

MEMORANDUM CONCERNING THE FORMULATION
OF THE NUREMBERG PRINCIPLES AND THE
QUESTION OF INTERNATIONAL CRIMINAL
JURISDICTION

Submitted by the
WORLD JEWISH CONGRESS
to the
GENERAL ASSEMBLY OF THE UNITED NATIONS

1834 Broadway
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1. Formulation of the Nuremberg Principles

(a) Crimes against Humanity

During its Second Session the International Law Commission adopted a formulation of seven principles of international law which it considered as having been recognized by the Charter and the Judgment of the Nuremberg International Military Tribunal.

Principle No. VI(c) deals with "acts against humanity", which in the view of the Commission are punishable as international crimes under "Nuremberg Law" only if "such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime." Acceptance of this view would mean that "acts against humanity", (except those described in the Genocide Convention) committed independently of another crime, would not be considered as crimes under international law, unless declared to be such by another act of the comity of nations.

In this connection the World Jewish Congress respectfully wishes to call the attention of the General Assembly of the United Nations to Control Council Law No. 10, enacted by the four occupying powers of Germany. This law was, in fact, an international agreement among the four powers occupying Germany which differed from the Charter of the International Military Tribunal in that it declared "acts against humanity" to be crimes whether or not committed in connection with the conduct of war. In order to stress its international character, the powers stated that its purpose was "to give effect to the terms of the Moscow Declaration of October 30, 1943, and the London Agreement of August 8, 1945." The tribunals established on the basis of that law (see, for instance, the judgment in case No. 3) considered themselves to have been based "upon international authority" and as having "international characteristics."

It is also submitted that the criminality of "acts against humanity"

cannot be made to depend on the "outside" circumstances under which they are committed, i. e. on whether they are perpetrated during a war or in connection with a war crime or whether they are committed in times of peace. For the acts are in both cases exactly the same, i. e. violations of the law of nations. To exclude those not committed in time of war or in connection with a war crime would mean that as concerns "acts against humanity" the comity of nations specifically favors those perpetrators of such crimes who are not in a state of war as against those who are. An attempt to make such a differentiation would make it impossible to deal with "acts against humanity" as a "sui generis" crime and would lead to many inconsistencies in the application of the law, as was the case in the judgment of the International Military Tribunal.

The present world situation is apt to result in new instances of inhuman action toward weak groups and their members, not necessarily connected with the waging of war. In our view, such action will not be prevented unless would-be perpetrators are warned that their acts would constitute a crime under international law and would be punished as such. In addition, the failure to incorporate the principles of Law No. 10 in the law of nations might weaken the moral force of the law. It is therefore suggested that if the General Assembly accepts the view of the International Law Commission that the rule of Control Council Law No. 10 is not part of the "Nuremberg principles" and that "acts against humanity" other than those perpetrated in execution of or in connection with crimes against the peace are not criminal offenses under the principles of law recognized in the Charter and Judgment of the Tribunal, the General Assembly should adopt a special resolution declaring such acts to be crimes under international law.

(b) Criminality of organizations

No large scale acts against humanity or crimes against the peace are possible without the machinery of an organization through which its members are

able to carry out their criminal acts. The Charter and Judgment of Nuremberg, therefore, correctly permitted the Tribunal to declare organizations whose actions are criminal under international law as "criminal" organizations.

The International Law Commission, as evident from its records, has only examined the criminal responsibility of individuals "leaving aside the responsibility of corporate bodies such as the states or organizations..."

(A/CN.4/SR/54). This might account for the fact that, in its report, the Commission made no suggestion concerning the "criminality" of organizations referred to above. It is submitted that the mere threat of being considered prima facie as an offender of international law will deter would-be members of such organizations from joining them in the future, a deterrent which may prove to be the most effective means of preventing large scale crimes. For this reason the World Jewish Congress suggests that the General Assembly consider the question of the "criminality" of organizations, with a view of incorporating it in the resolution to be adopted on the basis of the report of the International Law Commission.

2. Question of International Criminal Jurisdiction

The International Law Commission decided that the establishment of an international judicial organ for the trial of certain persons is both desirable and possible. The World Jewish Congress desires to point out that the mere existence of such a tribunal and its prestige as an organ of the comity of nations would serve as a warning and a deterrent to would-be violators of international law.

It should also be pointed out in connection with the above that the judgments of the international ad hoc tribunals established after the end of the Second World War were criticized by certain groups as not representing decisions of the comity of nations, but of the victors only. Although this view

has no merit, there can be no doubt but that judgments by an international judicial organ of the United Nations would vitiate such criticism and that such judgments would enjoy greater moral weight than that accorded ad hoc tribunals, however representative they might be.

It is submitted that the present tensions in the world might very well create the climate for crimes whose prosecution may require the existence of such a tribunal. Its establishment is therefore urged as an imperative and immediate necessity.

An international judicial organ established under the auspices of the United Nations need not be in permanent session. It would suffice if its members (and in case of non-availability, their alternates) and auxiliary personnel were nominated so that it could commence a trial whenever the prosecution of a person or persons charged with a crime under international law is referred to it by a member state or member states of the U. N. or when states agree to its jurisdiction for specific crimes and such a crime has, in fact, occurred.