

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL AT NUREMBERG¹

I. CONSTITUTION OF THE INTERNATIONAL MILITARY TRIBUNAL

Article 1

In pursuance of the Agreement signed on the 8th 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 any member of the Tribunal or his incapacity for some other reason to fulfill his functions, his alternate shall take his place.

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 members of the Tribunal or his alternate for reasons of health or for other good reasons, except that no replacement may take place during a Trial, other than by an alternate.

1. Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Aug. 8, 1945, 82 U.N.T.S. 279.

(a) The presence of all four members of the Tribunal or the alternate for any absent member shall be necessary to constitute the quorum.

(b) 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. If, 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) Save as aforesaid the Tribunal shall take decisions by a majority vote and in case the votes are evenly divided, the vote of the President shall be decisive: provided always that convictions and sentences shall only be imposed by affirmative votes of at least three members of the Tribunal.

Article 5

In case 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 of each Tribunal shall be identical, and shall be governed by this Charter.

II. JURISDICTION AND GENERAL PRINCIPLES

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

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 individual 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.

Article 13

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

III. COMMITTEE FOR THE INVESTIGATION AND PROSECUTION OF MAJOR WAR CRIMINALS

Article 14

Each Signatory shall appoint a Chief Prosecutor for the investigation of the charges against and the prosecution of major war criminals.

The Chief Prosecutors 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~~ *Fulfilling the Legacy* 91

(d) to lodge the Indictment and the accompany documents with the Tribunal,

(e) to draw up and recommend to the Tribunal for its approval draft rules of procedure, contemplated by Article 13 of this Charter. The Tribunal shall have the 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, that proposal will 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 15

The Chief Prosecutors 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 preparation of the Indictment for approval by the Committee in accordance with paragraph (c) of Article 14 hereof,

(c) the preliminary examination of all necessary witnesses and of all Defendants,

(d) to act as prosecutor at the Trial,

(e) to appoint representatives to carry out such duties as may be assigned them,

(f) 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 the Signatory shall be taken out of the possession of that Signatory without its assent.

IV. FAIR TRIAL FOR DEFENDANTS

Article 16

In order to ensure 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 Defendant. A copy of the Indictment and of all the documents lodged with the Indictment, translated into a language which he understands, shall be furnished to the Defendant at reasonable time before the Trial.

(b) During any preliminary examination or trial of a Defendant he will 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 witness called by the Prosecution.

V. POWERS OF THE TRIBUNAL AND CONDUCT OF THE TRIAL

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 and 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) confine the Trial strictly to an expeditious hearing of the cases raised by the charges,

(b) take strict measures to prevent any action which will cause reasonable delay, and rule out irrelevant issues and statements of any kind whatsoever,

(c) deal summarily with any contumacy, 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.

The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and nontechnical procedure, and shall admit any evidence which it deems to be of probative value.

Article 20

The Tribunal may require to be informed of the nature of any evidence before it is entered 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 of 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 meetings of the members 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.” *Gonzaga Journal of International Law* [Vol. 10:1

(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 and of the proceedings may also be translated into the language of any country in which the Tribunal is sitting, as the Tribunal is sitting, as the Tribunal considers desirable in the interests of the 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.

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 14 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 of Germany.