

### 3. THE CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL

The Charter of the International Military Tribunal,<sup>3</sup> commonly known as the Nürnberg Charter, which was annexed to and formed an integral part of the London Agreement, provided that the Tribunal shall consist of four members, each with an alternate, one member and one alternate to be appointed by each of the signatories (article 2). Neither the Tribunal, its members, nor their alternates can be challenged by the prosecution, or by the defendants or their counsel (article 3). 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. Convictions and sentences shall, however, only be imposed by affirmative votes of at least three members of the Tribunal (article 4 (c)).

The jurisdiction of the Tribunal was defined in article 6 of the Charter. This article provided that the Tribunal shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes:

“(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 persecution on political, racial or religious grounds in execution of or in connexion with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”

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<sup>3</sup> For full text, see appendix 2.

The same article further provided: "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 persons in execution of such plan."

The Charter also provided that 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 7). Furthermore, 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.

Article 9 stipulated that the Tribunal may declare that a group or organization was a criminal organization. In case a defendant could not be found, the Tribunal was empowered to take proceedings against him in his absence (article 12).

Investigation and prosecution were entrusted to a committee of chief prosecutors, each signatory to appoint one chief prosecutor, who, by a majority vote were to settle the final designation of major war criminals to be tried by the Tribunal and to lodge the indictment with the Tribunal (article 14).

The Tribunal was empowered to impose upon a defendant, on conviction, death or such other punishment as shall be determined by it to be just (article 27), and, in case of guilt, sentences shall be carried out in accordance with the orders of the Control Council for Germany, which may reduce or otherwise alter the sentence, but may not increase the severity thereof (article 29).

#### 4. THE INDICTMENT

On 18 October 1945, in accordance with article 14 of the Charter, an indictment<sup>4</sup> was lodged with the Tribunal against the following 24 defendants:

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<sup>4</sup> See "Trial of the Major War Criminals before the International Military Tribunal": Proceedings published by the secretariat of the Tribunal at Nürnberg; also, "The Trial of German Major War Criminals": Proceedings of the International Military Tribunal sitting at Nürnberg, Germany, published by His Majesty's Stationery Office, London, 1946, part I, pp. 2-46.

Herman Goering; Rudolf Hess; Joachim von Ribbentrop; Wilhelm Keitel; Ernst Kaltenbrunner; Alfred Rosenberg; Hans Frank; Wilhelm Frick; Julius Streicher; Walter Funk; Hjalmar Schacht; Karl Doenitz; Erich Raeder; Baldur von Schirach; Fritz Sauckel; Alfred Jodl; Martin Bormann; Frantz von Papen; Arthur Seyss-Inquart; Albert Speer; Constantin von Neurath; Hans Fritzsche; Robert Ley; and Gustav Krupp von Bohlen und Halbach.

In addition, the following were named as groups or organizations (since dissolved), which should be declared criminal:

The Reich Cabinet; the Leadership Corps of the Nazi Party; the *Schutzstaffeln*, known as the SS; the *Sicherheitsdienst*, known as the SD; the *Geheime Staatspolizei*, known as the Gestapo; the *Sturm-  
abteilungen*, known as the SA; the General Staff and High Command of the German Armed Forces.

The indictment consisted of the following four counts:

*Count one.* The common plan or conspiracy;

*Count two.* Crimes against peace;

*Count three.* War crimes;

*Count four.* Crimes against humanity.

## 5. THE TRIAL

The trial<sup>5</sup> which took place at Nürnberg began on 20 November 1945 and ended on 31 August 1946, during which time the Tribunal held 403 open sessions, heard 33 witnesses for the prosecution against the individual defendants, and 61 witnesses, in addition to 19 of the defendants, gave evidence for the defence. One hundred and forty-three witnesses gave evidence for the defence by means of written answers to interrogatories.

As regards the accused organizations, the Tribunal appointed commissioners to hear evidence and 101 witnesses were heard for the defence before these commissioners, while 1,809 affidavits from other witnesses were submitted. Six reports were also submitted, summarizing the contents of a great number of further affidavits. Thirty-eight thousand affidavits, signed by 155,000 people, were submitted on behalf of the political leaders, 136,213 on behalf of the SS, 10,000 on behalf of the SA, 7,000 on behalf of the SD, 3,000 on behalf of the General

<sup>5</sup> For proceedings of the trial, see "Proceedings," *Ibid.*