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FOREWORD

In the last preceding volume of these Reports, cases were included which discussed in what circumstances the denial of a fair trial constituted a substantive war crime of which members of the enemy forces of occupation could be held to be guilty. The first of the cases reported in this volume deals with kindred topics, but on a wider basis which goes a long way beyond the denial of a fair trial in any of the various ways in which that failure of justice may be manifested in individual cases. The scope of the issue can be best illustrated by a quotation from the Judgment of the Tribunal now reported, where it says: "No defendant is specifically charged in the indictment with the murder or abuse of any particular person. If he were, the indictment would no doubt have named the alleged victim. Simple murder and isolated instances of atrocities do not constitute the gravamen of the charge. Defendants are charged with crimes of such immensity that mere specific instances of criminality appear insignificant by comparison. The charge in brief is that of conscious participation in a nation-wide, governmentally organised system of cruelty and injustice in violation of the laws of war and humanity, and perpetrated by the authority of the Ministry of Justice and through the instrumentality of the courts. The dagger of the assassin was concealed beneath the robe of the jurist. The record is replete with evidence of specific criminal acts, but they are not the crimes charged in the indictment. They constitute evidence of the intentional participation of the defendants and serve as illustrations of the nature and effect of the greater crimes charged in the indictment". The persons charged, while they do not reach the status of the heads of the State who were tried by the International Military Court (which I shall describe as the I.M.T.) as "major criminals", were still persons in such positions of far-reaching power, both in the geographical area over which their influence extended and in the importance of the effects of their action, that they were more nearly akin to the "major criminals" than to actual perpetrators such as individual judges, prosecutors or legal officials who would generally be charged with individual crimes like the denial of a fair trial. It was therefore proper that these proceedings should take place in one of the Courts established in Nuremberg after, and at the suggestion of, the Judgment of the I.M.T. These Courts conducted what have been called the "Subsequent Proceedings" in which the prosecution was organised and conducted on behalf of the United States under General Telford Taylor. When I write these words, about the middle of August, 1948, all the trials which it is now contemplated to hold in this category have been concluded, except two. It is hoped, so far as time and space allow, to include Reports of the greater number of

these trials in this series. The trials and therefore the Reports of them will be of remarkable value towards the understanding of the full effect of the I.M.T's Judgment, and also for achieving the two main purposes which these trials and the Reports have in mind—the recording in sworn testimony of the relevant history of the events, and the development of the law and jurisprudence relating to war crimes and also to the kindred category crimes against humanity. It will be impossible in the future to neglect the study of the material relating to this vital branch of international law.

The system of Courts in which the Subsequent Proceedings were tried sat at Nuremberg. They were organised under Control Council Law No. 10 and Military Government Ordinance No. 7. They were International Courts; their jurisdiction was determined by their constituent laws, which incorporated the principles of the London Charter. They had a wider jurisdiction than the British Military Courts, in particular because their jurisdiction included crimes against humanity which the British military Courts did not; and not unnaturally their jurisdiction differed in various respects from that exercised by most of the Allied National Courts which tried war crimes, details of which will be found in these Reports. From the standpoint of the reporter, this Trial and its fellows have the great merit that the Court in each case delivers a reasoned judgment both on fact and law. In view of the careful and illuminating analysis of the facts and of the principles of law involved, which has been prepared by Mr. Brand, I have no intention here of repeating what he has done.

I shall only attempt here some very general remarks which I make merely to note how the particular war crimes and crimes against humanity discussed in the Judgment and in the Report show the development of this branch of international law consequent on the war of 1939-1945. What the Nazis called law and justice was no more than a description of one of their methods of exercising terrorism or domination. It was indeed the negation of law and justice and everything which goes with those words. It may be asked why they thought it necessary to cover their deeds with so tenuous and transparent a veil of legality or formalism, if indeed any pretence even of that was left in the "Nacht und Nebel" scheme. But generally the decrees which were drafted by the defendants in the case and by others, and on which the courts and judges were to act, had no vestige of legality in the true sense. All was arbitrary, nothing in any way resembling impartial justice. The judge was to do what he thought would, in the circumstances, be the will of the Führer. It is true that the Imperial Roman and Byzantine lawyers, corrupted by the loss of the idea of freedom, coined the maxim *quod placuit principi, legis habet vigorem*, but they did have and act upon highly civilized codes. They did not throw everything both civil and criminal into a blind arbitrary despotism. Perhaps the same feeling as was embodied in the

dictum that hypocrisy is the tribute which vice pays to virtue influenced the Nazis and perhaps the subservient people were at least a little mesmerised by the sacred name of law. In any case the defendants who have been convicted illustrate by their deeds the atrociousness of the crimes of which they have been found guilty.

The Norwegian case, a Report of which is included in this volume, is an interesting decision of the Courts of Norway. The Report has been prepared by Mr. Aars Rynning who was a member of the Legal Publications Committee until the Commission, and with it the Committee, was dissolved. Now I, who was only an ex-officio member of that Committee, am left to fulfil or neglect the duties of supervising Mr. Brand's labours, which he performs so admirably and with so little need of supervision.

WRIGHT

London, *August*, 1948.