

'America on Trial'

A Ruling on War Crimes

London

Three eminent international jurists ruled yesterday that, despite individual acts of atrocity in Vietnam, a general charge of war crimes could not be made against the United States.

Nor, they said, could an American President be held responsible for the actions of soldiers in the Vietnam war.

The rulings were made by British, West German and American legal experts at the end of a two-hour television program, "America on Trial," screened by the British Broadcasting Corp. The program is to be shown tonight on the National Educational Television network in the United States.

The three jurists are Elihu Lauterpacht, Queen's counsel and professor of international law at Cambridge University; Dr. Seidl Hohenveltern, professor of international law at Cologne University, and Philip C. Jessup, former American judge of the International Court of Justice at The Hague.

INVOLVEMENT

They agreed they could give no finding on the wider issue of whether the American involvement in Vietnam "is an illegal war" of aggression.

The "trial" was conducted and taped by the BBC via international satellite with testimony given by lawyers, historians, newsmen, a U.S. Marine general and a former marine convicted of slaying 12 Vietnamese civilians.

Telford Taylor, chief U.S. prosecutor at the Nuremberg trials after World War II and now professor of law at Columbia University, and Sir Elwyn Jones, British prosecutor at Nuremberg and attorney general in the last Labor government, led the prosecution against the United States.

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Defending America's action were Adrian Fisher, adviser to the American judges at Nuremberg and now dean of Georgetown University's law school; Robert E. Jordan, until a month ago the U.S. Army's general counsel, and John Roche, a close personal adviser of former President Johnson.

WITNESS

Witnesses included John F. Kerry, a former Navy officer in Vietnam and a leader of anti-war veterans, retired Lieutenant General Victor H. Krulak, who was marine commander in the Pacific; Sir Robert Thompson, a British expert on guerrilla warfare and special adviser to President Nixon; Peter Arnett, Associated Press correspondent in Vietnam and Pulitzer Prize winner; Robert MacCrate, a civilian lawyer who investigated the My Lai atrocities for the Pentagon, and Frank Reel, defense attorney for Japanese General Tomoyuki Yamashita who was convicted and hanged for atrocities committed by his troops in the Philippines in World War II.

Lauterpacht said it was wrong to draw a blanket accusation against the United States on the basis of individual actions.

On the issue of the responsibility of American military and political leaders for individual violations of international law, Lauterpacht found that "the superior is only liable if he actually ordered the offense or if he

knew of the offense or had a reasonable basis for knowing of the offense and did nothing about it."

QUESTION

He added: "But we are still left with the question which I think is unanswerable at the present time as to the responsibility of the American political leaders for the war in Vietnam—the

question of whether the war in Vietnam is an illegal war. If it is an illegal war, they are liable."

Even the prosecution had admitted that it was impossible to judge this question on the basis of present knowledge, Lauterpacht said.

Hohenveltern concurred and on the question of the responsibility of higher com-

manders said, "I do not think that wanton disregard of life, and the rules of warfare can be proved against higher commanders."

He said he believed American justice in the case of Yamashita had been "overstrict in trying to impose too heavy a duty on the commander in the field."

Jessup, who concluded the program, said, "we cannot find here any conspiracy to wage aggressive war in any terms comparable to those of Hitler's war."

Discussing air raids, Jessup said: "Some killing from the air may be illegal, but the mere fact that there has been bombardment of towns does not constitute a crime. Personally I cannot escape the conclusion that there have been crimes, even though some of them may have been contrary to orders."

Arnett said he believed that much of the problem in Vietnam had arisen because of the high regard for American life. He said that in some cases U.S. commanders would not send in a patrol to investigate a village from which a sniper had fired, but simply ordered the village blasted by artillery fire or aerial bombardment rather than risk an American life.

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