

Launching Aggressive War Is Nuremberg Crime

by Edward Spannaus

The pre-emptive (some would say, preventive) war, which President Bush and warhawks in his Cabinet and the civilian leadership of the Pentagon are in the process of launching, violates fundamental principles of international law and treaties to which the United States is a party.

After World War II, the Allied powers, led by the United States, prosecuted leaders of the Axis powers for initiating aggressive war without provocation. Both the German and Japanese leaders justified their launching of aggressive war on the grounds that the countries attacked posed a threat to them. As some have pointed out, by the standards of the “Bush Doctrine,” Japan would have been justified in launching its pre-emptive strike against Pearl Harbor in 1941. The United States certainly posed a threat to Japan, was quite hostile to it, and indeed, was developing weapons of mass destruction which it later used against Japanese civilians—unnecessarily, and after Japan was already effectively defeated. (The United States is the only country to have ever used the only real weapon of mass destruction—a nuclear bomb.)

The ‘Nuremberg Principles’

Planning and initiating aggressive war is a “Nuremberg Crime,” as defined by the four-power agreement creating the International Military Tribunal, signed on Aug. 8, 1945 in London, and sometimes called the “London Charter.” Following are the major stages in the evolution of what are today called the “Nuremberg Principles.”

I. Moscow Declaration: A declaration, by Roosevelt, Stalin, and Churchill, “speaking in the interest of the thirty-two United Nations,” and released on Nov. 1, 1943, called for trials of: 1) German officers and men, and members of the Nazi party, involved in war atrocities, who should be tried in the countries where the atrocities occurred; and 2) major war

criminals, who would be punished by the joint decision of the Allied governments. The Moscow Declaration was affirmed at Yalta in February 1945, and at the Berlin Conference of Aug. 2, 1945.

II. London Agreement, and Charter of the International Military Tribunal: The four-power agreement creating the International Military Tribunal was signed on Aug. 8, 1945 in London. Attached to the Agreement was the “Charter of the International Military Tribunal,” sometimes called the “London Charter.”

In the Charter’s statement of General Principles, three categories of offenses were defined for which there is 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*—violations of the laws or customs of war, including murder, ill-treatment, or deportation for slave labor of civilian populations, murder or ill-treatment of prisoners-of-war, and plunder, wanton destruction, or devastation not justified by military necessity; and c) *Crimes against humanity*—murder, extermination, deportation, and other inhumane acts committed against civilian populations, and persecutions on political, religious, or racial grounds.

The Charter also held that persons participating in the formulation or execution of a common plan or conspiracy to commit the above crimes, were responsible for all acts committed in the execution of such plans.

III. Indictment: The indictment in the trial of the major war criminals at Nuremberg was lodged on Oct. 18, 1945, and contained four counts: 1) Conspiracy; 2) Crimes against peace; 3) War crimes; and 4) Crimes against humanity.

Count Two of the Indictment stated: “All the defendants, with divers other persons, during a period of years preceding 8 May 1945 participated in planning, preparation, initiation, and waging wars of aggression which were also wars in violation of international treaties, agreements and assurances.” Twelve defendants were convicted on Count Two, in combination with other counts, and were sentenced on Sept. 30, 1946. Seven were sentenced to death by hanging (Goering, von Ribbentrop, Keitel, Rosenberg, Frick, Jodl, and Seyss-Inquart), and the others to terms of imprisonment ranging from ten years to life.

Principles of International Law

Almost identical language was used in the **Charter of the International Military Tribunal for the Far East** (Tokyo), in 1946. Counts of that indictment included: 1) As “leaders, organisers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy to wage wars of aggression, and war or wars in violation of international law”; 27) Waging unprovoked war against China; 29) Waging aggressive war against the United States; 31) Waging aggressive war against the British Commonwealth; 32) Waging aggressive war against the Netherlands; 33) Waging aggressive war against France (Indochina); and 35) and 36) Waging aggressive war against the Soviet Union.

On Count 1 (conspiracy to wage aggressive war), 23 of the 25 defendants were found guilty, with six sentenced to death and hung, and the others sentenced to life or a lesser term of imprisonment.

IV. Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and Judgment of the Tribunal, (as adopted by the UN General Assembly, 1950):

- “*Principle I*: Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.”
- “*Principle VI*: The crimes hereinafter set out are punishable as crimes under international law: a) Crimes against peace: (i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances; [and] (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).”
- “*Principle VII*: Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.”

What Is Aggressive War?

V. Definition of Aggression (adopted by UN General Assembly, Dec. 4, 1974):

“*Article 1*: Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nation, as set out in this Definition.



Planning and launching aggressive (now “pre-emptive” or “preventive”) war, was a crime which helped sentence seven of these 1945 Nuremberg Tribunal defendants to death by hanging.

“*Article 2*: The first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression, although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in light of other relevant circumstances. . . .

“*Article 3*: Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provision of Article 2, qualify as an act of aggression: a) The invasion or attack by the armed forces of a State of the territory of another state, or any military occupation; . . . b) Bombardment by the armed forces of a State against the territory of another State; . . . c) The blockade of the ports of the coasts of a State by the armed forces of another State; . . . g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.”

U.S. Declares Principles Binding

The principles of law declared in the Nuremberg Charter are binding on the United States, not only as a matter of natural law, but as a matter of positive law expressed by treaty and agreement between sovereign nations. This was expressed by the Chief Delegate of the United States, Warren R. Austin, in his opening address to the General Assembly of the United Nations on Oct. 30, 1946: “Besides being bound by the law of the United Nations Charter, twenty-three nations, members of this Assembly, including the United States, Soviet Russia, the United Kingdom and France, are also bound by the law of the Charter of the Nuremberg Tribunal. That makes planning or waging a war of aggression a crime against humanity for which individuals as well as nations can be brought before the bar of international justice, tried, and punished.”