

AD HOC COMMITTEE ON GENOCIDE

DOCUMENTS CONCERNING THE "NÜRNBERG PRINCIPLES"

MEMORANDUM SUBMITTED BY THE SECRETARY-GENERAL

In its resolution 180 (II), the General Assembly requested the Economic and Social Council, inter alia, to take into account that the International Law Commission, which will be set up in due course in accordance with General Assembly Resolution 174 (II) of 21 November 1947, has been charged with the formulation of the principles recognized in the Charter of the Nürnberg Tribunal as well as the preparation of a draft code of offences against peace and security.

For this reason the relevant parts of the Four Power Agreement signed at London 8 August 1945 of the Charter of the International Military Tribunal annexed to it and of related documents are herewith reproduced, namely:

- I. The Four Power Agreement of 8 August 1945.
- II. The Charter of the International Military Tribunal of 8 August 1945.
- III. The Berlin Protocol of 6 October 1945.
- IV. The Charter of the International Military Tribunal for the Far East of 19 January 1946.
- V. The Control Council Law No. 10 of 20 December 1945.
- VI. The Peace Treaty with Italy, signed 10 February 1947.
- VII. The Resolution of the General Assembly on the Extradition and Punishment of War Criminals, of 13 February 1946.
- VIII. The Resolution of the General Assembly 95 (I), of 11 December 1946.
- IX. The Resolution of the General Assembly 177 (II), of 21 November 1947.

I

Agreement by the Government of the United States of America, the
Provisional Government of the French Republic, the Government of the
United Kingdom of Great Britain and Northern Ireland and the Government

/of the

APR 5 1948

UNITED NATIONS
/ DIVISION

of the Union of Soviet Socialist Republics for the Prosecution and
Punishment of the Major War Criminals of the European Axis.

(Signed 8 August 1943).....

Now therefore the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics (hereinafter called "the Signatories") acting in the interests of all the United Nations and by their representatives duly authorized thereto have concluded this Agreement.

Article 1.

There shall be established after consultation with the Control Council for Germany an International Military Tribunal for the trial of war criminals whose offences have no particular geographical location whether they be accused individually or in their capacity as members of organizations or groups or in both capacities.

Article 2.

The Constitution, jurisdiction and functions of the International Military Tribunal shall be those set out in the Charter annexed to this Agreement, which Charter shall form an integral part of this Agreement.

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Article 5.

Any Government of the United Nations may adhere to this Agreement by notice given through the diplomatic channel to the Government of the United Kingdom, who shall inform the other signatory and adhering Governments of each such adherence.*

Article 6.

Nothing in this Agreement shall prejudice the jurisdiction or the powers of any national or occupation court established or to be established in any allied territory or in Germany for the trial of war criminals.

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Done in quadruplicate in London this 8th day of August 1945 each in English, French and Russian, and each text to have equal authenticity.

Signatures of the representatives of the Four Governments.

II

Charter of the International Military Tribunal

I.

II. Jurisdiction and General principles.

* The following Governments have expressed their adherence to the Agreement: Greece, Denmark, Yugoslavia, the Netherlands, Czechoslovakia, Poland, Belgium, Ethiopia, Australia, Honduras, Norway, Panama, Luxembourg, Haiti, New Zealand, India, Venezuela, Uruguay, and Paraguay.

/Article 6.

Article 6.

The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

- (a) CRIMES AGAINST PEACE; namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
- (b) WAR CRIMES: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
- (c) CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war;* or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

Article 7.

The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.

* (The contracting Governments signed a protocol at Berlin on 6 October 1945 which provides that this semi-colon in the English text should be changed to a comma, see below under III).

Article 8.

The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

Article 9.

At the trial of any individual member of any group or organization the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization.

After receipt of the Indictment the Tribunal shall give such notice as it thinks fit that the prosecution intends to ask the Tribunal to make such declaration and any member of the organization will be entitled to apply to the Tribunal for leave to be heard by the Tribunal upon the question of the criminal character of the organization. The Tribunal shall have power to allow or reject the application. If the application is allowed, the Tribunal may direct in what manner the applicants shall be represented and heard.

Article 10.

In cases where a group or organization is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein before national, military or occupation courts. In any such case the criminal nature of the group or organization is considered proved and shall not be questioned.

Article 11.

Any person convicted by the Tribunal may be charged before a national, military or occupation court, referred to in Article 10 of this Charter, with a crime other than of membership in a criminal group or organization and such court may, after convicting him, impose upon him punishment independent of and additional to the punishment imposed by the Tribunal for participation in the criminal activities of such group or organization.

Article 12.

The Tribunal shall have the right to take proceedings against a person charged with crimes set out in Article 6 of this Charter in his absence, if he has not been found or if the Tribunal, for any reason, finds it necessary, in the interests of justice, to conduct the hearing in his absence.

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III

Protocol dated Berlin 6 October 1945

PROTOCOL

Whereas an Agreement and Charter regarding the Prosecution of War Criminals was signed in London on the 8th August, 1945, in the English, French and Russian languages,

And whereas a discrepancy has been found to exist between the originals of Article 6, paragraph (c), of the Charter in the Russian language, on the one hand, and the originals in the English and French languages, on the other, to wit, the semi-colon in Article 6, paragraph (c), of the Charter between the words "war" and "or", as carried in the English and French texts, is a comma in the Russian text.

And whereas it is desired to rectify this discrepancy:

NOW, THEREFORE, the undersigned, signatories of the said Agreement on behalf of their respective Governments, have agreed that Article 6, paragraph (c), of the Charter in the Russian text is correct, and that the meaning and intention of the Agreement and Charter require that the said semi-colon in the English text should be changed to a comma, and that the French text should be amended to read as follows:

(c) LES CRIMES CONTRE L'HUMANITE: c'est à dire l'assassinat, l'extermination, la réduction en esclavage, la déportation, et tout autre acte inhumain commis contre toutes populations civiles, avant ou pendant la guerre, ou bien les persécutions pour des motifs politiques, raciaux ou religieux, lorsque ces actes ou persécutions, qu'ils aient constitué ou non une violation du droit interne du pays où ils ont été perpétrés, ont été commis à la suite de tout crime rentrant dans la compétence du Tribunal, ou en liaison avec ce crime.

Done in quadruplicate in Berlin this 6th day of October, 1945, each in English, French and Russian, and each text to have equal authenticity. Signatures of the representatives of the four Governments. (United States of America, United Kingdom, France, Union of Soviet Socialist Republics)

IV

Charter of the International Military Tribunal
for the Far East

(Annex to Special Proclamation of the Supreme Commander for the Allied Powers of 19 January 1946, General Orders No. 1, as amended by General Orders No. 20, of 26 April 1946)

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/JURISDICTION

JURISDICTION AND GENERAL PROVISIONS

Article 5.

Jurisdiction Over Persons and Offences

The Tribunal shall have the power to try and punish Far Eastern war criminals who as individuals or as members of organizations are charged with offences which include Crimes against Peace. The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

- (a) Crimes against Peace:
- (b) Conventional War Crimes: Namely, violations of the laws or customs of war;
- (c) Crimes against Humanity: Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed before or during the war, or persecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

V

Control Council Law No. 10 of 20 December 1945

(Official Gazette of the Control Council for Germany, No. 3, p. 22)

Article I - The Moscow Declaration of 30 October 1943 "Concerning Responsibility of Hitlerites for Committee Atrocities" and the London Agreement of 8 August 1945 "Concerning Prosecution and Punishment of Major War Criminals of the European Axis" are made integral parts of this Law. Adherence to the provisions of the London Agreement by any of the United Nations, as provided for in Article V of that Agreement, shall not entitle such Nation to participate or interfere in the operation of this Law within the Control Council area of authority in Germany.

Article II - (1) Each of the following acts is recognized as a crime:

- (a) Crimes against Peace
- (b) War Crimes
- (c) Crimes against Humanity - Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.
- (d) Membership in categories of a criminal group or organization declared criminal by the International Military Tribunal.

VI

Peace Treaty with Italy

(Signed in Paris 10 February 1947)

Article 45

1. Italy shall take all necessary steps to ensure the apprehension and surrender for trial of:

(a) Persons accused of having committed, ordered or abetted war crimes and crimes against peace and humanity;

(b) Nationals of any Allied or Associated Power accused of having violated their national law by treason or collaboration with the enemy during the war.

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VII

Resolution of the General Assembly (First Part of the First Session) adopted on 13 February 1946. (Document A/64, p.9)

Extradition and Punishment of War Criminals

The General Assembly:

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taking note of the definition of war crimes and crimes against peace and against humanity contained in the Charter of the International Military Tribunal dated 8 August 1945

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VIII

Resolution 95 (I) of the General Assembly (Second Part of its First Session) adopted 11 December 1946.

Affirmation of the Principles of International Law
recognized by the Charter of the Nuremberg Tribunal

The General Assembly

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Takes note of the Agreement for the establishment of an International Military Tribunal for the prosecution and punishment of the major war criminals of the European Axis signed in London on 8 August 1945, and of the Charter annexed thereto, and of the fact that similar principles have been adopted in the Charter of the International Military Tribunal for the trial of the major war criminals in the Far East, proclaimed at Tokyo on 19 January 1946;

* Similar provisions are contained in the Peace Treaty:

with Roumania: Art. 6
with Bulgaria: Art. 5
with Hungary: Art. 6
with Finland: Art. 9

Therefore,

Affirms the principles of international law recognized by the Charter of the Nurnberg Tribunal and the judgment of the Tribunal;

Directs the Committee on the codification of international law established by the resolution of the General Assembly of 11 December 1946, to treat as a matter of primary importance plans for the formulation, in the context of a general codification of offences against the peace and security of mankind, or of an International Criminal Code, of the principles recognized in the Charter of the Nurnberg Tribunal and in the judgment of the Tribunal.

IX

Resolution 177 (II) of the General Assembly
(Second Session) adopted 21 November 1947.

Plans for the formulation of the principles
recognized in the Charter of the Nurnberg
Tribunal and in the judgment of the Tribunal

The General Assembly

Decides to entrust the formulation of the principles of international law recognized in the Charter of the Nurnberg Tribunal and in the judgment of the Tribunal to the International Law Commission, the members of which will, in accordance with resolution 174 (II) be elected at the next session of the General Assembly; and

Directs the Commission to

- (a) Formulate the principles of international law recognized in the Charter of the Nurnberg Tribunal and in the judgment of the Tribunal, and
- (b) Prepare a draft code of offences against the peace and security of mankind, indicating clearly the place to be accorded to the principles mentioned in sub-paragraph (a) above.