

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

I. CONSTITUTION OF TRIBUNAL

Article 1. Tribunal Established. The International Military Tribunal for the Far East is hereby established for the just and prompt trial and punishment of the major war criminals in the Far East. The permanent seat of the Tribunal is in Tokyo.

Article 2. Members. The Tribunal shall consist of not less than five or more than nine Members, appointed by the Supreme Commander for the Allied Powers from the names submitted by the Signatories to the Instrument of Surrender.

Article 3. Officers and Secretariat.

(a) *President.* The Supreme Commander for the Allied Powers shall appoint a Member to be President of the Tribunal.

(b) *Secretariat.*

(1) The Secretariat of the Tribunal shall be composed of a General Secretary to be appointed by the Supreme Commander for the Allied Powers and such assistant secretaries, clerks, interpreters, and other personnel as may be necessary.

(2) The General Secretary shall organize and direct the work of the Secretariat.

(3) The Secretariat shall receive all documents addressed to the Tribunal, maintain the records of the Tribunal, provide necessary clerical services to the Tribunal, and its Members, and perform such other duties as may be designated by the Tribunal.

Article 4. Quorum and Voting.

(a) *Quorum.* The presence of a majority of all Members shall be necessary to constitute a quorum.

(b) *Voting.* All decisions and judgments of this Tribunal, including convictions and sentences, shall be by a majority vote of those Members of the Tribunal present. In case the votes are evenly divided, the vote of the President shall be decisive.

II. JURISDICTION AND GENERAL PROVISIONS

Article 5. Jurisdiction Over Persons and Offenses. The Tribunal shall have the power to try and punish Far Eastern war criminal who as individuals or as members of organizations are charged with offenses which include Crimes against Peace.

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, the planning, preparation, initiation or waging of a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

(b) *Conventional War Crimes:* Namely, violations of the laws or customs of war;

(c) *Crimes against Humanity:* Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or prosecutions on political or racial grounds in execution of or in connection with any crime

within the jurisdiction of the Tribunal, whether or not in violation of the 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 person in execution of such plan.

Article 6. Responsibility of Accused. Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

Article 7. Rules of Procedure. The Tribunal may draft and amend rules of procedure consistent with the fundamental provisions of this Charter.

Article 8. Counsel.

(a) *Chief of Counsel.* The Chief of Counsel designated by the Supreme Commander for the Allied Powers is responsible for the investigation and prosecution of charges against war criminals within the jurisdiction of this Tribunal, and will render such legal assistance to the Supreme Commander as is appropriate.

(b) *Associate Counsel.* Any United Nation with which Japan has been at war may appoint an Associate Counsel to assist the Chief of Counsel.

III. FAIR TRIAL FOR ACCUSED

Article 9. Procedure for Fair Trial. In order to ensure fair trial for the accused, the following procedure shall be followed:

(a) *Indictment.* The indictment shall consist of a plain, concise and adequate statement of each offense charged. Each accused shall be furnished in adequate time for defense a copy of the indictment, including any amendment, and of this Charter, in a language understood by the accused.

(b) *Hearing.* During the trial or any preliminary proceedings the accused shall have the right to give any explanation relevant to the charges made against him.

(c) *Language.* The trial and related proceedings shall be conducted in English and in the language of the accused. Translations of documents and other papers shall be provided as needed and requested.

(d) *Counsel for Accused.* Each accused shall be represented by counsel of his own selection, subject to disapproval of such counsel of his own selection, subject to disapproval of such counsel at any time by the Tribunal. The accused shall file with the General Secretary of the Tribunal the name of his counsel or of counsel whom he desires the Tribunal to appoint. If an accused is not represented by counsel, the Tribunal shall designate counsel for him.

(e) *Evidence for Defense.* An accused shall have the right through himself or through his counsel to present evidence at the trial in support of his defense, and to examine any witness called by the prosecution, subject to such reasonable restrictions as the Tribunal may determine.

(f) *Production of Evidence for the Defense.* An accused may apply in writing to the Tribunal for the production of witnesses or of documents. The application shall state where the witness or documents is thought to be located. It shall also state the facts proposed to be

proved by the witness or the document and the relevancy of such facts to the defense. If the Tribunal grants the application, the Tribunal shall be given such aid in obtaining production of the evidence as the circumstances require.

Article 10. Applications and Motions before Trial. All motions, applications or other requests addressed to the Tribunal prior to the commencement of trial shall be made in writing and filed with the General Secretary of the Tribunal for action by the Tribunal.

IV.

POWERS OF TRIBUNAL AND CONDUCT OF TRIAL

Article 11. Powers. The Tribunal shall have the power

(a) To summon witnesses to the trial, to require them to attend and testify, and to question them,

(b) To interrogate each accused and to permit comment on his refusal to answer any question,

(c) To require the production of documents and other evidentiary material,

(d) To require of each witness an oath, affirmation, or such declaration as is customary in the country of the witness, and to administer oaths,

(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 12. Conduct of Trial. 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 would cause any unreasonable delay and rule out irrelevant issues and statements of any kind whatsoever,

(c) Provide for the maintenance of order at the trial and deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any accused or his counsel from some or all further proceedings, but without prejudice to the determination of the charges,

(d) Determine the mental and physical capacity of any accused to proceed to trial.

Article 13. Evidence.

(a) *Admissibility.* The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and not-technical procedures and shall admit any evidence which it deems to have probative value. All purported admissions or statements of the accused are admissible.

(b) *Relevance.* The Tribunal may require to be informed of the nature of any evidence before it is offered in order to rule upon the relevance.

(c) *Specific evidence admissible.* In particular, and without limiting in any way to scope of the foregoing general rules, the following evidence may be admitted:

(1) A document, regardless of its security classification and without proof of its issuance or signature, which appears to the Tribunal to have been signed or issued by any officer, department, agency or member of the armed forces of any government.

(2) A report which appears to the Tribunal to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person who appears to be Tribunal to have personal knowledge of the matters contained in the report.

- (3) An affidavit, deposition or other signed statement.
- (4) A diary, letter or other document, including sworn or unsworn statements, which appear to the Tribunal to contain information relating to the charge.
- (5) A copy of a document or other secondary evidence of its contents, if the original is not immediately available.

(d) *Judicial Notice.* The Tribunal shall not require proof of facts of common knowledge, nor of the authenticity of official government documents and reports of any nation or of the proceedings, records and findings of military or other agencies of any of the United Nations.

(e) *Records, Exhibits and Documents.* The transcript of the proceedings, and exhibits and documents submitted to the Tribunal, will be filed with the General Secretary of the Tribunal and will constitute part of the Record.

Article 14. Place of Trial. The first trial will be held at Tokyo and any subsequent trials will be held at such places as the Tribunal decides.

Article 15. Course of Trial Proceedings. The proceedings at the Trial will take the following course:

- (a) The indictment will be read in court unless the reading is waived by all accused.
- (b) The Tribunal will ask each accused whether he pleads "guilty" or "not guilty."
- (c) The prosecution and each accused may make a concise opening statement.
- (e) The prosecution and counsel for the accused may examine each witness and each accused who gives testimony.
- (f) Counsel for the accused may address the Tribunal.
- (g) The prosecution may address the Tribunal.
- (h) The Tribunal will deliver judgment and pronounce sentence.

V. JUDGMENT AND SENTENCE

Article 16. Penalty. The Tribunal shall have the power to impose upon an accused, on conviction, death or such other punishment as shall be determined by it to be just.

Article 17. Judgment and Review. The judgment will be announced in open court and will give the reasons on which it is based. The record of the trial will be transmitted directly to the Supreme Commander for the Allied Powers for his action thereon. A sentence will be carried out in accordance with the Order of the Supreme Commander for the Allied Powers, who may at any time reduce or otherwise alter the sentence except to increase its severity.