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Otto Kranzbuhler

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NUREMBERG EIGHTEEN YEARS AFTERWARDS

OTTO KRANZBUHLER*

AFTER my learned friends, Professor Herbert Krauss and Professor Carl Haensel, have presented their thoughts on the Nuremberg trials in the previous issue of this Review, it will be difficult for me to be heard on the same topic without boring or shocking my readers. In order to avoid both, I should like to begin by saying that my approach is different in several respects, maybe because my personal position was, and is, completely different.

Until the end of the war, I was a naval career officer in the Judge Advocate's branch and, as Fleet Judge-Advocate, was vested with a rather high rank. Through the agency of the British Royal Navy, I was called to Nuremberg in October, 1945, to act as defense counsel for the last German head of state, Grand-Admiral Dönitz. After having defended Dönitz before the International Military Tribunal, which lasted until November, 1946, I acted as defense counsel in the trials of the big industrialists, *i.e.* Friedrich Flick and Alfried Krupp, before the American courts in Nuremberg, and defended the Saar industrialist, Hermann Röchling, before a similarly constituted French court in Rastatt. After that period, which lasted until 1949, I was concerned as a corporation lawyer with the consequences of these penal proceedings on the German enterprises affected thereby, particularly with problems of confiscation of private property and of decartellization. The tasks connected therewith were, and continue to be even today, of a political rather than a legal character.

If today, twenty years after the war, I am to express my opinion about the merits, or lack of merit, of the Nuremberg trials, I do so at a time when the effects of Nuremberg are still felt, in spite of the time which has elapsed.

By Nuremberg trials, I mean the big, so-called international trial, from 1945 to 1946 before the International Military Tribunal, of leading political and military men of the National Socialist regime, proceedings where the four Occupying Powers participated both on

* MR. KRANZBUHLER was Chief Counsel for Grand Admiral Karl Dönitz, Commander-in-Chief of the German Navy and last Führer of Germany, at the Nuremberg International War Crimes Trial, and is currently a practicing attorney of Düsseldorf, Germany.

the bench and in the prosecution. Furthermore, I mean by this term the twelve subsequent purely American trials. Of these trials, three were directed against the sphere of activities of the SS—the cases of the “Special Commandos” (*Einsatzgruppen*), the Chief Office for Racial and Settlement Policies (*Rasse- und Siedlungspolitisches Hauptamt*), and the *Pohl* case which dealt with the administration of concentration camps—three were concerned with the military sphere, which included the cases of Field-Marshal Milch, the South-Eastern Generals, and the German Supreme Command of the Armed Forces (OKW)—and three were concerned with the industrial sphere, Flick, I. G. Farben, and Krupp. In addition, there was one trial of jurists, one trial of medical doctors and the last trial, referred to in the jargon of Nuremberg as the “omnibus case,” against all those whom the prosecution had been unable to accommodate before—the most important group being six diplomats headed by State Secretary von Weizsäcker.

I think it is necessary to consider these trials together because they are based on a common idea of the American prosecution. As may be seen from the way the groups of the accused are combined, the idea was not to try criminals for crimes allegedly committed by them, but to prove by means of judicial proceedings that members of all the higher strata, regardless of whether they had directly participated or not, were responsible for everything which Hitler and his aiders and abettors had thought up and carried out. Thus they were political trials, or one might use the term “historical trials,” in which one political system, namely the democratic one, held court over another system, that is, the dictatorial one. That the delegates of Stalin sat on the democratic bench of the International Military Tribunal was just one of its defects which prompted criticism. The trials being organized in this manner, any consideration analyzing their substance cannot be limited to the legal aspect, it must include the political aspect.

The question may be raised as to whether a period immediately following an embittered war could contain the necessary conditions for the spiritual controversy which any historical trial constitutes. This question I wish to answer in the affirmative with due regard to the situation as it existed in Germany at the time. The conviction that a wrong committed required some sort of expiation, some sort of analysis and discussion, existed not only on the side of the victors or on the part of the neutrals, but also in, or at least gradually began to dawn upon, the German nation. Thus I believe that the conditions for

discussion, argument and analysis, and thus for a historical trial, were most favorable during the years 1945 to 1948 and that, consequently, if a trial of such a nature can make sense at all and be justified, optimum results ought to have been achieved.

In assessing the merits of the Nuremberg trials, I should like to combine juridical analysis with consideration of legal policy. It may appear somewhat peculiar to submit a trial to the requirements of legal policy and to a test according to the criterion of legal policy; but the judges at the Nuremberg trials never left any doubt, and it clearly appears from the history of the origins of the Nuremberg trials that they did not intend to administer existing law in the sense we are used to it, or as we would expect from our national administration of criminal justice.

This was expressed very clearly by the judges in the Weizsäcker case. They stated in their judgment that they considered it to be the task of the court to find standards of conduct for the citizens, officials and civil servants of a state which they would have to comply with in the future, in all situations where the law of nations was applicable and in a position to lay down rules of conduct for an individual. Thus, it was their intention to lay down a sort of categorical imperative for the political conduct of the individual in international affairs. This intention has not remained unopposed. In the same Weizsäcker case, Judge Powers wrote a dissenting opinion protesting violently against this usurpation of functions. But the discussion that took place during that trial, and that has come to the notice of the public, shows that the judges were clearly aware of the importance of the proceedings and of their decisions.

For yet another reason, one should combine the juridical with the legal policy consideration; Nuremberg was conceived, and can only be understood as, a revolutionary event in the development of international law. If one were to tackle the criticism of the venture with the idea that no *ex post facto* laws may be applied, or similar conservative conceptions, one need not speak about Nuremberg at all. Law in the conventional sense of the term had been knowingly disregarded at Nuremberg. One was fully aware that a step forward was being ventured. Mr. Robert Jackson, the American chief prosecutor, stated repeatedly, and in a very dramatic way, particularly in connection with the greatly contested concept of a Crime against Peace, that a beginning must be made at some time and peace-breakers

must be punished in order to free humanity from the scourge of war. This step was thus taken consciously, and it would be senseless to apply tests and standards other than those which may be applied to revolutionary events. Such events are always connected with a certain measure of injustice and a certain measure of force, and thus they have to be judged by their results for humanity. Accordingly, if I go back to the rules, doctrines or practices of international law that exist—or rather existed up to Nuremberg—my intention is not to brand as an injustice everything that is not in accordance therewith, but merely to clarify the direction and aim of the development initiated at Nuremberg and to raise a question as to whether the development has actually proceeded in the desired direction. The value or lack of value of those trials must in my opinion be judged as to whether the findings of these courts are suitable to constitute effective precedents in the future, whether they are suitable to be generally accepted as binding and whether, in actual fact, they have been or will be so accepted.

From the outset the trials were burdened by the manner in which they came into existence. It might be imagined that an independent tribunal composed of well-known members of the legal profession and experts in international law would have developed with greater success and with greater authority new principles of international law, including even revolutionary principles, than was possible at Nuremberg in view of the history of its origin.

I would consider the Anglo-American procedure as such, particularly suitable for a political criminal trial, subject to one requirement—equality of arms between the two parties. That was not the case at Nuremberg. The prosecution, through a multitude of investigators, had searched all the German archives, which had been confiscated, in order to find material in support of the prosecution's case. And the defense counsel had to live on what was left over, so to speak, from the documents which the prosecutor had introduced into evidence against the defendants. For the defense counsel, access to the archives was barred. Thus, they were unable to make the investigations, always necessary for the defense, but particularly necessary in an historical trial. It is easily recognized what this means whenever judging particular sets of facts in the fields of foreign policy or strategy. A further deficiency was that the defense was restricted to using purely German material; and this was a matter of grave importance in an

historical trial. It was the ambition of the prosecution to dispose of the Nazi war criminals on the basis of their own documents, and that meant that foreign archives remained strictly barred. The picture unfolded to the court was thus one-sided and incomplete. As an example, I merely wish to refer to the German-Soviet Treaty of August 23, 1939, the political basis of the occupation of Poland, which was not submitted to the court. Its existence was proved to the court by many detours through affidavits, subject to continued objections on the part of the Russian prosecution. This is one small instance, indicating the historical imperfection and thus the deficiency in fact-finding which appears in a trial of this kind.

The rules that were applied in this trial were not, as is generally assumed, rules of international law. The law of nations, at Nuremberg, was applicable only secondarily. This the judges knew very well, and it appeared to restrict some of them. Primarily, the laws created for the purpose of the Nuremberg Trial were as follows: the London Charter, which was based on discussions between the four occupying powers in July and August, 1945, and which was applicable to the International Military Tribunal; and Law No. 10 of the Control Council which reshaped the rules of the London Charter into German occupation law, with some changes, and which applied to the succeeding American war crime trials. The London Charter was created in a manner which was not calculated to increase the authority of the legislator or the judge. We know about it from the very extensive report submitted by American Chief Prosecutor Jackson to the President of the United States.

No attempt was made to come to a really thorough understanding of what was defensible under international law. The Charter obviously was merely intended to bring certain defendants to prosecution and conviction. As an instance I refer to the discussion aimed at introducing the American concept of conspiracy, *i.e.* a common plan or design to commit criminal acts. The Continental participants at the conference had considerable doubts about including this concept, which was unknown to them, in the rules of the London Charter. But when the argument was brought forward that without this concept a man such as Schacht could not be convicted, this was accepted as a sufficient basis for including conspiracy in the London Charter.

In connection with the origin of the Charter, another phenomenon must be considered that greatly weakens the authority of this admin-

istration of justice. Since the French Revolution it has been considered a basic requirement of true administration of justice that the separation of powers is strictly observed in legal proceedings. In Nuremberg, in the International Military Tribunal, it appeared that two of the legislators of the London Charter, that is the American, Jackson, and a Britisher, Sir David Maxwell Fyffe, acted as chief prosecutors, thus as part of the executive power, while two other legislators of the London Charter, a Frenchman, Falco, and a Russian, Nikichenkow, reappeared at Nuremberg in the capacity of judges. By this personal overlapping, the doctrine of separation of powers was grossly neglected and thus the authority of the administration of justice greatly impaired from the very outset.

Dealing with the contribution of the Nuremberg trials to substantive law, I should like to start with the classic concept of a war crime in order to emphasize the tribunal's revolutionary aspect. As a basis, I refer to a definition which will be found in all textbooks on international law. I proceed on the definition from *Oppenheim-Lauterpacht, International Law* (1944), which distinguishes the following types of war crimes, that is crimes that may be the subject of criminal prosecution by the opposing belligerent. The elements of these crimes are very simple: (1) violations of the rules of war by members of the armed forces, or (2) armed hostilities by non-members of the armed forces. These two points are essential. There are two further grounds, war-treason and marauding, which are of no importance in connection with our discussion. Thus, I repeat, violation of the rules of war by the members of the armed forces and armed hostilities by non-members of the armed forces are the two elements of war crimes.

This conservative definition of a war crime certainly would not provide a sufficient basis for the prosecution of statesmen or public officers for a policy leading to war, or the prosecution of generals on account of the military preparation for war, or the prosecution of members of the legal profession on account of their participation in certain legislation, or, even less, the prosecution of industrialists on account of their participation in the war economy of their country. As I said, I mention these two matters, the classic war crime and the Nuremberg practice, in juxtaposition in order to demonstrate the enormous step that was taken at Nuremberg, which I do not wish to criticize as it was a step forward. I merely examine whether this step forward continues to have authority as a precedent for the future.

The supposition underlying this step was the recognition of a completely new doctrine; the doctrine that international law is binding upon the individual citizen. One can read in any textbook on international law that the law of nations is the law regulating the relations between sovereign states. The binding character of this law on individuals is a novum that was introduced at Nuremberg, and had to be introduced there in order to make the individual punishable. This step results in really tragic consequences if a conflict between international law and national law ensues. Until the trials, it was generally accepted that in the case of conflict, national law would prevail over international law. The citizen, the argument stated, owes primarily allegiance to the state to whose legislation he is subject. Thus, the law of nations merely had a subsidiary validity as to individuals and never had a direct effect on them; in the case of a conflict of laws, the national law prevailed. The Nuremberg courts took the opposite point of view and submitted the individual citizen to the obligation of acting in accordance with the rules of international law in the event of an incompatibility, that is, to resist national law. This duty to resist is a postulate which makes its way as a ghost-like apparition through the judgments of Nuremberg; a postulate that cannot be reconciled to the actual facts of life, and that has never been recognized by jurisprudence or by the legal practice of states. The Roman Catholic Church, which often enough had to struggle to resist state power, made a very impressive statement in this respect, in connection with the attempt made in 1948 to create a court with power to hear appeals from the Nuremberg judgments. At that time Cardinal Frings, at the request of the Bishops' Conference in Fulda, wrote to General Clay. In his letter there is the following passage: "It may be a complex question of conscience whether one is to follow one's own judgment or supra-national rules against the order of one's legal superior, state authority. No state has ventured until now to lay down rules on this question for its own citizens, much less to provide a sanction in criminal law for such rules." This is as true now as it was then. The duty under international law to act in resistance, a duty construed by the Nuremberg courts at the time, and a necessary construction in the light of their *raison d'etre*, cannot be and is not being required of the citizen. The purpose of creating a precedent on this point, has certainly not been of any lasting import.

The second big step taken at Nuremberg was to set up a very

simple equation, an equation that until that time had never been mentioned at all, viz., a violation of international law equals punishability. In national law, which uses definite, published, generally known rules, a prescription of this type would be received with indignation. No one would think of equating illegality and punishability in national law, but rather would hold that punishability requires a specific law be in existence, which provides that a given unlawful act shall be subject to punishment. From this it will be clear, to what degree of legal uncertainty the individual is subjected by such a doctrine. International law, with its vague and fluctuating rules, its many undecided questions and the widely shared doubt whether, in an individual case, a certain action is unlawful or not, cannot attach punishability to unlawfulness. As an example of how impossible the results of such adjudication are, I might mention that in the case against Grand Admiral Raeder at the International Military Tribunal, hours and hours were spent discussing violations of the Versailles Treaty committed before the war, from the point of view that, as violations of international law, they were material as punishable acts. The idea that the violation of international treaties, as such, would have penal consequences is absurd in present-day international relationships. In another case, the Flick judgment, the court arrived at the conclusion that the employment of prisoners of war in a factory making railroad cars is not in conformity with the Hague Regulations Respecting the Laws and Customs of War on Land and the Geneva Convention, and convicted an industrialist on account of this "war crime," a matter which speaks for itself. The step from unlawfulness to punishability certainly is among those taken at Nuremberg most subject to criticism. One can only hope that it will not be recognized as a precedent.

This step was accompanied by the third great innovation, which became most evident to the outside world, that is, the extension of the scope of punishable acts. I should like to take up the acts which have been treated as offenses under international law in the sequence in which they become more distant from the classic concept of war crime, *i.e.*, first of all the extension of the concept of war crime as such, then the Crime against Humanity and, finally, the Crime against Peace.

With respect to actual war crimes, it appears very significant that the rules of war applied by the Nuremberg judges, as distinguished

from their revolutionary attitude in other respects, are more than conservative. The Hague Regulations on land warfare were applied according to the standards of the year 1907 and without regard to the technological development which war had seen, namely in the effect of weapons of air warfare upon the country behind the fighting lines, economic warfare, propaganda warfare, radio, in short, total warfare. Total war for some of the Nuremberg judges was a diabolical invention of the Nazis, and they ignored it as a necessary consequence of the development of warfare itself. This has a regrettable effect. I believe all experts agree that the rules of warfare, the laws of war, will have to be rewritten. The Nuremberg courts would have been a good place and a good body to have rewritten these rules of war to bring them up to date with the actual developments that have taken place. In this connection, I proceed on the assumption that historical experience has shown how wrong it was to rely on the prohibition of war as such, and thereby forget to regulate and secure the humanizing of war to the extent this is feasible, considering the frightful set of facts which war constitutes. The most urgent task, in my opinion, would have been to fix those rules of humanity that can still be observed and secured even in total war. Simply to deny total war as such and to retain the position of the year 1907 is such a misjudgment of reality that it cannot be expected to find the least consideration in any future conflict.

In connection with war crimes, I should like to take up another subject which is of special importance in this respect and also in reference to the crime against humanity: the appreciation of the military order. Controversy about this problem has come to fill libraries. Until 1945, it appears to have been generally recognized that the military order constituted justification for the subordinate unless—as expressed in the German Military Penal Code—he realized the intention to commit a felony or other crime by means of such an such order. The Anglo-American military penal law, until 1944, treated the military order in the same way. Then it was suddenly changed, as is openly admitted, with a view to the intended punishment of German war criminals. After this change of the English and American rules, a superior order only constituted a ground of extenuation. The Nuremberg judges took firmly the position that superior orders could never constitute justification and at most could amount to a mitigating factor in assessing punishment, and they maintained this

view to the extent of undermining the very foundation of military discipline, on which the striking force and the very right to existence of armies rests. The courts rendering decisions in this field were submitted to repeated criticism after the war by national courts, even in Allied countries. By such decisions, the subordinate was burdened with a responsibility which he cannot bear and which, in an institution such as the armed services, by its very nature, he is not even allowed to bear. I admit that circumstances may differ in the top ranks of the armed services. I admit that there is a difference as to whether an order is received by a field marshal or by an officer of lower rank or a non-commissioned officer or a private. However, the principle that the order is binding upon the subordinate, who is not justified in examining the order, appears to me to be definitely recognized. As an example, the "Commando Order," rightly considered to be in violation of international law (which provided that commando troops were to be killed before or after having been taken prisoner even if they wore uniforms) was given on the purported grounds that it constituted a reprisal under international law. It is impossible to expect from a subordinate that he should examine whether the requirements of a reprisal existed or not. Thus, I believe that the Nuremberg jurisprudence on this point also has failed completely.

Where conscientious judges dealt with the cases, they tried to free themselves from the predicament of their own decisions through the defense of duress. To a large extent, they found the somewhat constructive formula, that nonobservance of an order that was illegal under international law, would have submitted anyone who refused to comply with that order to a state of duress. We as defense counsel of course supported and promoted this doctrine, but if critically examined as to its substance, one must say that in many cases it is not true. With this point I leave the criticism concerning the treatment of the war crime in the sense of a violation of the rules applicable to the armed forces, and conclude that this adjudication cannot claim the effect of having created real precedents.

I now refer to the other great new complex: the Crime against Humanity. The Crime against Humanity has become a slogan nowadays to such an extent that many do not know any longer what its actual substance was. It was the intention of the Nuremberg courts to punish the abuse of legal forms and devices by the government in

the commission of acts, apparently carried out in legal form, or in the form of orders appearing to be lawful, but which in substance constituted the gravest crimes against humanitarian principles, against humanity itself. Against the creation of such elements of a punishable offense, one might raise the objection that the sovereignty of the state is negated and thereby disregarded. This objection carries some weight because it is in conformity with the entire system of international law as we know it. Nevertheless I believe that in this case, the Nuremberg jurisprudence has taken a step which corresponds to a necessary development and which should be accepted; not in the multitude of instances in which this has subsequently been improperly employed but in its basic concept.

In its basic concept, a Crime against Humanity is a crime of the government, and thus a prosecution should only be levelled against the government, that is, against the policy-making level. It is not a crime which, as such, should involve subordinates who merely carried matters into effect and who should and can only be judged according to the principles of their own national criminal law, not according to the principles of super-national law created in order to prevent the abuse of governmental power, in the past as well as in the future. In the Convention against Genocide, the family of nations has taken up at least the grossest example of a Crime against Humanity. In the political circumstances in which we live, with the danger of states abusing their powers in a grave manner in violation of all rules of humanity, I consider such a step to be justified and believe that in this case the effect of a precedent can be created, and I hope that it has been created.

The International Military Tribunal tried to find the legal basis for the Crime against Peace in the Briand-Kellogg Pact in the sense that this offense had already found the sanction of international law. This attempt was extremely weak and it is more honest to say in this respect, as Jackson did, "Once there must be a beginning." But here the precise question must be raised as to whether it really was a beginning or whether it was not at the same time the end of a legal concept that was applied only on one occasion and that has no chance of being applied repeatedly. To begin with, the War of Aggression is a concept which was not defined at Nuremberg and which, despite all efforts, it has not been possible to define. Great conflicts of interest exist and the peculiar situation nowadays is that the Eastern part of

the world insists that the war of aggression should be defined, while the Western world shows considerable reserve, which is understandable because the West is afraid that any definition might leave loopholes of which advantage could be taken. Thus we have a criminal offense, subject to the severest penalties, that cannot be defined.

The other problem, no doubt, is that a finding of a war of aggression is a political problem of the first order. War guilt, in modern days, is regarded as the very basis for the claim against the vanquished to repair the damages of the war and to submit to other sacrifices of territory and economic power. One cannot very well imagine that any court—and I am referring not only to a national court, or a court of the victorious powers, but to any court in the present organization of the world—would be in the position to render such a judgment without bias and with historical truth. If a court existed that was in a position to deprive the victor of the fruits of victory by declaring him to be the aggressor this would presuppose an organization capable of preventing war from the outset. Such an organization, as may be stated without detailed argument, is lacking now, as it was lacking nineteen years ago. This appears to be the decisive issue in considering the crime of war of aggression: can a war be prevented by means of the judiciary? Is the prevention of war not an aim that surpasses by far the deterrent power of a judicial decision?

One cannot very well imagine that those who in our day have to decide about war and peace could be influenced in their decision by the idea that they would be held personally responsible if things went wrong. It would seem to amount to an underestimation of those who are burdened with the weight of such a decision, if one believed personal fear to be a substantial element of their considerations. The responsibility which they bear, and which may rest upon them perhaps for much more than for their nation alone, is so immense that their own personal risk can, in my opinion, be of no importance to them.

The problems of preventing war, I think, cannot be achieved with the instruments of justice in our present world organization. We have merely to review the events that have taken place since 1945 in order to see that such prevention has not been achieved. Historians will be able to say more precisely than I how many wars have been conducted in the meantime. I merely mention Korea, Laos and Vietnam, which were, no doubt, wars according to the criteria of Nurem-

berg, or Egypt, Cuba or, what might be particularly interesting, Israel. In Israel, even now, there is a state of war. No one so far has had the courage to state who is the aggressor in that war, much less to attempt to call that aggressor to account. Why is that so? Because the family of nations is not in a position to solve the conflict existing in that part of the world by its own force. For that reason, the ancient instrument of war cannot be outlawed, as there is no other or better means available. This is a regrettable realization which, however, in my opinion must be faced in order to protect oneself from illusions. The judgments at Nuremberg have not increased the security of the world against wars by one jot.

If I now refer to political, especially foreign policy, considerations, this may need an additional word of justification. May these judgments be evaluated in terms of foreign policy at all? My answer is that this is permissible because those who organized the trials provoked such a judgment. At the very beginning of the Nuremberg trials, in my capacity as one of the two spokesmen for the defense, I had the opportunity for a very interesting discussion. In Nuremberg many very important matters occurred behind locked doors, different from German criminal procedure which as a rule is dominated by the principle of public proceedings. Matters of great weight, such as the access of defense counsel to the seized German archives had to be discussed by defense counsel, judges and prosecutors *in camera* and do not appear in any record of the court. At the very beginning of the Nuremberg trials there was a big problem, namely that the defense was flooded with documents issued in English, the existence of which was unknown to the defense before they were presented by the prosecution. Therefore, we demanded that these documents be made available to the defense in the German original before being submitted to the court. A meeting was held about this matter, at which the only participants were the judges, the chief prosecutors of the four nations and two spokesmen for the defense, attorney Dr. Dix and myself. In the course of the discussion, the American chief prosecutor refused to submit the documents, stating as the reason that such a time consuming procedure would be completely contrary to the purpose of the Nuremberg trials. Thereupon, he was asked by British Lord Justice Lawrence, what that purpose was? Mr. Jackson answered without hesitation, and disregarding the presence of the two German defense counsel, not, as might have

been imagined, that the purpose of the trials was to bring criminals to conviction, but that it had two purposes: one, to prove to the world that the German conduct of war had been illegal and unjustified just as the United States had alleged throughout the world by her propaganda before her entry into the war; and the other, to make it clear to the German people that it deserved severe punishment, and to prepare them for such punishment. These were purely political purposes, objects of foreign policy, as we expressed at the time. In the meantime, and unknown to me then, confirmation of the objects of foreign policy behind the Nuremberg trials existed in Mr. Jackson's report, mentioned earlier. In that report the chief prosecutor elucidates the special interest of the United States in a finding that Germany conducted an illegal war, on the grounds that some of the measures taken by the President of the United States before the United States entered the war—such as the well-known delivery of fifty destroyers to the British—could be legally justified only if there were a finding of the unlawfulness of German warfare as a whole.

Has this aim of foreign policy been achieved? With respect to the pinning down of war guilt, one of the essential points, a peculiar result has been obtained, showing that political trials can have a boomerang effect on their promoters. It is widely unknown that in Nuremberg neither the German conflict with France, nor that with Great Britain, nor that with the United States was found to constitute a German war of aggression. Of the four principal Allied powers represented on the Nuremberg bench, only the Russians had the satisfaction of hearing the war against them characterized as a German war of aggression. The tribunal was very careful to refrain from finding who had been the aggressor in the other three cases.

Another aim in the field of foreign policy was the re-education and democratization of the German people. No one familiar with present day Germany will doubt that this process was largely successful. Whether the Nuremberg trials contributed to that result, or whether in view of their many faults they have rather impeded this development, is a difficult question, which I am unable to answer. Doubtless, the reaction of the general public in Germany to the Allied war crimes trials initially was that one had had enough of it; and the German legal administration for all practical purposes did not bother for years with the prosecution of real crimes committed in wartime,

even after it became legally possible to do so. Only gradually, after the creation of a central prosecuting authority for all offenses of this nature, did investigations and new indictments again begin. What had been left undone for years was now done with "German thoroughness." As a consequence, hundreds, if not thousands, of trials are still to be expected, many against people of lesser account who acted within the scope of their mission or orders. In considering these unfortunate prospects I share the opinion of Sir Hartley Shawcross, the British Attorney General during the International Military Tribunal, who recently stated in a German periodical that he felt the time had come to put an end to these proceedings.

In spite of all of the criticism of the Nuremberg trials, I should like to stress one effect of the International Military Tribunal. It was clear that after the obvious crimes committed under Hitler's leadership, particularly the annihilation process against the Jews, something had to happen to discharge the tension between victors and vanquished. The British would have preferred at the time to shoot summarily some of the principal leaders of the Third Reich. The Soviets would certainly have liked to adhere to this procedure, multiplying the victims. It was the United States who insisted that expiation must be sought and found by way of a judicial trial. The International Military Tribunal proceedings did, in my opinion, perform this function. It was the painful starting point for building the relations that exist today between Germany and her Western Allies.