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CRIMES AGAINST HUMANITY¹

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I. *Introductory*

ARTICLE 6 of the Charter of the International Military Tribunal, annexed to the Four-Power Agreement of 8 August 1945,² provides that the Tribunal established by the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis

'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 organisations, committed any of the following crimes:

- (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 labour 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;³ 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 the domestic law of the country where perpetrated.'

The provision of sub-paragraph (c), referring to crimes against humanity, has, from the very beginning, caught the imagination of international lawyers as laying down, *prima facie*, a set of novel principles of law. The provisions relating to crimes against humanity have been acclaimed as 'a revolution in international criminal law'.⁴ Others have described it as an innovation inconsistent with international law.

The following three phrases appear to embody these startling and controversial changes: (1) 'before and during the war'; (2) 'against any civilian population'; (3) 'whether or not in violation of the domestic law of the

¹ The Editor proposes to include in the next issue of this *Year Book* an article devoted to a discussion of the place of the Nuremberg trial, as a whole, in the field of international law.

² Misc. No. 10 (1945), Cmd. 6668; Treaty Series No. 27 (1946), Cmd. 6903.

³ As to the replacement of this semi-colon in the English text by a comma and the alteration of the French text of Article 6 (c), see the Protocol signed at Berlin on 6 October 1945, U.S. Department of State Publication 2461, Executive Agreement Series 472, U.S. Government Printing Office, Washington: 1946, pp. 45 ff.; and see below, p. 188.

⁴ Albert de la Pradelle, *Nouvelle revue de droit international privé*, no. 2, 1946: 'Une Révolution dans le Droit Pénal International'.