

SECRET.

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UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE III.

General Propositions defining the term "Crimes against Humanity"  
under the Charters of the International Military Tribunals and  
the Control Council Law No. 10.

Re-drafted according to the decision of the meeting of Committee III  
held on 14th May 1946, (Minutes No.10/46.)

Note: The following text, excepting paragraphs 3 and 6,  
has been agreed upon by Committee III. With  
regard to paragraphs 3 and 6, the Secretary to  
Committee III has been charged with re-drafting  
them, having regard to the discussion in Committee.

The following texts of paragraphs 3 and 6 are,  
therefore, only tentative.

1. According to the basic documents (Charter of the International  
Military Tribunal annexed to the Four-Power Agreement of 8th August 1945  
as rectified by the Berlin Protocol of 6th October 1945; the Control  
Council Law No.10; the Charter of the International Military Tribunal  
for the Far East,) crimes against humanity may consist in the violation

either of the laws and customs of war, (x)  
or of positive municipal provisions of criminal law,  
or of the general principles of criminal law as  
derived from the criminal law of all civilized  
nations.

2. Under the basic documents there are two different types of crimes  
against humanity which, with a few exceptions, are subject to the same  
provisions, namely:
  - (a) crimes of the murder type, (murder, extermination, enslavement,  
deportation and other inhumane acts). The words "other  
inhumane acts" may be held to cover only serious crimes of a  
character similar to murder, extermination, enslavement and  
deportation - eiusdem generis rule of interpretation;
  - (b) persecutions (on political and racial, under the Charter of  
8th August 1945, also religious, grounds.)

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(x) It might be argued that in a purely scientific system violations  
of the laws and customs of war should not be included in the  
term "crimes against humanity", which should be restricted to such  
offences as do not fall under the term of violations of the laws  
and customs of war.

3. The Charter of the European International Military Tribunal (Art.6.) and the Charter of the International Military Tribunal for the Far East (Art.5.) start from the basic assumption that the major war criminals committed crimes against humanity acting in the interest of the European Axis Countries, or in the interest of the Japanese war effort ("Far Eastern War Criminals"), as the case may be.

This assumption is not expressed in the local law of Germany, as laid down by the Control Council Law No.10 for criminals other than major war criminals.

4. The formulation of this paragraph is adjourned. For the previous text, see Doc.III/39.
5. "Persecutions" constitute crimes against humanity only if perpetrated on political and racial (under the European Charter also religious) grounds. In the case of the major war criminals it is a further condition that "persecutions" be in execution of or in connection with any crime within the jurisdiction of an International Military Tribunal, (i.e. crimes against peace, violations of the laws and customs of war, crimes against humanity of the murder type.)
6. Isolated offences do not fall within the notion. As a rule systematic mass action, particularly if it can be shown to be authoritative, will be necessary to transform a common crime, punishable merely under municipal law, into a crime against humanity becoming also the concern of international law. Only crimes which either by their magnitude and savagery or by their great number or by the fact that a similar pattern is applied at different times and places, endanger the international community or shock the conscience of mankind, warrant intervention of states other than that on whose territory the crime has been committed, or whose subjects have become their victims.
7. It is irrelevant whether a crime against humanity has been committed before or during the war.
8. The nationality of the victims is irrelevant.
9. Not only the ringleaders, but also the actual perpetrators of crimes against humanity are criminally responsible.
10. It is irrelevant whether or not a crime against humanity has been committed in violation of the *lex loci*.
11. A crime against humanity can be committed by enacting legislation which orders or permits crimes against humanity, e.g. unjustified killing, deportations, racial discrimination, suppression of civil liberties, etc.