

Document:
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**Draft code of offences against the peace and security of mankind -
Compendium of relevant international instruments**

Topic:
**Draft code of crimes against the peace and security of mankind (Part II)- including the
draft statute for an international criminal court**

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DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND

Compendium of relevant international instruments

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INTRODUCTION

1. On 10 December 1981, the General Assembly adopted resolution 36/106 entitled "Draft Code of Offences against the Peace and Security of Mankind".
2. By that resolution, the General Assembly, inter alia, recalling its belief that the elaboration of a code of offences against the peace and security of mankind could contribute to strengthening international peace and security and thus to promoting and implementing the purposes and principles set forth in the Charter of the United Nations, invited the International Law Commission (ILC) to resume its work with a view to elaborating the draft Code of Offences against the Peace and Security of Mankind and to examine it with the required priority in order to review it, taking duly into account the results achieved by the process of progressive development of international law.
3. By the same resolution, the General Assembly requested the International Law Commission to consider at its thirty-fourth session the question of the Draft Code of Offences against the Peace and Security of Mankind in the context of its five-year programme and to report to the General Assembly at its thirty-seventh session on the priority it deemed advisable to accord to the draft Code and the possibility of presenting a preliminary report to the Assembly at its thirty-eighth session bearing, inter alia, on the scope and the structure of the draft Code.
4. In accordance with the request contained in resolution 36/106, the International Law Commission considered the question of the draft Code of Offences against the Peace and Security of Mankind at its thirty-fourth session, held from 3 May to 23 July 1982. It appointed Mr. Doudou Thiam Special Rapporteur for the topic and established a Working Group to be chaired by the Special Rapporteur.
5. On the recommendation of the Working Group, the Commission decided inter alia to request the Secretariat to give the Special Rapporteur the assistance that may be required and to submit to the Commission all necessary source materials, including, in particular, a compendium of relevant international instruments and an up-to-date version of the paper prepared pursuant to General Assembly resolution 35/49 of 4 December 1980 (A/36/535), analysing the comments and observations from Governments of Member States which may be received in writing or made in debates in the General Assembly. 1/
6. The present compendium of relevant international instruments has been prepared pursuant to the above request of the International Law Commission. It is divided into two main parts: part I, entitled "International instruments specifically related to the question of the Code of Offences against the Peace and Security of Mankind or to the specific offences", and part II, entitled "Instruments which were mentioned as relevant during the examination by the General Assembly of the question of the draft Code". Part I of the compendium is divided into section A, entitled "International instruments elaborated before the adoption of the Charter of the United Nations", and section B, entitled "International instruments elaborated after the adoption of the Charter of the United Nations". Both sections A and B are further divided into subsections entitled, respectively,

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"International agreements" and "Other international instruments". Part II of the compendium is divided into two sections, section 1, entitled "International agreements", and section 2, entitled "Other international instruments".

7. In part I, the instruments which appear to be relevant in their entirety to the topic of the compendium have been reproduced in extenso, while in the case of other instruments only excerpts have been published. In part II, the mere indication of their source has been provided for the General Assembly resolutions as well as for the instruments which are easily accessible either in the League of Nations Treaty Series, the United Nations Treaty Series, or in the United Nations Juridical Yearbook, while in the case of international agreements which have not been published in the above-mentioned publications relevant excerpts have been reproduced.

PART I. INTERNATIONAL INSTRUMENTS SPECIFICALLY RELATED TO THE
QUESTION OF THE CODE OF OFFENCES AGAINST THE PEACE
AND SECURITY OF MANKIND OR TO THE SPECIFIC OFFENCES

A. International instruments elaborated before the adoption
of the Charter of the United Nations

1. International agreements

(a) Peace Treaty; signed at Versailles on 28 June 1919 (excerpts)

Part VII.

Penalties.

Article 227.

The Allied and Associated Powers publicly arraign William II of Hohenzollern, formerly German Emperor, for a supreme offence against international morality and the sanctity of treaties.

A special tribunal will be constituted to try the accused, thereby assuring him the guarantees essential to the right of defence. It will be composed of five judges, one appointed by each of the following Powers: namely, the United States of America, Great Britain, France, Italy, and Japan.

In its decision the tribunal will be guided by the highest motives of international policy, with a view to vindicating the solemn obligations of international undertakings and the validity of international morality. It will be its duty to fix the punishment which it considers should be imposed.

The Allied and Associated Powers will address a request to the Government of the Netherlands for the surrender to them of the ex-Emperor in order that he may be put on trial.

Article 223.

The German Government recognises the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons shall, if found guilty, be sentenced to punishments laid down by law. This provision will apply notwithstanding any proceedings or prosecution before a tribunal in Germany or in the territory of her allies.

The German Government shall hand over to the Allied and Associated Powers, or to such one of them as shall so request, all persons accused of having committed an act in violation of the laws and customs of war, who are specified either by name or by the rank, office or employment which they held under the German authorities.

Article 229.

Persons guilty of criminal acts against the nationals of one of the Allied and Associated Powers will be brought before the military tribunals of that Power.

Persons guilty of criminal acts against the nationals of more than one of the Allied and Associated Powers will be brought before military tribunals composed of members of the military tribunals of the Powers concerned.

In every case the accused will be entitled to name his own counsel.

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- (b) TREATY relating to the Use of Submarines and Noxious Gases in Warfare; signed at Washington, on 6 February 1922. (excerpts)

ARTICLE I. The Signatory Powers declare that among the rules adopted by civilized nations for the protection of the lives of neutrals and non-combatants at sea in time of war, the following are to be deemed an established part of international law;

(1) A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized.

A merchant vessel must not be attacked unless it refuse to submit to visit and search after warning, or to proceed as directed after seizure.

A merchant vessel must not be destroyed unless the crew and passengers have been first placed in safety.

(2) Belligerent submarines are not under any circumstances exempt from the universal rules above stated; and if a submarine can not capture a merchant vessel in conformity with these rules the existing law of nations requires it to desist from attack and from seizure and to permit the merchant vessel to proceed unmolested.

ART. 2. The Signatory Powers invite all other civilized Powers to express their assent to the foregoing statement of established law so that there may be a clear public understanding throughout the world of the standards of conduct by which the public opinion of the world is to pass judgment upon future belligerents.

ART. 3. The Signatory Powers, desiring to insure the enforcement of the humane rules of existing law declared by them with respect to attacks upon and the seizure and destruction of merchant ships, further declare that any person in the service of any Power who shall violate any of those rules, whether or not such person is under orders of a governmental superior, shall be deemed to have violated the laws of war and shall be liable to trial and punishment as if for an act of piracy and may be brought to trial before the civil or military authorities of any Power within the jurisdiction of which he may be found.

ART. 4. The Signatory Powers recognize the practical impossibility of using submarines as commerce destroyers without violating, as they were violated in the recent war of 1914-1918, the requirements universally accepted by civilized nations for the protection of the lives of neutrals and non-combatants, and to the end that the prohibition of the use of submarines as commerce destroyers shall be universally accepted as a

part of the law of nations they now accept that prohibition as henceforth binding as between themselves and they invite all other nations to adhere thereto.

ART. 5. The use in war of asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices, having been justly condemned by the general opinion of the civilized world and a prohibition of such use having been declared in treaties to which a majority of the civilized Powers are parties,

/...

(c) TREATY OF MUTUAL ASSISTANCE

(draft adopted in 1923 by the Third Committee of the Assembly
of the League of Nations - excerpts)

ARTICLE 1.

The High Contracting Parties solemnly declare that aggressive war is an international crime and severally undertake that no one of them will be guilty of its commission.

I. Pact of
non-aggression

A war shall not be considered as a war of aggression if waged by a State which is party to a dispute and has accepted the unanimous recommendation of the Council, the verdict of the Permanent Court of International Justice, or an arbitral award against a High Contracting Party which has not accepted it, provided, however, that the first State does not intend to violate the political independence or the territorial integrity of the High Contracting Party.

ARTICLE 2.

The High Contracting Parties, jointly and severally, undertake to furnish assistance, in accordance with the provisions of the Present Treaty, to any one of their number should the latter be the object of a war of aggression, provided that it has conformed to the provisions of the present Treaty regarding the reduction or limitation of armaments.

II. General
assistance.

ARTICLE 3.

In the event of one of the High Contracting Parties being of opinion that the armaments of any other High Contracting Party are in excess of the limits fixed for the latter High Contracting Party under the provisions of the present Treaty, or in the event of it having cause to apprehend an outbreak of hostilities, either on account of the aggressive policy or preparations of any State party or not to the present Treaty, it may inform the Secretary-General of the League of Nations that it is threatened with aggression, and the Secretary-General shall forthwith summon the Council.

Menace
of aggression

The Council, if it is of opinion that there is reasonable ground for thinking that a menace of aggression has arisen, may take all necessary measures to remove such menace, and in particular, if the Council thinks right, those indicated in sub-paragraphs (a), (b), (c), (d) and (e) of the second paragraph of Article 5 of the present Treaty.

The High Contracting Parties which have been denounced and those which have stated themselves to be the object of a threat of aggression shall be considered as especially interested and shall therefore be invited to send representatives to the Council in conformity with Articles 4, 15 and 17 of the Covenant. The vote of their representatives shall, however, not be reckoned when calculating unanimity.

ARTICLE 4.

In the event of one or more of the High Contracting Parties becoming engaged in hostilities, the Council of the League of Nations shall decide, within four days of notification being addressed to the Secretary-General, which of the High Contracting Parties are the objects of aggression and whether they are entitled to claim the assistance provided under the Treaty.

Hostilities.

The High Contracting Parties undertake that they will accept such a decision by the Council of the League of Nations.

The High Contracting Parties engaged in hostilities shall be regarded as especially interested, and shall therefore be invited to send representatives to the Council (within the terms of Articles 4, 15 and 17 of the Covenant), the vote of their representative not being reckoned when calculating unanimity; the same shall apply to States signatory to any partial agreements involved on behalf of either of the two belligerents, unless the remaining Members of the Council shall decide otherwise.

/...

ARTICLE 5.

The High Contracting Parties undertake to furnish one another mutually with assistance in the case referred to in Article 2 of the Treaty in the form determined by the Council of the League of Nations as the most effective, and to take all appropriate measures without delay in the order of urgency demanded by the circumstances.

Measures
of assistance.

In particular, the Council may:

- (a) Decide to apply immediately to the aggressor State the economic sanctions contemplated by Article 16 of the Covenant, the Members of the League not signatory to the present Treaty not being, however, bound by this decision, except in the case where the State attacked is entitled to avail itself of the Articles of the Covenant;
- (b) Invoke by name the High Contracting Parties whose assistance it requires. No High Contracting Party situated in a continent other than that in which operations will take place shall, in principle, be required to co-operate in military, naval or air operations;
- (c) Determine the forces which each State furnishing assistance shall place at its disposal;
- (d) Prescribe all necessary measures for securing priority for the communications and transport connected with the operations;
- (e) Prepare a plan for financial co-operation among the High Contracting Parties with a view to providing for the State attacked and for the States furnishing assistance the funds which they require for the operations;
- (f) Appoint the Higher Command and establish the object and the nature of his duty.

The representatives of States recognised as aggressors under the provisions of Article 4 of the Treaty shall not take part in the deliberations of the Council specified in this Article. The High Contracting Parties who are required by the Council to furnish assistance, in accordance with sub-paragraph (b), shall, on the other hand, be considered as especially interested, and, as such, shall be invited to send representatives, unless they are already represented, to the deliberations specified in sub-paragraphs (c), (d), (e) and (f).

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(d) PROTOCOL FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL
DISPUTES

Adopted by the Fifth Assembly of the League of Nations
on 2 October 1924 (excerpts)

Asserting that a war of aggression constitutes a violation of this solidarity and an international crime;

Desirous of facilitating the complete application of the system provided in the Covenant of the League of Nations for the pacific settlement of disputes between States and of ensuring the repression of international crimes; and

...

The undersigned, duly authorised to that effect, agree as follows:

Article 1.

The signatory States undertake to make every effort in their power to secure the introduction into the Covenant of amendments on the lines of the provisions contained in the following articles.

They agree that, as between themselves, these provisions shall be binding as from the coming into force of the present Protocol and that, so far as they are concerned, the Assembly and the Council of the League of Nations shall thenceforth have power to exercise all the rights and perform all the duties conferred upon them by the Protocol.

Article 2.

The signatory States agree in no case to resort to war either with one another or against a State which, if the occasion arises, accepts all the obligations hereinafter set out, except in case of resistance to acts of aggression or when acting in agreement with the Council or the Assembly of the League of Nations in accordance with the provisions of the Covenant and of the present Protocol.

...

Article 7.

In the event of a dispute arising between two or more signatory States, these States agree that they will not, either before the dispute is submitted to proceedings for pacific settlement or during such proceedings, make any increase of their armaments or effectives which might modify the position established by the Conference for the Reduction of Armaments provided for by Article 17 of the present Protocol, nor will they take any measure of military, naval, air, industrial or economic mobilisation, nor, in general, any action of a nature likely to extend the dispute or render it more acute.

It shall be the duty of the Council, in accordance with the provisions of Article 11 of the Covenant, to take under consideration any complaint as to infraction of the above undertakings which is made to it by one or more of the States parties to the dispute. Should the Council be of opinion that the complaint requires investigation, it shall, if it deems it expedient, arrange for enquiries and investigations in one or more of the countries concerned. Such enquiries and investigations shall be carried out with the utmost possible despatch and the signatory States undertake to afford every facility for carrying them out.

The sole object of measures taken by the Council as above provided is to facilitate the pacific settlement of disputes and they shall in no way prejudice the actual settlement.

If the result of such enquiries and investigations is to establish an infraction of the provisions of the first paragraph of the present Article, it shall be the duty of the Council to summon the State or States guilty of the infraction to put an end thereto. Should the State or States in question fail to comply with such summons, the Council shall declare them to be guilty of a violation of the Covenant or of the present Protocol, and shall decide upon the measures to be taken with a view to end as soon as possible a situation of a nature to threaten the peace of the world.

For the purposes of the present Article decisions of the Council may be taken by a two-thirds majority.

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Article 8.

The signatory States undertake to abstain from any act which might constitute a threat of aggression against another State.

If one of the signatory States is of opinion that another State is making preparations for war, it shall have the right to bring the matter to the notice of the Council.

The Council, if it ascertains that the facts are as alleged, shall proceed as provided in paragraphs 2, 4, and 5 of Article 7.

Article 9.

The existence of demilitarised zones being calculated to prevent aggression and to facilitate a definite finding of the nature provided for in Article 10 below, the establishment of such zones between States mutually consenting thereto is recommended as a means of avoiding violations of the present Protocol.

The demilitarised zones already existing under the terms of certain treaties or conventions, or which may be established in future between States mutually consenting thereto, may at the request and at the expense of one or more of the conterminous States, be placed under a temporary or permanent system of supervision to be organised by the Council.

Article 10.

Every State which resorts to war in violation of the undertakings contained in the Covenant or in the present Protocol is an aggressor. Violation of the rules laid down for a demilitarised zone shall be held equivalent to resort to war.

In the event of hostilities having broken out, any State shall be presumed to be an aggressor, unless a decision of the Council, which must be taken unanimously, shall otherwise declare:

1. If it has refused to submit the dispute to the procedure of pacific settlement provided by Articles 13 and 15 of the Covenant as amplified by the present Protocol, or to comply with a judicial sentence or arbitral award or with a unanimous recommendation of the Council, or has disregarded a unanimous report of the Council, a judicial sentence or an arbitral award recognising that the dispute between it and the other belligerent State arises out of a matter which by international law is solely within the domestic jurisdiction of the latter State; nevertheless, in the last case the State shall only be presumed to be an aggressor if it has not previously submitted the question to the Council or the Assembly, in accordance with Article 11 of the Covenant.
2. If it has violated provisional measures enjoined by the Council for the period while the proceedings are in progress as contemplated by Article 7 of the present Protocol.

Apart from the cases dealt with in paragraphs 1 and 2 of the present Article, if the Council does not at once succeed in determining the aggressor, it shall be bound to enjoin upon the belligerents an armistice, and shall fix the terms, acting, if need be, by a two-thirds majority and shall supervise its execution.

Any belligerent which has refused to accept the armistice or has violated its terms shall be deemed an aggressor.

The Council shall call upon the signatory States to apply forthwith against the aggressor the sanctions provided by Article 11 of the present Protocol, and any signatory State thus called upon shall thereupon be entitled to exercise the rights of a belligerent.

Article 11.

As soon as the Council has called upon the signatory States to apply sanctions, as provided in the last paragraph of Article 10 of the present Protocol, the obligations of the said States, in regard to the sanctions of all kinds mentioned in paragraphs 1 and 2 of Article 16 of the Covenant, will immediately become operative in order that such sanctions may forthwith be employed against the aggressor.

Those obligations shall be interpreted as obliging each of the signatory States to co-operate loyally and effectively in support of the Covenant of the League of Nations, and in resistance to any act of aggression, in the degree which its geographical position and its particular situation as regards armaments allow.

In accordance with paragraph 3 of Article 16 of the Covenant the signatory States give a joint and several undertaking to come to the assistance of the State attacked or threatened, and to give each other mutual support by means of facilities and reciprocal exchanges as regards the provision of raw materials and supplies of every kind, openings of credits, transport and transit, and for this purpose to take all measures in their power to preserve the safety of communications by land and by sea of the attacked or threatened State.

If both parties to the dispute are aggressors within the meaning of Article 10, the economic and financial sanctions shall be applied to both of them.

...

Article 15.

In conformity with the spirit of the present Protocol, the signatory States agree that the whole cost of any military, naval or air operations undertaken for the repression of an aggression under the terms of the Protocol, and reparation for all losses suffered by individuals, whether civilians or combatants, and for all material damage caused by the operations of both sides, shall be borne by the aggressor State up to the extreme limit of its capacity.

Nevertheless, in view of Article 10 of the Covenant, neither the territorial integrity nor the political independence of the aggressor State shall in any case be affected as the result of the application of the sanctions mentioned in the present Protocol.

Article 16.

The signatory States agree that in the event of a dispute between one or more of them and one or more States which have not signed the present Protocol and are not Members of the League of Nations, such non-Member States shall be invited, on the conditions contemplated in Article 17 of the Covenant, to submit, for the purpose of a pacific settlement, to the obligations accepted by the States signatories of the present Protocol.

If the State so invited, having refused to accept the said conditions and obligations, resorts to war against a signatory State, the provisions of Article 16 of the Covenant, as defined by the present Protocol, shall be applicable against it.

...

Article 19.

Except as expressly provided by its terms, the present Protocol shall not affect in any way the rights and obligations of Members of the League as determined by the Covenant.

/...

(e) CONVENTION FOR THE PREVENTION AND PUNISHMENT OF TERRORISM

(Adopted by the International Conference on the Repression of
Terrorism in Geneva on 16 November 1937 - excerpts)

.....
Being desirous of making more effective the prevention and punishment of terrorism of an international character,

Have appointed as their Plenipotentiaries :

.....
Who, having communicated their full powers, which were found in good and due form, have agreed upon the following provisions :

Article 1.

1. The High Contracting Parties, reaffirming the principle of international law in virtue of which it is the duty of every State to refrain from any act designed to encourage terrorist activities directed against another State and to prevent the acts in which such activities take shape, undertake as hereinafter provided to prevent and punish activities of this nature and to collaborate for this purpose.

2. In the present Convention, the expression " acts of terrorism " means criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public.

Article 2.

Each of the High Contracting Parties shall, if this has not already been done, make the following acts committed on his own territory criminal offences if they are directed against another High Contracting Party and if they constitute acts of terrorism within the meaning of Article 1 :

(1) Any wilful act causing death or grievous bodily harm or loss of liberty to :

(a) Heads of States, persons exercising the prerogatives of the head of the State, their hereditary or designated successors;

(b) The wives or husbands of the above-mentioned persons;

(c) Persons charged with public functions or holding public positions when the act is directed against them in their public capacity.

(2) Wilful destruction of, or damage to, public property or property devoted to a public purpose belonging to or subject to the authority of another High Contracting Party.

(3) Any wilful act calculated to endanger the lives of members of the public.

(4) Any attempt to commit an offence falling within the foregoing provisions of the present article.

(5) The manufacture, obtaining, possession, or supplying of arms, ammunition, explosives or harmful substances with a view to the commission in any country whatsoever of an offence falling within the present article.

/...

Article 3.

Each of the High Contracting Parties shall make the following acts criminal offences when they are committed on his own territory with a view to an act of terrorism falling within Article 2 and directed against another High Contracting Party, whatever the country in which the act of terrorism is to be carried out :

- (1) Conspiracy to commit any such act;
- (2) Any incitement to any such act, if successful;
- (3) Direct public incitement to any act mentioned under heads (1), (2) or (3) of Article 2, whether the incitement be successful or not;
- (4) Wilful participation in any such act;
- (5) Assistance, knowingly given, towards the commission of any such act.

Article 4.

Each of the offences mentioned in Article 3 shall be treated by the law as a distinct offence in all cases where this is necessary in order to prevent an offender escaping punishment.

Article 5.

Subject to any special provisions of national law for the protection of the persons mentioned under head (1) of Article 2, or of the property mentioned under head (2) of Article 2, each High Contracting Party shall provide the same punishment for the acts set out in Articles 2 and 3, whether they be directed against that or another High Contracting Party.

Article 6.

1. In countries where the principle of the international recognition of previous convictions is accepted, foreign convictions for any of the offences mentioned in Articles 2 and 3 will, within the conditions prescribed by domestic law, be taken into account for the purpose of establishing habitual criminality.

2. Such convictions will, further, in the case of High Contracting Parties whose law recognises foreign convictions, be taken into account, with or without special proceedings, for the purpose of imposing, in the manner provided by that law, incapacities, disqualifications or interdictions whether in the sphere of public or of private law.

Article 7.

In so far as *parties civiles* are admitted under the domestic law, foreign *part'es civiles*, including, in proper cases, a High Contracting Party shall be entitled to all rights allowed to nationals by the law of the country in which the case is tried.

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Article 8.

1. Without prejudice to the provisions of paragraph 4 below, the offences set out in Articles 2 and 3 shall be deemed to be included as extradition crimes in any extradition treaty which has been, or may hereafter be, concluded between any of the High Contracting Parties.

2. The High Contracting Parties who do not make extradition conditional on the existence of a treaty shall henceforward, without prejudice to the provisions of paragraph 4 below and subject to reciprocity, recognise the offences set out in Articles 2 and 3 as extradition crimes as between themselves.

3. For the purposes of the present article, any offence specified in Articles 2 and 3, if committed in the territory of the High Contracting Party against whom it is directed, shall also be deemed to be an extradition crime.

4. The obligation to grant extradition under the present article shall be subject to any conditions and limitations recognised by the law or the practice of the country to which application is made.

Article 9.

1. When the principle of the extradition of nationals is not recognised by a High Contracting Party, nationals who have returned to the territory of their own country after the commission abroad of an offence mentioned in Articles 2 or 3 shall be prosecuted and punished in the same manner as if the offence had been committed on that territory, even in a case where the offender has acquired his nationality after the commission of the offence.

2. The provisions of the present article shall not apply if, in similar circumstances, the extradition of a foreigner cannot be granted.

Article 10.

Foreigners who are on the territory of a High Contracting Party and who have committed abroad any of the offences set out in Articles 2 and 3 shall be prosecuted and punished as though the offence had been committed in the territory of that High Contracting Party, if the following conditions are fulfilled—namely, that :

(a) Extradition has been demanded and could not be granted for a reason not connected with the offence itself;

(b) The law of the country of refuge recognises the jurisdiction of its own courts in respect of offences committed abroad by foreigners;

(c) The foreigner is a national of a country which recognises the jurisdiction of its own courts in respect of offences committed abroad by foreigners.

Article 11.

1. The provisions of Articles 9 and 10 shall also apply to offences referred to in Articles 2 and 3 which have been committed in the territory of the High Contracting Party against whom they were directed.

2. As regards the application of Articles 9 and 10, the High Contracting Parties do not undertake to pass a sentence exceeding the maximum sentence provided by the law of the country where the offence was committed.

Article 12.

Each High Contracting Party shall take on his own territory and within the limits of his own law and administrative organisation the measures which he considers appropriate for the effective prevention of all activities contrary to the purpose of the present Convention.

Article 13.

1. Without prejudice to the provisions of head (5) of Article 2, the carrying, possession and distribution of fire-arms, other than smooth-bore sporting-guns, and of ammunition shall be subjected to regulation. It shall be a punishable offence to transfer, sell or distribute such arms or munitions to any person who does not hold such licence or make such declaration as may be required by domestic legislation concerning the possession and carrying of such articles; this shall apply also to the transfer, sale or distribution of explosives.

2. Manufacturers of fire-arms, other than smooth-bore sporting-guns, shall be required to mark each arm with a serial number or other distinctive mark permitting it to be identified; both manufacturers and retailers shall be obliged to keep a register of the names and addresses of purchasers.

Article 14.

1. The following acts shall be punishable :

(a) Any fraudulent manufacture or alteration of passports or other equivalent documents;

(b) Bringing into the country, obtaining or being in possession of such forged or falsified documents knowing them to be forged or falsified;

(c) Obtaining such documents by means of false declarations or documents;

(d) Wilfully using any such documents which are forged or falsified or were made out for a person other than the bearer.

2. The wilful issue of passports, other equivalent documents, or visas by competent officials to persons known not to have the right thereto under the laws or regulations applicable, with the object of assisting any activity contrary to the purpose of the present Convention, shall also be punishable.

3. The provisions of the present article shall apply irrespective of the national or foreign character of the document.

Article 15.

1. Results of the investigation of offences mentioned in Articles 2 and 3 and (where there may be a connection between the offence and preparations for an act of terrorism) in Article 14 shall in each country, subject to the provisions of its law, be centralised in an appropriate service.

2. Such service shall be in close contact :

(a) With the police authorities of the country;

(b) With the corresponding services in other countries.

3. It shall furthermore bring together all information calculated to facilitate the prevention and punishment of the offences mentioned in Articles 2 and 3 and (where there may be a connection between the offence and preparations for an act of terrorism) in Article 14; it shall, as far as possible, keep in close contact with the judicial authorities of the country.

Article 16.

Each service, so far as it considers it desirable to do so, shall notify to the services of the other countries, giving all necessary particulars :

(a) Any act mentioned in Articles 2 and 3, even if it has not been carried into effect, such notification to be accompanied by descriptions, copies and photographs;

(b) Any search for, any prosecution, arrest, conviction or expulsion of persons guilty of offences dealt with in the present Convention, the movements of such persons and any pertinent information with regard to them, as well as their description, finger-prints and photographs;

(c) Discovery of documents, arms, appliances or other objects connected with offences mentioned in Articles 2, 3, 13 and 14.

/...

Article 17.

1. The High Contracting Parties shall be bound to execute letters of request relating to offences referred to in the present Convention in accordance with their domestic law and practice and any international conventions concluded or to be concluded by them.
2. The transmission of letters of request shall be effected :
 - (a) By direct communication between the judicial authorities;
 - (b) By direct correspondence between the Ministers of Justice of the two countries;
 - (c) By direct correspondence between the authority of the country making the request and the Minister of Justice of the country to which the request is made;
 - (d) Through the diplomatic or consular representative of the country making the request in the country to which the request is made; this representative shall send the letters of request, either directly or through the Minister for Foreign Affairs, to the competent judicial authority or to the authority indicated by the Government of the country to which the request is made and shall receive the papers constituting the execution of the letters of request from this authority either directly or through the Minister for Foreign Affairs.
3. In cases (a) and (d), a copy of the letters of request shall always be sent simultaneously to the Minister of Justice of the country to which application is made.
4. Unless otherwise agreed, the letters of request shall be drawn up in the language of the authority making the request, provided always that the country to which the request is made may require a translation in its own language, certified correct by the authority making the request.
5. Each High Contracting Party shall notify to each of the other High Contracting Parties the method or methods of transmission mentioned above which he will recognise for the letters of request of the latter High Contracting Party.
6. Until such notification is made by a High Contracting Party, his existing procedure in regard to letters of request shall remain in force.
7. Execution of letters of request shall not give rise to a claim for reimbursement of charges or expenses of any nature whatever other than expenses of experts.
8. Nothing in the present article shall be construed as an undertaking on the part of the High Contracting Parties to adopt in criminal matters any form or methods of proof contrary to their laws.

Article 18.

The participation of a High Contracting Party in the present Convention shall not be interpreted as affecting that Party's attitude on the general question of the limits of criminal jurisdiction as a question of international law.

Article 19.

The present Convention does not affect the principle that, provided the offender is not allowed to escape punishment owing to an omission in the criminal law, the characterisation of the various offences dealt with in the present Convention, the imposition of sentences, the methods of prosecution and trial, and the rules as to mitigating circumstances, pardon and amnesty are determined in each country by the provisions of domestic law.

(f) CONVENTION FOR THE CREATION OF AN INTERNATIONAL CRIMINAL COURT

(Adopted by the International Conference on the Repression of
Terrorism in Geneva on 16 November 1937 - excerpts)

.....
Being desirous on the occasion of concluding the Convention for the Prevention and
Punishment of Terrorism, which bears to-day's date, of creating an International Criminal Court
with a view to making progress in the struggle against offences of an international character,
Have appointed as their Plenipotentiaries :

.....
Who, having communicated their full powers, which were found in good and due form, have
agreed upon the following provisions :

Article 1.

An International Criminal Court for the trial, as hereinafter provided, of persons accused
of an offence dealt with in the Convention for the Prevention and Punishment of Terrorism is
hereby established.

Article 2.

1. In the cases referred to in Articles 2, 3, 9 and 10 of the Convention for the Prevention and
Punishment of Terrorism, each High Contracting Party to the present Convention shall be entitled,
instead of prosecuting before his own courts, to commit the accused for trial to the Court.

2. A High Contracting Party shall further, in cases where he is able to grant extradition
in accordance with Article 8 of the said Convention, be entitled to commit the accused for trial
to the Court if the State demanding extradition is also a Party to the present Convention.

3. The High Contracting Parties recognise that other Parties discharge their obligations
towards them under the Convention for the Prevention and Punishment of Terrorism by making
use of the right given them by the present article.

Article 3.

The Court shall be a permanent body, but shall sit only when it is seized of proceedings for
an offence within its jurisdiction.

Article 4.

The seat of the Court shall be established at The Hague. For any particular case, the
President may take the opinion of the Court and the Court may decide to meet elsewhere.

Article 5.

The Court shall be composed of judges chosen from among jurists who are acknowledged
authorities on criminal law and who are or have been members of courts of criminal jurisdiction
or possess the qualifications required for such appointments in their own countries.

Article 6.

The Court shall consist of five regular judges and five deputy judges, each belonging to a
different nationality, but so that the regular judges and deputy judges shall be nationals of the
High Contracting Parties.

/...

...

Article 25.

1. The Court is seized so soon as a High Contracting Party has committed an accused person to it for trial.

2. The document committing an accused person to the Court for trial shall contain a statement of the principal charges against him and the allegations on which they are based, and shall name the agent by whom the State will be represented.

3. The State which committed the accused person to the Court shall conduct the prosecution unless the State against which the offence was directed or, failing that State, the State on whose territory the offence was committed expresses a wish to prosecute.

Article 26.

1. Any State entitled to seize the Court may intervene, inspect the file, submit a statement of its case to the Court and take part in the oral proceedings.

2. Any person directly injured by the offence may, if authorised by the Court, and subject to any conditions which it may impose, constitute himself *partie civile* before the Court; such person shall not take part in the oral proceeding except when the Court is dealing with the damages.

Article 27.

The Court may not entertain charges against any person except the person committed to it for trial, or try any accused person for any offences other than those for which he has been committed.

Article 28.

The Court shall not proceed further with the case and shall order the accused to be discharged if the prosecution is abandoned and not at once recommenced by a State entitled to prosecute.

Article 29.

1. Accused persons may be defended by advocates belonging to a Bar and approved by the Court.

2. If provision is not made for the conduct of the defence by a barrister chosen by the accused, the Court shall assign to each accused person a counsel selected from advocates belonging to a Bar.

Article 30.

The file of the case and the statement of the *partie civile* shall be communicated to the person who is before the Court for trial.

Article 31.

1. The Court shall decide whether a person who has been committed to it for trial shall be placed or remain under arrest. Where necessary, it shall determine on what conditions he may be provisionally set at liberty.

2. The State on the territory of which the Court is sitting shall place at the Court's disposal a suitable place of internment and the necessary staff of warders for the custody of the accused.

Article 32.

The parties may submit to the Court the names of witnesses and experts, but the Court shall be free to decide whether they shall be summoned and heard. The Court may always, even of its own motion, hear other witnesses and experts. The same rules shall apply as regards any other kind of evidence.

/...

Article 33.

Any letters of request which the Court considers it necessary to have despatched shall be transmitted to the State competent to give effect thereto by the method prescribed by the regulations of the Court.

Article 34.

No examination, no hearing of witnesses or experts and no confrontation may take place before the Court except in the presence of the counsel for the accused and of the representatives of the States which are taking part in the proceedings or after these representatives have been duly summoned.

Article 35.

1. The hearings before the Court shall be public.
2. Nevertheless, the Court may, by a reasoned judgment, decide that the hearing shall take place *in camera*. Judgment shall always be pronounced at a public hearing.

Article 36.

The Court shall sit in private to consider its judgment.

Article 37.

The decisions of the Court shall be by majority of the judges.

Article 38.

Every judgment or order of the Court shall state the reasons therefor and be read at a public hearing by the President.

Article 39.

1. The Court shall decide whether any object is to be confiscated or be restored to its owner.
2. The Court may sentence the persons committed to it to pay damages.
3. High Contracting Parties in whose territory objects to be restored or property belonging to convicted persons is situated shall be bound to take all the measures provided by their own laws to ensure the execution of the sentences of the Court.
4. The provisions of the preceding paragraph shall also apply to cases in which pecuniary penalties imposed by the Court or costs of proceedings have to be recovered.

Article 40.

1. Sentences involving loss of liberty shall be executed by a High Contracting Party chosen with his consent by the Court. Such consent may not be refused by the State which committed the convicted person to the Court for trial. The sentence shall always be executed by the State which committed the convicted person to the Court if this State expresses the wish to do so.
2. The Court shall determine the way in which any fines shall be dealt with.

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Article 41.

If sentence of death has been pronounced, the State designated by the Court to execute the sentence shall be entitled to substitute therefor the most severe penalty provided by its national law which involves loss of liberty.

Article 42.

The right of pardon shall be exercised by the State which has to enforce the penalty. It shall first consult the President of the Court.

Article 43.

1. Against convictions pronounced by the Court, no proceedings other than an application for revision shall be allowable.

2. The Court shall determine in its rules the cases in which an application for revision may be made.

3. The States mentioned in Article 25, and the persons mentioned in Article 29, shall have the right to ask for a revision.

...

Article 45.

1. The Court shall decide any questions as to its own jurisdiction arising during the hearing of a case; it shall for this purpose apply the provisions of the present Convention and of the Convention for the Prevention and Punishment of Terrorism and the general principles of law.

2. If a High Contracting Party, not being the Party who sent the case in question for trial to the Court, disputes the extent of the Court's jurisdiction in relation to the jurisdiction of his own national courts and does not see his way to appear in the proceedings in order that the question may be decided by the International Criminal Court, the question shall be treated as arising between such High Contracting Party and the High Contracting Party who sent the case for trial to the Court, and shall be settled as provided in Article 48.

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2. Other international instruments

- (a) Resolution of the Assembly of the League of Nations adopted on 24 September 1927

I. DECLARATION CONCERNING WARS OF AGGRESSION.

The Assembly,

Recognising the solidarity which unites the community of nations ;

Being inspired by a firm desire for the maintenance of general peace ;

Being convinced that a war of aggression can never serve as a means of settling international disputes and is, in consequence, an international crime ;

Considering that a solemn renunciation of all wars of aggression would tend to create an atmosphere of general confidence calculated to facilitate the progress of the work undertaken with a view to disarmament ;

Declares :

(1) That all wars of aggression are, and shall always be, prohibited ;

(2) That every pacific means must be employed to settle disputes, of every description, which may arise between States.

The Assembly declares that the States Members of the League are under an obligation to conform to these principles.

- (b) The Sixth Pan-American Conference, Havana, January 1928 2/

Second resolution (excerpts)

" Considering. . . .

" That war of aggression constitutes a crime against mankind,

" Resolves:

" I. All aggression is declared illicit, and, therefore, it is declared prohibited.

" II. The American States shall employ all peaceful means for the settlement of conflicts that may arise among them."

/...

- (c) RESOLUTION by Allied Governments condemning German Terror and demanding retribution. - London, 13 January 1942 (excerpts)

Representatives of the Governments of the occupied countries of Europe now established in London, and of the Free French National Committee, met at St. James's Palace on January 13, 1942, and signed a formal resolution condemning the German régime of terror throughout occupied Europe.

...

The undersigned...

...

"Whereas Germany, since the beginning of the present conflict which arose out of her policy of aggression, has instituted in the occupied countries a regime of terror characterised amongst other things by imprisonments, mass expulsions, the execution of hostages and massacres,

"And whereas these acts of violence are being similarly committed by the Allies and Associates of the Reich and, in certain countries, by the accomplices of the occupying Power,

"And whereas international solidarity is necessary in order to avoid the repression of these acts of violence simply by acts of vengeance on the part of the general public, and in order to satisfy the sense of justice of the civilised world,

"Recalling that international law, and in particular the Convention signed at The Hague in 1907 regarding the laws and customs of land warfare, do not permit belligerents in occupied countries to commit acts of violence against civilians, to disregard the laws in force, or to overthrow national institutions,

- (1) affirm that acts of violence thus inflicted upon the civilian populations have nothing in common with the conceptions of an act of war or a political crime as understood by civilised nations,
- (2) take note of the declarations made in this respect on 25th October 1941, by the President of the United States of America and by the British Prime Minister,
- (3) place among their principal war aims the punishment, through the channel of organised justice, of those guilty of or responsible for these crimes, whether they have ordered them, perpetrated them or participated in them,
- (4) resolve to see to it in a spirit of international solidarity that (a) those guilty or responsible, whatever their nationality, are sought out, handed over to justice and judged, (b) that the sentences pronounced are carried out."

/...

(d) Moscow Declaration on German Atrocities of 30 October 1943

The United Kingdom, the United States and the Soviet Union have received from many quarters evidence of atrocities, massacres and cold-blooded mass executions which are being perpetrated by the Hitlerite forces in the many countries they have overrun and from which they are now being steadily expelled. The brutalities of Hitlerite domination are no new thing and all the peoples or territories in their grip have suffered from the worst form of government by terror. What is new is that many of these territories are now being redeemed by the advancing armies of the liberating Powers and that in their desperation the recoiling Hitlerite Huns are redoubling their ruthless cruelties. This is now evidenced with particular clearness by monstrous crimes of the Hitlerites on the territory of the Soviet Union which is being liberated from the Hitlerites, and on French and Italian territory.

Accordingly, the aforesaid three Allied Powers, speaking in the interests of the thirty-two (thirty-three) United Nations, hereby solemnly declare and give full warning of their declaration as follows:

At the time of the granting of any armistice to any government which may be set up in Germany, those German officers and men and members of the Nazi party who have been responsible for, or have taken a consenting part in the above atrocities, massacres and executions, will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free governments which will be created therein. Lists will be compiled in all possible detail from all these countries, having regard especially to the invaded parts of the Soviet Union, to Poland and Czechoslovakia, to Yugoslavia and Greece, including Crete and other islands, to Norway, Denmark, the Netherlands, Belgium, Luxembourg, France and Italy.

Thus, the Germans who take part in wholesale shootings of Italian officers or in the execution of French, Dutch, Belgian or Norwegian hostages or of Cretan peasants, or who have shared in the slaughters inflicted on the people of Poland or in territories of the Soviet Union which are now being swept clear of the enemy, will know that they will be brought back to the scene of their crimes and judged on the spot by the peoples whom they have outraged. Let those who have hitherto not imbrued their hands with innocent blood beware lest they join the ranks of the guilty, for most assuredly the three Allied Powers will pursue them to the uttermost ends of the earth and will deliver them to their accusers in order that justice may be done.

The above declaration is without prejudice to the case of the major criminals, whose offences have no particular geographical localization and who will be punished by the joint decision of the Governments of the Allies.

ROOSEVELT
CHURCHILL
STALIN

/...

B. International instruments elaborated after the adoption of
the Charter of the United Nations

1. International agreements

(a)

AGREEMENT BY THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, THE GOVERNMENT OF THE UNITED STATES OF AMERICA, THE PROVISIONAL GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS FOR THE PROSECUTION AND PUNISHMENT OF THE MAJOR WAR CRIMINALS OF THE EUROPEAN AXIS. SIGNED AT LONDON, ON 8 AUGUST 1945

Whereas the United Nations have from time to time made declarations 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 stated that those German officers and men and members of the Nazi Party who have been responsible for or have taken a consenting part in atrocities and crimes will be sent back to the countries in which their abominable deeds 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 major criminals whose offences have no particular geographical location and who will be punished by the joint decision of the Governments of the Allies;

Now therefore the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic 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 authorised 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 organisations 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 endeavours to make available for investigation of the charges against and the trial before the International Military Tribunal such 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 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.

Article 7

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 to the right of any Signatory 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 findings already made in pursuance of this Agreement.

IN WITNESS WHEREOF the Undersigned have signed the present Agreement.

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

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

JOWITT

For the Government of the United States of America:

Robert H. JACKSON

For the Provisional Government of the French Republic:

Robert FALCO

For the Government of the Union of Soviet Socialist Republics:

I. NIKITCHENKO

A. TRAININ

/...

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL

I.—CONSTITUTION OF THE INTERNATIONAL MILITARY TRIBUNAL

Article 1

In pursuance of the Agreement signed on the 8th August, 1945, by the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic and the Government of the Union 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 fulfil 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 member 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.

Article 4

(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 that 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.

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II.—JURISDICTION AND GENERAL PRINCIPLES

Article 6

The Tribunal established by the Agreement referred to in Article I 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 organisations, 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, organisers, 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.

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.

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Article 9

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

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 organisation 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 organisation. 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 organisation 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 organisation 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 organisation 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 organisation.

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.

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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,
- (d) to lodge 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 13 of this Charter. 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, 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 the Defendants,
- (d) to act as prosecutor at the Trial,

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- (e) to appoint representatives to carry out such duties as may be assigned to 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 any 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 Defendants. 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 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 defence 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 defence, 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,

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- (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 issues raised by the charges,
- (b) take strict measures to prevent any action which will cause unreasonable 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.

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 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.

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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 authorised 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 authorised 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 Defence 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 Defence. Thereafter such rebutting evidence as may be held by the Tribunal to be admissible shall be called by either the Prosecution or the Defence.
- (f) The Tribunal may put any question to any witness and to any Defendant, at any time.
- (g) The Prosecution and the Defence shall interrogate and may cross-examine any witnesses and any Defendant who gives testimony.
- (h) Defence 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 considers desirable in the interests of justice and public opinion.

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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 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 for Germany.

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(b)

INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

Special proclamation by the Supreme Commander for the Allied Powers at Tokyo,
19 January 1946; charter dated 19 January 1946; amended charter dated
26 April 1946
Tribunal established 19 January 1946

SPECIAL PROCLAMATION

ESTABLISHMENT OF AN INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

Whereas, the United States and the Nations allied therewith in opposing the illegal wars of aggression of the Axis Nations, have from time to time made declarations of their intentions that war criminals should be brought to justice;

Whereas, the Governments of the Allied Powers at war with Japan on the 26th July 1945 at Potsdam, declared as one of the terms of surrender that stern justice shall be meted out to all war criminals including those who have visited cruelties upon our prisoners;

Whereas, by the Instrument of Surrender of Japan executed at Tokyo Bay, Japan, on the 2nd September 1945, the signatories for Japan, by command of and in behalf of the Emperor and the Japanese Government, accepted the terms set forth in such Declaration at Potsdam;

Whereas, by such Instrument of Surrender, the authority of the Emperor and the Japanese Government to rule the state of Japan is made subject to the Supreme Commander for the Allied Powers, who is authorized to take such steps as he deems proper to effectuate the terms of surrender;

Whereas, the undersigned has been designated by the Allied Powers as Supreme Commander for the Allied Powers to carry into effect the general surrender of the Japanese armed forces;

/...

Whereas, the Governments of the United States, Great Britain and Russia at the Moscow Conference, 26th December 1945, having considered the effectuation by Japan of the Terms of Surrender, with the concurrence of China have agreed that the Supreme Commander shall issue all Orders for the implementation of the Terms of Surrender.

Now, therefore, I, Douglas MacArthur, as Supreme Commander for the Allied Powers, by virtue of the authority so conferred upon me, in order to implement the Term of Surrender which requires the meting out of stern justice to war criminals, do order and provide as follows:

ARTICLE 1. There shall be established an International Military Tribunal for the Far East for the trial of those persons charged individually, or as members of organizations, or in both capacities, with offenses which include crimes against peace.

ARTICLE 2. The Constitution, jurisdiction and functions of this Tribunal are those set forth in the Charter of the International Military Tribunal for the Far East, approved by me this day.

ARTICLE 3. Nothing in this Order shall prejudice the jurisdiction of any other international, national or occupation court, commission or other tribunal established or to be established in Japan or in any territory of a United Nation with which Japan has been at war, for the trial of war criminals.

Given under my hand at Tokyo, this 19th day of January, 1946

DOUGLAS MACARTHUR
General of the Army, United States Army
Supreme Commander for the Allied Powers

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

GENERAL ORDERS }
NO.-----1 }

APO 500
19 January 1946

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST

Proclamation of the Supreme Commander for the Allied Powers dated 19 January 1946 established an International Military Tribunal for the Far East. Charter of this Tribunal is as follows:

SECTION I

CONSTITUTION OF TRIBUNAL

ARTICLE 1. *Tribunal Established.* The International Military Tribunal for the Far East is hereby established for the just and prompt trial and punishment of the major war criminals in the Far East. The permanent seat of the Tribunal is in Tokyo.

ARTICLE 2. *Members.* The Tribunal shall consist of not less than five nor more than nine Members, appointed by the Supreme Commander for the Allied Powers from the names submitted by the Signatories to the Instrument of Surrender.

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ARTICLE 3. *Officers and Secretariat.*

a. President. The Supreme Commander for the Allied Powers shall appoint a Member to be President of the Tribunal.

b. Secretariat.

(1) The Secretariat of the Tribunal shall be composed of a General Secretary to be appointed by the Supreme Commander for the Allied Powers and such assistant secretaries, clerks, interpreters, and other personnel as may be necessary.

(2) The General Secretary shall organize and direct the work of the Secretariat.

(3) The Secretariat shall receive all documents addressed to the Tribunal, maintain the records of the Tribunal, provide necessary clerical services to the Tribunal and its Members, and perform such other duties as may be designated by the Tribunal.

ARTICLE 4. *Quorum and Voting.*

a. Quorum. The presence of a majority of all Members shall be necessary to constitute a quorum.

b. Voting. All decisions and judgments of this Tribunal, including convictions and sentences, shall be by a majority vote of those Members of the Tribunal present. In case the votes are evenly divided, the vote of the President shall be decisive.

SECTION II

JURISDICTION AND GENERAL PROVISIONS

ARTICLE 5. *Jurisdiction Over Persons and Offenses.* 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 offenses 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: Namely, the planning, preparation, initiation or waging of a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

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 against any civilian population, 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. 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. *Responsibility of Accused.* Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

ARTICLE 7. *Rules of Procedure.* The Tribunal may draft and amend rules of procedure consistent with the fundamental provisions of this Charter.

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ARTICLE 8. *Counsel.*

a. Chief of Counsel. The Chief of Counsel designated by the Supreme Commander for the Allied Powers is responsible for the investigation and prosecution of charges against war criminals within the jurisdiction of this Tribunal, and will render such legal assistance to the Supreme Commander as is appropriate.

b. Associate Counsel. Any United Nation with which Japan has been at war may appoint an Associate Counsel to assist the Chief of Counsel.

SECTION III

FAIR TRIAL FOR ACCUSED

ARTICLE 9. *Procedure for Fair Trial.* In order to insure fair trial for the accused, the following procedure shall be followed:

a. Indictment. The indictment shall consist of a plain, concise and adequate statement of each offense charged. Each accused shall be furnished in adequate time for defense a copy of the indictment, including any amendment, and of this Charter, in a language understood by the accused.

b. Hearing. During the trial or any preliminary proceedings the accused shall have the right to give any explanation relevant to the charges made against him.

c. Language. The trial and related proceedings shall be conducted in English and in the language of the accused. Translations of documents and other papers shall be provided as needed and requested.

d. Counsel for Accused. Each accused shall be represented by counsel of his own selection, subject to disapproval of such counsel at any time by the Tribunal. The accused shall file with the General Secretary of the Tribunal the name of his counsel or of counsel whom he desires the Tribunal to appoint. If an accused is not represented by counsel, the Tribunal shall designate counsel for him.

e. Evidence for Defense. An accused shall have the right through himself or through his counsel to present evidence at the trial in support of his defense, and to examine any witness called by the prosecution, subject to such reasonable restrictions as the Tribunal may determine.

f. Production of Evidence for the Defense. An accused may apply in writing to the Tribunal for the production of witnesses or of documents. The application shall state where the witness or document is thought to be located. It shall also state the facts proposed to be proved by the witness or the document and the relevancy of such facts to the defense. If the Tribunal grants the application, the Tribunal shall be given such aid in obtaining production of the evidence as the circumstances require.

ARTICLE 10. *Applications and Motions before Trial.* All motions, applications or other requests addressed to the Tribunal prior to the commencement of trial shall be made in writing and filed with the General Secretary of the Tribunal for action by the Tribunal.

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SECTION IV

POWERS OF TRIBUNAL AND CONDUCT OF TRIAL

ARTICLE 11. *Powers.* The Tribunal shall have the power:

- a. To summon witnesses to the trial, to require them to attend and testify, and to question them.
- b. To interrogate each accused and to permit comment on his refusal to answer any question.
- c. To require the production of documents and other evidentiary material.
- d. To require of each witness an oath, affirmation, or such declaration as is customary in the country of the witness, and to administer oaths.
- e. To appoint officers for the carrying out of a task designated by the Tribunal, including the power to have evidence taken on commission.

ARTICLE 12. *Conduct of Trial.* The Tribunal shall:

- a. Confine the trial strictly to an expeditious hearing of the issues raised by the charges.
- b. Take strict measures to prevent any action which would cause any unreasonable delay and rule out irrelevant issues and statements of any kind whatsoever.
- c. Provide for the maintenance of order at the trial and deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any accused or his counsel from some or all further proceedings, but without prejudice to the determination of the charges.
- d. Determine the mental and physical capacity of any accused to proceed to trial.

ARTICLE 13. *Evidence.*

a. Admissibility. 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. All purported admissions or statements of the accused are admissible.

b. Relevance. The Tribunal may require to be informed of the nature of any evidence before it is offered in order to rule upon the relevance.

c. Specific evidence admissible. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(1) A document, regardless of its security classification and without proof of its issuance or signature, which appears to the Tribunal to have been signed or issued by any officer, department, agency or member of the armed forces of any government.

(2) A report which appears to the Tribunal to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person, who appears to the Tribunal to have personal knowledge of the matters contained in the report.

(3) An affidavit, deposition or other signed statement.

(4) A diary, letter or other document, including sworn or unsworn statements, which appear to the Tribunal to contain information relating to the charge

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(c) A copy of a document or other secondary evidence of its contents, if the original is not immediately available.

d. Judicial Notice. The Tribunal shall not require proof of facts of common knowledge, nor of the authenticity of official government documents and reports of any nation or of the proceedings, records and findings of military or other agencies of any of the United Nations.

e. Records, Exhibits and Documents. The transcript of the proceedings, and exhibits and documents submitted to the Tribunal, will be filed with the General Secretary of the Tribunal and will constitute part of the Record.

ARTICLE 14. *Place of Trial.* The first trial will be held at Tokyo and any subsequent trials will be held at such places as the Tribunal decides.

ARTICLE 15. *Course of Trial Proceedings.* The proceedings at the Trial will take the following course:

a. The indictment will be read in court unless the reading is waived by all accused.

b. The Tribunal will ask each accused whether he pleads "guilty" or "not guilty".

c. The prosecution and each accused may make a concise opening statement.

d. The prosecution and defense may offer evidence and the admissibility of the same shall be determined by the Tribunal.

e. The prosecution and counsel for the accused may examine each witness and each accused who gives testimony.

f. Counsel for the accused may address the Tribunal.

g. The prosecution may address the Tribunal.

h. The Tribunal will deliver judgment and pronounce sentence.

SECTION V

JUDGMENT AND SENTENCE

ARTICLE 16. *Penalty.* The Tribunal shall have the power to impose upon an accused, on conviction, death or such other punishment as shall be determined by it to be just.

ARTICLE 17. *Judgment and Review.* The judgment will be announced in open court and will give the reasons on which it is based. The record of the trial will be transmitted directly to the Supreme Commander for the Allied Powers for his action thereon. A sentence will be carried out in accordance with the Order of the Supreme Commander for the Allied Powers, who may at any time reduce or otherwise alter the sentence except to increase its severity.

By command of General MACARTHUR:

Chief of Staff

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GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

GENERAL ORDERS }
NO. 20 }

PO 506
16 April 1946

General Orders No. 1, General Headquarters, Supreme Commander for the Allied Powers, 19 January 1946, subject as below, is superseded. The Charter of the International Military Tribunal for the Far East established by Proclamation of the Supreme Commander for the Allied Powers, 19 January 1946, is amended, and as amended, reads as follows:

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST

SECTION I

CONSTITUTION OF TRIBUNAL

ARTICLE 1. *Tribunal Established.* The International Military Tribunal for the Far East is hereby established for the just and prompt trial and punishment of the major war criminals in the Far East. The permanent seat of the Tribunal is in Tokyo.

ARTICLE 2. *Members.* The Tribunal shall consist of not less than six members nor more than eleven members, appointed by the Supreme Commander for the Allied Powers from the names submitted by the Signatories to the Instrument of Surrender, India, and the Commonwealth of the Philippines.

ARTICLE 3. *Officers and Secretariat.*

a. President. The Supreme Commander for the Allied Powers shall appoint a Member to be President of the Tribunal.

b. Secretariat

(1) The Secretariat of the Tribunal shall be composed of a General Secretary to be appointed by the Supreme Commander for the Allied Powers and such assistant secretaries, clerks, interpreters, and other personnel as may be necessary.

(2) The General Secretary shall organize and direct the work of the Secretariat.

(3) The Secretariat shall receive all documents addressed to the Tribunal, maintain the records of the Tribunal, provide necessary clerical services to the Tribunal and its members, and perform such other duties as may be designated by the Tribunal.

ARTICLE 4. *Convening and Quorum, Voting, and Absence.*

a. Convening and Quorum. When as many as six members of the Tribunal are present, they may convene the Tribunal in formal session. The presence of a majority of all members shall be necessary to constitute a quorum.

b. Voting. All decisions and judgments of this Tribunal, including convictions and sentences, shall be by a majority vote of those members of the Tribunal present. In case the votes are evenly divided, the vote of the President shall be decisive.

c. Absence. If a member at any time is absent and afterwards is able to be present, he shall take part in all subsequent proceedings; unless he declares in open court that he is disqualified by reason of insufficient familiarity with the proceedings which took place in his absence.

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SECTION II

JURISDICTION AND GENERAL PROVISIONS

ARTICLE 5. *Jurisdiction Over Persons and Offenses.* 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 offenses 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: Namely, the planning, preparation, initiation or waging of a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

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. 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. *Responsibility of Accused.* Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

ARTICLE 7. *Rules of Procedure.* The Tribunal may draft and amend rules of procedure consistent with the fundamental provisions of this Charter.

ARTICLE 8. *Counsel.*

a. Chief of Counsel. The Chief of Counsel designated by the Supreme Commander for the Allied Powers is responsible for the investigation and prosecution of charges against war criminals within the jurisdiction of this Tribunal and will render such legal assistance to the Supreme Commander as is appropriate.

b. Associate Counsel. Any United Nation with which Japan has been at war may appoint an Associate Counsel to assist the Chief of Counsel.

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SECTION III

FAIR TRIAL FOR ACCUSED

ARTICLE 9. *Procedure for Fair Trial.* In order to insure fair trial for the accused the following procedure shall be followed:

a. Indictment. The indictment shall consist of a plain, concise, and adequate statement of each offense charged. Each accused shall be furnished, in adequate time for defense, a copy of the indictment, including any amendment, and of this Charter, in a language understood by the accused.

b. Language. The trial and related proceedings shall be conducted in English and in the language of the accused. Translations of documents and other papers shall be provided as needed and requested.

c. Counsel for Accused. Each accused shall have the right to be represented by counsel of his own selection, subject to the disapproval of such counsel at any time by the Tribunal. The accused shall file with the General Secretary of the Tribunal the name of his counsel. If an accused is not represented by counsel and in open court requests the appointment of counsel, the Tribunal shall designate counsel for him. In the absence of such request the Tribunal may appoint counsel for an accused if in its judgment such appointment is necessary to provide for a fair trial.

d. Evidence for Defense. An accused shall have the right, through himself or through his counsel (but not through both), to conduct his defense, including the right to examine any witness, subject to such reasonable restrictions as the Tribunal may determine.

e. Production of Evidence for the Defense. An accused may apply in writing to the Tribunal for the production of witnesses or of documents. The application shall state where the witness or document is thought to be located. It shall also state the facts proposed to be proved by the witness or the document and the relevancy of such facts to the defense. If the Tribunal grants the application the Tribunal shall be given such aid in obtaining production of the evidence as the circumstances require.

ARTICLE 10. *Applications and Motions before Trial.* All motions, applications, or other requests addressed to the Tribunal prior to the commencement of trial shall be made in writing and filed with the General Secretary of the Tribunal for action by the Tribunal.

SECTION IV

POWERS OF TRIBUNAL AND CONDUCT OF TRIAL

ARTICLE 11. *Powers.* The Tribunal shall have the power:

a. To summon witnesses to the trial, to require them to attend and testify, and to question them.

b. To interrogate each accused and to permit comment on his refusal to answer any question.

c. To require the production of documents and other evidentiary material.

d. To require of each witness an oath, affirmation, or such declaration as is customary in the country of the witness, and to administer oaths.

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

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ARTICLE 12. *Conduct of Trial.* The Tribunal shall:

- a. Confine the trial strictly to an expeditious hearing of the issues raised by the charges.
- b. Take strict measures to prevent any action which would cause any unreasonable delay and rule out irrelevant issues and statements of any kind whatsoever.
- c. Provide for the maintenance of order at the trial and deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any accused or his counsel from some or all further proceedings, but without prejudice to the determination of the charges.
- d. Determine the mental and physical capacity of any accused to proceed to trial.

ARTICLE 13. *Evidence.*

a. Admissibility. 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. All purported admissions or statements of the accused are admissible.

b. Relevance. The Tribunal may require to be informed of the nature of any evidence before it is offered in order to rule upon the relevance.

c. Specific evidence admissible. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(1) A document, regardless of its security classification and without proof of its issuance or signature, which appears to the Tribunal to have been signed or issued by any officer, department, agency or member of the armed forces of any government.

(2) A report which appears to the Tribunal to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person who appears to the Tribunal to have personal knowledge of the matters contained in the report.

(3) An affidavit, deposition or other signed statement.

(4) A diary, letter or other document, including sworn or unsworn statements, which appear to the Tribunal to contain information relating to the charge.

(5) A copy of a document or other secondary evidence of its contents, if the original is not immediately available.

d. Judicial Notice. The Tribunal shall neither require proof of facts of common knowledge, nor of the authenticity of official government documents and reports of any nation or of the proceedings, records, and findings of military or other agencies of any of the United Nations.

e. Records, Exhibits, and Documents. The transcript of the proceedings, and exhibits and documents submitted to the Tribunal, will be filed with the General Secretary of the Tribunal and will constitute part of the Record.

ARTICLE 14. *Place of Trial.* The first trial will be held at Tokyo, and any subsequent trials will be held at such places as the Tribunal decides.

ARTICLE 15. *Course of Trial Proceedings.* The proceedings at the Trial will take the following course:

- a. The indictment will be read in court unless the reading is waived by all accused.
- b. The Tribunal will ask each accused whether he pleads "guilty" or "not guilty".
- c. The prosecution and each accused (by counsel only, if represented) may make a concise opening statement.
- d. The prosecution and defense may offer evidence, and the admissibility of the same shall be determined by the Tribunal.
- e. The prosecution and each accused (by counsel only, if represented) may examine each witness and each accused who gives testimony.
- f. Accused (by counsel only, if represented) may address the Tribunal.
- g. The prosecution may address the Tribunal.
- h. The Tribunal will deliver judgment and pronounce sentence.

SECTION V

JUDGMENT AND SENTENCE

ARTICLE 16. *Penalty.* The Tribunal shall have the power to impose upon an accused, on conviction, death, or such other punishment as shall be determined by it to be just.

ARTICLE 17. *Judgment and review.* The judgment will be announced in open court and will give the reasons on which it is based. The record of the trial will be transmitted directly to the Supreme Commander for the Allied Powers for his action. Sentence will be carried out in accordance with the Order of the Supreme Commander for the Allied Powers, who may at any time reduce or otherwise alter the sentence, except to increase its severity.

By command of General MACARTHUR:

RICHARD J. MARSHALL
Major General, General Staff Corps
Chief of Staff

/...

(c) TREATY OF PEACE WITH BULGARIA. SIGNED AT
PARIS, ON 10 FEBRUARY 1947

(excerpts)

Article 5

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

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

2. At the request of the United Nations Government concerned, Bulgaria shall likewise make available as witnesses persons within its jurisdiction, whose evidence is required for the trial of the persons referred to in paragraph 1 of this Article.

...

(d) TREATY OF PEACE WITH HUNGARY. SIGNED AT
PARIS, ON 10 FEBRUARY 1947

(excerpts)

Article 6

1. Hungary 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 or 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.

2. At the request of the United Nations Government concerned, Hungary shall likewise make available as witnesses persons within its jurisdiction, whose evidence is required for the trial of the persons referred to in paragraph 1 of this Article.

...

/...

(e) TREATY OF PEACE WITH FINLAND. SIGNED AT
PARIS, ON 10 FEBRUARY 1947

(*excerpts*)

Article 9

1. Finland 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 or 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.

2. At the request of the United Nations Government concerned, Finland shall likewise make available as witnesses persons within its jurisdiction, whose evidence is required for the trial of the persons referred to in paragraph 1 of this Article.

...

(f) TREATY OF PEACE WITH ITALY. SIGNED AT PARIS, ON
10 FEBRUARY 1947

(*excerpts*)

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 or 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.

2. At the request of the United Nations Government concerned, Italy shall likewise make available as witnesses persons within its jurisdiction, whose evidence is required for the trial of the persons referred to in paragraph 1 of this Article.

...

/...

(g) TREATY OF PEACE WITH ROUMANIA. SIGNED
AT PARIS, ON 10 FEBRUARY 1947

(*excerpts*)

Article 6

1. Roumania 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 or 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.

2. At the request of the United Nations Government concerned, Roumania shall likewise make available as witnesses persons within its jurisdiction, whose evidence is required for the trial of the persons referred to in paragraph 1 of this Article.

...

(h) TREATY OF PEACE WITH JAPAN. SIGNED
AT SAN FRANCISCO, ON 8 SEPTEMBER 1951

(*excerpts*)

Article 11

Japan accepts the judgments of the International Military Tribunal for the Far East and of other Allied War Crimes Courts both within and outside Japan, and will carry out the sentences imposed thereby upon Japanese nationals imprisoned in Japan. The power to grant clemency, to reduce sentences and to parole with respect to such prisoners may not be exercised except on the decision of the Government or Governments which imposed the sentence in each instance, and on the recommendation of Japan. In the case of persons sentenced by the International Military Tribunal for the Far East, such power may not be exercised except on the decision of a majority of the Governments represented on the Tribunal, and on the recommendation of Japan.

...

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- (i) General Assembly resolution 260 (III). Prevention and punishment of the crime of genocide

A

ADOPTION OF THE CONVENTION ON THE
PREVENTION AND PUNISHMENT OF THE
CRIME OF GENOCIDE, AND TEXT OF
THE CONVENTION

The General Assembly

Approves the annexed Convention on the Prevention and Punishment of the Crime of Genocide and proposes it for signature and ratification or accession in accordance with its article XI.

*Hundred and seventy-ninth plenary meeting,
9 December 1948.*

ANNEX

TEXT OF THE CONVENTION

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world;

Recognizing that at all periods of history genocide has inflicted great losses on humanity; and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required;

Hereby agree as hereinafter provided.

ARTICLE I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

ARTICLE II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such :

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

ARTICLE III

The following acts shall be punishable :

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

ARTICLE IV

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

ARTICLE V

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

ARTICLE VI

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

ARTICLE VII

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

ARTICLE VIII

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

ARTICLE IX

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

ARTICLE X

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

ARTICLE XI

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE XII

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

ARTICLE XIII

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a *procès-verbal* and transmit a copy of it to each Member of the United Nations and to each of the non-member States contemplated in article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

ARTICLE XIV

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

ARTICLE XV

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

ARTICLE XVI

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

ARTICLE XVII

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following :

- (a) Signatures, ratifications and accessions received in accordance with article XI;
- (b) Notifications received in accordance with article XII;
- (c) The date upon which the present Convention comes into force in accordance with article XIII;
- (d) Denunciations received in accordance with article XIV;
- (e) The abrogation of the Convention in accordance with article XV;
- (f) Notifications received in accordance with article XVI.

ARTICLE XVIII

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to all Members of the United Nations and to the non-member States contemplated in article XI.

ARTICLE XIX

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

- (j) General Assembly resolution 2391 (XXIII) . Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity

The General Assembly,

Having considered the draft Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity,

Adopts and opens for signature, ratification and accession the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the text of which is annexed to the present resolution.

*1727th plenary meeting,
26 November 1968,*

/...

ANNEX

Convention on the Non-Applicability of Statutory Limitations
to War Crimes and Crimes against Humanity

PREAMBLE

The States Parties to the present Convention,

Recalling resolutions of the General Assembly of the United Nations 3 (I) of 13 February 1946 and 170 (II) of 31 October

1947 on the extradition and punishment of war criminals, resolution 95 (I) of 11 December 1946 affirming the principles of international law recognized by the Charter of the International Military Tribunal, Nürnberg, and the judgement of the Tribunal, and resolutions 2184 (XXI) of 12 December 1966 and 2202 (XXI) of 16 December 1966 which expressly condemned as crimes against humanity the violation of the economic and political rights of the indigenous population on the one hand and the policies of *apartheid* on the other,

Recalling resolutions of the Economic and Social Council of the United Nations 1074 D (XXXIX) of 28 July 1965 and 1158 (XLI) of 5 August 1966 on the punishment of war criminals and of persons who have committed crimes against humanity,

Noting that none of the solemn declarations, instruments or conventions relating to the prosecution and punishment of war crimes and crimes against humanity made provision for a period of limitation,

Considering that war crimes and crimes against humanity are among the gravest crimes in international law,

Convinced that the effective punishment of war crimes and crimes against humanity is an important element in the prevention of such crimes, the protection of human rights and fundamental freedoms, the encouragement of confidence, the furtherance of co-operation among peoples and the promotion of international peace and security,

Noting that the application to war crimes and crimes against humanity of the rules of municipal law relating to the period of limitation for ordinary crimes is a matter of serious concern to world public opinion, since it prevents the prosecution and punishment of persons responsible for those crimes,

Recognizing that it is necessary and timely to affirm in international law, through this Convention, the principle that there is no period of limitation for war crimes and crimes against humanity, and to secure its universal application,

Have agreed as follows:

ARTICLE I

No statutory limitation shall apply to the following crimes, irrespective of the date of their commission:

(a) War crimes as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, particularly the "grave breaches" enumerated in the Geneva Conventions of 12 August 1949 for the protection of war victims;

(b) Crimes against humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, evict on by armed attack or occupation and inhuman acts resulting from the policy of *apartheid*, and the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, even if such acts do not constitute a violation of the domestic law of the country in which they were committed.

ARTICLE II

If any of the crimes mentioned in article I is committed, the provisions of this Convention shall apply to representatives of the State authority and private individuals who, as principals or accomplices, participate in or who directly incite others to the commission of any of those crimes, or who conspire to commit them, irrespective of the degree of completion, and to representatives of the State authority who tolerate their commission.

ARTICLE III

The States Parties to the present Convention undertake to adopt all necessary domestic measures, legislative or otherwise, with a view to making possible the extradition, in accordance with international law, of the persons referred to in article II of this Convention.

ARTICLE IV

The States Parties to the present Convention undertake to adopt, in accordance with their respective constitutional processes, any legislative or other measures necessary to ensure that statutory or other limitations shall not apply to the prosecution and punishment of the crimes referred to in articles I and II of this Convention and that, where they exist, such limitations shall be abolished.

ARTICLE V

This Convention shall, until 31 December 1969, be open for signature by any State Member of the United Nations or member of any of its specialized agencies or of the International Atomic Energy Agency, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.

ARTICLE VI

This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE VII

This Convention shall be open to accession by any State referred to in article V. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE VIII

1. This Convention shall enter into force on the ninetieth day after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the tenth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day after the date of the deposit of its own instrument of ratification or accession.

ARTICLE IX

1. After the expiry of a period of ten years from the date on which this Convention enters into force, a request for the revision of the Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

ARTICLE X

1. This Convention shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States referred to in article V.

3. The Secretary-General of the United Nations shall inform all States referred to in article V of the following particulars:

(a) Signatures of this Convention, and instruments of ratification and accession deposited under articles V, VI and VII;

(b) The date of entry into force of this Convention in accordance with article VIII;

(c) Communications received under article IX.

ARTICLE XI

This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 26 November 1968.

IN WITNESS WHEREOF the undersigned, being duly authorized for that purpose, have signed this Convention.

/...

(k) General Assembly resolution 3068 (XXVIII). International Convention on the Suppression and Punishment of the Crime of Apartheid

The General Assembly,

Recalling resolution 2922 (XXVII) of 15 November 1972, in which it reaffirmed its conviction that *apartheid* constitutes a total negation of the purposes and principles of the Charter of the United Nations and is a crime against humanity,

Recognizing the urgent need to take further effective measures with a view to the suppression and punishment of *apartheid*,

Mindful of the need to conclude, under the auspices of the United Nations, an International Convention on the Suppression and Punishment of the Crime of *Apartheid*,

Convinced that the Convention would be an important step towards the eradication of the policies and practices of *apartheid*, and that it should be signed and ratified by States at the earliest possible date and its provisions implemented without delay,

Considering also that the text of the Convention should be made known throughout the world,

1. *Adopts* and opens for signature and ratification the International Convention on the Suppression and Punishment of the Crime of *Apartheid*, the text of which is annexed to the present resolution;

2. *Appeals* to all States to sign and ratify the Convention as soon as possible;

3. *Requests* all Governments and intergovernmental and non-governmental organizations to acquaint the public as widely as possible with the text of the Convention, using all the information media at their disposal;

4. *Requests* the Secretary-General to ensure the urgent and wide dissemination of the Convention and, for that purpose, to publish and circulate its text;

5. *Requests* the Economic and Social Council to invite the Commission on Human Rights to undertake the functions set out under article X of the Convention.

*2185th plenary meeting
30 November 1973*

ANNEX

**International Convention on the Suppression and
Punishment of the Crime of *Apartheid***

The States Parties to the present Convention,

Recalling the provisions of the Charter of the United Nations, in which all Members pledged themselves to take joint and separate action in co-operation with the Organization for the achievement of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Considering the Universal Declaration of Human Rights, which states that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour or national origin,

Considering the Declaration on the Granting of Independence to Colonial Countries and Peoples, in which the General Assembly stated that the process of liberation is irresistible and irreversible and that, in the interests of human dignity, progress and justice, an end must be put to colonialism and all practices of segregation and discrimination associated therewith,

Observing that, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, States particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction,

Observing that, in the Convention on the Prevention and Punishment of the Crime of Genocide, certain acts which may also be qualified as acts of *apartheid* constitute a crime under international law,

Observing that, in the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, "inhuman acts resulting from the policy of *apartheid*" are qualified as crimes against humanity,

Observing that the General Assembly of the United Nations has adopted a number of resolutions in which the policies and practices of *apartheid* are condemned as a crime against humanity,

Observing that the Security Council has emphasized that *apartheid* and its continued intensification and expansion seriously disturb and threaten international peace and security,

Convinced that an International Convention on the Suppression and Punishment of the Crime of *Apartheid* would make it possible to take more effective measures at the international and national levels with a view to the suppression and punishment of the crime of *apartheid*,

Have agreed as follows:

Article I

1. The States Parties to the present Convention declare that *apartheid* is a crime against humanity and that inhuman acts resulting from the policies and practices of *apartheid* and similar policies and practices of racial segregation and discrimination, as defined in article II of the Convention, are crimes violating the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security.

2. The States Parties to the present Convention declare criminal those organizations, institutions and individuals committing the crime of *apartheid*.

Article II

For the purpose of the present Convention, the term "the crime of *apartheid*", which shall include similar policies and

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practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

(a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:

- (i) By murder of members of a racial group or groups;
- (ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;
- (iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

(b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

(c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

(d) Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

(e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

(f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose *apartheid*.

Article III

International criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State, whether residing in the territory of the State in which the acts are perpetrated or in some other State, whenever they:

(a) Commit, participate in, directly incite or conspire in the commission of the acts mentioned in article II of the present Convention;

(b) Directly abet, encourage or co-operate in the commission of the crime of *apartheid*.

Article IV

The States Parties to the present Convention undertake:

(a) To adopt any legislative or other measures necessary to suppress as well as to prevent any encouragement of the crime of *apartheid* and similar segregationist policies or their manifestations and to punish persons guilty of that crime;

(b) To adopt legislative, judicial and administrative measures to prosecute, bring to trial and punish in accordance with their jurisdiction persons responsible for, or accused of, the acts defined in article II of the present Convention, whether or not such persons reside in the territory of the State in which the acts are committed or are nationals of that State or of some other State or are stateless persons.

Article V

Persons charged with the acts enumerated in article II of the present Convention may be tried by a competent tribunal

of any State Party to the Convention which may acquire jurisdiction over the person of the accused or by an international penal tribunal having jurisdiction with respect to those States Parties which shall have accepted its jurisdiction.

Article VI

The States Parties to the present Convention undertake to accept and carry out in accordance with the Charter of the United Nations the decisions taken by the Security Council aimed at the prevention, suppression and punishment of the crime of *apartheid*, and to co-operate in the implementation of decisions adopted by other competent organs of the United Nations with a view to achieving the purposes of the Convention.

Article VII

1. The States Parties to the present Convention undertake to submit periodic reports to the group established under article IX on the legislative, judicial, administrative or other measures that they have adopted and that give effect to the provisions of the Convention

2. Copies of the reports shall be transmitted through the Secretary-General of the United Nations to the Special Committee on *Apartheid*.

Article VIII

Any State Party to the present Convention may call upon any competent organ of the United Nations to take such action under the Charter of the United Nations as it considers appropriate for the prevention and suppression of the crime of *apartheid*.

Article IX

1. The Chairman of the Commission on Human Rights shall appoint a group consisting of three members of the Commission on Human Rights, who are also representatives of States Parties to the present Convention, to consider reports submitted by States Parties in accordance with article VII.

2. If, among the members of the Commission on Human Rights, there are no representatives of States Parties to the present Convention or if there are fewer than three such representatives, the Secretary-General of the United Nations shall, after consulting all States Parties to the Convention, designate a representative of the State Party or representatives of the States Parties which are not members of the Commission on Human Rights to take part in the work of the group established in accordance with paragraph 1 of this article, until such time as representatives of the States Parties to the Convention are elected to the Commission on Human Rights.

3. The group may meet for a period of not more than five days, either before the opening or after the closing of the session of the Commission on Human Rights, to consider the reports submitted in accordance with article VII.

Article X

1. The States Parties to the present Convention empower the Commission on Human Rights:

(a) To request United Nations organs, when transmitting copies of petitions under article 15 of the International Convention on the Elimination of All Forms of Racial Discrimination, to draw its attention to complaints concerning acts which are enumerated in article II of the present Convention;

(b) To prepare, on the basis of reports from competent organs of the United Nations and periodic reports from States Parties to the present Convention, a list of individuals, organizations, institutions and representatives of States which are alleged to be responsible for the crimes enumerated in article II of the Convention, as well as those against whom legal proceedings have been undertaken by States Parties to the Convention;

(c) To request information from the competent United Nations organs concerning measures taken by the authorities responsible for the administration of Trust and Non-Self-Governing Territories, and all other Territories to which General Assembly resolution 1514 (XV) of 14 December

1960 applies, with regard to such individuals alleged to be responsible for crimes under article II of the Convention who are believed to be under their territorial and administrative jurisdiction.

2. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV), the provisions of the present Convention shall in no way limit the right of petition granted to those peoples by other international instruments or by the United Nations and its specialized agencies.

Article XI

1. Acts enumerated in article II of the present Convention shall not be considered political crimes for the purpose of extradition.

2. The States Parties to the present Convention undertake in such cases to grant extradition in accordance with their legislation and with the treaties in force.

Article XII

Disputes between States Parties arising out of the interpretation, application or implementation of the present Convention which have not been settled by negotiation shall, at the request of the States Parties to the dispute, be brought before the International Court of Justice, save where the parties to the dispute have agreed on some other form of settlement.

Article XIII

The present Convention is open for signature by all States. Any State which does not sign the Convention before its entry into force may accede to it.

Article XIV

1. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article XV

1. The present Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

Article XVI

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

Article XVII

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article XVIII

The Secretary-General of the United Nations shall inform all States of the following particulars:

(a) Signatures, ratifications and accessions under articles XIII and XIV;

(b) The date of entry into force of the present Convention under article XV;

(c) Denunciations under article XVI;

(d) Notifications under article XVII.

Article XIX

1. The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

- (1) OAU CONVENTION FOR THE ELIMINATION OF MERCENARISM IN AFRICA
(Adopted by the twenty-ninth ordinary session of the Council
of Ministers of the Organization of African Unity in Libreville,
on 30 June 1977 - excerpts)

PREAMBLE

We, the Heads of State and Government of the Member States of the
Organization of African Unity;

Considering the grave threat which the activities of mercenaries
present to the independence, sovereignty, security, territorial
integrity and harmonious development of Member States of the
Organization of African Unity;

Concerned with the threat which the activities of mercenaries
pose to the legitimate exercise of the right of African People under
colonial and racist domination to their independence and freedom;

Convinced that total solidarity and co-operation between Member
States are indispensable for putting an end to the subversive
activities of mercenaries in Africa;

Considering that the resolutions of the UN and the CAU, the
statements of attitude and the practice of a great number of States
are indicative of the development of new rules of international law
making mercenarism an international crime;

Determined to take all necessary measures to eliminate from
the African continent the scourge that mercenarism represents;

Have agreed as follows:

ARTICLE 1 - DEFINITION

1. A mercenary is any person who:-

- a) is specially recruited locally or abroad in order to fight
in an armed conflict;

/...

- b) does in fact take a direct part in the hostilities;
- c) is motivated to take part in the hostilities essentially by the desire for private gain and in fact is promised by or on behalf of a party to the conflict material compensation;
- d) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
- e) is not a member of the armed forces of a party to the conflict; and
- f) is not sent by a state other than a party to the conflict on official mission as a member of the armed forces of the said state.

2. The crime of mercenarism is committed by the individual, group or association, representative of a State or the State itself who with the aim of opposing by armed violence a process of self-determination stability or the territorial integrity of another State, practises any of the following acts:

- a) Shelters, organises, finances, assists, equips, trains, promotes, supports or in any manner employs bands of mercenaries;
- b) Enlists, enrolls or tries to enrol in the said bands;
- c) Allows the activities mentioned in paragraph (a) to be carried out in any territory under its jurisdiction or in any place under its control or affords facilities for transit, transport or other operations of the above mentioned forces.

3. Any person, natural or juridical who commits the crime of mercenarism as defined in paragraph 1 of this Article commits an

/...

Offence considered as a crime against peace and security in Africa and shall be punished as such.

ARTICLE 2 - AGGRAVATING CIRCUMSTANCE

The fact of assuming command over or giving orders to mercenaries shall be considered as an aggravating circumstance.

ARTICLE 3 - STATUS OF MERCENARIES

Mercenaries shall not enjoy the status of combatants and shall not be entitled to the prisoners of war status.

ARTICLE 4 - SCOPE OF CRIMINAL RESPONSIBILITY

A mercenary is responsible both for the crime of mercenarism and all related offences, without prejudice to any other offences for which he may be prosecuted.

ARTICLE 5 - GENERAL RESPONSIBILITY OF STATES AND THEIR REPRESENTATIVES

1. When the representative of a State is accused by virtue of the provisions of Article 1 of this Convention for acts or omissions declared by the aforesaid article to be criminal, he shall be punished for such an act or omission.

2. When a State is accused by virtue of the provisions of Article 1 of this Convention for acts or omissions declared by the aforesaid article to be criminal, any other party to the present Convention may invoke the provisions of this Convention in its relations with the offending State and before any competent OAU or International Organisation tribunal or body.

/...

ARTICLE 6 - OBLIGATIONS OF STATES

The contracting parties shall take all necessary measures to eradicate all mercenary activities in Africa.

To this end, each contracting State shall undertake to:

- a) Prevent its nationals or foreigners on its territory from engaging in any of the acts mentioned in Article 1 of this Convention;
- b) Prevent entry into or passage through its territory of any mercenary or any equipment destined for mercenary use;
- c) Prohibit on its territory any activities by persons or organisations who use mercenaries against any African State member of the Organization of African Unity or the people of Africa in their struggle for liberation;
- d) Communicate to the other Member States of the Organization of African Unity either directly or through the Secretariat of the OAU any information related to the activities of mercenaries as soon as it comes to its knowledge;
- e) Forbid on its territory the recruitment, training, financing and equipment of mercenaries and any other form of activities likely to promote mercenarism;
- f) Take all the necessary legislative and other measures to ensure the immediate entry into force of this Convention.

ARTICLE 7 - PENALTIES

Each contracting State shall undertake to make the offence defined in Article 1 of this Convention punishable by severest penalties under its laws, including capital punishment.

/...

ARTICLE 8 - JURISDICTION

Each contracting State shall undertake to take such measures as may be necessary to punish, in accordance with the provisions of Article 7, any person who commits an offence under Article 1 of this Convention and who is found on its territory if it does not extradite him to the State against which the offence has been committed.

ARTICLE 9 - EXTRADITION

1. The crimes defined in Article 1 of this Convention, are not covered by national legislation excluding extradition for political offences.

2. A request for extradition shall not be refused unless the requested State undertakes to exercise jurisdiction over the offender in accordance with the provisions of Article 8.

3. Where a national is involved in the request for extradition the requested State shall take proceedings against him for the offence committed if extradition is refused.

4. Where proceedings have been initiated in accordance with paragraphs 2 and 3 of this Article, the requested State shall inform the requesting State or any other State member of the OAU interested in the proceedings, of the result thereof.

5. A State shall be deemed interested in the proceedings within the meaning of paragraph 4 of this Article if the offence is linked in any way with its territory or is directed against its interests.

ARTICLE 10 - MUTUAL ASSISTANCE

The contracting States shall afford one another the greatest measure of assistance in connection with the investigation and criminal proceedings brought in respect of the offence and other acts connected with the activities of the offender.

ARTICLE 11 - JUDICIAL GUARANTEE

Any person or group of persons on trial for the crime defined in Article 1 of this Convention shall be entitled to all the guarantees normally granted to any ordinary person by the State on whose territory he is being tried.

...

/...

2. Other international instruments

(a) General Assembly resolution 3 (I). **EXTRADITION AND PUNISHMENT OF WAR CRIMINALS**

The General Assembly:

taking note of the Moscow Declaration of 1 November 1943 by President Roosevelt, Marshal Stalin and Prime Minister Churchill concerning enemy atrocities in the course of the war and of

the declaration by certain allied governments of 13 January and 18 December 1942 concerning the same matter;

taking note of the laws and usages of warfare established by the fourth Hague Convention of 1907;

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;

believing that certain war criminals continue to evade justice in the territories of certain States;

recommends

that Members of the United Nations forthwith take all the necessary measures to cause the arrest of those war criminals who have been responsible for or have taken a consenting part in the above crimes, and to cause them to be sent back to the countries in which their abominable deeds were done, in order that they may be judged and punished according to the laws of those countries;

and calls upon

the governments of States which are not Members of the United Nations also to take all necessary measures for the apprehension of such criminals in their respective territories with a view to their immediate removal to the countries in which the crimes were committed for the purpose of trial and punishment according to the laws of those countries.

Thirty-second plenary meeting, 13 February 1946.

(b) General Assembly resolution 95 (I). **Affirmation of the Principles of International Law recognized by the Charter of the Nürnberg Tribunal**

The General Assembly,

Recognizes the obligation laid upon it by Article 13, paragraph 1, sub-paragraph a, of the Charter, to initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification;

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;

Therefore,

Affirms the principles of international law recognized by the Charter of the Nürnberg 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 Nürnberg Tribunal and in the judgment of the Tribunal.

*Fifty-fifth plenary meeting,
11 December 1946.*

(c) General Assembly resolution 96 (I).

The Crime of Genocide

(excerpts)

The General Assembly, therefore,

Affirms that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices — whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds — are punishable;

• • •

*Fifty-fifth plenary meeting,
11 December 1946.*

/...

(d) General Assembly resolution 170 (II). **Surrender of war criminals and traitors**

The General Assembly,

Noting what has so far been done in the matter of the surrender and punishment; after due trial, of the war criminals referred to in its resolution adopted on 13 February 1946¹

Reaffirms the aforementioned resolution;

Reaffirms also its resolutions on the subject of refugees adopted on 12 February 1946² and on 15 December 1946;³

Recommends Members of the United Nations to continue with unabated energy to carry out their responsibilities as regards the surrender and trial of war criminals;

Recommends Members of the United Nations, which desire the surrender of alleged war criminals or traitors (that is to say nationals of any State accused of having violated their national law by treason or active collaboration with the enemy during the war) by other Members in whose jurisdiction they are believed to be, to request such surrender as soon as possible and to support their request with sufficient evidence to establish that a reasonable *prima facie* case exists as to identity and guilt, and

Reasserts that trials of war criminals and traitors, like all other trials, should be governed by the principles of justice, law and evidence.

*Hundred and second plenary meeting,
31 October 1947.*

¹ See *Resolutions adopted by the General Assembly during the first part of its first session*, resolution 3(I), page 9.

² *Ibid.*, resolution 8(I), page 12.

³ See *Resolutions adopted by the General Assembly during the second part of its first session*, resolution 62(I),

- (e) Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgement of the Tribunal (adopted by the International Law Commission in 1950 and submitted to the General Assembly)

PRINCIPLE I

Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.

PRINCIPLE II

The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

PRINCIPLE III

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

PRINCIPLE IV

The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

PRINCIPLE V

Any person charged with a crime under international law has the right to a fair trial on the facts and law.

/...

PRINCIPLE VI

The crimes hereinafter set out are punishable as crimes under international law:

a. *Crimes against peace:*

- (i) *Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;*
- (ii) *Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).*

b. *War crimes:*

Violations of the laws or customs of war which include, but are not 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 of 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:*

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connexion with any crime against peace or any war crime.

PRINCIPLE VII

Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.

(f) General Assembly resolution 2142 (XXI). **Elimination of all forms of racial discrimination**

(excerpts)

The General Assembly,

...

Reaffirming that racial discrimination and apartheid are denials of human rights and fundamental freedoms and of justice and are offences against human dignity,

Recognizing that racial discrimination and apartheid, wherever they are practised, constitute a serious impediment to economic and social development and are obstacles to international co-operation and peace,

Deeply concerned that racial discrimination and apartheid, despite the decisive condemnation of them by the United Nations, continue to exist in some countries and territories,

Convinced of the urgent necessity of further measures to attain the goal of the complete elimination of all forms of racial discrimination and apartheid,

1. *Condemns*, wherever they exist, all policies and practices of apartheid, racial discrimination and segregation, including the practices of discrimination inherent in colonialism;

2. *Reiterates* that such policies and practices on the part of any Member State are incompatible with the obligations assumed by it under the Charter of the United Nations;

...

1152nd plenary meeting,
26 October 1966.

(g) General Assembly resolution 2184 (XXI). **Question of Territories under Portuguese administration**

(excerpts)

The General Assembly,

...

3. *Condemns*, as a crime against humanity, the policy of the Government of Portugal, which violates the economic and political rights of the indigenous population by the settlement of foreign immigrants in the Territories and by the exporting of African workers to South Africa;

...

1490th plenary meeting,
12 December 1966.

/...

(h) General Assembly resolutions:

- 2338 (XXII). Question of the punishment of war criminals and of persons who have committed crimes against humanity

The General Assembly,

Recalling its resolutions 3 (I) of 13 February 1946 and 170 (II) of 31 October 1947 on the extradition and punishment of war criminals, resolution 95 (I) of 11 December 1946 affirming the principles of inter-

national law recognized by the Charter of the Nürnberg Tribunal and the judgement of the Tribunal, and resolutions 2184 (XXI) of 12 December 1966 and 2202 (XXI) of 16 December 1966, which expressly condemned as crimes against humanity the violation of the economic and political rights of the indigenous population, on the one hand, and the policies of apartheid, on the other,

Recalling Economic and Social Council resolutions 1074 D (XXXIX) of 28 July 1965 and 1158 (XLI) of 5 August 1966 on the punishment of war criminals and of persons who have committed crimes against humanity,

Noting that none of the solemn declarations, instruments or conventions relating to prosecution and punishment for war crimes and crimes against humanity makes provision for a period of limitation,

Considering that war crimes and crimes against humanity are among the gravest crimes in international law,

Convinced that effective punishment for war crimes and crimes against humanity is an important element in the prevention of such crimes, the protection of human rights and fundamental freedoms, the encouragement of confidence, the furtherance of co-operation among peoples and the promotion of international peace and security,

Noting that the application to war crimes and crimes against humanity of the rules of municipal law relating to the period of limitation for ordinary crimes is a matter of serious concern to world public opinion, since it prevents the prosecution and punishment of persons responsible for those crimes,

Recognizing that it is necessary and timely to affirm in international law, through a convention, the principle that there is no period of limitation for war crimes and crimes against humanity, and to secure its universal application,

Having considered the report of the joint working group of the Third and Sixth Committees on the draft convention on the non-applicability of statutory limitation to war crimes and crimes against humanity,¹⁰

Expressing its regret that owing to the lack of time it has not been possible to complete consideration of and to adopt the convention on the non-applicability of statutory limitation to war crimes and crimes against humanity,

1. *Expresses its thanks* to the joint working group of the Third and Sixth Committee for the work it has accomplished;

2. *Takes note* of the report of the joint working group;

3. *Requests* the Secretary-General to transmit to Member States the report of the joint working group containing the text of the draft convention adopted by the group and to invite them to submit comments on the draft convention;

4. *Further requests* the Secretary-General to issue to Member States, before the twenty-third session of the General Assembly, a report containing the replies received from Member States in accordance with paragraph 3 above;

5. *Recommends* that no legislative or other action be taken which may be prejudicial to the aims and purposes of a convention on the non-applicability of statutory limitation to war crimes and crimes against humanity, pending the adoption of a convention by the General Assembly;

6. *Decides* to give high priority to the completion of the draft convention on the non-applicability of statutory limitation to war crimes and crimes against humanity, with a view to its adoption at the twenty-third session.

1638th plenary meeting,
18 December 1967.

¹⁰ The joint working group was established, for the twenty-second session, following consultations between the Chairman of the Third Committee and the Chairman of the Sixth Committee, in accordance with the recommendation adopted by the General Assembly at its 1564th plenary meeting, on 23 September 1967. For the report of the joint working group, see *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 60, document A/C.3/L.1503.

- 2583 (XXIV). Question of the punishment of war criminals and of persons who have committed crimes against humanity

The General Assembly,

Recalling its resolutions 3 (I) of 13 February 1946 and 170 (II) of 31 October 1947 on the extradition and punishment of war criminals, its resolution 95 (I) of 11 December 1946 affirming the principles of international law recognized by the Charter of the International Military Tribunal, Nuremberg, and the judgment of the Tribunal, and its resolutions 2338 (XXII) of 18 December 1967 and 2391 (XXIII) of 26 November 1968 on the punishment of war criminals and of persons who have committed crimes against humanity,

Recalling also the Declarations of 13 January 1942²⁴ and 30 October 1943,²⁴ and the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, providing for the extradition and punishment of

²⁴ U.S. Department of State Bulletin (Washington, D.C.), vol. IX, No. 228, p. 310 (Moscow Declaration on German Atrocities).

war criminals and of persons who have committed crimes against humanity,

Convinced that the thorough investigation of war crimes and crimes against humanity, and the detection, arrest, extradition and punishment of persons responsible for war crimes and crimes against humanity, constitute an important element in the prevention of such crimes, the protection of human rights and fundamental freedoms, the encouragement of confidence, the furtherance of co-operation among peoples and the promotion of international peace and security,

Noting that a number of States have already signed the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity,

1. *Calls upon* all the States concerned to take the necessary measures for the thorough investigation of war crimes and crimes against humanity, as defined in article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and for the detection, arrest, extradition and punishment of all war criminals and persons guilty of crimes against humanity who have not yet been brought to trial or punished;

2. *Invites* States concerned which have not yet signed or ratified the Convention to do so as soon as possible;

3. *Expresses the hope* that States which were unable to vote for the adoption of the Convention will refrain from action running counter to its main purposes;

4. *Again calls upon* States which have not yet become parties to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide to do so as soon as possible;

5. *Draws attention* to the special need for international action in order to ensure the prosecution and punishment of persons guilty of war crimes and crimes against humanity;

6. *Requests* all States Members of the United Nations or members of specialized agencies to submit to the Secretary-General information on the measures taken by them in implementation of the present resolution;

7. *Requests* the Secretary-General to submit to the General Assembly at its twenty-fifth session a progress report on the implementation of the present resolution;

8. *Decides* to give priority at its twenty-fifth session to the question of further measures to ensure the extradition and punishment of war criminals and of persons who have committed crimes against humanity.

1834th plenary meeting,
15 December 1969.

- 2712 (XXV). Question of the punishment of war criminals and of persons who have committed crimes against humanity

The General Assembly,

Recalling its resolution 2583 (XXIV) of 15 December 1969 on the punishment of war criminals and of persons who have committed crimes against humanity,

Welcoming with satisfaction the fact that the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity entered into force on 11 November 1970,

Noting with regret that the numerous decisions adopted by the United Nations on the question of the

punishment of war criminals and of persons who have committed crimes against humanity are still not being fully complied with,

Expressing deep concern at the fact that in present-day conditions, as a result of aggressive wars and the policies and practices of racism, *apartheid* and colonialism and other similar ideologies and practices, war crimes and crimes against humanity are being committed in various parts of the world,

Convinced that a thorough investigation of war crimes and crimes against humanity, as well as the arrest, extradition and punishment of persons guilty of such crimes—wherever they may have been committed—and the establishment of criteria for determining compensation to the victims of such crimes, are important elements in the prevention of similar crimes now and in the future, and also in the protection of human rights and fundamental freedoms, the strengthening of confidence and the development of co-operation between peoples and the safeguarding of international peace and security,

1. Draws attention to the fact that many war criminals and persons who have committed crimes against humanity are continuing to take refuge in the territories of certain States and are enjoying protection;

2. Calls upon all States to take measures, in accordance with recognized principles of international law, to arrest such persons and extradite them to the countries where they have committed war crimes and crimes against humanity, so that they can be brought to trial and punished in accordance with the laws of those countries;

3. Condemns the war crimes and crimes against humanity at present being committed as a result of aggressive wars and the policies of racism, *apartheid* and colonialism and calls upon the States concerned to bring to trial persons guilty of such crimes;

4. Also calls upon all the States concerned to intensify their co-operation in the collection and exchange of information which will contribute to the detection, arrest, extradition, trial and punishment of persons guilty of war crimes and crimes against humanity;

5. Once again requests the States concerned, if they have not already done so, to take the necessary measures for the thorough investigation of war crimes and crimes against humanity, as defined in article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and for the detection, arrest, extradition and punishment of all war criminals and persons guilty of crimes against humanity who have not yet been brought to trial or punished;

6. Requests States which have not yet become parties to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity to do so as soon as possible;

7. Appeals to Governments to provide the Secretary-General with information on the measures which they have taken or are taking to become parties to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity;

8. Also appeals to States which have not yet become parties to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity strictly to observe the provisions of General Assembly resolution 2583 (XXIV)

to the effect that they should refrain from action running counter to the main purposes of that Convention;

9. Requests the Secretary-General to continue, in the light of the comments and observations submitted by Governments, the study of the question of the punishment of war crimes and crimes against humanity and the criteria for determining compensation to the victims of such crimes, in order to submit a report on this question to the General Assembly at its twenty-sixth session.

1930th plenary meeting,
15 December 1970.

- 2840 (XXVI). Question of the punishment of war criminals and of persons who have committed crimes against humanity

The General Assembly,

Recalling its resolutions 3 (I) of 13 February 1946 and 170 (II) of 31 October 1947 on the extradition and punishment of war criminals and its resolution 95 (I) of 11 December 1946 affirming the principles of international law recognized by the Charter of the International Military Tribunal, Nuremberg, and the judgement of that Tribunal,

Recalling further its resolution 2712 (XXV) of 15 December 1970 in which it condemned the war crimes and crimes against humanity at present being committed as a result of aggressive wars and the policies of racism, *apartheid* and colonialism,

Again noting with regret that the numerous decisions adopted by the United Nations on the question of the punishment of war criminals and of persons who have committed crimes against humanity are still not being fully complied with,

Recalling the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity,

Convinced that the effective punishment of war crimes and crimes against humanity is an important element in putting an end to and preventing such crimes, in the protection of human rights and fundamental freedoms, in the strengthening of confidence and in promoting co-operation between peoples as well as peace and international security,

Expressing its deep concern at the fact that many war criminals and persons who have committed crimes

against humanity are continuing to take refuge in the territories of certain States and are enjoying their protection,

Affirming that war crimes and crimes against humanity are among the most dangerous crimes under international law,

Firmly convinced of the need for international co-operation in the thorough investigation of war crimes and crimes against humanity, as defined in article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and in bringing about the detection, arrest, extradition and punishment of all war criminals and persons guilty of crimes against humanity who have not yet been brought to trial or punished,

1. *Urges* all States to implement the relevant resolutions of the General Assembly and to take measures in accordance with international law to put an end to and prevent war crimes and crimes against humanity and to ensure the punishment of all persons guilty of such crimes, including the extradition to those countries where they have committed such crimes;

2. *Further urges* all States to co-operate in particular in the collection and exchange of information which will contribute to the detection, arrest, extradition, trial and punishment of persons guilty of war crimes and crimes against humanity;

3. *Again calls upon* all States which have not yet done so to become as soon as possible parties to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity;

4. *Affirms* that refusal by States to co-operate in the arrest, extradition, trial and punishment of persons guilty of war crimes and crimes against humanity is contrary to the purposes and principles of the Charter of the United Nations and to generally recognized norms of international law;

5. *Requests* the Commission on Human Rights to consider the principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity and to submit a report on this question to the General Assembly at its twenty-seventh session.

*2025th plenary meeting,
18 December 1971.*

/...

(i) General Assembly resolutions:

- 2465 (XXIII). Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

(excerpts)

The General Assembly,

...

8. Declares that the practice of using mercenaries against movements for national liberation and independence is punishable as a criminal act and that the mercenaries themselves are outlaws, and calls upon the Governments of all countries to enact legislation declaring the recruitment, financing and training of mercenaries in their territory to be a punishable offence and prohibiting their nationals from serving as mercenaries;

...

1751st plenary meeting,
20 December 1968.

- 2548 (XXIV). Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

(excerpts)

The General Assembly,

...

4. Declares that the continuation of colonial rule threatens international peace and security and that the practice of apartheid and all forms of racial discrimination constitute a crime against humanity;

...

7. Reiterates its declaration that the practice of using mercenaries against movements for national liberation and independence is punishable as a criminal act and that the mercenaries themselves are outlaws, and calls upon the Governments of all countries to enact legislation declaring the recruitment, financing and training of mercenaries in their territory to be a punishable offence and prohibiting their nationals from serving as mercenaries;

...

1820th plenary meeting,
11 December 1969.

/...

- 2708 (XXV). Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

(excerpts)

The General Assembly,

...

8. Reiterates its declaration that the practice of using mercenaries against national liberation movements in the colonial Territories constitutes a criminal act and calls upon all States to take the necessary measures to prevent the recruitment, financing and training of mercenaries in their territory and to prohibit their nationals from serving as mercenaries;

...

1929th plenary meeting,
14 December 1970.

- (j) General Assembly resolution 2621 (XXV). Programme of action for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

(excerpts)

The General Assembly,

...

1. *Declares* the further continuation of colonialism in all its forms and manifestations a crime which constitutes a violation of the Charter of the United Nations, the Declaration on the Granting of Independence to Colonial Countries and Peoples and the principles of international law;

...

1862nd plenary meeting,
12 October 1970.

/...

(k) General Assembly resolution 2625 (XXV). Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations

(excerpts)

1883rd plenary meeting,
24 October 1970.

ANNEX

DECLARATION ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS

PREAMBLE

The General Assembly,

...

1. *Solemnly proclaims the following principles:*

The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations

Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues.

A war of aggression constitutes a crime against the peace, for which there is responsibility under international law.

In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.

(l) General Assembly resolution 2784 (XXVI). Elimination of all forms of racial discrimination

(excerpts)

The General Assembly

...

III

1. Reaffirms that apartheid is a crime against humanity;

2. Declares that racial discrimination in all its forms is a criminal affront to the conscience and dignity of mankind;

...

2001st plenary meeting,
6 December 1971.

/...

(m) The policies of apartheid of the Government of the Republic of South Africa
General Assembly resolutions (excerpts):

- 2775 (XXVI) E

ESTABLISHMENT OF BANTUSTANS

The General Assembly,

...

Noting further that under the aforementioned resolution crimes against
humanity are committed when enslavement, deportation and other inhuman acts are
enforced against any civilian population on political, racial or religious grounds,

...

1997th plenary meeting
29 November 1971

- 3151 (XXVIII) G

SITUATION IN SOUTH AFRICA RESULTING FROM THE POLICIES OF
APARTHEID

The General Assembly,

...

Reaffirming that the practice of apartheid constitutes a crime against
humanity,

...

2201st plenary meeting
14 December 1973

- 3324 (XXIX) E

SITUATION IN SOUTH AFRICA

The General Assembly,

...

Reaffirming that the policies and practices of apartheid constitute a crime
against humanity,

...

/...

1. Strongly condemns the South African régime for its policies and practices of apartheid, which are a crime against humanity;

...

2320th plenary meeting
16 December 1974

- 3411 (XXX) G

SITUATION IN SOUTH AFRICA

The General Assembly,

...

Reaffirming that the policy and practice of apartheid constitute a crime against humanity,

...

1. Again condemns the racist régime of South Africa for its policies and practices of apartheid, which are a crime against humanity, for its persistent and flagrant violations of the principles enshrined in the the Charter of the United Nations and for its continued defiance of the resolutions of the General Assembly and the Security Council;

...

2435th plenary meeting
10 December 1975

- 31/6 I

SITUATION IN SOUTH AFRICA

The General Assembly,

...

Reaffirming that the policy and practice of apartheid constitutes a crime against humanity,

...

58th plenary meeting
9 November 1976

/...

- 31/6 J

PROGRAMME OF ACTION AGAINST APARTHEID

The General Assembly,

...

58th plenary meeting
9 November 1976

...

ANNEX

Programme of Action against Apartheid

...

2. Apartheid, like slavery, must be eradicated because it is a crime against humanity.

...

- 32/105 M

INTERNATIONAL DECLARATION AGAINST APARTHEID IN SPORTS

The General Assembly,

...

1. Adopts and proclaims the International Declaration against Apartheid in Sports, recommended by the Ad Hoc Committee on the Drafting of an International Convention against Apartheid in Sports and annexed to the present resolution;

...

102nd plenary meeting
14 December 1977

...

ANNEX

International Declaration against Apartheid in Sports

The General Assembly,

...

Recalling further that the International Convention on the Suppression and Punishment of the Crime of Apartheid declares that apartheid is a crime violating

/...

the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security,

...

- 33/183 B

INTERNATIONAL MOBILIZATION AGAINST APARTHEID

The General Assembly,

...

Reaffirming that apartheid is a crime against the conscience and dignity of mankind,

...

93rd plenary meeting
24 January 1979

- 33/183 L

SITUATION IN SOUTH AFRICA

The General Assembly,

...

Reaffirming that apartheid constitutes a crime against humanity,

...

93rd plenary meeting
24 January 1979

- 34/93 A

SITUATION IN SOUTH AFRICA

The General Assembly,

...

Reaffirming that apartheid is a crime against humanity,

...

100th plenary meeting
12 December 1979

/...

- 34/93 O

DECLARATION ON SOUTH AFRICA

The General Assembly,

Reaffirming that apartheid is a crime against the conscience and dignity of mankind,

...

100th plenary meeting
12 December 1979

- 35/206 A

SITUATION IN SOUTH AFRICA

The General Assembly,

...

Reaffirming that apartheid is a crime against humanity,

...

98th plenary meeting
16 December 1980

- 36/172 A

SITUATION IN SOUTH AFRICA

The General Assembly,

...

Reaffirming that apartheid is a crime against humanity and a threat to international peace and security,

...

102nd plenary meeting
17 December 1981

/...

- 37/69 A

SITUATION IN SOUTH AFRICA

The General Assembly,

...

Reaffirming that apartheid is a crime against humanity and a threat to international peace and security,

...

97th meeting
9 December 1982

(n) General Assembly resolution 3074 (XXVIII). Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity

The General Assembly,

Recalling its resolutions 2583 (XXIV) of 15 December 1969, 2712 (XXV) of 15 December 1970, 2840 (XXVI) of 18 December 1971 and 3020 (XXVII) of 18 December 1972,

Taking into account the special need for international action in order to ensure the prosecution and punishment of persons guilty of war crimes and crimes against humanity,

Having considered the draft principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity,²⁴

Declares that the United Nations, in pursuance of the principles and purposes set forth in the Charter concerning the promotion of co-operation between peoples and the maintenance of international peace and security, proclaims the following principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity:

1. War crimes and crimes against humanity, wherever they are committed, shall be subject to investigation and the persons against whom there is evidence that they have committed such crimes shall be subject to tracing, arrest, trial and, if found guilty, to punishment.

2. Every State has the right to try its own nationals for war crimes or crimes against humanity.

3. States shall co-operate with each other on a bilateral and multilateral basis with a view to halting and preventing war crimes and crimes against humanity, and shall take the domestic and international measures necessary for that purpose.

4. States shall assist each other in detecting, arresting and bringing to trial persons suspected of having committed such crimes and, if they are found guilty, in punishing them.

5. Persons against whom there is evidence that they have committed war crimes and crimes against humanity shall be subject to trial and, if found guilty, to punishment, as a general rule in the countries in which they committed those crimes. In that connexion, States shall co-operate on questions of extraditing such persons.

6. States shall co-operate with each other in the collection of information and evidence which would help to bring to trial the persons indicated in paragraph 5 above and shall exchange such information.

7. In accordance with article 1 of the Declaration on Territorial Asylum of 14 December 1967,²⁵ States shall not grant asylum to any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity.

8. States shall not take any legislative or other measures which may be prejudicial to the international obligations they have assumed in regard to the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity.

9. In co-operating with a view to the detection, arrest and extradition of persons against whom there is evidence that they have committed war crimes and crimes against humanity and, if found guilty, their punishment, States shall act in conformity with the provisions of the Charter of the United Nations

and of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.²⁶

2187th plenary meeting
3 December 1973

/...

²⁴ See A/9136.

²⁵ Resolution 2312 (XXII).

²⁶ Resolution 2625 (XXV), annex.

- (o) General Assembly resolution 3103 (XXVIII). Basic principles of the legal status of the combatants struggling against colonial and alien domination and racist régimes
(excerpts)

The General Assembly,

...

Reaffirming the declarations made in General Assembly resolutions 2548 (XXIV) of 11 December 1969 and 2708 (XXV) of 14 December 1970 that the practice of using mercenaries against national liberation movements in the colonial Territories constitutes a criminal act,

...

5. The use of mercenaries by colonial and racist régimes against the national liberation movements struggling for their freedom and independence from the yoke of colonialism and alien domination is considered to be a criminal act and the mercenaries should accordingly be punished as criminals.

6. The violation of the legal status of the combatants struggling against colonial and alien domination and racist régimes in the course of armed conflicts entails full responsibility in accordance with the norms of international law.

*2197th plenary meeting
12 December 1973*

/...

(p) General Assembly resolution 3314 (XXIX).
Definition of Aggression

The General Assembly,

Having considered the report of the Special Committee on the Question of Defining Aggression, established pursuant to its resolution 2330 (XXII) of 18 December 1967, covering the work of its seventh session held from 11 March to 12 April 1974, including the draft Definition of Aggression adopted by the Special Committee by consensus and recommended for adoption by the General Assembly,⁶

Deeply convinced that the adoption of the Definition of Aggression would contribute to the strengthening of international peace and security,

1. Approves the Definition of Aggression, the text of which is annexed to the present resolution;

2. Expresses its appreciation to the Special Committee on the Question of Defining Aggression for its work which resulted in the elaboration of the Definition of Aggression;

3. Calls upon all States to refrain from all acts of aggression and other uses of force contrary to the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations;⁷

4. Calls the attention of the Security Council to the Definition of Aggression, as set out below, and recommends that it should, as appropriate, take account of that Definition as guidance in determining, in accordance with the Charter, the existence of an act of aggression.

2319th plenary meeting
14 December 1974

ANNEX

Definition of Aggression

The General Assembly,

Basing itself on the fact that one of the fundamental purposes of the United Nations is to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace,

Recalling that the Security Council, in accordance with Article 39 of the Charter of the United Nations, shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security,

Recalling also the duty of States under the Charter to settle their international disputes by peaceful means in order not to endanger international peace, security and justice,

Bearing in mind that nothing in this Definition shall be interpreted as in any way affecting the scope of the provisions of the Charter with respect to the functions and powers of the organs of the United Nations,

Considering also that, since aggression is the most serious and dangerous form of the illegal use of force, being fraught, in the conditions created by the existence of all types of weapons of mass destruction, with the possible threat of a world conflict and all its catastrophic consequences, aggression should be defined at the present stage,

Reaffirming the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence, or to disrupt territorial integrity,

Reaffirming also that the territory of a State shall not be violated by being the object, even temporarily, of military occupation or of other measures of force taken by another State in contravention of the Charter, and that it shall not be the object of acquisition by another State resulting from such measures or the threat thereof,

Reaffirming also the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Convinced that the adoption of a definition of aggression ought to have the effect of deterring a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to suppress them and would also facilitate the protection of the rights and lawful interests of, and the rendering of assistance to, the victim,

Believing that, although the question whether an act of aggression has been committed must be considered in the

light of all the circumstances of each particular case, it is nevertheless desirable to formulate basic principles as guidance for such determination,

Adopts the following Definition of Aggression:⁸

Article 1

Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.

Explanatory note: In this Definition the term "State":

(a) Is used without prejudice to questions of recognition or to whether a State is a member of the United Nations;

(b) Includes the concept of a "group of States" where appropriate.

Article 2

The first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.

⁸ Explanatory notes on articles 3 and 5 are to be found in paragraph 20 of the report of the Special Committee on the Question of Defining Aggression (*Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 19 (A/9619 and Corr.1)*). Statements on the Definition are contained in paragraphs 9 and 10 of the report of the Sixth Committee (A/9890).

⁶ *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 19 (A/9619 and Corr.1)*.

⁷ Resolution 2625 (XXV), annex.

Article 3

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade of the ports or coasts of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

Article 4

The acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter.

Article 5

1. No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.

2. A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.

3. No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.

Article 6

Nothing in this Definition shall be construed as in any way enlarging or diminishing the scope of the Charter, including its provisions concerning cases in which the use of force is lawful.

Article 7

Nothing in this Definition, and in particular article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist régimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.

Article 8

In their interpretation and application the above provisions are interrelated and each provision should be construed in the context of the other provisions.

(q) General Assembly resolution 36/100. **Declaration on the Prevention of Nuclear Catastrophe**

The General Assembly,

Bearing in mind that the foremost task of the United Nations, born in the flames of the Second World War, has been, is and will be to save present and succeeding generations from the scourge of war,

Recognizing that all the horrors of past wars and all other calamities that have befallen people would pale in comparison with what is inherent in the use of nuclear weapons capable of destroying civilization on earth,

Reaffirming that the universally accepted objective is to eliminate completely the possibility of the use of nuclear weapons through the cessation of their production, followed by the destruction of their stockpiles, and that, to this end, priority in disarmament negotiations should be given to nuclear disarmament,

Convinced that, as the first step in this direction, the use of nuclear weapons and the waging of nuclear war should be outlawed,

Solemnly proclaims, on behalf of the States Members of the United Nations:

1. States and statesmen that resort first to the use of nuclear weapons will be committing the gravest crime against humanity.

2. There will never be any justification or pardon for statesmen who take the decision to be the first to use nuclear weapons.

3. Any doctrines allowing the first use of nuclear weapons and any actions pushing the world towards a catastrophe are incompatible with human moral standards and the lofty ideals of the United Nations.

4. It is the supreme duty and direct obligation of the leaders of nuclear-weapon States to act in such a way as to eliminate the risk of the outbreak of a nuclear conflict. The nuclear-arms race must be stopped and reversed by joint efforts, through negotiations conducted in good faith and on the basis of equality, having as their ultimate goal the complete elimination of nuclear weapons.

5. Nuclear energy should be used exclusively for peaceful purposes and only for the benefit of mankind.

*91st plenary meeting
5 December 1981*

(r) General Assembly resolution 37/40

Implementation of the Programme for the
Decade for Action to Combat Racism and
Racial Discrimination

(excerpts)

The General Assembly,

...

Reaffirming that apartheid is a crime
against humanity,

...

90th meeting
3 December 1982

(s) General Assembly resolution 37/88 C

Report of the Special Committee to
Investigate Israeli Practices Affecting
the Human Rights of the Population of the
Occupied Territories

(excerpts)

The General Assembly,

...

6. Declares once more that Israel's
grave breaches of the Geneva Convention
are war crimes and an affront to humanity;

...

100th meeting
10 December 1982

/...

PART II. INSTRUMENTS WHICH WERE MENTIONED AS RELEVANT DURING THE
EXAMINATION BY THE GENERAL ASSEMBLY OF THE QUESTION OF
THE DRAFT CODE

1. International agreements

- (a) Geneva Conventions for the protection of war victims of
12 August 1949 (for the text of the Conventions see United Nations,
Treaty Series, vol. 75 of 1950, I, Nos. 970-973);
- (b) Additional Protocols to the Geneva Conventions of 12 August 1949.
Adopted by the Diplomatic Conference on the Reaffirmation and
Development of International Humanitarian Law Applicable in Armed
Conflicts on 8 June 1977 (for the text of the Protocols see
United Nations Juridical Yearbook 1977, chap. IV);
- (c) Single Convention on Narcotic Drugs, 1961. New York, 30 March 1961
(for the text of the Convention see United Nations, Treaty Series,
vol. 520 of 1964, No. 7515).
- (d) CONVENTION ON PSYCHOTROPIC SUBSTANCES

(Adopted by the United Nations Conference in Vienna on 21 February 1971 -
excerpts)

PREAMBLE

The Parties,

Being concerned with the health and welfare of mankind,

Noting with concern the public health and social problems resulting from the
abuse of certain psychotropic substances,

Determined to prevent and combat abuse of such substances and the illicit
traffic to which it gives rise,

Considering that rigorous measures are necessary to restrict the use of such
substances to legitimate purposes,

Recognizing that the use of psychotropic substances for medical and scientific
purposes is indispensable and that their availability for such purposes should not
be unduly restricted,

Believing that effective measures against abuse of such substances require
co-ordination and universal action,

/...

Acknowledging the competence of the United Nations in the field of control of psychotropic substances and desirous that the international organs concerned should be within the framework of that Organization,

Recognizing that an international convention is necessary to achieve these purposes,

Agree as follows:

...

ARTICLE 20

Measures against the abuse of psychotropic substances

1. The Parties shall take all practicable measures for the prevention of abuse of psychotropic substances and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved, and shall co-ordinate their efforts to these ends.
2. The Parties shall as far as possible promote the training of personnel in the treatment, after-care, rehabilitation and social reintegration of abusers of psychotropic substances.
3. The Parties shall assist persons whose work so requires to gain an understanding of the problems of abuse of psychotropic substances and of its prevention, and shall also promote such understanding among the general public if there is a risk that abuse of such substances will become widespread.

ARTICLE 21

Action against the illicit traffic

Having due regard to their constitutional, legal and administrative systems, the Parties shall:

- (a) make arrangements at the national level for the co-ordination of preventive and repressive action against the illicit traffic; to this end they may usefully designate an appropriate agency responsible for such co-ordination;
- (b) assist each other in the campaign against the illicit traffic in psychotropic substances, and in particular immediately transmit, through the diplomatic channel or the competent authorities designated by the Parties for this purpose, to the other Parties directly concerned, a copy of any report addressed to the Secretary-General under article 16 in connection with the discovery of a case of illicit traffic or a seizure;

/...

(c) co-operate closely with each other and with the competent international organizations of which they are members with a view to maintaining a co-ordinated campaign against the illicit traffic;

(d) ensure that international co-operation between the appropriate agencies be conducted in an expeditious manner; and

(e) ensure that, where legal papers are transmitted internationally for the purpose of judicial proceedings, the transmittal be effected in an expeditious manner to the bodies designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that legal papers be sent to it through the diplomatic channel.

ARTICLE 22

Penal provisions

1. (a) Subject to its constitutional limitations, each Party shall treat as a punishable offence, when committed intentionally, any action contrary to a law or regulation adopted in pursuance of its obligations under this Convention, and shall ensure that serious offences shall be liable to adequate punishment, particularly by imprisonment or other penalty of deprivation of liberty.

(b) Notwithstanding the preceding subparagraph, when abusers of psychotropic substances have committed such offences, the Parties may provide, either as an alternative to conviction or punishment or in addition to punishment, that such abusers undergo measures of treatment, education, after-care, rehabilitation and social reintegration in conformity with paragraph 1 of article 20.

2. Subject to the constitutional limitations of a Party, its legal system and domestic law,

- (a) (i) if a series of related actions constituting offences under paragraph 1 has been committed in different countries, each of them shall be treated as a distinct offence;
- (ii) intentional participation in, conspiracy to commit and attempts to commit, any of such offences, and preparatory acts in financial operations in connection with the offences referred to in this article, shall be punishable offences as provided in paragraph 1;
- (iii) foreign convictions for such offences shall be taken into account for the purpose of establishing recidivism; and
- (iv) serious offences heretofore referred to committed either by nationals or by foreigners shall be prosecuted by the Party in whose territory the offence was committed, or by the Party in whose territory the offender is found if extradition is not acceptable in conformity with the law of the Party to which application is made, and if such offender has not already been prosecuted and judgement given.

/...

(b) It is desirable that the offences referred to in paragraph 1 and paragraph 2 (a) (ii) be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the Parties, and, as between any of the Parties which do not make extradition conditional on the existence of a treaty or on reciprocity, be recognized as extradition crimes; provided that extradition shall be granted in conformity with the law of the Party to which application is made, and that the Party shall have the right to refuse to effect the arrest or grant the extradition in cases where the competent authorities consider that the offence is not sufficiently serious.

3. Any psychotropic substance or other substance, as well as any equipment, used in or intended for the commission of any of the offences referred to in paragraphs 1 and 2 shall be liable to seizure and confiscation.

4. The provisions of this article shall be subject to the provisions of the domestic law of the Party concerned on questions of jurisdiction.

5. Nothing contained in this article shall affect the principle that the offences to which it refers shall be defined, prosecuted and punished in conformity with the domestic law of a Party.

...

- (e) Protocol amending the Slavery Convention signed at Geneva on 25 September 1926 (for the text of the Protocol see General Assembly resolution 794 (VIII) of 23 October 1953, annex)
 - Slavery Convention. Signed at Geneva, 25 September 1926 (for the text of the Convention see League of Nations, Treaty Series, Vol. CC of 1927, No. 1414);
- (f) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery of 7 September 1956 (for the text of the Convention see United Nations, Treaty Series, vol. 266 of 1957, No. 3822);
- (g) Convention on the High Seas of 29 April 1958 - articles 14-21 relating to the acts of piracy (for the text of the Convention see United Nations, Treaty Series, vol. 450 of 1963, No. 6465);
- (h) United Nations Convention on the Law of the Sea (Adopted by the Third United Nations Conference on the Law of the Sea at Montego Bay on 10 December 1982 - excerpts)

/...

Article 100

Duty to co-operate in the repression of piracy

All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Article 101

Definition of piracy

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate-ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Article 102

Piracy by a warship, government ship or government aircraft
whose crew has mutinied

The acts of piracy, as defined in article 101, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft.

Article 103

Definition of a pirate ship or aircraft

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

/...

Article 104

Retention or loss of the nationality of a pirate ship or aircraft

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

Article 105

Seizure of a pirate ship or aircraft

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Article 106

Liability for seizure without adequate grounds

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft for any loss or damage caused by the seizure.

Article 107

Ships and aircraft which are entitled to seize on account of piracy

A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

- (i) Convention on Offences and Certain Other Acts committed on Board Aircraft of 14 September 1963 (for the text of the Convention see United Nations, Treaty Series, vol. 704 of 1969, No. 10106);

- (j) Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970 (for the text of the Convention see United Nations, Treaty Series, vol. 859/860 of 1973, No. 12325);
- (k) Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation of 23 September 1971 (for the text of the Convention see United Nations Juridical Yearbook 1971, chap. IV);
- (l) Convention to Prevent and Punish the Acts of Terrorism taking the Form of Crimes against Persons and related Extortion that are of International Significance

(Adopted by the Organization of American States in Washington on 2 February 1971 - excerpts)

WHEREAS:

...

The General Assembly of the Organization, in resolution 4, of 30 June 1970, strongly condemned acts of terrorism, especially the kidnapping of persons and extortion in connection with that crime, which it declared to be serious common crimes;

Criminal acts against persons entitled to special protection under international law are occurring frequently, and those acts are of international significance because of the consequences that may flow from them for relations among States;

It is advisable to adopt general standards that will progressively develop international law as regards co-operation in the prevention and punishment of such acts; and

In the application of those standards the institution of asylum should be maintained and, likewise the principle of non-intervention should not be impaired,

THE MEMBER STATES OF THE ORGANIZATION OF AMERICAN STATES HAVE AGREED UPON THE FOLLOWING ARTICLES:

...

/...

Article 1

The Contracting States undertake to co-operate among themselves by taking all the measures that they may consider effective, under their own laws, and especially those established in this convention, to prevent and punish acts of terrorism, especially kidnapping, murder, and other assaults against the life or physical integrity of those persons to whom the State has the duty according to international law to give special protection, as well as extortion in connexion with those crimes.

Article 2

For the purposes of this Convention, kidnapping, murder and other assaults against the life or personal integrity of those persons to whom the State has the duty to give special protection according to international law, as well as extortion in connexion with those crimes, shall be considered common crimes of international significance, regardless of motive.

Article 3

Persons who have been charged or convicted for any of the crimes referred to in Article 2 of this Convention shall be subject to extradition under the provisions of the extradition treaties in force between the parties or, in the case of States that do not make extradition dependent on the existence of a treaty, in accordance with their own laws.

In any case, it is the exclusive responsibility of the State under whose jurisdiction or protection such persons are located to determine the nature of the acts and decide whether the standards of this Convention are applicable.

Article 4

Any person deprived of his freedom through the application of this Convention shall enjoy the legal guarantees of due process.

Article 5

When extradition requested for one of the crimes specified in Article 2 is not in order because the person sought is a national of the requested State, or because of some other legal or constitutional impediment, that State is obliged to submit the case to its competent authorities for prosecution, as if the act had been committed in its territory. The decision of these authorities shall be communicated to the State that requested extradition. In such proceedings, the obligation established in Article 4 shall be respected.

Article 6

None of the provisions of this Convention shall be interpreted so as to impair the right of asylum.

Article 7

The Contracting States undertake to include the crimes referred to in Article 2 of this Convention among the punishable acts giving rise to extradition

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in any treaty on the subject to which they agree among themselves in the future. The Contracting States that do not subject extradition to the existence of a treaty with the requesting State shall consider the crimes referred to in Article 2 of this Convention as crimes giving rise to extradition, according to the conditions established by the laws of the requested State.

Article 8

To co-operate in preventing and punishing the crimes contemplated in Article 2 of this Convention, the Contracting States accept the following obligations:

(a) To take all measures within their power, and in conformity with their own laws, to prevent and impede the preparation in their respective territories of the crimes mentioned in Article 2 that are to be carried out in the territory of another Contracting State.

(b) To exchange information and consider effective administrative measures for the purpose of protecting the persons to whom Article 2 of this Convention refers.

(c) To guarantee to every person deprived of his freedom through the application of this Convention every right to defend himself.

(d) To endeavour to have the criminal acts contemplated in this Convention included in their penal laws, if not already so included.

(e) To comply most expeditiously with the requests for extradition concerning the criminal acts contemplated in this Convention.

/...

(m) European Convention on the Suppression of Terrorism

(Adopted by the Council of Europe in Strasbourg on 27 January 1977 -
excerpts)

The member States of the Council of Europe, signatory hereto,

...

Aware of the growing concern caused by the increase in acts of terrorism;

Wishing to take effective measures to ensure that the perpetrators of such
acts do not escape prosecution and punishment;

Convinced that extradition is a particularly effective measure for achieving
this result;

...

Article 1

For the purposes of extradition between Contracting States, none of the
following offences shall be regarded as a political offence or as an offence
connected with a political offence or as an offence inspired by political motives:

(a) an offence within the scope of the Convention for the Suppression of
Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;

(b) an offence within the scope of the Convention for the Suppression of
Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on
23 September 1971;

(c) a serious offence involving an attack against the life, physical
integrity or liberty of internationally protected persons, including diplomatic
agents;

(d) an offence involving kidnapping, the taking of a hostage or serious
unlawful detention;

(e) an offence involving the use of a bomb, grenade, rocket, automatic
firearm or letter or parcel bomb if this use endangers persons;

/...

(f) an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

Article 2

1. For the purposes of extradition between Contracting States, a Contracting State may decide not to regard as a political offence or as an offence connected with a political offence or as an offence inspired by political motives a serious offence involving an act of violence, other than one covered by Article 1, against the life, physical integrity or liberty of a person.

2. The same shall apply to a serious offence involving an act against property, other than one covered by Article 1, if the act created a collective danger for persons.

3. The same shall apply to an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

Article 3

The provisions of all extradition treaties and arrangements applicable between Contracting States, including the European Convention on Extradition, are modified as between Contracting States to the extent that they are incompatible with this Convention.

Article 4

For the purposes of this Convention and to the extent that any offence mentioned in Article 1 or 2 is not listed as an extraditable offence in any extradition convention or treaty existing between Contracting States, it shall be deemed to be included as such therein.

Article 5

Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State has substantial grounds for believing that the request for extradition for an offence mentioned in Article 1 or 2 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.

Article 6

1. Each Contracting State shall take such measures as may be necessary to establish

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its jurisdiction over an offence mentioned in Article 1 in the case where the suspected offender is present in its territory and it does not extradite him after receiving a request for extradition from a Contracting State whose jurisdiction is based on a rule of jurisdiction existing equally in the law of the requested State.

2. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 7

A Contracting State in whose territory a person suspected to have committed an offence mentioned in Article 1 is found and which has received a request for extradition under the conditions mentioned in Article 6, paragraph 1, shall, if it does not extradite that person, submit the case, without exception whatsoever and without undue delay, to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.

Article 8

1. Contracting States shall afford one another the widest measure of mutual assistance in criminal matters in connexion with proceedings brought in respect of the offences mentioned in Article 1 or 2. The law of the requested State concerning mutual assistance in criminal matters shall apply in all cases. Nevertheless this assistance may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

2. Nothing in this Convention shall be interpreted as imposing an obligation to afford mutual assistance if the requested State has substantial grounds for believing that the request for mutual assistance in respect of an offence mentioned in Article 1 or 2 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion or that that person's position may be prejudiced for any of these reasons.

3. The provisions of all treaties and arrangements concerning mutual assistance in criminal matters applicable between Contracting States, including the European Convention on Mutual Assistance in Criminal Matters, are modified as between Contracting States to the extent that they are incompatible with this Convention.

Article 9

1. The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Convention.

2. It shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

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Article 10

1. Any dispute between Contracting States concerning the interpretation or application of this Convention, which has not been settled in the framework of Article 9, paragraph 2, shall, at the request of any Party to the dispute, be referred to arbitration. Each Party shall nominate an arbitrator and the two arbitrators shall nominate a referee. If any Party has not nominated its arbitrator within the three months following the request for arbitration, he shall be nominated at the request of the other Party by the President of the European Court of Human Rights. If the latter should be a national of one of the Parties to the dispute, this duty shall be carried out by the Vice-President of the Court or, if the Vice-President is a national of one of the Parties to the dispute, by the most senior judge of the Court not being a national of one of the Parties to the dispute. The same procedure shall be observed if the arbitrators cannot agree on the choice of referee.
2. The arbitration tribunal shall lay down its own procedure. Its decisions shall be taken by majority vote. Its award shall be final.

...

Article 13

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, declare that it reserves the right to refuse extradition in respect of any offence mentioned in Article 1 which it considers to be a political offence, an offence connected with a political offence or an offence inspired by political motives, provided that it undertakes to take into due consideration, when evaluating the character of the offence, any particularly serious aspects of the offence, including:
 - (a) that it created a collective danger to the life, physical integrity or liberty of persons; or
 - (b) that it affected persons foreign to the motives behind it; or
 - (c) that cruel or vicious means have been used in the commission of the offence.
2. Any State may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary-General of the Council of Europe which shall become effective as from the date of its receipt.
3. A State which has made a reservation in accordance with paragraph 1 of this article may not claim the application of Article 1 by any other State; it may, however, if its reservation is partial or conditional, claim the application of that article in so far as it has itself accepted it.

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- (n) Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water of 5 August 1963 (for the text of the Treaty see United Nations, Treaty Series, vol. 480 of 1963, No. 6964);
- (o) Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies of 27 January 1967 (for the text of the Treaty see United Nations, Treaty Series, vol. 610 of 1967, No. 8843);
- (p) Treaty on the Non-Proliferation of Nuclear Weapons (for the text of the Treaty see General Assembly resolution 2373 (XXII) of 12 June 1968, annex);
- (q) Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof (for the text of the Treaty see General Assembly resolution 2660 (XXV) of 7 December 1970, annex);
- (r) Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (for the text of the Convention see General Assembly resolution 2826 (XXVI) of 16 December 1971, annex);
- (s) Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (for the text of the Convention see General Assembly resolution 31/72 of 10 December 1976, annex);
- (t) Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (for the text of the Agreement see General Assembly resolution 34/68 of 5 December 1979, annex);
- (u) Convention on Prohibition or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects

(Adopted by the United Nations Conference in Vienna on
10 October 1980 - excerpts)

/...

The High Contracting Parties,

Recalling that every State has the duty, in conformity with the Charter of the United Nations, to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Further recalling the general principle of the protection of the civilian population against the effects of hostilities,

Basing themselves on the principle of international law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited, and on the principle that prohibits the employment in armed conflicts of weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering,

Also recalling that it is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment,

Confirming their determination that in cases not covered by this Convention and its annexed Protocols or by other international agreements, the civilian population and the combatants shall at all times remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience,

• • •

Wishing to prohibit or restrict further the use of certain conventional weapons and believing that the positive results achieved in this area may facilitate the main talks on disarmament with a view to putting an end to the production, stockpiling and proliferation of such weapons,

• • •

Article 1

Scope of application

This Convention and its annexed Protocols shall apply in the situations referred to in Article 2 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, including any situation described in paragraph 4 of Article 1 of Additional Protocol I to these Conventions.

Article 2

Relations with other international agreements

Nothing in this Convention or its annexed Protocols shall be interpreted as detracting from other obligations imposed upon the High Contracting Parties by international humanitarian law applicable in armed conflict.

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Appendix C

PROTOCOL ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF
MINES, BOOBY TRAPS AND OTHER DEVICES (PROTOCOL II)

Article 1

Material scope of application

This Protocol relates to the use on land of the mines, booby-traps and other devices defined herein, including mines laid to interdict beaches, waterway crossings or river crossings, but does not apply to the use of anti-ship mines at sea or in inland waterways.

Article 2

Definitions

For the purpose of this Protocol:

1. "Mine" means any munition placed under, on or near the ground or other surface area and designed to be detonated or exploded by the presence, proximity or contact of a person or vehicle, and "remotely delivered mine" means any mine so defined delivered by artillery, rocket, mortar or similar means or dropped from an aircraft.
2. "Booby-trap" means any device or material which is designed, constructed or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act.
3. "Other devices" means manually-emplaced munitions and devices designed to kill, injure or damage and which are actuated by remote control or automatically after a lapse of time.
4. "Military objective" means, so far as objects are concerned, any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.
5. "Civilian objects" are all objects which are not military objectives as defined in paragraph 4.
6. "Recording" means a physical, administrative and technical operation designed to obtain, for the purpose of registration in the official records, all available information facilitating the location of minefields, mines and booby-traps.

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Article 3

General restrictions on the use of mines, booby traps
and other devices

1. This Article applies to:

- (a) mines
- (b) booby-traps; and
- (c) other devices.

2. It is prohibited in all circumstances to direct weapons to which this Article applies, either in offence, defence or by way of reprisals, against the civilian population as such or against individual civilians.

3. The indiscriminate use of weapons to which this Article applies is prohibited. Indiscriminate use is any placement of such weapons:

- (a) which is not on, or directed at, a military objective; or
- (b) which employs a method or means of delivery which cannot be directed at a specific military objective; or
- (c) which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

4. All feasible precautions shall be taken to protect civilians from the effects of weapons to which this Article applies. Feasible precautions are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations.

Article 4

Restrictions on the use of mines other than remotely delivered mines,
booby-traps and other devices in populated areas

1. This Article applies to:

- (a) mines other than remotely delivered mines;
- (b) booby-traps and
- (c) other devices.

/...

2. It is prohibited to use weapons to which this Article applies in any city, town, village or other area containing a similar concentration of civilians in which combat between ground forces is not taking place or does not appear to be imminent, unless either;

(a) they are placed on or in the close vicinity of a military objective belonging to or under the control of an adverse party; or

(b) measures are taken to protect civilians from their effects, for example, the posting of warning signs, the posting of sentries, the issue of warnings or the provision of fences.

Article 5

Restrictions on the use of remotely delivered mines

1. The use of remotely delivered mines is prohibited unless such mines are only used within an area which is itself a military objective or which contains military objectives, and unless:

(a) their location can be accurately recorded in accordance with Article 7(1)(a); or

(b) an effective neutralizing mechanism is used on each such mine, that is to say, a self-actuating mechanism which is designed to render a mine harmless or cause it to destroy itself when it is anticipated that the mine will no longer serve the military purpose for which it was placed in position, or a remotely-controlled mechanism which is designed to render harmless or destroy a mine when the mine no longer serves the military purpose for which it was placed in position.

2. Effective advance warning shall be given of any delivery or dropping of remotely delivered mines which may affect the civilian population, unless circumstances do not permit.

Article 6

Prohibition on the use of certain booby traps

1. Without prejudice to the rules of international law applicable in armed conflict relating to treachery and perfidy, it is prohibited in all circumstances to use:

(a) any booby-trap in the form of an apparently harmless portable object which is specifically designed and constructed to contain explosive material and to detonate when it is disturbed or approached, or

(b) booby-traps which are in any way attached to or associated with:

(i) internationally recognized protective emblems, signs or signals;

(ii) sick, wounded or dead persons;

(iii) burial or cremation sites or graves;

- (iv) medical facilities, medical equipment, medical supplies or medical transportation;
- (v) children's toys or other portable objects or products specially designed for the feeding, health, hygiene, clothing or education of children;
- (vi) food or drink;
- (vii) kitchen utensils or appliances except in military establishments, military locations or military supply depots;
- (viii) objects clearly of a religious nature;
- (ix) historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;
- (x) animals or their carcasses

2. It is prohibited in all circumstances to use any booby-trap which is designed to cause superfluous injury or unnecessary suffering.

...

Article 8

Protection of United Nations forces and missions from the effects of minefields, mines and booby-traps

1. When a United Nations force or mission performs functions of peacekeeping, observation or similar functions in any area, each party to the conflict shall, if requested by the head of the United Nations force or mission in that area, as far as it is able:

(a) remove or render harmless all mines or booby traps in that area;

(b) take such measures as may be necessary to protect the force or mission from the effects of minefields, mines and booby traps while carrying out its duties; and

(c) make available to the head of the United Nations force or mission in that area, all information in the party's possession concerning the location of minefields, mines and booby traps in that area.

2. When a United Nations fact-finding mission performs functions in any area any party to the conflict concerned shall provide protection to that mission except where, because of the size of such mission, it cannot adequately provide such protection. In that case it shall make available to the head of the mission the information in its possession concerning the location of minefields, mines and booby-traps in that area.

...

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- (v) International Convention on the Elimination of All Forms of Racial Discrimination (for the text of the Convention see General Assembly resolution 2106 (XX) of 21 December 1965, annex);
- (w) International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights (for the texts of the Covenants see General Assembly resolution 2200 (XXI) of 16 December 1966, annex);
- (x) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents

(Adopted by the General Assembly of the United Nations on 14 December 1973 - resolution 3166 (XXVIII) - excerpts)

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and the promotion of friendly relations and co-operation among States,

Considering that crimes against diplomatic agents and other internationally protected persons jeopardizing the safety of these persons create a serious threat to the maintenance of normal international relations which are necessary for co-operation among States,

Believing that the commission of such crimes is a matter of grave concern to the international community,

Convinced that there is an urgent need to adopt appropriate and effective measures for the prevention and punishment of such crimes,

Have agreed as follows:

ARTICLE 1

For the purposes of this Convention:

1. "Internationally protected person" means:

(a) A Head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government or a Minister for Foreign Affairs, whenever any such person is in a foreign State, as well as members of his family who accompany him;

(b) Any representative or official of a State or any official or other agent of an international organization of an inter-governmental character who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household;

2. "Alleged offender" means a person as to whom there is sufficient evidence to determine *prima facie* that he has committed or participated in one or more of the crimes set forth in article 2.

/...

ARTICLE 2

1. The intentional commission of:

- (a) A murder, kidnapping or other attack upon the person or liberty of an internationally protected person;
- (b) A violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty;
- (c) A threat to commit any such attack;
- (d) An attempt to commit any such attack; and
- (e) An act constituting participation as an accomplice in any such attack

shall be made by each State Party a crime under its internal law.

2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature.

3. Paragraphs 1 and 2 of this article in no way derogate from the obligations of States Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of an internationally protected person.

ARTICLE 3

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set forth in article 2 in the following cases:

- (a) When the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;
- (b) When the alleged offender is a national of that State;
- (c) When the crime is committed against an internationally protected person as defined in article 1 who enjoys his status as such by virtue of functions which he exercises on behalf of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these crimes in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

ARTICLE 4

States Parties shall co-operate in the prevention of the crimes set forth in article 2, particularly by:

- (a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories;
- (b) Exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

ARTICLE 5

1. The State Party in which any of the crimes set forth in article 2 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to all other States concerned, directly or through the Secretary-General of the United Nations, all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

2. Whenever any of the crimes set forth in article 2 has been committed against an internationally protected person, any State Party which has information concerning the victim and the circumstances of the crime shall endeavour to transmit it, under the conditions provided for in its internal law, fully and promptly to the State Party on whose behalf he was exercising his functions.

ARTICLE 6

1. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its internal law so as to ensure his presence for the purpose of prosecution or extradition. Such measures shall be notified without delay directly or through the Secretary-General of the United Nations to:

- (a) The State where the crime was committed;
- (b) The State or States of which the alleged offender is a national or, if he is a stateless person, in whose territory he permanently resides;
- (c) The State or States of which the internationally protected person concerned is a national or on whose behalf he was exercising his functions;
- (d) All other States concerned; and
- (e) The international organization of which the internationally protected person concerned is an official or an agent.

2. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

- (a) To communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights or, if he is a stateless person, which he requests and which is willing to protect his rights; and
- (b) To be visited by a representative of that State.

ARTICLE 7

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

ARTICLE 8

1. To the extent that the crimes set forth in article 2 are not listed as extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every future extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may, if it decides to extradite, consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the procedural provisions and the other conditions of the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the procedural provisions and the other conditions of the law of the requested State.

4. Each of the crimes shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 3.

/...

(y) International Convention against the Taking of Hostages

(Adopted by the General Assembly of the United Nations on
17 December 1979 - resolution 34/164 - excerpts)

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and co-operation among States,

• • •

Considering that the taking of hostages is an offence of grave concern to the international community and that, in accordance with the provisions of this Convention, any person committing an act of hostage taking shall be either prosecuted or extradited,

Being convinced that it is urgently necessary to develop international co-operation between States in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking of hostages as manifestations of international terrorism,

Have agreed as follows:

Article 1

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

2. Any person who:

(a) Attempts to commit an act of hostage-taking, or

(b) Participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking
likewise commits an offence for the purposes of this Convention.

Article 2

Each State Party shall make the offences set forth in article 1 punishable by appropriate penalties which take into account the grave nature of those offences.

Article 3

1. The State Party in the territory of which the hostage is held by the offender shall take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his release and, after his release, to facilitate, when relevant, his departure.

2. If any object which the offender has obtained as a result of the taking of hostages comes into the custody of a State Party, that State Party shall return it as soon as possible to the hostage or the third party referred to in article 1, as the case may be, or to the appropriate authorities thereof.

Article 4

States Parties shall co-operate in the prevention of the offences set forth in article 1, particularly by:

(a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts of taking of hostages;

(b) Exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those offences.

/...

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in article 1 which are committed:

(a) In its territory or on board a ship or aircraft registered in that State;

(b) By any of its nationals or, if that State considers it appropriate, by those stateless persons who have their habitual residence in its territory;

(c) In order to compel that State to do or abstain from doing any act; or

(d) With respect to a hostage who is a national of that State, if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the alleged offender is present shall, in accordance with its laws, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted. That State Party shall immediately make a preliminary inquiry into the facts.

2. The custody or other measures referred to in paragraph 1 of this article shall be notified without delay directly or through the Secretary-General of the United Nations to:

(a) The State where the offence was committed;

(b) The State against which compulsion has been directed or attempted;

(c) The State of which the natural or juridical person against whom compulsion has been directed or attempted is a national;

(d) The State of which the hostage is a national or in the territory of which he has his habitual residence;

(e) The State of which the alleged offender is a national or, if he is a stateless person, in the territory of which he has his habitual residence;

(f) The international intergovernmental organization against which compulsion has been directed or attempted;

(g) All other States concerned.

3. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

(a) To communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;

(b) To be visited by a representative of that State.

4. The rights referred to in paragraph 3 of this article shall be exercised in conformity with the laws and regulations of the State in the territory of which the alleged offender is present, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purpose for which the rights accorded under paragraph 3 of this article are intended.

5. The provisions of paragraphs 3 and 4 of this article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with paragraph 1 (1) of article 5 to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. The State which makes the preliminary inquiry contemplated in paragraph 1 of this article shall promptly report its findings to the States or organization referred to in paragraph 2 of this article and indicate whether it intends to exercise jurisdiction.

Article 8

1. The State Party in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connexion with any of the offences set forth in article 1 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which he is present.

Article 9

1. A request for the extradition of an alleged offender, pursuant to this Convention, shall not be granted if the requested State Party has substantial grounds for believing:

(a) That the request for extradition for an offence set forth in article 1 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality, ethnic origin or political opinion; or

(b) That the person's position may be prejudiced:

(i) For any of the reasons mentioned in subparagraph (a) of this paragraph, or

(ii) For the reason that communication with him by the appropriate authorities of the State entitled to exercise rights of protection cannot be effected.

2. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

Article 10

1. The offences set forth in article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 1 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. The offences set forth in article 1 shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 5.

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2. Other international instruments

- (a) Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960);
- (b) United Nations Declaration on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 1904 (XVIII) of 20 November 1963);
- (c) Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty (General Assembly resolution 2131 (XX) of 21 December 1965);
- (d) Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX) of 9 December 1975, annex).

Notes

1/ See Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 10 (A/37/10), para. 256.

2/ Yearbook of the International Law Commission 1950, vol. II, "Question of International Criminal Jurisdiction" pp. 11-12, paras. 76-77.
