

Document:-  
**A/CN.4/12**

**Formulation of the Principles Recognized in the Charter of the Nürnberg Tribunal and in  
Judgment of the Tribunal – The Principles as Stated by Sir Hartley Shawcross before the  
American Bar Association in 1946**

Topic:  
**Formulation of the Nürnberg Principles**

Extract from the Yearbook of the International Law Commission:-  
**1949 , vol. I**

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Tribunal, and a detailed draft plan of general codification of offences against the peace and security of mankind. The Commission also drew the Assembly's attention to the possible advantages of establishing an international judicial authority with competence to exercise jurisdiction over such crimes. That last recommendation had entirely disappeared from the text of resolution 177 (II), and the first two had undergone modifications. Thus, the resolution was drawn up in more imperative terms than the draft: instead of merely inviting it to prepare drafts, the Assembly "decides to entrust" to the Commission the formulation of the Nürnberg principles and "directs" it at the same time to carry out that task and prepare a draft code of offences against the peace and security of mankind. Of those two tasks only the first should be discussed at the present meeting.

4. The Commission was therefore directed to formulate and not to study critically the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal. The Tribunal had, moreover, introduced only a few changes into the principles of the Charter. Only on two points had there been a slight deviation from them: first, when, by a restrictive interpretation, the Tribunal decided not to take account of the crimes against humanity committed before the beginning of the 1939 war; and secondly, when it refrained from considering as guilty of war crimes those who had committed violations of the Naval Protocol of 1936 concerning submarine warfare.

5. Although it had confirmed them, the General Assembly had not pointed out what were the principles of international law recognized by the Charter and the judgment of the Nürnberg Tribunal. It seemed therefore that the Commission was to some extent free to determine those principles even though its mandate was solely to formulate them.

6. In examining those principles the Commission could take as a basis for discussion either the various headings in the third part of the memorandum submitted by the Secretary-General (A/CN.4/5), or the summary on page 20 of that document of the French memorandum (A/AC.10/34) submitted to the Committee on the Progressive Development of International Law and its Codification, which proposed the definition of five principles drawn from the Charter and the judgment of the Nürnberg Tribunal.

7. That, moreover, had not been the only attempt to formulate those principles. Sir Hartley Shawcross when addressing the American Bar Association in 1946 had defined three of them in the following terms:<sup>1</sup>

<sup>1</sup> Sir Hartley Shawcross, "International Law: a Statement of the British View of its Role". *American Bar Association Journal*, Vol. 33, No. 1 (Jan. 1947), p. 32.

"(1) To initiate a war of aggression is an international crime.

"(2) Individuals who lead their countries into such a war are personally responsible.

"(3) Individuals therefore have international duties which transcend the national duty of obedience imposed by particular States when to obey would constitute a crime against the nations."

8. The Chairman requested the Commission to express its opinion on the analysis he had just made of the task before it.

9. Mr. SANDSTRÖM said that on the whole he shared the point of view expressed by the Chairman. He thought, however, that it would be advisable to define the word "formulate", which might mean either to analyse the principles and criticize them before deciding whether they were in conformity with international law, or merely to transcribe them, accepting them officially as principles of international law. The second interpretation seemed the better of the two, since, the General Assembly having already confirmed the principles of Nürnberg, there could be no question of the Commission reaching contrary conclusions after a critical examination of them.

10. The CHAIRMAN in that connexion drew attention to the difference in wording that could be noticed between the imperative text of resolution 177 (II) and the text of resolution 260 B(III) of 9 December 1948 in which the General Assembly invited the Commission to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide. In the case of the Nürnberg principles, it was not a work of criticism which the Assembly was asking the Commission to carry out, but a simple legal drafting of already recognized principles.

11. Mr. SANDSTROM thought it was not the Commission's task to assess the competence of the Nürnberg Tribunal, either. All the evidence seemed to show that the General Assembly had assumed such competence, and the Commission ought therefore to adopt a similar attitude on the point.

12. Mr. CORDOVA stated that both the Charter and the judgment of the Nürnberg Tribunal seemed to him to represent considerable progress in international law. There was, however, some doubt as to the intentions of the authors of resolution 177(II) when they directed the Commission to formulate the principles of that Charter and judgment.

13. First of all, since the Assembly had not pointed out what those principles were, the Commission would have to find them before formulating them. It could not, as Mr. Sandström had suggested, confine its activities to a mere transcription of them.