Adolf Hitler refused to shake hands with American Negro sprint champion Jesse Owens at the 1936 Olympic Games.

There, inside that rusty, brick prison—once built to house 600 inmates—sits a solitary victim of man's inhumanity to fellow man. He is former Nazi Deputy Fuehrer Rudolf Hess who in April became 83 years of age. Since October 1, 1966, Hess has been in virtual solitary confinement—the last major Nazi war criminal still imprisoned.

On May 10, 1941, in a bold stroke calculated to restore himself to Hitler's favor (at war, Hitler's attentions now were directed toward his military advisors, strategists and tacticians) and in an honest effort to avoid a costly war with England, Hess secreted a new German ME-110 fighter plane, flew to Great Britain, and parachuted into Scotland where he promptly was taken prisoner.

Rebuffed as an envoy of peace, Hess was imprisoned for the duration of hostilities and underwent numerous medical and intelligence interrogations. The former proved he was, indeed, a mentally sick man; the latter assured his captors he knew very little about actual German military operations and was not privy to Hitler's military schemes of aggression since the 1937 Anschluss with Austria.

*EDITOR'S NOTE: The author, a member of the Texas Bar, is the only American attorney presently engaged in working to obtain the release from prison of aging Nazi Deputy Fuehrer Rudolf Hess. In addition, the writer is the only man in history to interview three of the four surviving Nuremberg major war crimes trial defendants after they were released from Spandau prison; and his 1971 interview with Hitler's architect and Reichsminister of armaments and production, Albert Speer, and Nuremberg Executive Trial Counsel, Robert G. Storey of Texas, is to date the only interview between one of the senior Nazi defendants and his American prosecutor. The following material is taken from the author's soon to be published book, *Rudolf Hess—Twilight of Nazism*.

Churchill wished to return Hess to Germany as an ordinary prisoner of war, but Stalin and the Russians insisted he be tried as a war criminal. Thus, shortly after World War II ended in Europe, Hess, together with twenty-two other "senior" Nazi officials, was indicted and forced to stand trial by the victorious allied powers before a court of their own creation, the International Military Tribunal. The first such court of its kind—to deal with international crimes—the IMT derived its powers from the 1945 London Agreement between Great Britain, the United States, France and the Soviet Union.

Of the original twenty-three defendants, twenty-one endured the eleven-month trial (Labor Leader Robert Ley committed suicide before the trial began; Martin Bormann, Hitler's ubiquitous secretary and lackey, was never found, but was nevertheless tried and sentenced to death in absentia).

At the conclusion of evidence and after some two weeks of deliberation, the eight-member IMT (there were two judges each representing the four allied powers) acquitted three defendants (Fritz von Papen, Hjalmar Schacht and Hans Fritzsche); eleven others, including Reichsmarschall Hermann Wilhelm Goering, were sentenced to death by hanging; and, the remaining seven, including Hess, were sentenced to prison terms ranging from ten years to life.

Of the condemned, only Goering cheated the hangman's noose by crushing a cyanide pellet between his teeth a few hours before he was to mount the scaffold.

For Hess, the Tribunal intoned: "Defendant Rudolf Hess, the court sentences you to imprisonment for life "

Also receiving life sentences were Grossadmiral Erich Raeder and Economics Minister Walther Funk. Diplomat Constantine von Neurath, who ironically had barely escaped death for participating in the July 20 attempt on Hitler's life, received a fifteen-year sentence. Grossadmiral Karl Doenitz, brilliant U-boat commander, head of the German Navy and designated successor to Hitler, was given ten years in prison. Two other less sinister defendants, Armaments and Productions Minister Albert Speer and Hitler Youth leader Baldur B. von Schirach, received twenty-year terms.

Today, all save Hess have been released from Spandau, either having served to the exact minute their sentences or having been released early for humanitarian reasons. This latter gesture is important, for it marked a precedent accepted by the Soviets which lays a solid legal groundwork for Hess's release. Since October 1, 1966 when Speer and von Schirach were turned out, having served their sentences to the final minute, only Hess remains behind, living testimony that man is, indeed, the only animal who rejoices in his brother's discomfort. A single, unintelligible inmate within a rotting fortress built to house six hundred times his number, guarded twenty-four hours a day by rotating contingents of quadrupartite power military troops, isolated within the confines of a 10½ by 7 foot cell, allowed daily walks of but half an hour

and permitted but one approved visitor once a month for an exact thirty minutes, Rudolf Hess has become the forgotten residue of the hatred and injustice which permeated even our own concept of common law jurisprudence amidst the still warm ashes of a defeated Germany.

The political fulcrum upon which the rules and regulations governing Spandau Prison are precariously balanced is an enigma which defies reason. From its questionable ramifications have evolved some rather shocking abuses of international law.

The Nuremberg Indictments

Under the London Agreement of 1945, Great Britain, France, the United States and Russia collectively agreed to establish an international military court of law to bring to trial major Nazi war criminals whose offenses were identified among the following counts:

(A) Crimes against peace: namely planning and waging wars of aggression; (B) War crimes: namely violations of the laws or customs of war (and here were added deportation to slave labor and ill-treatment of civilian populations); (C) Crimes against humanity: namely murder, extermination, genocide and other inhumane acts; and (D) Membership in organizations engaged in a common plan or conspiracy to commit any of the foregoing crimes within the jurisdiction of the tribunal.

To be sure, the points of the indictment were considerably more thorough and complex, and they have been but summarized here, but as can be observed readily, the jurisdiction of the IMT was vast and the broad and sweeping counts of the quadrupartite indictment were both far-reaching and omnipotent. In short, no member of the enemy force, military or civilian, was immune from prosecution.

As indicated above, the IMT derived its powers under international law from the London Four-Power Agreement of 8 August 1945; United States Supreme Court Associate Justice Robert H. Jackson, who later was to serve as America's chief prosecutor at Nuremberg, signed the Agreement for the United States.

Rudolf Hess, absent from Hitler's Germany since May 10, 1941, was indicted on all four counts, yet he was acquitted of war crimes and of crimes against humanity. But, for having been one of the earliest associates of Hitler, a political ally, and for having served as deputy fuehrer in the Nazi regime, Rudolf Hess was sentenced to prison for life.

Sir Winston Churchill wanted Hess returned to Germany after the war as were other German POWs, but Stalin demanded that he be brought back to stand trial as one of the principal Nazi defendants of the major war crimes hearing. The reason for this was that Stalin and the Russians were convinced Hess had known in advance of Hitler's plan to strike eastward and they be-

lieved his flight to Great Britain was designed to arrange a pact between England and Germany, thus freeing Hitler to invade Russia.

Hess has neither denied nor confirmed the veracity of such a plan, but documents and statements by his wife and his British interrogators refute this theory.

A Sensible Hess Defense

Rudolf Hess was denied a fair trial for the following reasons: (A) he was mentally unable to stand trial and neither assisted his defense counsel nor testified in his own behalf; in short, he simply refused to recognize the IMT's jurisdiction to try him at all!; (B) he was tried (as were all the defendants) under a newly conceived rule of law prepared by the victors and especially designed to convict a vanquished foe; (C) he was not in Germany during the major portion of the war and was forced to stand trial together with defendants whose commission of war crimes was so heinous that Hess's case was irrefutably prejudiced.

That Hess suffered from mental aberrations and was, in fact adjudged a paranoiac-schizoid, that he suffered from amnesia and delusions of grandeur, and that he was found mentally unable to understand or comprehend the proceedings against him were medically documented facts available at the Nuremberg trial. But Hess refused to participate in his own defense, even refusing to assist his able German counsel, Dr. Alfred Seidl. Rather than listening to the proceedings, Hess read booklets, wrote rambling memorandums reorganizing Germany under his leadership, and often just sat sideways staring at the wall or ceiling. Thus, under common law, Hess most assuredly would have been found mentally incompetent to stand trial and would have been committed for treatment of his mental illness. In more rational times, Hess never would have been indicted, for never before and never since have "crimes against peace" been either a defined or an enforced international law.

As was frequently observed at the time, there was no legal precedent in international law to try the political figures of a defeated power. Although feeble efforts were made by the Allies after World War I to bring the Kaiser and others to trial to account for Germany's actions, nothing came of them; even Holland refused to extradite the former German leader.

Warnings were given to Germany as early as 1942 that those responsible for crimes would be held strictly accountable (and after Casablanca the unconditional surrender ultimatum was dictated to Germany); but Rudolf Hess had been a prisoner of war in England since May of 1941; clearly, he was not accountable.

Hess was acquitted of all war crimes and crimes against humanity, points of the indictment for which some guilty defendants received sentences lesser than life imprisonment. Passions were running at fever pitch against unbelievable

Nazi atrocities when the war ended and by the time the Nuremberg Trial began an entire enraged world wept in shock as news of the concentration camps and sadistic crimes spread.

The prosecution at Nuremberg, as was so articulately announced by Mr. Justice Jackson, was there to extract its pound of flesh from the defendants, each according to his own participation; but the theory of a common conspiracy advanced at the prosecution, sacked all the defendants into one vulnerable basket.

The Soviets were less particular; they simply demanded the death penalty for all. In fact, according to Dr. Storey, chief Russian Prosecutor Andrei Vishinsky, at a reception he hosted for the senior prosecution staffs on Saturday evening before the Nuremberg Trial began on the following Monday, proposed a toast: "To the conviction and death of all the defendants about to go on trial." America's IMT Judge John J. Parker refused to participate saying: "I will not drink to the conviction of any man before I hear the evidence against him."

The points of law in defense of Hess today are so embryonic that any first-year law students should be able to win an acquittal. Then why is the former deputy fuhrer still imprisoned?

Politics Prostitute the Law

The case of Rudolf Hess is no longer a legal issue. It has become a political dilemma and Hess has become a pawn between East and West.

The quadrapartite powers responsible for the control of Spandau Prison operate under the Allied Kommandatura which is itself responsible to the Berlin Control Council. Each decision at Spandau, from the release of prisoners before their sentence is fully served (as was done with Soviet concurrence in the case of von Neurath, Raeder and Funk), to visitation, mail censorship, exercise periods and hundreds of other almost daily routine activities, must be agreed on by all four powers. Thus, the Soviets effectively can veto any proposal which effects the prisoner. Since 1966 when Speer and von Schirach were released, France, Great Britain and the United States have expressed a willingness to release Hess; always, the Soviet Spandau member has said, "nyet!"

But in 1948, the Russians walked out of the Allied Kommandatura and in July of that same year they abandoned the Berlin Control Council; they have never returned. Theoretically, there came into existence at that time a Tripartite Power regulating Spandau and, at that time, the Western Allies announced they would continue to uphold their responsibilities in the regulation of Berlin; but, that owing to Russian obstructionism, they would be able to do so in the Western sectors of Berlin only.

Spandau Fortress, as has been noted, is in the British sector of West Berlin.

Thus, the three Western Allies could release Hess at any time and there is very little the Soviets could do to prevent this.

Why haven't we done so? American authorities at the United States Mission on Clayallee in West Berlin say they are reluctant to do so for fear the Russians will violate some of their Berlin treaty obligations—unquestionably a vapid argument in support of legal evidence to the contrary. But we are now playing a game of politics with Rudolf Hess, not one of the law.

To cite but one example of Soviet incipient illogic—while Hess was confined to the British Military Hospital for illness, leaving an empty Spandau, the Russians demanded that the twenty-four-hour guard be maintained in the prison's watchtowers—armed guards protecting an empty, rusty brick fortress!

Twilight of Nazism

This writer has made frequent trips to Spandau to consult with Hess; always he has been denied the right to confer with his client, even though quadruplicate rules insure that each prisoner shall be allowed to confer with his legal counsel. The Russians seemingly take delight in vetoing designated Hess attorneys. Finally, after four months, the Russians allowed Hess to receive a Bible and a religious book this writer took to him.

Likewise, appeals have been made to all four powers for Hess's release on humanitarian grounds similar to those which evoked the release of von Neurath, Raeder and Funk. Recently, new requests have been made by the three Western Allied Powers seeking Hess's freedom. Predictably, the Soviets, once again, adamantly have refused. Neither have they responded to this writer's multiple appeals.

The international military court which sentenced Rudolf Hess to life imprisonment long since has been dismantled; today, only a political act can free this ailing defendant.

His mail and reading material are heavily censored; he is not allowed to touch nor to embrace either his wife or son. No other prisoner in the history of mankind has been so isolated from humanity and normality.

The legendary injustice in the Hess trial and sentence is a blight upon all international law; and the political sanctions to which the tripartite Western Powers have acceded in favor of Soviet obstinacy is both shocking and fecklessly disabling to their sovereign rights in West Berlin.

Sir Winston Churchill, Britain's World War II prime minister, stated after the war: "Whatever may be the moral guilt of a German who stood near to Hitler, Hess had, in my view, atoned for this by his completely devoted and fanatic deed of lunatic benevolence. He came to us of his own free will and, though without authority, had something of the quality of an envoy. He was a medical and not a criminal case, and should be so regarded."

And so he should. But for the Spandau prisoner, the sands of time which ultimately must expurgate those inequities which profane and abuse international law, now have been reduced to a mere trickle.

The twilight of Nazism is at hand; soon darkness will forever obscure supreme illuminations of truth and justice for Rudolf Hess.

