

MY TRIAL AS A WAR CRIMINAL*

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I WAS just about to lock the door of my hotel room and go to bed when there was a knock on the door and there stood a Russian officer and a young Russian civilian. I had expected something of this sort ever since the President signed the terms of unconditional surrender and the Russians landed a token occupation force in New York. The officer handed me something that looked like a warrant and said that I was under arrest as a war criminal on the basis of my activities during the Second World War in connection with the atomic bomb. There was a car waiting outside and they told me that they were going to take me to the Brookhaven National Laboratory on Long Island. Apparently, they were rounding up all the scientists who had ever worked in the field of atomic energy.

Once we were in the car the young man introduced himself and told me that he was a physicist as well as a member of the Moscow Chapter of the Communist Party. I had never heard his name before and I was never able to remember it thereafter. He was obviously very eager to talk. He told me that he and the other Russian scientists were all exceedingly sorry that the strain of the virus which had been used had killed such a disproportionately large number of children. It was very fortunate, he said, that the first attack was limited to New Jersey and that the early cessation of hostilities made attacks of larger scope unnecessary. According to plan—so he said—stocks of this virus were merely held in reserve for an emergency. Another virus differing by five further mutational steps had been in the stage of pilot plant production, and it was this improved virus which was meant to be used in case of war. It would not affect children at all and would kill predominantly men between twenty and forty. Owing to the premature outbreak of the war, however, the Russian government found itself forced to use the stocks which it had on hand.

He said that all the scientists arrested would be given a chance to go to Russia, in which case they need not stand trial as war criminals; but that

* The editors originally requested permission to publish this article in June, 1948. The author was then reluctant to release it for publication because at that time political tensions would have made it difficult for the reader to be receptive to the particular treatment of the subject adopted in the article. With the present relaxation of these political tensions, the author has withdrawn his objection to publication.

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if I should elect to stand for trial he personally hoped that I would be exonerated and that afterwards I would be willing to collaborate with the Russians here in the United States.

He said that the Russians were very anxious to get the support of people other than the American Communists for a stable political regime in the United States which would collaborate with them. Since they now had the support of the Communists anyway, he explained, they would rather bestow their favors on those whose cooperation was not yet assured. "We shall, of course, lean on the Communists for the next few months," he said, "but, in the long run, dissatisfied elements who are used to conspiracy would not be relied on by us." "It is difficult to work with fellows who have no sense of humor," he added as an afterthought.

He told me that no scientist would be forced to go to Russia and that no one who was innocent need go there for fear of having to stand trial as a war criminal, because, he said, Russia would do everything in her power to make the trials fair and impartial. "The outcome of a bona fide trial," he added somewhat illogically, "is, of course, always something of a toss up."

He told me that he expected that Russia would, within a fortnight, change her position on the question of world government; that she would come out in favor of it, in principle, and that she would press for immediate strengthening of the United Nations. The tribunal which was being assembled to try war criminals would not be Russian-dominated, he said, but would rather be composed of representatives of all nations which were not at war with Russia.

I was surprised to hear him say that he expected Great Britain to delegate the Lord Chief Justice to sit on the tribunal, and, frankly, I did not believe him then, though, of course, this was technically not impossible since the coalition cabinet had declared Britain's neutrality twenty-four hours before the outbreak of the war. His prediction was confirmed, however, the following morning when the newspapers reported the speech of the British Prime Minister who had said that Great Britain, having participated in the Nuremberg trials, could not now refuse her participation without being guilty of displaying a double standard of morality. The information which I received from this young man proved to be most valuable to me because it gave me time to make up my mind as to what line I would want to follow.

As far as going to Russia was concerned, my mind was made up. Having been raised in Hungary, I had lived in Germany and in England before I settled in the United States, and that is as much migration as is good

for any man. Moreover, when you are above fifty you are no longer as quick at learning languages. How many years would it take me to get a sufficient command of Russian to be able to turn a phrase and to be slightly malicious without being outright offensive? No, I did not want to go to Russia.

Even less did I want to be put in the position of having favors bestowed upon me by the Russians or of having to refuse point-blank some position of importance which they might wish to offer to me. I did not want to incur the favor of the Russians, but I did not want to antagonize them either. After devoting some thought to this dilemma, I decided that the best way for me to keep out of trouble was to stick to the truth and thereby to arouse the suspicion of the Russians.

I did not have to wait long for an opportunity to implement this plan of action. The next morning at Brookhaven I was interrogated by a Russian official. In the beginning his attitude was rather benevolent. Almost the first question he asked me was why I had not worked in the field of atomic energy prior to the Third World War. When I truthfully said that I had five good and valid reasons and named them one by one, he took them down in shorthand, but the longer I talked the more incredulous he looked. It was obvious that he felt himself unable to believe what I was saying to him. Realizing that my method worked, I answered all his questions as truthfully as I possibly could and then signed the transcript at the end of the interview.

I was called back for further interrogation in the afternoon; this time it was an older Russian scientist who was known to me by name, but whom I had not previously met. He told me that he had asked to see me because he had read the transcript which I had signed in the morning. He said that the Russian scientists had followed with great interest the articles I had written before the war, and he quoted to me passages from articles entitled "Calling for a Crusade" and "Letter to Stalin" which I had published in the *Bulletin of the Atomic Scientists* in 1947. This pleased me very much. He went on to say, however, that these articles showed an almost incredible degree of naïveté and were models of un-Marxian writing. He acknowledged that they were free from any anti-Russian bias and told me that the Russian scientists had formed the opinion that I had not been working in the field of atomic energy before the Third World War because I had not wanted to make bombs that would be dropped on Russia. He said that he regretted that I had not given this as my reason, that he wanted to give me an opportunity to revise the answers which I had given, and that he was prepared to tear up my signed statement then and there,

though by doing so he would be sticking his neck out, since he would be acting against regulations.

I thanked him for his kindness and told him that I had merely told the truth which, unfortunately, was not within my power to change; and there then ensued a most interesting and protracted conversation about the intrinsic value of truth. Since what he told me was told in confidence and might get him into trouble if revealed, I do not feel free to record it here.

The war crimes trials opened about one month later at Lake Success and I was—apparently as a special favor—among the first to be tried. I was charged by the prosecutor, a Russian, first of all with having tried to induce the United States government to take up the development of atomic energy in a meeting held on October 21, 1939, i.e., at a time when the war in Europe was still an imperialist war, since Germany had not attacked Russia until 1941.

I was also charged with having contributed to the war crime of dropping an atomic bomb on Hiroshima. I thought at first that I had a good and valid defense against this latter charge, since I had warned against the military use of the bomb in the war with Japan in a memorandum which I had presented to Mr. Byrnes at Spartanburg, South Carolina, six weeks before the first bomb had been tested in New Mexico.

But unfortunately this memorandum, which Mr. Byrnes had put into a pocket of his trousers when I left him, could not be located by Counsel for the Defense either in the files of the State Department or in the possession of any of the Spartanburg cleaners who might have kept it as a souvenir. Mr. Byrnes was himself under indictment and was not called as a witness. Excerpts from the memorandum which were published in the fall of 1947 in the *Bulletin of the Atomic Scientists* were stricken from the record on the ground that the parts of this memorandum which were omitted from the publication for reasons of secrecy might have contained the opposite of what the published part of the document appeared to indicate.

Under these circumstances I had to fall back for my defense on a petition which I had circulated in the Uranium Project at the University of Chicago immediately after the testing of the bomb in New Mexico and which asked the President to withhold his approval of a military use of the bomb against the cities of Japan. The prosecutor moved, however, that this document be stricken from the record on the ground that it was not transmitted by me to the President directly, but was rather handed by me to the head of the project, who forwarded it through the Manhattan District of the War Department, headed by General Groves. The prosecutor said that I, Szilard, should have known better than to agree to such a method of transmittal.

Having rested my defense I was now free on bail. Since I was not permitted to leave Lake Success I was spending my time there listening to the trials of the statesmen and scientists. In spite of the seriousness of my own situation, I found it difficult sometimes to refrain from joining in the laughter which frequently interrupted the proceedings.

As a prelude to the Nuremberg trials, war crimes had been defined with the collaboration of the United States, represented by Justice Jackson of the United States Supreme Court. The "violations of the customs of war" had been defined as a war crime at that time. "Planning a war in violation of international agreements" had been also defined as a crime.

The first statesman to be tried on charges arising from the bombing of Hiroshima was Mr. Stimson, and he was tried on his own admission contained in an article which he had published in 1947 in *Harper's*. The prosecution pointed out that the "defense" put forward by Mr. Stimson in that article was untenable. Mr. Stimson's point was that, had the bomb not been used, millions would have perished in an invasion of Japan. The prosecutor, a Dutchman, quoted from a memorandum prepared after the surrender of Japan by the United States Strategic Bombing Survey which showed that the United States could have won the war against Japan without invasion, just by sitting tight, since Japan was essentially defeated before the bomb was dropped on Hiroshima. He further quoted passages from the book *Secret Mission*, by Ellis M. Zacharias, published in 1946, which showed that Japan's desperate position must have been known to Mr. Stimson, since it was fully disclosed in the reports prepared by the United States Naval Intelligence.

Counsel for the Defense, however, submitted a deposition obtained from the British Secretary of War in order to prove that secretaries of war never based decisions on reports prepared by the Naval Intelligence. "Mr. Stimson," so Counsel for the Defense said, "should not be reproached for acting as all Secretaries of War in all English-speaking countries have acted at all times."

The presiding judge, in summing up, disregarded the arguments presented by both the prosecution and the defense and took the line that prior to the Third World War it was not *customary* to drop atomic bombs on towns and cities, and that such a "violation of the customs of war" was a war crime which could not be justified on the ground that the government which committed it hoped that by doing so, it would bring the war to a speedier conclusion.

It was expected that Mr. Stimson would be found guilty on his own admission but that he would be reprieved primarily because of his article published in *Foreign Affairs* in 1947 in which he commented on the for-

eign policy of the Truman administration. It was generally considered that in 1947 his was a voice of reason and moderation in the midst of general confusion.

Mr. Truman was charged with the "crime" of actually ordering the bombing of Hiroshima. At first, Counsel for the Defense took the line that at the time when the definition of war crimes was made public at Nuremberg, Mr. Truman was at sea—in the literal sense of the term. He was on board a battleship on his way back from Potsdam and did not have opportunity adequately to study the text of the Nuremberg Declaration prior to the bombing of Hiroshima. This plea was rejected by the court on the ground that those who were sentenced to death and executed at Nuremberg could—if they were alive—use much the same type of argument in their defense.

Subsequently, Counsel for the Defense took the line that Mr. Truman was not guilty because he had not acted on his own but had merely followed advice given to him and that, so to speak, he had been merely following orders. In proof of this the defense read into the record a magazine article published by Garbatov in Russia in 1947 which asserted that Mr. Truman had always been taking orders from one boss or another. This article had drawn a protest from the American ambassador at the time of its publication.

Having had little luck with any of his "lines," Counsel for the Defense raised the questions why the use of an atomic bomb should be considered as a "violation of the customs of war" any more than the use of a virus that killed children. But the presiding judge ordered his remark stricken from the record, saying that this was the trial of Harry S. Truman and not of Somebody Else and that since Mr. Truman was not accused of having ordered the use of a virus in warfare, nothing relating to any virus could possibly be relevant to his defense.

It was generally expected that Mr. Truman would be found guilty but it was rumored that there were powerful Russian influences at work to have him reprieved. There were all sorts of guesses as to what the reasons of the Russians may have been, and some thought that they favored Mr. Truman on account of his supposed Wall Street connections, since the Russians were known to nurture a secret admiration for Wall Street. I, myself, believe that the reason of the Russians may have been political and rather difficult to guess in detail without knowing on which of their misconceptions it was based.

The next to be tried was Mr. Byrnes, who was not only accused of being responsible for the decision of using the atomic bomb against Japan, but,

above all, was accused of having advocated a war against Russia "in violation of international agreements" in his book *Speaking Frankly*, which appeared in 1947. The British prosecutor quoted from page 203 of the first edition:

... I do not believe the Red Army would try to hold permanently all of Eastern Germany. However, if I misjudge them, and they do go to the point of holding Eastern Germany and vetoing a Security Council Directive to withdraw occupation forces, we must be prepared to assume the obligation that then clearly will be ours. If our action is to be effective, we must be clear in our minds and must make it clear to all that we are willing to adopt these *measures of last resort* if, for the peace of the world, we are forced to do so.

On this passage Mr. Byrnes was most severely cross-examined by the prosecutor. He was asked whether he was aware of the fact that the United States ratified the Charter of the United Nations at the time when Mr. Byrnes himself was Secretary of State. He was asked whether he was aware of the fact that by doing so the United States undertook the solemn obligation of refraining from war and that, under Article 51 of the Charter, the United States merely retained the right of waging war in case of an *armed attack*. He was asked whether the mere refusal of Russia to leave the territories which she had occupied after the Second World War could be construed as an armed attack. He was asked whether he could suggest any way of interpreting what he had been saying on page 203 of his book other than as advocating that the United States ought to violate her solemn obligation under the Charter and wage an illegal war against Russia in case Russia should refuse to settle on the terms set by the United States government.

Counsel for the Defense replied that he wished to elucidate the meaning of the passage "measures of last resort" quoted by the prosecutor from Mr. Byrnes' book. At a press conference following shortly the publication of his book, Mr. Byrnes himself, had explained this passage—so Counsel for the Defense said. "There is no suggestion as to whether such collective action should be persuasion, economic, or military action," Counsel quoted. "Clearly," Counsel said, raising his voice a little, "if Mr. Byrnes had had *military action* in mind, he would have spoken of *measures of very last resort* and not merely of *measures of last resort*." "British statesmen," he said, looking sharply at the prosecutor, "may indulge in understatements, but that is no reason for accusing my client of one."

The prosecutor replied that Mr. Byrnes had condemned himself by the very words quoted by the defense, for by virtue of those words Mr. Byrnes had admitted that the term "measures of last resort" meant either persuasion *or* military action. "I am not conversant with American law,"

he said, "but surely in England a man who publicly proclaims that he is going to get hold of something that is in the possession of his neighbor either by persuasion *or* by pulling a gun on him is persuaded to go to jail."

At this point, Counsel for the Defense submitted evidence to show that, two weeks before the outbreak of the Third World War, Mr. Byrnes had sent a memorandum to the President of the United States warning against any aggressive act on the part of the United States Armed Forces that would result in war. The prosecutor's motion that this memorandum be ruled out as evidence was upheld by the presiding judge on the ground that if inconsistency were admissible as a defense at the trial of a statesman, then no statesman could ever be convicted as a war criminal and the statesmen would enjoy an immunity not shared by the other defendants.

All of us who attended his trial were unanimous in our praise of Mr. Byrnes for the patience and firmness he displayed. Of course, if sentence had been passed and executed, he would have lost his life; but as is generally known, no sentence was ever passed on Mr. Byrnes or any of the rest of us. The first Russian appeal for help reached the United States Public Health Service one week after Mr. Byrnes rested his defense.

Just what happened will never be known with certainty. This much is clear, that the vast quantities of vaccine which the Russians held in readiness to safeguard their own population against the virus were absolutely without any effect. In the laboratory tests such vaccine had proved to be 100 per cent effective; something must have gone wrong in the change-over from pilot plant operation to mass production, and *someone* must have forgotten to check the product for its effectiveness. Since the engineer in charge of the production plant at Omsk perished in the disorders which broke out after over half of the children of the town had died, and since all records of the production plants were destroyed in the fire, we shall never know just what had gone wrong.

The terms of the post-war settlement which had been reached within two weeks of the Omsk riots were in every respect very favorable to the United States and also put an end to all war crime trials. Naturally, all of us who had been on trial for our lives were greatly relieved.