

COMMITTEE ON THE PROGRESSIVE DEVELOPMENT
OF INTERNATIONAL LAW AND ITS CODIFICATIONDRAFT PROPOSAL TO DEFINE THE PRINCIPLES RECOGNIZED
IN THE CHARTER OF THE NUREMBERG TRIBUNAL
AND IN THE JUDGMENT OF THE TRIBUNAL

MEMORANDUM SUBMITTED BY THE DELEGATE FOR FRANCE

DRAFT PROPOSAL FOR THE ESTABLISHMENT
OF AN INTERNATIONAL COURT OF CRIMINAL JURISDICTION

The repression of international crimes against peace and humanity provided for in the application of the principles of the Nuremberg judgment which the General Assembly of the United Nations affirmed by its resolution of 11 December 1946, can only be ensured by the establishment of an international criminal court.

This would meet, in advance, the criticism often levelled against the International Military Tribunal for the trial of major war criminals, that it is an ad hoc court which only imperfectly represents the international community.

This need had been realized immediately after the first world war. The proposals then submitted to the League of Nations Assembly were not, unfortunately, followed up. But the idea was taken up by private bodies such as the International Law Association, l'Association internationale de droit pénal, and concrete proposals were issued. These proposals may be divided into two categories:

1. Those in favour of giving the Permanent Court of International Justice (now the International Court of Justice) jurisdiction in criminal matters.

Those providing for the establishment of an international criminal court to pronounce judgment on questions of fact. This latter system

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was applied in the Geneva Convention of 16 November 1937 on the international repression of terrorism.

It would appear desirable to combine the two systems, to merge their respective advantages by providing for two distinct fields of jurisdiction:

1. Jurisdiction conferred on the criminal chamber to be established as part of the International Court of Justice. This would deal with:

(a) juridicial matters such as conflicts regarding judicial and legislative competence and questions relating to the jurisdiction of a res judicata which are likely to arise between courts of different states.

(b) indictments for the crime against peace (the crime of aggression in all its forms) brought against a state or its rulers.

(c) indictments for the crime against humanity which might be brought against a state or its rulers.

The criminal chamber might be composed of fifteen judges elected under the same conditions as the other members of the International Court of Justice. Sections might be established. A procedure for preliminary investigation would be set up. The prosecution entrusted with instituting public international proceedings would be in liaison with the Security Council. The right of initiative, to be defined, would be left to the governments concerned. Following the examination the criminal chamber would give its verdict on the liabilities incurred and would inflict appropriate penalties upon the rulers.

2. Jurisdiction conferred on the International Court of Justice to deal with:

(a) all international infringements capable of being committed in time of peace, including those known as offences against the law of nations.

(b) war crimes, that is to say violations of common law which are also violations of the laws of war.

/(c) all

(c) all common law offences connected with crimes against humanity committed by the rulers of a state.

The organization might be based on the above-mentioned Convention of 1937 regarding the international repression of terrorism. The jurisdiction vested in the international court might be optional, the state holding the offender having the option according to the case, of trying him in its own tribunals, to extradite him (if its jurisdiction is subsidiary) or, on the contrary, to hand him over to the international tribunal.

One or more international criminal courts of this nature would be established according to requirements.

The creation of such an international court would ensure the repression of the various infringements of the law of nations and would thus give effect to the General Assembly's resolution of 11 December which takes note of the agreement on the establishment of the International Military Tribunal and confirms the principles of international law recognized by this Tribunal.
