The General Ideas of the Agreement and the Charter

The Agreement of August 8, 1945 is an international treaty, concluded by the four signatories, Great Britain, the U.S.A., the U.S.S.R., and the French Republic. The signatories declare themselves to be acting in the interests of all the United Nations, and any government of the United Nations is entitled to adhere to the agreement by diplomatic notice.

The agreement is the outcome of long and profound discussions between the Allied governments, the signatories as well as the other United Nations. Like every important law or treaty the agreement has its "motives" which can be understood from these preceding discussions, from official declarations and statements by the members of the governments, from discussions and resolutions in the law-making bodies, and finally, from the statement of the American representative, Justice Robert H. Jackson on signing the agreement. While the discussions represented many different viewpoints, with the signing of the Agreement of August 8, 1945, the discussions are declared completed and the treaty stands as an entire agreement. By the conclusion of the agreement international criminal law is created for the special purpose as described in the document.

This purpose is the prosecution and punishment of the major war criminals of the European Axis, of those men whose offenses, according to the Moscow Declaration of October 30, 1943, have no particular geographical location, and whose punishment has been reserved to the joint decision of the governments of the Allies. By the Agreement of August 8, 1945, this decision will not be a unilateral act of the Allied governments, but an International Military Tribunal is established for the trial of these major criminals, whether they be accused as individuals or in their capacity as members of organizations or groups or in both capacities. While the
agreement binds the contracting governments, it creates law against the
defendants who must accept the judgment of the Tribunal. The constitution
of the International Military Tribunal and the principles which govern its
operations are contained in the "Charter" which forms an integral part of
the agreement and supplements its rulings. The constitution of the Interna-
tional Military Tribunal, the principles of its jurisdiction, its powers
in conducting the trials, and the rules on the Tribunal's judgment and sen-
tences, are agreed upon by the signatories: agreement and charter, as
an indivisible unit, are the formal and material law which materializes the
recognized necessity that the major criminals of the European Axis have
to be prosecuted and punished by an international judgment. The Interna-
tional accountability which is laid upon the individuals responsible for
crimes against peace, for war crimes, and for crimes against humanity, is
to be judged by the International Military Tribunal established for this
special purpose.

If this undertaking is "something entirely new," this situation without
precedent has not been created by the signatories of the agreement but
as a consequence of the unique criminal act of those responsible, their
criminal guilt, and their complete contempt for everything that the civilized
people of the world have considered as moral and legal law. There were
three possible answers to the question: What should be done with the cri-
minals? Leave them at large without a hearing, execute or otherwise punish
them without a hearing, determine the innocence or guilt of the accused
after a fair trial. While there was nobody who advocated the first possi-
bility, for a long time the second possibility found wide support. But the
final decision was made in favor of the third possibility. By the agreement
and the charter this decision has become law.
It is typical of the crimes committed by the accused that they could not be recognized by civilized people as criminal at their very start. The acts committed within Germany since 1933 were legally to be the internal affairs of the German government, although the feeling of a general moral refusal against them prevailed outside Germany. The connection of these acts with a war of aggression to come were not understood either. The individual members of the Nazi inner circle proceeded in deceiving the world about the final urge and bearing of the political and social provocations as well as their war mongering plans at a time when the treaties of non-aggression and of neutrality which they offered were credibly accepted and concluded. Even after the outbreak of war it took a considerable time until the Allied governments recognized the true character of totalitarian war and of the measures applied by the major criminals of the European Axis to set up their "new order." In the beginning the invaded European countries, each one attacked separately, reacted separately with protests against the system of Nazi crimes. The first act of a concerted international reaction was the Saint James' Conference of January 13, 1942, by which the governments of the nine occupied European countries created a common front for retribution for the acts of violence committed by the Axis criminals. This step favored by Great Britain, the U.S.S.R., the U.S.A., and China, was the basis for the international collaboration of the Allied Nations with regard to the punishment of the war criminals. The great number of warnings issued since, separately or jointly, by the statesmen of the United Nations and the discussions in their parliaments made it clear beyond any doubt that the punishment of those responsible for war crimes had become a matter of international concern and one of the major purposes of the war. The strict accountability of the criminal ringleaders and their henchmen on the one side, and international solidarity on the other, proclaimed by the late
President Roosevelt on July 17, August 21, and December 17, 1944, and at various subsequent dates, and confirmed by Prime Minister Churchill or other members of the British Government, became the leading motive for the international cooperation among the civilized nations of the world. In the Moscow Declaration of November 1, 1943, the leaders of Great Britain, U.S.A. and U.S.S.R. stressed the principle that the major war criminals would have to be punished by an international court, the joint decision of the governments of the Allies.

Even at this time the informations of the Allied governments and their spokesmen with regard to the extent of the crimes of the Nazi leaders, their criminal doings and purposes, were not complete. With the advance of the Allied armies the flow of information grew and the evidence for the crimes actually done increased. Not only the final and complete breakdown of the German armies brought into the hands of the Allied governments the thousands of documents which proved the criminal intentions of the criminals and the criminality of their acts of murder and destruction, but the political masters of Germany in January 1945 and were able to use the means of power of the German state for the final object of their war of aggression.

After having taken complete cognizance of the facts, the Allied Powers in the "Declaration regarding Defeat of Germany and Assumption of Supreme Authority by Allied Powers" of June 5, 1945, in which they announced their rulings for the maintenance of order in Germany and the administrative of the country, stated in article 11 that the principal Nazi leaders and all persons named or designated by the Allied representatives as being suspected of having committed, ordered or abetted war crimes or analogous offenses, will be apprehended and surrendered to the Allied representatives. Finally, the agreement reached by the governments of U.S.A., Great Britain and the U.S.S.R. at Potsdam and published on August 2, 1945 stated in number 5 that
"War criminals and those who have participated in planning or carrying out
Nazi enterprises involving or resulting in atrocities or war crimes shall be
arrested and brought to judgment." With this agreement the principle of a
trial by court was finally adopted.

While it is characteristic of the decision of the Allies that it could
be reached only gradually, corresponding to the gradual uncovering and under-
standing of the character and range of the crimes committed by the Nazi
leaders, it is characteristic of the criminality of these leaders that they
committed their acts by means of intentionally veiling the criminality of the
acts proper and their personal plans and intentions. The Allies were not
able to proceed against acts as crimes or war crimes as long as the
criminal character of these acts was carefully concealed. On the other
hand, it is characteristic of the criminals' behavior that they continued
the crimes after and despite of the warnings which were issued by the Allies,
separately and jointly. In this behavior the criminals proved that they did
not recognize the existence of law at whatever time and in whatever form
it existed. Therefore, they are rightly excluded from the defense that the
criminal legislation which is now bringing them to justice did not exist as
a written law at the time when the crimes were committed. The defense of:
"we were merely following the orders of the Nazi leaders" would be not only a
forensic abuse but even a confirmation of the criminal status which is contained in
their conspiracy. Therefore, the characterization as crimes of the acts
covered in article 6 of the Agreement of August 8, 1945, is binding for
the defendants, for the prosecution and for the court. Any objection to
the contrary must be overruled by the court as irrelevant and obstructive
to expeditious proceedings.

As a consequence of the unique criminal situation created by the Nazi
leaders, the Agreement and Charter of August 8, 1945 have been developed
upon international concern, as a special instrument capable to deal with this unique situation. On the one hand, the agreement is restricted to its purposes, it can not be used for other charges but those mentioned in article 6 and against other persons but those characterized as major war criminals. The agreement and charter are exclusive and exhaustive. But on the other hand, the purpose of the agreement is to be pursued on the basis of the substantive and jurisdictional rulings given in the charter, supplemented even by legal principles which may exist nowhere and may have been fitting for other situations. The agreement and charter are also exclusive and exhaustive with regard to the formal and material law to be applied before and by the international military court which has been created by this agreement. All substantive and procedural principles not contained in the agreement and the charter have to be disregarded by the international military court and their possible existence is not essential for the trial.

The crimes against humanity (under article 6 of the agreement) have their special aspect as far as they have been directed against the Jewish people. The unexampled systematic murder of the Jews of Europe has been characterized by the late President Roosevelt in his statement of March 24, 1943, as "one of the blackest crimes of all history, begun by the Nazis in the day of peace and multiplied by them a hundred times in time of war." The British Government and by official statement of the same day "wholeheartedly associated" itself with this declaration. The principle that crimes against humanity are not dependent on space or time or on the nationality of the victims has been asserted in the House of Lords on November 12, 1944 by Lord Hirston and the claim has been stressed that such crimes should be punished by the Allies. After it was recognized that the bellicosity within Germany was preparatory to launching aggression and was instrumental in
spreading rules to other countries (Justice Jackson's report to President Truman of June 7, 1945) a charge was made under the Agreement of August 8, 1945 of crimes against humanity committed in execution of or in connection with any crime within the jurisdiction of the International Military Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

By this formula an international accountability has been recognized for the crimes against the Jewish people, while the individual crimes as murder, kidnap, looting etc. are criminal acts under the individual national laws of every state, the Agreement and Charter of August 8, 1945 had acknowledged, then as crimes under international criminal law when they were associated with attacks on the peace of the international order.

The entanglement of the crimes against the Jewish people with the war of aggression planned and executed by the Nazis leaders could be recognized only gradually as well as the fact that the Nazi leaders used anti-Semitism as one of their means of aggression. But after the criminal connection between the systematic racial persecutions and the war of aggression became clear, this special type of war crimes belongs to the competence of the International Military Tribunal and has been assigned to it by the Agreement and the Charter. Here again, the Agreement and the Charter are conclusive and exhaustive, exclusive, because only such crimes against humanity are assigned to the Tribunal which have been committed in execution of or in connection with a crime within the jurisdiction of the Tribunal, that is, a crime belonging to the system of aggression exclusive, because these acts against humanity are definitely declared to be international crimes and belonging as such to the competence of the Tribunal, regardless of the question whether they were covered by or violated the domestic law of the country where they were perpetrated.