

STANFORD AND THE NUREMBERG PRINCIPLES

1. PRINCIPLES OF NUREMBERG

In 1945, at the initiative of the United States, the General Assembly of the United Nations affirmed unanimously "the principles of international law recognized by the Charter of the Nuremberg Tribunal." In 1950, the International Law Commission formulated the Principles of Nuremberg, which offer the most complete set of guidelines presently available on the relationship between personal responsibility and war crimes.

PRINCIPLE I

Any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.

PRINCIPLE II

The fact the internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

PRINCIPLE III

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

PRINCIPLE IV

The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible for him.

PRINCIPLE V

Any person charged with a crime under international law has the right to a fair trial on the facts and law.

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;

(ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

b. War crimes:

Violations of the laws or customs of war which include, but are not 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:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connexion with any crime against peace or any war crime.

PRINCIPLE VII

Complicity in the commission of a crime against humanity as set forth in Principle VI is a crime under international law.

"If certain acts in violation of treaties are crimes, they are crimes whether the United States does them or Germany does them, and we are not prepared to lay down a rule of criminal conduct against others which we would be unwilling to have invoked against us." - Justice Robert Jackson, Chief U.S. Prosecutor at Nuremberg.

It is now indisputable that crimes of war as defined by the Nuremberg Principles have been committed by the United States in significant number and over a long time period in Vietnam. In summarizing the published evidence to this effect in the New York Times March 28, 1971, Neil Sheehan states: "If you credit as factual a fraction of the information assembled here about what happened in Vietnam, and if you apply the laws of war to American conduct there, then the leaders of the United States for the past six years at least, including the incumbent President, Richard Milhous Nixon, may well be guilty of war crimes...The more perspective we gain on our behaviour, the uglier our conduct appears. At first it had seemed unfortunate and sad; we were caught in the quicksand of Indochina. Then our conduct had appeared stupid and brutal, the quagmire was of our own making, the Vietnamese were the victims, and we were the executioners. Now we are finding out that we may have taken life, not merely as cruel and stubborn warriors, but as criminals...Looking back one realizes that the war crimes issue was always present. Our vision was so narrowly focused on the unfolding details of the war that we lacked perspective to see it, or when the problem was held up to us, we paid no heed. This lesson becomes clear in reading the proceedings of the Russell Tribunal now published in "Against the Crime of Silence." The proceedings were widely dismissed in 1967 as a combination of kookery and leftist propaganda. They should not have been. Although the proceedings were one-sided, the perspective was there. Crimes have occurred in each of the categories listed under Section B of Principle VI. In some instances the magnitude of the crime may substantially exceed those for which convictions were secured in Nuremberg and Tokyo war crimes trials.

The question is no longer the existence of war crimes. It is the establishment of responsibility for them. Responsibility goes beyond the military and governmental officials who initiate and execute criminal policy. Though not clearly established by precedent, this extension of responsibility to others is incorporated in Principle VII under the heading of complicity. For example, German judges were tried at Nuremberg for enforcing national laws which were in violation of the Nuremberg Principles. This is an important example for it establishes that that which is legal by an internal or national judicial system if subordinate to the international principles of Nuremberg. It follows that people acting in opposition to internal law, but in accordance with the international principles are not acting illegally, and those who charge and try them for such action are acting illegally.

On the question of civilian responsibility, Richard Falk, Professor of Political Science at Princeton, states: "The idea of prosecuting war criminals involves using international law as a sword against violators in the military and civilian hierarchy of government. But the Nuremberg Principles imply broader human responsibility to oppose an illegal war and illegal methods of war. There is nothing to suggest that the ordinary citizen, whether within or outside the armed services, is potentially guilty of a war crime merely as a consequence of such a status. But there are grounds to maintain that anyone who believes or has reason to believe that a war is being waged in violation of minimum canons of law and morality has an obligation of conscience to resist participation in and support of that war effort by every means at his disposal. In that respect, the Nuremberg Principles provide guidelines

for citizen's conscience and a shield that can be used in the domestic legal system to interpose obligations under international law between the government and members of the society." Invoking this citizens' responsibility, President Roosevelt addressed the following appeal to the German people during World War II: "Hitler is committing these crimes against humanity in the name of the German people. I ask every German and every man everywhere under Nazi domination to show the world that he does not share these insane criminal desires...I ask him also to keep watch, and to record the evidence that will one day be used to convict the guilty."

Stanford University has been involved in the Vietnam War in many ways over many years. It has done research funded by the Department of Defense which has been directly applicable to the war in Vietnam, it has invested in war industry from which it has drawn profit, it has leased land to war industry from which it has drawn income, it has trained men for the military and for war industry and has provided special refresher courses for the latter, it has established a system whereby faculty income is in part dependent upon consultation for war industry, and many of its Trustees are owners and direct beneficiaries of war industry. In view of the advanced technology employed in the Vietnam war, and the dependence upon university-based research to develop such technology, the interlocking relationships between universities and the war can be said to be essential for the prosecution of the war. Howsoever the ultimate decision in individual cases may evolve, it is clear that a strong case exists for university complicity in the war. In view of the ready availability of information about War Crimes over the past few years, and of the clear moral choice available to the university to disassociate itself from relationship to the war (Nuremberg Principle IV), a case also exists for university complicity in war crimes.

The injunction against a university involving itself in war crimes, however indirectly, emanates not from international law alone. As an institution whose purpose is to analyze, extend and transmit the finest of human traditions and knowledge, the university violates its most fundamental purpose when it aligns itself with inhumane policies and actions. Such a relationship is no less abhorrent because it is indirect or covert. It is striking how accurately aspects of this and other campuses are characterized by the following description of the relationships of science to government in Nazi Germany by Dr. Alexander Mitscherlich, Head of the German Medical Commission to the United States Military Tribunal at Nuremberg. "Science and government alike have proliferated to a degree too vast to be encompassed. During the war years especially, their interests were so closely interwoven that often the individual was no longer able to check the effects of his work. What had been the fruits of scientific research but yesterday, suddenly turned into a weapon of war, an adjunct in the killing of men, found on Weltanschauung. Twilight pervaded the space in which all of us lived. Our guilt--the guilt of all of us--arises in consequence of our failure to find the strength to air out this murky atmosphere. Now we must make every effort to help one another to create a common realm of life in which the simplest stirrings of justice are no longer threatened with death, in which our work is no longer wrested from unresisting hands to service the powers of destruction, of contempt for the dignity of man... Only the secret kinship between the practices of science and politics can explain why throughout this trial the names of high-ranking men of science were mentioned--men who perhaps themselves committed no culpable act but who nevertheless took an objective interest in all the things that were to become the cruel destiny of defenseless men. A profound inhumanity has long been presaged. This is the alchemy of the modern age, the transmogrification of subject into object, or man into a thing against which the destructive urge may wreak its fury without restraint...To make amends is scarcely within our human powers. But to overcome error remains the worthiest task, for weak and strong alike. It has been our purpose to help those who do not shrink

from the sweat and shame it takes to learn from history, in the broad sense and the narrow...To disprove our guilt cannot be our concern, for we shall enjoy respect only if we have the strength to survive in the full knowledge of it." Can we at Stanford say any less?

We suggest that the following are incumbent on the University Administration:

1. Recognize, at the least, that there is an ambiguity in the relationship between freedom of speech which is invoked on behalf of Ambassador Lodge and the Principles of Nuremberg which are invoked on behalf of the disruptors of the Ambassador's speech, and withdraw the first charge against Professor Franklin.

2. Recognize the precedent established at Nuremberg whereby those who enforced internal law at variance with the Nuremberg Principles were subsequently charged and convicted of violation of those principles. This raises significant questions concerning University actions against opponents of the war.

3. Establish a Commission of Inquiry to determine the extent of and the reasons for the involvement of the university with the military and with war crimes in Vietnam.

4. Invoke discussions amongst different constituencies of the university concerning the report of the Commission of Inquiry and possible university responses to it. These constituency discussions will be a prelude to

5. The convening of a university-wide Assembly to draft and adopt policies and procedures which will prevent this university from becoming implicated in crimes of war.