

## THE EICHMANN TRIAL

The trial of Adolf Eichmann, held in Jerusalem in 1961 and 1962, riveted the attention of the Israeli public and aroused great interest the world over. This was the first time that the Holocaust was presented to a competent judicial body in full detail, in all its stages and from all its aspects. Journalists from many countries converged upon Jerusalem to cover the trial, and international public opinion followed its course with concentration; the trial gave rise to discussions on a great variety of subjects, on the legal, social, educational, psychological, religious, and political levels.

In May 1960 Eichmann was kidnapped in Argentina by Israeli agents, taken to Israel, and handed over to the Israeli police. On May 23, 1960, the Prime Minister of Israel, David Ben-Gurion, announced in the Knesset (the Israeli parliament): "Adolf Eichmann .-. is under arrest in Israel and will shortly be put on trial." A magistrate issued an order for Eichmann's arrest and remanded him for trial, the order being renewed from time to time. The police investigation was put into the hands of a special unit established for this purpose (Bureau 06), which took nine months to complete its task.

When the investigation was completed, on February 21, 1961, the attorney general, Gideon Hausner, signed the bill of indictment against Eichmann and submitted it to the district court in Jerusalem (which marked it Criminal File 40/61). The indictment consisted of fifteen counts of "crimes against the Jewish people," "crimes against humanity," "war crimes," and "membership in a hostile organization" - that is, the SS, SD (Sicherheitsdienst; Security Service), and Gestapo, all three of which had been declared "criminal organizations" by the International Military Tribunal at the Nuremberg Trial, in a judgment rendered on October 1, 1946.

The crimes against the Jewish people with which the accused was charged consisted of all aspects of the persecution of millions of Jews, including their arrest and imprisonment in concentration camps, their deportation to extermination camps, their murder, and the theft of their property. The charges did not, however, confine themselves to Eichmann's participation in crimes against the Jewish people; they also included crimes against other peoples, such as the mass expulsions of Poles and Slovenes; the seizure, deportation to extermination camps, and murder of tens of thousands of gypsies; and the deportation and murder of some one hundred children from the village of Lidice in Czechoslovakia, in revenge for the killing of

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Reinhard Heydrich. All the counts related to offenses under the Nazis and Nazi Collaborators (Punishment) Law 5710-1950.

The trial, conducted by the District Court in Jerusalem, began on April 10, 1961. It took place in a Jerusalem community center that had been adapted for this special purpose. The court consisted of Supreme Court justice Moshe Landau (who presided), Jerusalem District Court president Benjamin Halevi, and Tel Aviv District Court judge Yitzhak Raveh.

The public prosecution was represented by a team headed by Attorney General Hausner, and the defense team was headed by Dr. Robert Servatius, a German lawyer who had served as attorney for the defense of several of the accused in the Nuremberg trials of major war criminals.

When the trial began, the defense lawyer raised several preliminary arguments, questioning the court's competence to try his client for the charges contained in the bill of indictment. His major arguments were: (1) there was reason to doubt whether the three judges, who were Jews and citizens of the state of Israel, were able to give the accused a fair trial; (2) the trial must not be held, because the accused had been kidnapped from his place of residence in Argentina and illegally taken to Israel; (3) the Nazis and Nazi Collaborators Law 5710-1950 was a post factum law and therefore wrong and unjust; and (4) the offenses listed in the bill of indictment had been committed outside the borders of the state of Israel and before the state's establishment.

All these arguments were rejected by the court. On the contention that the judges might lack objectivity, the court stated: "When a judge sits on a bench, he does not cease to be flesh and blood with human emotions; but he is bidden by law to overcome these emotions. If this were not so, no judge would ever be qualified to sit in judgment in a criminal case evoking strong disgust, such as a case of treason or murder or some other heinous offense."

Concerning the principle that no criminal laws should be passed that were of retroactive validity, the court stated that the principle was not legally binding; it was rather a principle of justice, since the natural sense of justice is generally outraged by a person's being punished for a deed that was not illegal at the time it was committed. The situation with regard to the offenses that were being charged in this case, however, was quite different: the Nazis and Nazi Collaborators Law (like similar laws enacted by various countries after the war) did not introduce new legal norms; all it did was to make it possible to bring persons to trial for

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committing offenses that were known to be against the law at the time they were committed, in every place in the world, including Germany – the illegality of which these persons were well aware. Owing to the illegal regime that was in power in Nazi Germany, the perpetrators of these crimes were not punished for them at the time; but it was precisely the sense of natural justice that called for the establishment of a forum where the persons suspected of these crimes could be brought to trial.

With regard to the argument concerning Eichmann's kidnapping in Argentina and the manner in which he was brought to Israel against his will, the court, quoting precedents of United States and British courts, found that jurisdiction to try an accused person depends only on the essence of the criminal law cited in the bill of indictment and its applicability to the offenses with which the accused is charged; a court is not entitled to examine in what manner an accused was brought into the sovereign territory of the state in which he is to stand trial.

The court further found that the date on which the state of Israel was established was of no relevance to the court's competence to try Eichmann; moreover, the plan for the destruction of the Jewish people was also meant to include Jews who at the time of World War II were residents of Palestine. Undoubtedly, there was a strong connection between the existence of the state of Israel and the objective of ensuring that persons who committed "crimes against the Jewish people" be brought to trial for those offenses.

After the court's rejection of the preliminary arguments, the accused was ordered to state how he pleaded on the counts as enumerated in the indictment. Eichmann's answer, on each count, was: "In the sense of the indictment, not guilty."

This was followed by the body of evidence being presented to the court. By means of more than one hundred witnesses and some sixteen hundred documents - many of them bearing Eichmann's own signature - the prosecution presented to the court the full account of all the events related to the Holocaust of European Jewry, or the "final solution of the Jewish question," as the Nazis called it. In great detail the prosecution furnished the court with proof of the persecution of the Jews in all its stages: the anti-Jewish legislation; the incitement among the general population of hostility to the Jewish minority; the plunder of Jewish property; and, worst of all, the searching out of the Jews in every European country under German occupation and in the satellite states, their imprisonment, under inhuman conditions, in ghettos and concentration camps, where they were harassed and humiliated, and, finally, their systematic mass murder, with the aim of completely destroying the Jewish people. The

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prosecution demonstrated what had happened to the Jews of Europe, country by country and camp by camp; it proved the personal involvement of Eichmann, as the head of section IV B 4 (the Gestapo section for Jewish affairs), in every stage of the heinous operation, and that, in fact, Eichmann was in charge of all the steps taken to implement the plan for the "Final Solution."

The defense did not really question the facts related to these events, or challenge the authenticity of the documents proving Eichmann's involvement in the crimes. The systematic defense line was to play down Eichmann's role in the whole process by depicting him as a small cog in the machinery of murder, an underling who had no choice but to carry out the orders he was given by his superiors. The court rejected this claim. The trial proved that mentally and emotionally, Eichmann fully identified with his task; indeed, the evidence presented to the court - which included official documents from German sources - showed that in the final stages of the war, Eichmann's desire to come as close as possible to the complete and total destruction of the Jews became an obsession. This was demonstrated with particular force in Hungary, where Eichmann was sent by Heinrich Himmler in 1944 to take personal charge of the deportation of that country's Jews to the extermination camps in Poland.

The court also found that the claim made by the defense that Eichmann was only acting under orders was of no avail to him, from the legal standpoint; this claim was also disproved in fact, as the court was persuaded that Eichmann had done everything in his power to interpret and implement the orders he received in as extreme and harsh a manner as possible. Accordingly, the court found Eichmann guilty on all counts (with some unimportant changes) and, on December 15, 1961, sentenced him to death.

Eichmann lodged an appeal against the verdict that was heard by the Supreme Court sitting as a panel of five justices, with the president of the Supreme Court, Justice Yitzhak Olshan, presiding. On May 29, 1962, the Supreme Court announced its rejection of the appeal and confirmed the judgment of the lower court. Following the denial by the president of Israel, Itzhak Ben-Zvi, of Eichmann's request for clemency, Eichmann was executed by hanging at midnight between May 31 and June 1, 1962. It was the only instance in the annals of the state of Israel of a death sentence being carried out. Eichmann's body was cremated and the ashes scattered over the sea, beyond Israel's territorial waters.

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In general, the trial was well received around the world and seen as the embodiment of historical justice. It also had various positive side effects. The citizens of Israel, particularly the youth, learned for the first time, from the mouths of numerous witnesses, how the brutal and inhuman methods employed by the Nazis made it possible for millions of people to be exterminated without having any chance of offering effective resistance, and they came to understand that there was no reason for this phenomenon to arouse in themselves feelings of guilt and inferiority. On the other hand, the heroism displayed by the Jews during the Warsaw Ghetto Uprising and in other revolts evoked their admiration and pride.

The Eichmann trial also led to increased interest in Holocaust research and to a chain reaction in the investigation and trial of Nazi war criminals. In Germany particularly, the investigation of charges of complicity in Nazi crimes was intensified, and many of the trials that were subsequently held in Germany against Nazi criminals can be traced to the Eichmann trial and the shock it had upon the German people.