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FOREWORD

This Volume contains in addition to a number of separate minor trials two trials of fundamental importance, examining with particular reference to Poland two great principles of the law of War Crimes : (1) the crime of genocide as it has been called, (2) the liability of parties to criminal organisations.

The word "genocide" has been much criticised by etymologists, for reasons which may be regarded, even if not inaccurate, as being pedantic. Genocide as used in this context means, to quote from the Indictment in the Nuremberg trial, a systematic programme aimed at the destruction of foreign nations or ethnic groups ("foreign" that is from the Nazi point of view) in part by elimination or suppression of national characteristics. The effect of the word as used in this connection was also defined, in the judgment of the Nuremberg Military Tribunal (Subsequent Proceedings) included in this volume, as a programme concerned and implemented "for one primary purpose . . . which might be summed up in one phrase : the twofold objective of weakening and eventually destroying other nations (*i.e.*, than Germany) while at the same time strengthening Germany, territorially and biologically at the expense of conquered nations."

The word itself is one of a great number of similar compounds in which the second portion "cide" is a Latin root from "caedo" ("I kill"), while the former part describes the particular object of the slaughter. As a few instances, one may take homicide, germicide, regicide, suicide, tyrannicide. As "cide" derives from a Latin root, so also should the first syllable be of Latin origin. But anomalous formations are not uncommon, as for instance suicide is anomalous, and tyrannicide may be from the original Greek word. In other contexts many hybrid formations can be found, *e.g.*, sociology. There are a great number of such words formed with "cide." Genocide is said to be derived from the Greek *γένος*, or rather the root *gen* : this root is also found in Latin in *genus* and *gens*. The connective article before "cide" is generally perhaps "i" not "o." But all this is pedantry. The idea has become of great importance in international law. It has been discussed in the United Nations (General Assembly of 11th December, 1946) which has prepared and adopted a definition which covers practically the entire field of the crimes tried in these cases, in particular abortions, punishments for sexual intercourse, preventing marriages and hampering reproduction, and measures taken for forced germanization including the kidnapping or taking away of children and infants, the deportation and resettlement of populations and the persecution of Jews. The draft Convention also included the more obvious methods of killing which would be

used (and were used in Poland) in order to destroy the Polish nation. The whole scheme as put into effect in Poland is too complex and many-sided to be capable of useful summary in this Foreword. The general character is fully illustrated in the text of this volume both in the judgment of the U.S. Military Tribunal (Subsequent Proceedings) and in the judgment of the Polish Supreme National Tribunal. In the indictment in both these cases the word genocide or genocidal is used though it does not appear in either judgment exactly as it appears in the indictment in the International Military Tribunal (I.M.T.) The Resolutions on the point and other proceedings before the United Nations will be found in detail in the Notes to the Case on pages 36-42 of this volume, where also will be found an instructive study of the concept.

It is interesting that there should be two judgments reported together in reference to this crime in Poland where perhaps it figured more largely and shockingly than in any other occupied territory. It is an accident that they should both be available. The trial in Poland was before the Supreme National Tribunal of Poland, the Constitution, jurisdiction and procedure of which were explained by Dr. Litawski on pages 82-97 of Volume VII of this series of Reports. The proceedings were, as was natural, in Polish. When final arrangements were being made for winding up the United Nations War Crimes Commission, the Polish representative, Colonel Muszkat, asked that at least three Polish reports should be included. The case which appears is one of those selected, the other two having been included in Volume VII. It has been reported by Dr. Litawski who did or supervised the necessary translation. It is hoped to include yet another Polish case. It is very helpful towards understanding the similarity and difference between a case tried before the Nuremberg Court and one tried before a Polish Court. In particular the latter trial will illustrate the dovetailing together of the National Code and the International law of war, and to observe what additions or modifications are necessary to effect the dovetailing. It may be noted that the most important cases of war crimes (killing, pillage and, in general, crimes against humanity) are specifically covered by the National Law, which only needs to be supplemented when that is necessary to give the defendant the opportunity of availing himself of the specific defences available under the law of war. On the other hand, many aspects of genocide, a category which in part overlaps with war crimes and crimes against humanity, and in part is different in scope and detail, can only sufficiently be dealt with by particular *ad hoc* amendments or extensions of the national law.

If I were to compare the two reports which in a sense cover the same ground, though the positions and personalities of the accused are different, I should be disposed to say that the Subsequent Proceedings judgment was

more analytical and so were the proceedings throughout. But I do not find any radical difference in the exposition and application of the Law and in each there is a most painstaking care and impartiality, as might be expected from the high attainments of all the judges concerned and the high legal traditions of the two countries to which they respectively belong. The latter report includes a valuable treatment of the liability of criminal organisations.

As I have already said, I do not think I can do better than to refer the reader to a careful study of the two Reports. The distinction between the Government General and the "annexed" territory which the Germans attempted to make raises no novel point.

The remaining Reports included in this volume are important in their different ways. One may call for particular note, that of Max Schmid who was charged with and found guilty of offences against the dead, the maltreatment of an unknown dead member of the United States Army. He was a medical officer in the German army. In effect he kept a head as souvenir which he had severed from a dead United States soldier. He was found guilty and sentenced to 10 years' imprisonment. The Geneva Convention and the United States Manual contain stringent provisions to that effect. The notes to the present report refer to other cases of the sort during the war in which the accused were Japanese military persons and in some of which the criminality was complicated by charges of cannibalism by the Japanese in the Far East. Customary international law has for centuries held that the maltreatment of dead belligerents is a serious offence. In the Weiss case self-defence was held to be an effective defence to a charge of killing a captured airman. Enforced prostitution of Dutch women in Batavia was held to be a war crime in the trial of Washio Awochi. The other cases reported in the volume will all repay careful reading because each in its way embodies important variants of well-known rules.

Dr. Litawski has prepared the Polish trial reported in this volume, while the rest of the reports contained herein are the work of Dr. Zivkovic with the exception of that on the trial of Max Schmid which was contributed by Mr. Stewart. Mr. Brand, whose main energies are now devoted to the writing of a general analysis of the decisions reported or cited in this series which will appear in Volume XV, has not contributed any separate reports to the present volume, but has performed as usual the selective, supervisory and technical work incidental to his position as Editor.

WRIGHT.

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