

A p p e n d i x 2

to the brief of Dr. W. Siemers of 26 April 1948 in CASE X.

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Excerpts from the Plea by Otto Kranzbuehler for Dr. Odilo Burkart in
the Flick-Case (CASE V).

Pages 26/29:

The Prosecution does not like to hear such arguments from modern times and it wants to make believe that none of the allied measures in Germany after the capitulation of May 1945 allowed of any conclusions as to the duties imposed by International law before this period. This argument fails in the first place because the Morgenthau Plan and the Yalta Agreement were made before the German capitulation. But, apart from this fact, such an argument seems strange in the mouth of representatives of a nation, which has written on its flag and declared as its war aim the carrying out of true International Law. Should not precisely the time since the capitulation, when no enemy any longer resists the implementation of International Law, be most suitable to recognize this law?

Three statements are being produced in support of the thesis that a retroactive conclusion from Allied measures after the capitulation to the true state of International Law is not justified. They are as follows: it is said that Germany as a state no longer exists, it has no government and, by her unconditional surrender, has waived all rights. Let me comment on this in brief.

The legal aspect of states is dominated by the principle of continuity. The change of an existing legal state must clearly manifest itself in some exterior form. A state, and least of all a world power, with a centuries-old history does not, as it were, secretly disappear from the concert of nations. It is true,

that the victorious Allied Powers had the possibility one by one or all together of annexing Germany. However, they did not do that, -- maybe in remembrance of the Atlantic Charter. In the declaration of the four Allied Supreme Commands of 5 June 1945, in which their taking over of the supreme power in Germany is announced, it says:

"The taking over of this supreme power and sovereignty for the above mentioned purposes does not effect the annexation of Germany."

In the meantime numerous government declarations have been made on the part of Allies and neutrals, confirming Germany's continued existence as a state.¹⁾ Likewise there are already a series of national and foreign legal verdicts²⁾ to the same effect.³⁾

But if Germany as a state continues to exist then the present regime is an occupational regime and, as long as the state of peace is not restored, is not less subject to the regulations of the Hague Convention than was the German occupation before the capitulation. It is alleged now that the rights of the Military Government exceed these of an occupation power because there is no German Government capable of action. That seems quite incorrect to me. The government of a belligerent country which is occupied only in part, never has any sovereignty in this occupied part. In this routine case of occupation the occupying power always bears the full responsibility for the needs of the population being considered in all branches of administration.

- 1) for example: declaration of the British Foreign Minister, The Times of 4 April 1946 "Germany still exists as a State".
- 2) for example: Supreme Court in Zuerich on 1 December 1945, Deutsche Reichszeitschrift (German Legal Journal) Number 1, January 1947, page 31.
- 3) compare quotations by
F.A. Mann, London "Germany's Present Status"
Sueddeutsche Juristenzeitung, Volume 2, No. 9, September 1947, page 468
Ernst J. COHN, London, "Aspects of Germany's Legal Problem" Monatschrift fuer Deutsches Recht, Volume 1, No. 6, September 1947, page 178.