

Document:-
A/CN.4/W.6

Formulation of the principles recognized in the Nürnberg Tribunal and in the Judgment of the Tribunal - Draft proposed by the Sub-Committee on the formulation of the Nürnberg principles incorporated in document A/CN.4/SR.25, footnote 9

Topic:
Formulation of the Nürnberg Principles

Extract from the Yearbook of the International Law Commission:-
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and Duties of States. He expressed his satisfaction with the work already done by the Commission.

Formulation of the Principles recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal (A/CN.4/5)
(*resumed*)

GENERAL DISCUSSION (*resumed*)

58. The CHAIRMAN asked the Commission to begin the task entrusted to it by the General Assembly under resolutions 177 (II) of 21 November 1947;⁷ under that resolution, the Commission was asked to formulate the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal.

59. The Sub-Committee⁸ entrusted with the formulation of the Nürnberg principles had drawn up a draft⁹ which would serve as a basis for the Commission's work.

⁷ The general discussion opened at the 17th meeting. See A/CN.4/SR.17, para. 1.

⁸ *Ibid.*, para. 58.

⁹ Principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal:

1. A violation of international law may constitute an international crime even if no legal instrument characterizes it as such.

2. The categories of international crimes recognized by the Charter and the Judgment of the Tribunal are crimes against peace, war crimes and crimes against humanity.

3. The following acts constitute crimes against peace, namely:

(a) The planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances;

(b) Any participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (a).

4. The following acts constitute war crimes, namely: violations of the laws or customs of war.

5. The following acts constitute crimes against humanity, namely: murder, extermination, enslavement, deportation and other inhuman acts done against the civilian population before or during a war, or persecution on political, racial or religious grounds, where such acts are done or such persecution is conducted in execution of or in connexion with any crime against peace or any war crime, notwithstanding that the municipal law applicable may not have been violated.

6. Any individual author of or accomplice in an international crime is responsible under international law and liable to punishment, whether or not his offence is punishable under municipal law.

7. The official position of an individual as Head of State or responsible official does not free him from responsibility or mitigate punishment.

8. The fact that an individual acts pursuant to order of this Government or of a superior does not free him from responsibility. It may, however, be considered in mitigation of punishment, if justice so requires.

60. Mr. SPIROPOULOS presented the Sub-Committee's draft. He pointed out that it followed closely the provisions of articles 6, 7 and 8 of the Charter of the International Military Tribunal. Indeed, paragraphs a, b and c of article 6 of the Charter defined crimes against peace, war crimes, and crimes against humanity; the Sub-Committee had adopted those definitions without any modification; articles 7 and 8 of the Charter had also been adopted for the draft with mere drafting changes.

61. He pointed out that the Sub-Committee had examined the text proposed by Mr. Alfaro which defined eighteen principles. Some of them were identical with those contained in the Sub-Committee's draft, while others concerned questions of procedure which the Sub-Committee had decided not to include in its draft at present.

62. The CHAIRMAN said that the General Assembly resolution 177 (II) directed the Commission to formulate the principles of international law; the aim of the second paragraph of article 6 of the Charter of the International Military Tribunal, however, was to define the crimes within the Tribunal's jurisdiction and not crimes which constituted violations of the principles of international law. Consequently, it could be asked whether the Sub-Committee had sufficiently realized the essential distinction between crimes within the Tribunal's jurisdiction and crimes under international law when it had textually reproduced the definitions of article 6 of the Tribunal's Charter.

63. He believed that paragraphs 6, 7 and 8 of the draft proposed by the Sub-Committee set forth principles of international law recognized by the Charter of the International Military Tribunal. On the other hand, he felt that paragraph 1 could not be regarded as setting forth a principle of international law. He drew attention to resolution 95 (I) of 11 December 1946, in which the General Assembly confirmed the principles of international law recognized by the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal.

64. Mr. SPIROPOULOS stated that the Sub-Committee was quite aware of the difference between crimes coming within the competence of the International Military Tribunal and crimes under international law. The Sub-Committee had taken into account the fact that the judgment qualified as international crimes certain crimes which the Statute only defined as crimes coming within the competence of the International Military Tribunal.

65. Mr. SANDSTROM drew attention to paragraph 5 of the Sub-Committee's draft relating to crimes against humanity. The proposed definition was not general enough as it seemed to restrict those crimes to acts committed in certain circumstances; that was due to the fact that the