CHAPTER 5

The Past Discontinued: American and European Views on International Criminal Tribunals, 1918-1945

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In 1944 the United States, like Britain, made a 180-degree turn from its 1919 war crimes policies, but in the opposite direction.

TAYLOR, 1993

Introduction

The question of how authorities should deal with excessively cruel behaviour by soldiers against civilians or prisoners of war has been discussed since ancient times. While many good reasons have been found for waging wars (such as, for example, gaining more power and prosperity, or religious motivations, or defence against aggressive neighbours) there has also been a perception that some kind of demarcation line existed between, on the one hand, what was necessary for winning the wars and, on the other hand, what was not necessary and therefore might be characterized as excessive cruelty. Linked with this were discussions on punishment of perpetrators and codification of the norms, including the establishment of international crimes and international criminal courts. One of the most important steps in this long development on war crimes and other war-related issues was the discussion after and in-between the two world wars in the period 1918-1945, resulting in the international military tribunals in Nuremberg and Tokyo in the second half of the 1940s.

The USA and its allied counterparts in Europe, mainly Britain, had different perceptions of what should be done with the defeated opponents after both the First and the Second World Wars. Moreover, not only did they have different perceptions, they interchanged perceptions from the First to the Second World War and took over the other side’s arguments and points of view. This is apparently a paradox. The aim of this chapter is to find out why

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this paradox occurred and what in a more specific sense determined the different perceptions.

The Background

The general background and the political and military context can be outlined as follows: In none of the two World Wars did the USA participate from the beginning, but the USA played an important role in the final outcome and was on the winning side in both cases. The First World War started between the Entente (Britain, France and Russia) and the Central powers (Germany, Austria-Hungary and the Ottoman Empire), and it was only in 1917 that the USA interfered on the side of the Entente and contributed to the defeat of the Central powers in 1918. The Second World started between Britain and France, on the one side, and Germany on the other. Other important states that became involved in 1941 were the Soviet Union, Japan and the USA. Two major fighting blocks were formed, i.e. the Axis powers led by Nazi-Germany and the anti-Nazi alliance, which soon gave itself the informal designation the United Nations, a forerunner of the international organization of the same name established in 1946. After the First World War, on the basis of an armistice, a preliminary Peace Conference took place in Paris in 1919, to negotiate a number of peace agreements as well as to determine the new political and geographical structure of Europe and the Middle East, that had appeared with many new states after the fall of the great empires Germany, Austria-Hungary and the Ottoman Empire. After the Second World War, and the unconditional surrender of Germany and Japan, the victorious powers did not need to negotiate with the defeated nations but could dictate the con-

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2 The preliminary peace conference lasted half a year and was never followed by another "real" one, so the preliminary Peace Conference proved to be the Peace Conference in Paris in 1919 (Margaret MacMillan, Paris 1919. Six Months that Changed the World. Random House, Toronto 2001).

3 Also Russia was a fallen empire, but in 1919 its destiny was uncertain due to the Civil War (1918-1920). Ultimately, Russia did not disintegrate geographically either after the revolution in 1917, the separate peace agreement with Germany in Brest-Litovsk in 1918, or the Civil War, and the Russian Empire reappeared as the Soviet Union, albeit without the Baltic States.