

# Military Tribunals and International Crimes

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## BOOK REVIEW

John Alan Appleman, *MILITARY TRIBUNALS AND INTERNATIONAL CRIMES*. \* Indianapolis: The Bobbs-Merrill Co., 1954. Pp. 436. \$8.00.

Few trials in history, whether national or international in scope, have produced the tremendous body of commentary that has been written on the proceedings of the International Military Tribunal at Nuremberg. Much of this commentary has ranged from bitter, even vituperative criticism to equally impassionate apologetics of the legal and moral soundness of these proceedings. Mr. Appleman's work fails in neither of these categories, but is rather an objective and careful examination of the record by an able and experienced American trial lawyer.

In discussing the preliminary work preceding the Nuremberg proceedings, Mr. Appleman touches on some of the interesting and novel problems which confronted the framers of that tribunal's rules of procedure. Of these the most interesting, from the standpoint of comparative law, was the problem of defining the application of the respective spheres of the Anglo-Saxon and Civil adjective law. In the end, as is well known, the Anglo-Saxon adversary, rather than the Continental inquisitorial type of practice predominated. Considering this circumstance, the performance of some of the German defense counsel, as Mr. Appleman points out, is indeed remarkable.

The highlight of the work is the author's interesting and exhaustive examination of the legal defenses, both substantive and procedural, interposed on behalf of the defendants. As it is on this score that most of the serious criticism has been levied against the rulings of the Tribunal, Mr. Appleman's thorough analysis of these points should contribute in no small degree to the clarification of the issues created by them.

After concluding that the decisions of the Nuremberg Tribunal were basically sound, Mr. Appleman proceeds to an examination of the other principal war trials held in Europe following World War II. For obvious reasons, he does not purport to examine or even summarize all of these trials, the number of which has been estimated in the thousands. His discussion, however, of the principal U.S. war trials in Europe seems to be rather too terse to afford a basis for their serious evaluation.

Mr. Appleman next takes up a discussion of the organization, procedure and proceedings of the International Military Tribunal for the Far East. This body appeared to have been far more directly patterned after American procedural legal principles than its Nuremberg counter-

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part, which might perhaps be explained in terms of the dominant U.S. contribution to the conduct of the war in that theater, or of the equally dominant personality of the U.S. commanding officer then in charge.

It is in Mr. Appleman's final chapter that the only disappointment lies; the title of his work suggests a fairly broad treatise on the law governing military tribunals and international crimes. His evaluation and conclusions, based on the proceedings he has reviewed, fall considerably short of such a treatise. He is certainly correct in pointing out in this respect that the applicable international case law is indeed meager. A much more exhaustive examination of the available international customary law, however, seems to have been both feasible and indicated.

The rulings of the war crimes tribunals, particularly of the International Military Tribunal at Nuremberg, have raised, both expressly and by necessary implication, many interesting and provocative issues on which authoritative textual discussion is still lacking. Among these are the questions of whether, in view of the broad holdings of the Nuremberg tribunals, the defense of *ex post facto* could ever be used as a tenable defense in respect to relatively novel charges of international crimes; to what extent, if any, the *lex loci* could be interposed as a defense to a charge of international crime involving acts which might be valid under that law; and the extent to which the rulings at Nuremberg should be regarded as established international case law with respect to the initiation and conduct of hostilities and the treatment of occupied civilian populations. Mr. Appleman's work does not treat these issues to the extent that its broad title might suggest.

On the whole, the book presents a well-organized and extremely interesting review of the Nuremberg and other war trial proceedings from a fresh and highly authoritative viewpoint. It should be enjoyable and remunerative reading to all who are interested in the proceedings from a legal or a historical standpoint.

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