

APPENDIX

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

WHEREAS the United Nations have from time to time made declaration 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 offenses have no particular geographic location and who will be punished by the joint decision of the Governments of the Allies;

NOW THEREFORE the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland 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 authorized thereto have concluded this Agreement.

Article I. There shall be established after consultation with the Control Council for Germany an International Military Tribunal for the trial of war criminals whose offenses have no particular geographical location whether they be accused individually' or in their capacity as members of organizations or groups or in beth capacitit".

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 from 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 endeavors 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 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 authenticity.

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 United Kingdom of Great Britain and Northern Ireland

Jowitt

For the Government of Union of Soviet Socialist Republics

LT. Nikitchenko (and) A.N. Trainin

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL

I. CONSTITUTION OF THE TRIBUNAL

Article 1. In pursuance of the Agreement signed on the 8th day of August 1945 by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of 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 fulfill 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 the 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.

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 organizations, 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 labor 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 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 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 determine that justice so requires .

Article 9. At the trial of any individual member of any group or organization the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization .

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 organization 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 organization. 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 organization 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 organization 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 organization and such court, 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 organization.

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.

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 to 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) if Article 14 hereof,

(c) the preliminary examination of all necessary witnesses and of the Defendants,

(d) to act as prosecutor at the Trial,

(e) to appoint representative to carry out such duties as may be assigned to them -

(1) 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 defense 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 defense, 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,

(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 nontechnical 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 Nürnberg, and any subsequent trials shall be held at such places as the Tribunal may decide.

Article 23. One or more of the Chief Prosecutors may take part in the prosecution at each Trial. The function of any Chief Prosecutér may may be discharged by him personally, or by any person or persons authorized by him. The function of Counsel for a Defenant may he discharged at the Defendants request by any Counsel professionally qualified c conduct cases before the Courts of his own Country, or by any other person who may be specially authorized 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 defense 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 Defense. Thereafter such rebutting evidence as may be held by the Tribunal to be admissible shall be called by either the Prosecution or the Defense.

(f) The Tribunal may put any question to any witness and to any Defendant, at any time.

(g) The Prosecution and the Defense shall interrogate and may cross examine any witnesses and any Defendant who gives testimony.

(h) The Defense 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.

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.

VIII. EVIDENCE AND ARGUMENTS ON IMPORTANT ASPECTS OF THE CASE

A. Applicability of Control Council Law No. 10 to Offenses Against Germans During the War

a. Introduction

Under Count III of the indictment, "Crimes against Humanity", the prosecution alleged that the defendants had engaged in medical experiments "*upon German civilians and nationals of other countries*" and that the defendants had participated in executing "the so-called 'euthanasia program' of the German Reich in the course of which the defendants herein murdered hundreds of thousands of human beings, *including German civilians, as well as civilians of other nations.*" [Emphasis added.] Insofar as these offenses involved German nationals, the defense argued that international law was not applicable. The defense argued that under the Charter annexed to the London Agreement, crimes against humanity within the meaning of the Charter do not exist unless offenses are committed "in the execution of, or in connection with, any crime within the jurisdiction of the Tribunal". Although the analagous provision of Control Council Law No. 10 does not include the words of limitation "in the execution of, or in connection with any crime within the jurisdiction of the Tribunal", the defense argued that Control Council Law No. 10 was only "an implementation law" of the London Agreement and Charter, and hence could not increase the scope of the offenses defined by the London Charter. Pointing to the section of the judgment of the International Military Tribunal entitled "The law relating to war crimes and crimes against

humanity";' the defense noted that the IMT stated: "to constitute crimes against humanity, the acts relied on before the outbreak of war must have been in execution of, or in connection with, any crime within the jurisdiction of the Tribunal", ' that is crimes against peace or war crimes. Although the indictment in the Medical Case did not allege that crimes were committed against German nationals before the outbreak of the war on 1 September 1939, the defense further argued that any offenses against German nationals committed after 1939 had not been shown to be "in execution of, or in connection with" crimes against peace and war crimes and hence were not cognizable as crimes within the jurisdiction of the Tribunal.

Extracts of the closing statement of the prosecution appear below on pages 910 to 915. A summation of the evidence on this question by the defense has been taken from the closing brief for defendant Karl Brant. It appears below on pages **915-925**.

b. Selection from the Argumentation of The Prosecution

*EXTRACTS FROM THE CLOSING STATEMENT OF THE PROSECUTION*³

The Law of the Case

Before proceeding to outline the prosecutions case,, it way perhaps be desirable to anticipate several legal questions

Trial of the Major Wa Criminals, vol. I, pp. 253-255, Nuremberg, 1947.

2Ibid., p. 254.

Closing statement is recorded in memographed transcript, 14 July 1947, pp. 10718-10794.

which will undoubtedly be raised with respect to war crimes and crimes against humanity, as defined in Article II of Control Council Law No. 10. Law No. 10 is of course the law of this case and its terms are conclusive upon every part of this proceeding. This tribunal is, we respectfully submit, bound by the definitions in Law No. 10, just as the International Military Tribunal was bound by the definitions in the London Charter. It was stated in the IMT judgment that:²

"The jurisdiction of the Tribunal is defined in the Agreement and Charter, and the crimes coming within the jurisdiction of the Tribunal, for which there shall be individual responsibility, are set out in Article 6. The law of the Charter is decisive and binding upon the Tribunal * * *"

In outlining briefly the prosecution's conception of some of the legal principles underlying war crimes and crimes against humanity, I shall, with the Tribunal's permission, adopt some of the language from the opening statement of the prosecution in the case against Friedrich Flick, et al., now pending before Tribunal IV. [See Vol. VI.] General Taylor there said:

"Law No. 10 is * * * a legislative enactment by the Control Council. One of the infirmities of dictatorship is that, when it suffers irretrievable and final military disaster, it usually crumbles into nothing and leaves the victims of its tyranny leaderless amidst political chaos. The Third Reich had ruthlessly hunted down every man and woman in Germany who sought to express political ideas or develop political leadership outside of the bestial ideology of nazism. When the Third Reich collapsed, Germany tumbled into a political vacuum. The declaration by the Allied Powers of 5 June 1945 announced the 'assumption of supreme authority' in Germany 'for the

² Trial of the Major War Criminals, vol. I, p. 218, Nuremberg, 1947.

maintenance of order' and 'for the administration of the country', and recited that--

'There is no central government authority in Germany capable of accepting responsibility for the maintenance of order, the administration of the country, and compliance with the requirements of the victorious powers.'

"Following this declaration, the Control board was constituted as the repository of centralized authority in Germany. Law No. 10 is an enactment of that body and is the law of Germany, although its substantive provisions derive from and embody the law of nations. The Nuerenberg Military Tribunals are established under the authority of Law No. 10,' and they render judgment not only under international law as enacted in Law No. 10, but under the law of Germany as enacted in Law No. 10. The Tribunals, in short, enforce both international law and German law, and in interpreting and applying Law No. 10, they must view Law No. 10 not only as a declaration of international law, but as an enactment of the occupying powers for the governance of and administration of Justice in Germany. The enactment of Law No. 10 was an exercise of legislative powers by the four countries to which the Third Reich surrendered, and, as was held by the International Military Tribunal: '

'* * the undoubted right of these countries to legislate for the occupied territories has been recognized by the civilized world.

Control Council Law No. 10, Article III, par. 1(d) and 2, Military Government Ordinance No. 7, Article II.

² Trial of the Major War Criminals, vol. I, p.218, Nuremberg, 1947.

War crimes are defined in Law No. 10 as atrocities or offenses in violation of the laws of customs of war. This definition is based primarily upon the Hague Convention of 1907 and the Geneva Convention of 1929, which declare the law of nations at those times with respect to land warfare, the treatment of prisoners of war, the rights and duties of a belligerent power when occupying territory of a hostile state and other matters. The laws customs of war apply between belligerents, but not domestically or among allies. Crimes by German nationals against other German nationals are not war crimes, nor are acts by German national against Hungarians or Romanians. The war crimes charged in this indictment occurred after 1 September 1939, and it is therefore unnecessary to consider the somewhat narrow limitation of the scope of war crimes by the International Military Tribunal to the acts committed after the outbreak of war. One might argue that the occupations of Austria and the Sudatenland in 1938 and of Bohemia and Moravia in March' 1939, were sufficiently similar to a state of belligerency to bring the laws of war into effect, but such questions are academic for purposes of this case.

In connection with the charge of crimes against humanity, it is also anticipated that an argument will be made by the defense to the effect that crimes committed by German nationals against other nationals cannot constitute crimes against humanity as defined by Article, 113f Control Council Law No. 10 and hence are not within the jurisdiction of this Tribunal. The evidence of the prosecution has proved that in substantially all of the experiments prisoners of war or civilians from German-occupied territories were used as subjects. This proof stands uncontradicted save by general statements of the defendants that they were told by Himmler or some unidentified person that the experimental subjects were all German criminals or that the subjects all spoke fluent German. Thus, for the most part the acts here in issue constitute war crimes and hence, at the same time crimes against humanity. Certainly

there has been no proof whatever that an order was ever issued restricting the experimental subjects to German criminals as distinguished from non-German nationals. If, in this or that minor instance, the proof has not disclosed the precise nationality of the unfortunate victims or has even shown them to be Germans, we may rest assured that it was merely a chance occurrence.

Be that as it may, the prosecution does not wish to ignore a challenge to the jurisdiction of the Tribunal even though it is of minor importance to this case. One thing should be made clear at the outset: We are not here concerned with any question as to jurisdiction over crimes committed before 1 September 1939, whether against German nationals or otherwise. That subject has been mooted and is in issue in another case now on trial, but the crimes in this case all occurred after the war began.

Moreover, we are not concerned with the question whether crimes against humanity must have been committed "in execution of or in connection with any crimes within the jurisdiction of the Tribunal." The International Military Tribunal construed it.)' Charter as requiring that crimes against humanity be committed in execution of, or in connection with, the crime of aggressive war. Whatever the merit of that holding the language of the Charter of the International Military Tribunal which led to it is not included in the definition of crimes against humanity in Control Council Law No. 10. There can be no doubt that crimes against humanity as defined in Law No. 10 stand on an independent footing and constitute crimes per se. In any event, the crimes with which this case is concerned were in fact all "committed in execution of, or in connection with, the aggressive war." This is true not only of the medical experiments, but also of the Euthanasia Program, pursuant

to which a large number of non-German nationals were killed. The judgment of the International Military Tribunal expressly so holds.'

Thus, it is clear that the only issue which is raised in this as to crimes against humanity is whether the Tribunal has jurisdiction over crimes committed by Germans against Germans. Does the definition of crimes against humanity in Control Council Law No. 10 comprehend crimes by Germans against Germans of the type with which this case is concerned? The provisions of Law No. 10 are binding upon the Tribunal as the law to be applied to the case.' The provisions of Section 1(c) of Article II are clear and unambiguous. Crimes against humanity are there defined as--

"Atrocities and offenses, including but not limited to murder extermination, enslavement, deportation, imprisonment, torture, rape or other inhumane acts committed against any civilian population, or persecutions on political, racial, or religious ground whether or not in violation of the domestic laws of the country where perpetrated." [Emphasis supplied.]

The words "any civilian population" cannot possibly be construed to exclude German civilians. If Germans are deemed to be excluded, there is little or nothing left to give purpose to the concept of crimes against humanity. War crimes include all acts listed in the definition of crimes against humanity when committed against prisoners of war and the civilian population of occupied territory. The only remaining significant groups are Germans and nationals of the satellite countries, such as Hungary or Romania. It is one of the very purposes of the

Ibid., pp. 231, 247, 252, 254, 301.

² *Ibid.*, pp. 174, 253.

concept of crimes against humanity, not only as set forth in Law No. 10 but also as long recognized by international law, to reach the systematic commission of atrocities and offenses by a state against its own people. The concluding phrase of the definition of crimes against humanity, *which is in the alternative, makes it quite clear that crimes by Germans against Germans are within the jurisdiction of this Tribunal. It reads "or persecutions on political, racial, or religious grounds whether or not in violation of the domestic laws of the country where perpetrated."* This reference to "domestic laws" can only mean discriminatory and oppressive legislation directed against a state's own people, as for example, the Nuremberg Laws against German Jews. [Emphasis supplied.]

The matter is put quite beyond doubt by Article III of Law No. 10 which authorizes each of the occupying powers to arrest persons suspected of having committed crimes defined in Law No. 10, and to bring them to trial "before an appropriate tribunal." Paragraph 1(d) of Article III further provides that--

"Such Tribunal may, in the case of crimes committed by persons of German citizenship or nationality against other persons of German citizenship or nationality, or stateless persons be a German court, if authorized by the occupying authorities."

This constitutes an explicit recognition that acts committed by Germans against other Germans are punishable as crimes under Law No. 10 according to the definitions contained therein in the discretion of the occupying power. This has particular reference to crimes against humanity, since the application of crimes against peace and war crimes while possible, is almost entirely theoretical. If the occupying power fails to authorize German courts to try crimes committed by Germans against other Germans (and in the American zone of occupation no such authorization has been given), then these cases are tried

only before non-German tribunals, such as these Military Tribunals.

What would be the effect of a holding that crimes by Germans against Germans under no circumstances be within the jurisdiction of the Tribunal? Is this Tribunal to ignore the proof that tens of thousands of Germans were exterminated pursuant to a secret decree, because a group of criminals in control of a police state thought them "useless eaters" and an unnecessary burden, or that German prisoners were murdered and mistreated by thousands in concentration camps, in part by medical experimentation? Military Tribunal II in the *MUCH* case held that crimes against nationals of Hungary and Romania were crimes against humanity. There is certainly no reason in saying that there is jurisdiction over crimes by Germans against Hungarians but not against Germans -

The judgment of the International Military Tribunal shows a clear recognition of its jurisdiction over crimes by Germans against Germans. After reviewing a large number of inhumane acts in connection with *war* crimes and crimes against humanity, the Tribunal concluded by saying that--

" * * from the beginning of the war in 1939 war crimes were committed on a vast scale, which were also crimes against humanity, and insofar as the inhumane acts charged in the indictment, and committed after the beginning of the war, did not constitute war crimes, they were all committed in execution of, or in connection with the aggressive war, and therefore constituted crimes against humanity."

Since war crimes are necessarily also crimes against humanity, the broader definition of the latter can only refer to crimes not covered by the former, namely, crimes against Germans and

nationals of countries other than those occupied by Germany. Moreover, the prosecution in that case maintained that the inhumane treatment of Jews and political opponents *in Germany before the war constituted crimes against humanity.* *The Tribunal said in this connection--*

With regard to crimes against humanity there is in doubt whatever that political opponents were murdered in Germany before the war, and that many of them were kept in concentration camps in circumstances of great horror and cruelty. The policy of terror was certainly carried out on a vast scale, and in many cases was organized and systematic. The policy of persecution, repression, and murder of civilians in Germany before the war of 1939, who were likely to be hostile to the government, was most ruthlessly carried out. The persecution of Jews during the same period is established beyond all doubt."²

The Tribunal was there speaking exclusively of crimes by Germans against Germans. It held that such acts were not crimes against Humanity, as defined by the Charter, not because they were crimes against Germans, but because they were not committed in execution of, or in connection with, aggressive war. Indeed, the Tribunal went on to hold that the very same acts committed after the war began were crimes against humanity. No distinction was drawn between the murder of German Jews and Polish or Russian Jews. And, moreover, no distinction was drawn between criminal medical experimentation on German and non-German concentration camp inmates or the murder of German and non-German civilians under the Euthanasia program. The Tribunal held them all to be war crimes and/or crimes against humanity.

² Ibid.