ASSIGNMENT OF THE RESPONSIBILITY OF WAR CRIMINALS

INTERNATIONAL MILITARY TRIBUNAL


Whereas the United Nations have, in the late Declaration of their intention that war criminals shall be brought to justice;

And whereas the Moscow Declaration of the 30th October 1943 on German atrocities in occupied Europe made it clear that those German officers and men and members of the Nazi party who have been responsible for or have taken a part in the planning, preparation or commission of such crimes and acts will be sent back to the countries in which their atrocious acts were done in order that they may be judged and punished according to the laws of these liberated countries and of the free governments that will be created therein;

And whereas this declaration was stated to be without prejudice to the case of war criminals whose offenses have no particular geographical location and who will be punished by the joint decision of the Governments of the Allied;

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 thereof have concluded this agreement.

Article 1. There shall be established after consultation with the Central Powers a Military Tribunal for the trial of war criminals whose offenses have no particular geographical location or who are 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.

Article 3. Each of the signatories shall take the necessary steps to make available for the investigation of the charges and trial the major war criminals detained by them who are to be tried by the International Military Tribunal. The signatories shall also use their best endeavors to make available for investigation of the charges against the major war criminals and the German military tribunal of the major war criminals as are not in the territories of any of the signatories.

Article 4. Nothing in this agreement shall prejudice the provisions established by the Moscow Declaration concerning the return of war criminals to the countries where they committed their crimes.

Article 5. Any Government of the United Nations may agree to this agreement by notice given through the diplomatic channel to the "Governments of the United Nations, who shall inform the other signatories and adhering Governments of such each adherence.

Article 6. Nothing in this agreement shall prejudice the jurisdiction or the power of any national or international court established or to be established in any Allied territory or in Germany for the trial of war criminals.
ARTICLE I. This agreement shall come into force on the day of signature and shall remain in force for the period of one year and shall continue thereafter, subject in the right of any signature to give, through the diplomatic channel, one month's notice of intention to terminate it. Such termination shall not prejudice any proceedings already taken or any penalties already due in pursuance of this agreement.

In witness whereof the undersigned have signed the present agreement.

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

For the Government of the United States of America

ROBERT B. DOUGLAS

For the Provisional Government of the French Republic

Pierre Pflimlin

For the Government of the United Kingdom of Great Britain and Northern Ireland

JOHN G.

For the Government of the Union of Soviet Socialist Republics

I.S. KHRUSHCHEV

A.L. TRUTHE

CHAIRMAN OF THE INTERNATIONAL MILITARY TRIBUNAL

1. CONSTITUTION OF THE INTERNATIONAL MILITARY TRIBUNAL

ARTICLE 1. In pursuance of the agreement signed on the eighth day of August 1945 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 Union of Soviet Socialist Republics, there shall be established an International Military Tribunal (hereinafter called the Tribunal) for the just and prompt trial and punishment of the major war criminals of the European Axis.

ARTICLE 2. The Tribunal shall consist of four members, each with an alternate. One member and one alternate shall be appointed by each of the signatories. The alternates shall, so far as they are able, be present at all sessions of the Tribunal. In case of illness of a member of the Tribunal, the alternate shall take his place. In the absence of a member or an alternate, the remaining members or alternates may continue the Tribunal.

ARTICLE 3. Neither the Tribunal, its members nor their alternates can be challenged by the prosecution, or by the defendants or their counsel. Each signatory may replace its member of the Tribunal or its alternate for reasons of health or for other good reasons, except that in replacement may take place during a trial, other than by an alternate.

ARTICLE 4. In the presence of all four members of the Tribunal or the alternates for any absent member shall be necessary to constitute the quorum.

(b) (1) The members of the Tribunal shall, before any trial begins, agree among themselves upon the selection from their number of a President, and the President shall hold office during the trial, or as may otherwise be agreed by a vote of not less than three members. The principle of rotation of presidency for successive trials is agreed to, i.e., however, a session of the Tribunal takes place on the territory of one of the four signatories, the representative of that signatory on the Tribunal shall preside.

(c) Hereinafter the Tribunal shall not deliberate by a majority vote and in case the votes are evenly divided, the vote of the President shall be decisive; provided always that continuance and sentences shall only be imposed by affirmative votes of at least three members of the Tribunal.
Article 5. In cases of need and depending on the number of the matters to be tried, other tribunals may be set up, and the establishment, functions, and procedure thereof shall be identical, and shall be governed by this Chapter.

II. FUNDAMENTAL AND GENERAL PRINCIPLES

Article 5. The Tribunal established by the agreement referred to in article 1 heretofore 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) War crimes, 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) Crimes against humanity, 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 labor or for any other purpose of civilian population of or in occupied territory, murder of members of groups of persons belonging to national, racial or religious groups or to all members of a racial or religious group, with intent to destroy, in whole or in part, such groups;

(c) Crimes against peace, namely, war crimes as such crimes committed against any civilian population, before or during the war, or persecution on political, racial, or religious grounds in connection with 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 person in execution of such plan.

Article 6. The official position of defendants, whether as heads of state or responsible officials in government departments, shall not be considered as having them free responsibility or mitigating punishment.

Article 7. The fact that the defendant acted pursuant to order of his government or of a superior shall not relieve him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

Article 8. All trials of any individual member of any group or organization the Tribunal may declare to be in connection with any act of which the individual may be proved, that the group or organization of which the Tribunal 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 seek the Tribunal to make such declaration and if 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 discretion to grant or refuse the application. If the application is allowed, the Tribunal may direct in what manner the applicant 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 Chapter, with a crime other than that of membership in a criminal group or organization and such court may, after convicting him, impose upon him punishment independent of an 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 Chapter to 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.

Article 13. The Tribunal shall draw up rules for its procedure. These rules shall not be inconsistent with the provisions of this Chapter.

III. COMPETENCE FOR THE INVESTIGATION AND PROSECUTION OF MAJOR WAR CRIMES

Article 16. Each signatory shall appoint a chief prosecutor for the investigation of the charges against and the prosecution of major war criminals.

The chief prosecutor shall act as a committee for the following purposes:
(a) To agree upon a plan of the individual work of each of the chief prosecutors and his staff,
(b) To settle the final designation of major war criminals to be tried by the Tribunal,
(c) To approve the indictment and the documents to be submitted therewith,
(d) To judge the indictment and the accompanying documents with the Tribunal,
(e) To draw up and recommend to the Tribunal for its approval draft rules of procedure, contemplated by article 15 of this Chapter. The Tribunal shall have power to accept, with or without amendments, or to reject, the rules so recommended.

The committee shall act in all the above matters by a majority vote and shall appoint a chairman as may be convenient and in accordance with the principle of rotation provided that if there is an equal division of vote concerning the designation of a defendant to be tried by the Tribunal, or the crimes with which he shall be charged, such proposal shall be adopted which was made by the party which proposed that the particular defendant be tried, or the particular charges be preferred against him.

Article 17. The chief prosecutor shall individually, and acting in collaboration with one another, also undertake the following duties:
(a) Investigation, collection and production before or at the trial of all necessary evidence,
(b) The presentation of the indictment for approval by the committee in accordance with paragraph (e) of article 16 heretofore,
(c) The preliminary examination of all necessary witnesses and of the defendants,
(d) To act as prosecutor at the trial,
(a) To appoint representatives to carry out such duties as may be assigned to them,

(b) To undertake such other matters as may appear necessary to them for the purposes of the preparation for and conduct of the trial.

It is understood that no witness or defendant detained by any thereafter shall be taken out of the possession of that detentory without its consent.

IV. TRIAL FOR DEFENDANTS

Article 16. In order to secure fair trial for the defendants, the following procedure shall be followed:

(a) The indictment shall include full particulars specifying in detail the charges against the defendants. A copy of the indictment and of all the documents listed with it shall be transmitted to the defendant at a reasonable time before the trial.

(b) During any preliminary examination or trial of a defendant he shall have the right to give any explanation relevant to the charges made against him.

(c) A preliminary examination of a defendant and his trial shall be conducted in, or translated into, a language which the defendant understands.

(d) A defendant shall have the right to conduct his own defense before the Tribunal or to have the assistance of counsel.

(e) A defendant shall have the right through himself or through his counsel to present evidence at the trial in support of his defense, and to cross-examine any witnesses called by the prosecution.

V. POWERS OF THE TRIBUNAL AND COURT OF THE TRIBUNAL

Article 17. The Tribunal shall have the power:

(a) To summon witnesses to the trial and to require their attendance and testimony and to put questions to them,

(b) To interrogate any defendant,

(c) To require the production of documents or other evidentiary material,

(d) To administer oaths to witnesses,

(e) To appoint officers for the carrying out of any task designated by the Tribunal including the power to have evidence taken on commission.

Article 18. The Tribunal shall:

(a) Constitute the trial strictly on an expeditious hearing of the issues raised by the charges.

(b) Take strict measures to prevent any action which will be deemed unreasonable, unjust, and use our irrelevancy issues and statements of any kind whatsoever.

(c) Deal equitably with any controversy, imposing appropriate punishment, including exclusion of any defendant or his counsel from some or all further proceedings, but without prejudice to the determination of the charges.

Article 19. The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence which it deems to have probative value.
Article 20. The Tribunal may require to be informed of the nature of any evidence before it is offered so that it may rule upon the relevance thereof.

Article 21. The Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof. It shall also take judicial notice of official governmental documents and reports of the United Nations, including the acts and documents of the committees set up in the various Allied countries for the investigation of war crimes, and the records and findings of military or other tribunals of any of the United Nations.

Article 22. The permanent seat of the Tribunal shall be in Berlin. The first sessions of the Tribunal and of the Chief Prosecutors shall be held at Berlin in a place to be designated by the Control Council for Germany. The first trial shall be held at Nuremberg, and any subsequent trials shall be held at such places as the Tribunal may decide.

Article 23. One or more of the chief prosecutors may take part in the prosecution at each trial. The function of any chief prosecutor may be discharged by him personally, or by any person or persons authorized by him.

The function of counsel for a defendant may be discharged at the defendant's request by any counsel professionally qualified to conduct cases before the courts of his own country, or by any other person who may be specially authorized thereto by the Tribunal.

Article 24. The proceedings at the trial shall take the following course:

(a) The indictment shall be read in court.

(b) The Tribunal shall ask each defendant whether he pleads "guilty" or "not guilty".

(c) The prosecution shall make an opening statement.

(d) The Tribunal shall ask the prosecution and the defense what evidence (if any) they wish to submit to the Tribunal, and the Tribunal shall rule upon the admissibility of any such evidence.

(e) The witnesses for the prosecution shall be examined and after that the witnesses for the defense. Thereafter such rebutting evidence as may be held by the Tribunal to be admissible shall be called by either the prosecution or the defense.

(f) The Tribunal may put any question to any witness and to any defendant, at any time.

(g) The prosecution and the defense shall interrogate and may cross-examine any witnesses and any defendant who gives testimony.

(h) The defense shall address the court.

(i) The prosecution shall address the court.

(j) Each defendant may make a statement to the Tribunal.

(k) The Tribunal shall deliver judgment and pronounce sentence.

Article 25. All official documents shall be produced, and all court proceedings conducted, in English, French and Russian, and in the language of the defendant. So much of the record of the proceedings may also be translated into the language of any country in which the Tribunal is sitting, as the Tribunal considers desirable in the interests of justice and public opinion.
VI. JUDGMENT AND SENTENCE

Article 26. The judgment of the Tribunal as to the guilt or the innocence of any defendant shall give the reasons on which it is based, and shall be final and not subject to review.

Article 27. The Tribunal shall have the right to impose upon a defendant, on conviction, death or such other punishment as shall be determined by it to be just.

Article 28. In addition to any punishment imposed by it, the Tribunal shall have the right to deprive the convicted person of any stolen property and order its delivery to the Control Council for Germany.

Article 29. In case of guilt, sentences shall be carried out in accordance with the orders of the Control Council for Germany, which may at any time reduce or otherwise alter the sentences, but may not increase the severity thereof. If the Control Council for Germany, after any defendant has been convicted and sentenced, discovers fresh evidence which, in its opinion, would found a fresh charge against him, the Council shall report accordingly to the Committee established under article 16 hereof, for such action as they may consider proper, having regard to the interests of justice.

VII. EXPENSES

Article 30. The expenses of the Tribunal and of the trials, shall be charged by the signatories against the funds allotted for maintenance of the Control Council for Germany.