

INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

*Special proclamation by the Supreme Commander for the Allied Powers at Tokyo January 19, 1946; charter dated January 19, 1946; amended charter dated April 26, 1946
Tribunal established January 19, 1946*

Treaties and Other International
Acts Series 1589

SPECIAL PROCLAMATION

ESTABLISHMENT OF AN INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

Whereas, the United States and the Nations allied therewith in opposing the illegal wars of aggression of the Axis Nations, have from time to time made declarations of their intentions that war criminals should be brought to justice;

Whereas, the Governments of the Allied Powers at war with Japan on the 26th July 1945 at Potsdam, declared as one of the terms of surrender that stern justice shall be meted out to all war criminals including those who have visited cruelties upon our prisoners; ¹

Whereas, by the Instrument of Surrender of Japan executed at Tokyo Bay, Japan, on the 2nd September 1945,² the signatories for Japan, by command of and in behalf of the Emperor and the Japanese Government, accepted the terms set forth in such Declaration at Potsdam;

Whereas, by such Instrument of Surrender, the authority of the Emperor and the Japanese Government to rule the state of Japan is made subject to the Supreme Commander for the Allied Powers, who is authorized to take such steps as he deems proper to effectuate the terms of surrender;

Whereas, the undersigned has been designated by the Allied Powers as Supreme Commander for the Allied Powers to carry into effect the general surrender of the Japanese armed forces;

¹ *Ante*, vol. 3, p. 1205.

² EAS 493, *ante*, vol. 3, p. 1251.

Whereas, the Governments of the United States, Great Britain and Russia at the Moscow Conference, 26th December 1945,³ having considered the effectuation by Japan of the Terms of Surrender, with the concurrence of China have agreed that the Supreme Commander shall issue all Orders for the implementation of the Terms of Surrender.

Now, therefore, I, Douglas MacArthur, as Supreme Commander for the Allied Powers, by virtue of the authority so conferred upon me, in order to implement the Term of Surrender which requires the meting out of stern justice to war criminals, do order and provide as follows:

ARTICLE 1. There shall be established an International Military Tribunal for the Far East for the trial of those persons charged individually, or as members of organizations, or in both capacities, with offenses which include crimes against peace.

ARTICLE 2. The Constitution, jurisdiction and functions of this Tribunal are those set forth in the Charter of the International Military Tribunal for the Far East, approved by me this day.

ARTICLE 3. Nothing in this Order shall prejudice the jurisdiction of any other international, national or occupation court, commission or other tribunal established or to be established in Japan or in any territory of a United Nation with which Japan has been at war, for the trial of war criminals.

Given under my hand at Tokyo, this 19th day of January, 1946.

DOUGLAS MACARTHUR
General of the Army, United States Army
Supreme Commander for the Allied Powers

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

GENERAL ORDERS }
NO.-----1 }

APO 500
19 January 1946

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST

Proclamation of the Supreme Commander for the Allied Powers dated 19 January 1946 established an International Military Tribunal for the Far East. Charter of this Tribunal is as follows:

SECTION 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

³ TIAS 1555, *ante*, vol. 3, p. 1341.

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 nor 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.

SECTION 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 criminals 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 persecutions 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.

SECTION III

FAIR TRIAL FOR ACCUSED

ARTICLE 9. *Procedure for Fair Trial*. In order to insure 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 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 document 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.

SECTION 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 non-technical procedure, 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 the scope of the forgoing 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 the 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.

d. The prosecution and defense may offer evidence and the admissibility of the same shall be determined by the Tribunal.

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.

SECTION 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.

By command of General MACARTHUR:

RICHARD J. MARSHALL
Major General, General Staff Corps
Chief of Staff

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

GENERAL ORDERS }
NO.-----20 }

APO 500
26 April 1946

General Orders No. 1, General Headquarters, Supreme Commander for the Allied Powers, 19 January 1946, subject as below, is superseded. The Charter of the International Military Tribunal for the Far East established by Proclamation of the Supreme Commander for the Allied Powers, 19 January 1946, is amended, and as amended, reads as follows:

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST

SECTION 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 six members nor more than eleven members, appointed by the Supreme Commander for the Allied Powers from the names submitted by the Signatories to the Instrument of Surrender, India, and the Commonwealth of the Philippines.

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. *Convening and Quorum, Voting, and Absence.*

a. Convening and Quorum. When as many as six members of the Tribunal are present, they may convene the Tribunal in formal session. 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.

c. Absence. If a member at any time is absent and afterwards is able to be present, he shall take part in all subsequent proceedings; unless he declares in open court that he is disqualified by reason of insufficient familiarity with the proceedings which took place in his absence.

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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 before or during the war, or persecutions 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.

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d. Evidence for Defense. An accused shall have the right, through himself or through his counsel (but not through both), to conduct his defense, including the right to examine any witness, subject to such reasonable restrictions as the Tribunal may determine.

e. 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 document 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.

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- 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.
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By command of General MACARTHUR:

RICHARD J. MARSHALL
Major General, General Staff Corps
Chief of Staff