A. INTRODUCTION

It is impossible to overestimate the contribution of the International Military Tribunal (IMT) at Nuremberg to the development of international criminal law. In almost every respect, the seminal trial of the major German war criminals of World War II has blazed the trail: remarkably, the signposts have been left standing for the past sixty years. Indeed, the Nuremberg trial of 1945/1946 has set the stage for the establishment of the permanent International Criminal Court (ICC) in the Rome Statute of 1998.¹

Notwithstanding the adjective “Military” appearing in the name of the Nuremberg Tribunal, the IMT was a far cry from a military court. It was composed of four Judges and four Alternates: one from each of the four Big Allied Powers (the United States, the United Kingdom, the USSR and France). The four Judges were Sir Geoffrey Lawrence (Lord Justice of Appeal, later elevated to the House of Lords, taking the title Lord Oaksey), President, from the UK; Francis Biddle (prior to joining the IMT, the Attorney-General) from the US; Professor Henri Donnedieu de Vabres (a well-known scholar in the field of international criminal law) from France; and Major General I.T. Nikitchenko (Vice-President of the Soviet Supreme Court) from the USSR. The four Alternates – who sat on the bench together with their colleagues and took a full part in judicial consultations without voting – were Sir Norman Birkett (a High Court Judge) from the UK; John J. Parker (a Circuit Court of Appeals Judge) from the US; Robert Falco (formerly a member of the Cour de Cassation) from France; and Lt. Colonel A.F. Volekhov (Judge of the Moscow District Court) from the USSR. Thus, all the Western Judges and Alternates were civilians. Only the Soviet Judge and Alternate held military ranks, and they alone wore military uniforms on the bench, to the regret of their Western colleagues (who were enrobed in traditional black gowns).²

The crimes over which the IMT had jurisdiction were crimes against peace, war crimes and crimes against humanity (examined below, E). The prosecution was conducted by teams from the four Big Powers, but the leading person – and driving spirit – was, undeniably, the US Chief of Counsel, Justice Robert H. Jackson (Justice of the Supreme Court on leave and former Attorney-General). The other Chief Prosecutors were Sir Hartley Shawcross (the Attorney-General) from the UK; François de Menthon from France, and General R.A. Rudenko from the USSR.

Pursuant to Articles 16(d) of the London Charter that governed the proceedings, the defendants had the right to conduct their own defence or to have the assistance of counsel. In accordance with Article 23 (Second Paragraph), defence counsel were either chosen by the defendants themselves or – as in the case of Martin Bormann (see below, C) – were appointed by the IMT. Expenses were covered by the IMT.

B. A SUMMARY

The path leading to the Nuremberg trial was not particularly promising. The Moscow Declaration of 30 October 1943 – issued by the UK, the US and the USSR – unequivocally warned that German perpetrators of atrocities would be “sent back to the countries in which their abominable deeds were done in order that they may be judged and punished”; but the Declaration was “without prejudice to the case of the major criminals, whose offences have no particular geographical localisation and who will be punished by the joint decision of the Governments of the Allies”. As for the latter, there was no assurance of a trial prior to punishment.

Serious high-level consultations among the leading Allies on the fate of the major Nazi criminals commenced only late in 1944. On 4 September 1944, the British Lord Chancellor, Viscount Simon, expressed a strong opinion that judicial proceedings were “inappropriate” for the major criminals: their fate was political and did not rest with judges. Half a year later, on 16 April 1945,

4 Ibid., 15.
5 Judgment, ibid., 171, 172.
7 Great Britain-Soviet Union-United States, Tripartite Conference in Moscow, Declaration of German Atrocities (30 October 1943), 38 A.J.I.L., Supp., 7, 8 (1944).