# BOOK REVIEWS

NUREMBERG AND VIETNAM: AN AMERICAN TRAGEDY. By Telford Taylor. Toronto: Bantam Books. 1971. Pp. 224. $1.25.

The casual way in which countries and their leaders are often accused of "war crimes" and "crimes against humanity" by many contemporary crusaders justifies some effort by the legal mind to ascertain whether those phrases are being used accurately. The incident commonly known as My Lai, revealed in 1970, and the ensuing trials of Lt. Calley and Capt. Medina, have focussed attention on the history and development of this branch of international, military and domestic law for the first time since the war crimes trials which began in 1945.

In this book, originally published in 1970 and now available in paperback, Brigadier-General Telford Taylor, Professor of Law at Columbia University, has presented a discussion which is learned yet comprehensible to the average lawyer and layman.

General Taylor reviews the evolution of the concepts of war crimes, superior orders, and just and unjust wars, ending with the Nuremberg Tribunal, at which he was United States Chief counsel. He then discusses the war in Viet Nam, which he concludes is "the most costly and tragic national blunder in American history." He has no conviction that legally the involvement of the United States in Viet Nam is an "aggressive war". Yet he clearly considers that the ultimate manner and extent of the involvement betray a degree of inhumanity that is profoundly shocking and militarily and politically stupid. However, he does not expressly accuse his country's national leaders of crimes against humanity. He is critical of the fact that high military leaders have not been called to account for numerous reported instances of indiscriminate killings of civilians and maltreatment of prisoners. His conclusion is that in general the government of the United States and the armed forces on several grounds have failed to measure up to the moral commitments undertaken at the time of Nuremberg.

That the United States government and military leaders may not have violated the principles laid down by the London Charter and applied at Nuremberg would depend on acceptance of the premise that the United States has not been waging an aggressive war. For, according to those principles, only those engaged in waging an aggressive war can be guilty of crimes against humanity. The charges at Nuremberg within this category included the murder and ill-treatment of civilian populations, the pillage of public and private property, slave labour and genocide, all committed *in connection with, or in execution of, an aggressive war.*

The Nuremberg and Tokyo trials were not the only war crimes trials conducted after the Second World War. In particular, a military commission of American generals condemned General Yamashita, Japanese commander in the Philippines, to death for failure properly to control the conduct of troops under his control during the closing months of the war, when there were many massacres of prisoners of war and

slaughter of civilians. While, legally, the Yamashita case is consistent with the limitation contained within the Nuremberg principles, it is, as General Taylor recognizes, morally imperative that the leaders of the United States Army (whether aggressors or not) be subjected to the same standards by their own military courts.

The author has raised these issues candidly. That he has done so is evidence, as was the trial of Calley, of the spirit of self-criticism that still makes his country a realizable vision.

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THE CANADIAN YEARBOOK OF INTERNATIONAL LAW. Vol. 8. Edited by C. B. Bourne. Published under the auspices of The Canadian Branch, International Law Association. Vancouver, B.C.: University of British Columbia. 1970. Pp. 429. $14.

The collection maintains the high standard set by the previous volumes in the series of the *Canadian Yearbook*. This eighth volume upholds the excellence of the quality of presentation both in respect of the subject matter covered, as well as in pursuance of the systematic rendering of Canadian thought and practice in Public International Law and Conflicts of Law.

The present "mixed bag" includes, in the main section: two Canadian perspectives specifically devoted to the International Court of Justice and to the U.S. Anti-Trust Laws; two articles in French, on international regional co-operation for the development of the law of Direct Satellite Broadcasting, and on the problem of the Arctic, both in terms of technical progress and pollution, as well as in light of the recent developments in the Canadian law of the sea; also, the collection contains an examination, in one study, of the defence of Superior Orders; in another, of the concept of Consensus as it relates to public international law; followed by an essay on the perennial problem of Succession to Treaties. In the *Notes and Comments* section there are four contributions covering such diverse areas as the Revision of the 1929 Warsaw Convention; the International Control Commission in Cambodia; Commonwealth "extradition"; and international adjudication. There is the customary annual review of Canadian Practice and Digest of Important Cases covering the year 1969.

The article by Dean Macdonald on the April 1970 New Canadian Declaration as it relates to Canada's acceptance of the compulsory jurisdiction of the International Court of Justice, commences by tracing the development of the system of the "Optional Clause" in the jurisprudence of both the Permanent Court of Justice and the International Court of Justice. It next examines in some detail the Canadian Reservations, more specifically, in terms of Article 36 of the Statute of the International Court of Justice. The author reviews, at some length, the principle of reciprocity; notice of termination of acceptance; the question of applicability as it relates to disputes arising subsequent to the declaration; recourse to some other method of peaceful settle-