

But these and other intricate problems should not to my mind frighten us or lead us to the conclusion that therefore it is impossible to establish an International Criminal Court.- It is true that the formation of an International Criminal Court does bring us upon wholly untrodden paths. But the same could have been said of the Permanent Court of International Justice, and yet this was established, and in the short period of its existence acquired great authority.

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Par. 6. The Competence of the International Criminal Court.

There was originally a considerable difference of opinion regarding the question whether an eventual International Criminal Court would have to try all war criminals, or only a limited number. But on this point, and also on the question of the describing of the competence of the International Criminal Court, a positive opinion - at any rate in the London International Assembly - has been established. It has been laid down in a motion passed by the Assembly, which we can here take over as far as is necessary, and which proposes: -

"that war crimes which come under the jurisdiction of Municipal Courts of the United Nations will be tried by such Courts (either civil, military or mixed), in conformity with the laws of the country concerned; that an International Criminal Court shall have jurisdiction over the following categories of crimes:

- (a): Crimes in respect of which no United Nations Court has jurisdiction (e.g.: crimes committed in Germany against Jews and stateless persons and possibly against Allied nationals);
- (b): Crimes in respect of which a United Nations Court has jurisdiction, but which the State concerned elects not to try in its own Courts (for reasons such as the following:  
where a trial in the country concerned might lead to disturbances,  
where a National Court would find it difficult to obtain evidence);
- (c): crimes which have been committed or which have taken effect in several countries or against nationals of different countries;
- (d): crimes committed by Heads of States."

This, however, only describes the first and most urgent task of the Court. - Later on a more comprehensive description of the Court's powers would have to be added in the sense of the Report of the International Law Association of 1926.

According to this Report the Court would have to decide on violations of international legal obligations of criminal character, on violations of treaties regulating the usages and methods of warfare, and on violations of the customs of war generally accepted as binding by all civilized nations.(art.23 du Statut de la Cour.).

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Par.7. The composition of the International Criminal Court.

According to art.I.of the Statute of the Permanent Court of International Justice,(1) this "shall be composed of a body of independent Judges", chosen from amongst those who "possess the qualifications required in their respective countries for the highest judicial offices, or are jurisconsults of recognised competence in international law."

By virtue of art.3.of the Statute this Court consists of eleven Judges and four Deputy Judges. This has since been increased to fifteen Judges and four Deputy Judges.

The candidature takes place in principle through the national groups of arbiters of the Permanent Court of Arbitrage(Arbitration), that is to say in each country by the four persons whose names had been placed by the respective Government on the list of Arbiters.(art.4.,par.I.)

Each group can propose a maximum of four candidates, of which at the most two may be of the group's own nationality.(art.5, par.2.)

The elections take place simultaneously by the Assembly and by the Council of the League of Nations.(art.4.par.8.)

Only those who are chosen by both these organs are elected. If after three divisions seats are still unfilled, a special procedure of mediation is adopted,

(1)An extract from the Statute of the Permanent Court of International Justice is appended as Annex No.I.to this Report.

and should over this not yield any result, then the ones already elected are to choose the remainder from among those who have already had votes cast for them.(art.12.)

At each election care is to be taken that the Members elected should together represent the foremost forms of civilization and the most important systems of jurisprudence in the world.(art.9.).

The election is valid for nine years, and Judges may be re-elected.(art.13.).

Members of the Court can only be dismissed from their functions if in the unanimous opinion of their colleagues they no longer fulfil the requisite conditions.(art.18.).

During the exercise of their functions they enjoy diplomatic privileges and immunity.(art.18.).

The Court is established at The Hague.(art.22.).

It is obvious that in this way the composition of the Permanent Court is closely allied to the organism of the League of Nations, and moreover is fairly complicated.

The project of the International Law Association adopted in Vienna in 1926 follows with regard to the composition of the Court almost entirely the system of the Permanent Court at The Hague(See arts.1-14 of the Viennese proposed Statute(1)). It even stipulates that the International Criminal Court shall form a special Chamber of the Permanent Court, with this reservation: "qu'elle exercera sa juridiction séparément dans les affaires où des États ou des individus seront accusés d'infractions internationales".-

The convention for an International Criminal Court for the prevention and punishment of acts of terrorism adopted at Geneva in 1937 also corresponds in many respects with the design of the Permanent Court of International Justice and the Vienna project of the International Law Association of 1926, but also shows some interesting differences.

For instance, the convention of 1937, diverging from what is laid down in article 2 of the Statute of the Permanent Court, declares: "that the Judges shall be chosen among Jurists who are acknowledged authorities on Criminal Law, and who are

(1)A Copy of the 1926-Statute is appended as Annex II to this Report.



are or have been members of Courts of Criminal Jurisdiction, or possess the qualifications required for such appointments in their own country". - In this way a far stronger stress is laid upon legal experience and judicial training.

The method of election is also different. The respective Governments may each submit not more than two candidates. From these candidates the Permanent Court is to choose five Judges and five Deputy Judges, on regulations of its own making. The nominations in this instance are to be valid for ten years, and every two years one Judge and one Deputy Judge is to resign.

I feel that when coming to the appointment of Judges and Deputy Judges, we shall have to separate ourselves from the League of Nations. On the one hand we shall have to keep the requirements for nomination very strict, as per the Convention of 1937, but on the other hand make the actual designations as simple as possible. The number of Judges will also have <sup>to be</sup> larger than is proposed in the above-mentioned projects.

When, however, the composition of the Court is being decided upon, perhaps the most important thing of all will be to differentiate between the:

- 1st period: during which it will chiefly be occupied with the punishment of war criminals; and the
- 2nd period: when after the Peace Treaty has been signed, it will also be occupied with a broader and more comprehensive task as is already indicated in par.6. of this Report and amplified in art. 23 of the Vienna project.

In the first period the Judges and the Deputy Judges will of necessity have to be designated by the Governments of the United Nations direct, without the intermediary of any other organ. The Court will therefore - as I have already indicated - in the first period still be a "United Nations Criminal Court".

Later on, however, after the signing of Peace, and with the extension of the tasks of the Court, another method of composition could also be adopted. For instance, when finally ex-neutral Powers are conjoined, the various Governments could submit a certain number of candidates, from whom a body such as the Permanent Court of International Justice at The Hague could make a choice on a basis to be settled upon later.

In this way the establishment of the International Criminal Court will not



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In this way the establishment of the International Criminal Court will not

not have to wait until the end of the war.

On the contrary, it can and must be completely constructed and installed in the shortest possible time, so that it will be in full working order as soon as the Armistice is signed.

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Par.8. The Material Law to be applied.

The International Criminal Court ought as soon as possible to be supplied with an International Criminal CODE, defining the crimes and limiting the punishments.

We must however not be so optimistic as to expect that such a Code will be compiled within the next two or three years and also be accepted by the respective Powers.-

For the time being therefore we shall have to content ourselves with "mutatis mutandis" a description of the material law to be applied, as laid down in art.23 of the Vienna project of 1926, which reads as follows: -

"La Cour applique:

1: Les traités, conventions et déclarations internationaux, soit généraux, soit spéciaux, reconnus par les Etats en litige.

2: La coutume internationale comme preuve d'une coutume générale acceptée ayant la force d'une loi.

3: Les principes généraux de droit public ou international reconnus par les nations civilisées.

4: Les décisions judiciaires comme moyens auxiliaires de détermination des règles de droit.

5: En outre, la doctrine des publicistes les plus qualifiés peut être citée.

Pourvu qu'aucun acte ne puisse être jugé comme infraction par le Statut de la Cour ou par la loi interne de l'accusé, ou, dans le cas d'unheimatlos, par la loi du lieu de sa résidence au moment de la perpétration du crime, ou, à défaut de résidence, par la loi de l'Etat où le crime aura été commis."

Particularly the last clause is of great significance.

With respect to the punishment to be inflicted, the second part of art.22. can be very useful. It reads as follows:

"Lorsque la Cour trouve qu'une accusation contre un sujet, ou un citoyen,

citoyen, ou un héimatlos, est établie, la Cour peut le condamner à toute peine qu'elle croit juste, sous les conditions suivantes:

a: La peine de mort ne sera prononcée contre personne, à moins que cette peine ne puisse être infligée par une infraction similaire selon les lois de l'Etat auquel appartient le coupable.

b: En aucun cas, le fouet ne sera ordonné;

c: En tout autre cas, la peine d'emprisonnement ou de détention sera prononcée par la Cour, qui ordonnera la nature de l'emprisonnement ou de la détention infligée;

d: Les pénalités pécuniaires et les indemnités seront infligées, soit cumulativement, soit au lieu de la peine prononcée."

The description here given of the material law to be applied agrees approximately with the analogous precept for the Permanent Court of International Justice (art.38 of the Statute), with this reservation, that no act be punishable unless it is indicated so to be by the Statute of the Court, or by the national law of the accused person.(1).

According to the Statute of 1926, both, States and individuals may be arraigned before the Court. A State which has been found guilty may be sentenced to pay the plaintiff State a fine in cash, and to make good the damage, including the damage civilians have suffered. This regulation however is of little value for us in the immediate future.

In accordance with art.22, private persons may be sentenced to whatever penalty the Court may deem fit, but only to the death penalty provided the guilty person's national court admits of such punishment.

The Spanish Jurist Saldana is somewhat more precise in his famous work published in 1923 entitled: "La Justicia penal internacional". He wanted eight kinds of crime to be submitted to the International Criminal Court, namely:-

"1: los cas doteux de jurisdiccion pénale nationale;

2: los cas pénaux oxtranationaux.(for instance these on the High Seas).

3: los crimes internationaux de droit comun.(for instance, white slave

(1) See Annex I, art.38.



white slave trade, opium offences, etc)

- 4: les crimes politiques internationaux.(art.227.Treaty of Versailles).
- 5: les crimes militaires internationaux.(art.228.Treaty of Versailles).
- 6: les crimes contre le droit des gens.
- 7: les crimes d'un intérêt international commis dans un pays occupé;
- 8: les crimes sociaux collectifs non réprimés par un Etat."(1)

In contrast to this rather large conception the International Criminal Court for the Prevention of Acts of Terrorism(Convention of 1937) was to have a more limited sphere of activity. The following crimes were to come under the jurisdiction of this Court, viz: -

- 1: Any wilful act causing death or grievous bodily harm to:
  - a: Heads of States, persons exercising the prerogatives of the Head of State, their hereditary or designated successors;
  - b: The wives or husbands of the above-mentioned persons;
  - c: Persons charged with public functions or holding public positions, when the act is directed against them in their public capacity.
- 2: Wilful destruction of, or damage to, public property or property devoted to a public purpose belonging to, or subject to the authority of, another High Contracting Party.
- 3: Any wilful act calculated to endanger the lives of members of the public.
- 4: Any attempt to commit an offence falling within the foregoing provisions of the present article.
- 5: The manufacture, obtaining, possession or supplying of arms, ammunition, explosives or harmful substances with a view to the commission in any country whatsoever of an offence, falling within the present article.

As we know, this Convention was signed by the Representatives of all the participating States(Belgium, Bulgaria, Spain, France, Greece, the Netherlands, Roumania, Czecho-Slovakia, Turkey and Jugo-Slavia), but it was never ratified by the various Governments.

(1) See: Recueil des Cours.A.D.I.1925,V, pag.367.

For the first and most urgent task of the International Criminal Court now to be established, namely the punishment of war criminals, I think that, as we have said, we could if necessary be satisfied with the application of arts.22 and 23 of the Statut de la Cour, of 1926.

It goes without saying, however, that it would be of the greatest importance if early agreement could be reached between the respective Powers regarding a fully elaborated List of War Crimes, with an exact and clear description of the offences, and with the maximum punishments.

With respect to the question as to which offences are to be regarded as war crimes, both in our own and other Commissions, full Reports(1) have been issued, accompanied by exhaustively elaborated Lists, and I think I can refer you to them.(2).

Par.9. The formal law to be applied.

The Statute of the Permanent Court of International Justice and that of the International Criminal Court (see annexes I and II) can also serve us as guides in this direction.

The official languages of the Permanent Court are English and French. If the parties agree the whole proceedings take place in one of these languages, then the judgment will be pronounced in that language. In case such agreement is wanting, the parties may utilize whichever of these languages they choose, and judgment will in that case be pronounced both in French and in English; The Permanent Court will however decide which of the two texts is to be deemed the authentic one.(art.39.)

Before the International Criminal Court the accused will have to be able to express himself in his own language, and everything he says, as well as all questions that are put, and everything that is said regarding the case of the accused, will have to be translated by experienced interpreters.

(1) See inter alia the Report of the International Commission for Penal Reconstruction and Development - sub-Commission for War Crimes - and in particular the Memorandum of Professor Lauterpacht, contained therein, pages 5 to 11.)

(2) For the competence of the International Criminal Court see Par.6.

As however the large majority of war criminals will be able to understand German, the question arises as to whether it would not be advisable to recognise German as the third official language of the Court after English and French.

The accused will be permitted to be assisted by counsel chosen by him/herself - themselves.

In general, and under reference to the respective articles of the Concept-Statute of 1926(annex II), one may well say, with Professor Sheldon Glueck in "Free World", (1), that the procedure in the International Criminal Court ought to consist of a simplified combination of the best features of the Continental and Anglo-American criminal proceedings, guaranteeing certain fundamental rights, such as the right of counsel and the right to set up any legitimate defences found in civilized penal codes. Rules of evidence should be simple and should not too greatly stress exclusionary provisions, since the trials are to be before panels of judges trained by long practice.

The main point should be to seek the truth in the most impartial manner. When hearing the accused and the witnesses, full account should be taken of what modern criminology has taught us with regard to the psychology of the witnesses and the suspects, etc. -

"A Prosecuting staff of trained representatives of the various countries establishing the International Criminal Court, as well as a public defenders staff, should be appointed by the Court from panels submitted by the Chief Executives of the countries involved", as Sheldon Glueck proposes in his work referred to above.- I thoroughly agree.

The seat of the Court should be established in the Capital of one of the Allied Countries(c.g.: London, Paris or The Hague.)

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(1) See: " Trial and Punishment of Axis War-Criminals", by Sheldon Glueck. Reprinted from "Free World". Vol.IV.no.2.November 1942.



Par.10. Final Conclusions.

It will be clear from the foregoing that it is by no means impossible to come to a workable international agreement for the establishment of an International Criminal Court.

Above all else, however, in order this time to achieve the proper punishment of war criminals, and not again to fall into a hopeless fiasco as we did after 1914-1918, we must insist upon the greatest possible speed.

We have already been faced with a "fait accompli" with respect to Italy, and once more that which every expert insisted was absolutely essential, namely, the surrender of war criminals simultaneously with the signing of the Armistice, has been neglected.

We cannot tell how long we still have for further preparations, but it is certain that TIME IS EXCEEDINGLY SHORT.

Should the punishment of war criminals again end in a fiasco, then the future peace of the world would be gravely endangered.

Therefore: CAVEANT CONSULES.

LONDON, September 1943.

Annex I

EXTRACT OF THE STATUTE OF THE

PERMANENT COURT

OF INTERNATIONAL JUSTICE

Provided for by Article 14 of the Covenant  
of the League of Nations

STATUTE OF THE COURT

Article 1

A Permanent Court of International Justice is hereby established, in accordance with Article 14 of the Covenant of the League of Nations. This Court shall be in addition to the Court of Arbitration organised by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.

Article 2

The Permanent Court of International Justice shall be composed of a body of independent judges elected regardless of their nationality from amongst persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognised competence in international law.

Article 3

The Court shall consist of fifteen members.

Article 4

The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions.

Article 9

At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilisation and the principal legal systems of the world.

Article 10

Those candidates who obtain an absolute majority of votes in the Assembly and in the Council shall be considered as elected.

Article 13

The members of the Court shall be elected for nine years.  
They may be re-elected.

Article 16

The ordinary members of the Court may not exercise any political or administrative function.

Article 20

Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

## Article 22

The seat of the Court shall be established at The Hague.

## Article 23

A session of the Court shall be held every year.

## Article 24

The full Court shall sit except when it is expressly provided otherwise.

## Article 25

The expenses of the Court shall be borne by the League of Nations, in such a manner as shall be decided by the Assembly upon the proposal of the Council.

## Article 34

Only States or Members of the League of Nations can be parties in cases before the Court.

## Article 35

The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council.

## Article 36

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in Treaties and Conventions in force.

The Members of the League of Nations and the States mentioned in the Annex to the Covenant may . . . declare that they recognise as compulsory, ipso facto and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes . . .

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

## Article 38

The Court shall apply:

1. International Conventions, whether general or particular, establishing rules expressly recognised by the contesting States;
2. International custom, as evidence of a general practice accepted as law;
3. The general principles of law recognised by civilised nations;
4. Subject to the provisions of Article 39, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

## Article 46

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.



## Article 55

All questions shall be decided by a majority of the judges present at the hearing. In the event of an equality of votes, the President or his deputy shall have a casting vote.

## Article 56

The judgment shall state the reasons on which it is based. It shall contain the names of the judges who have taken part in the decision.

## Article 57

If the judgment does not represent in whole or in part the unanimous opinion of the judges, dissenting judges are entitled to deliver a separate opinion.

## Article 58

The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

## Article 59

The decision of the Court has no binding force except between the parties and in respect of that particular case.

## Article 71

Advisory opinions shall be given after deliberation by the full Court. They shall mention the number of the judges constituting the majority.

Dissenting judges may, if they so desire, attach to the opinion of the Court either an exposition of their individual opinion or the statement of their dissent.

## Article 72

Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request, signed either by the President of the Assembly or the President of the Council of the League of Nations, or by the Secretary-General of the League under instructions from the Assembly or the Council.

## Article 74

Advisory opinions shall be read in open Court, notice having been given to the Secretary-General of the League of Nations and to the representatives of States, of Members of the League and of international organisations immediately concerned. The Registrar shall take the necessary steps in order to ensure that the text of the advisory opinion is in the hands of the Secretary-General at the seat of the League at the date and hour fixed for the meeting held for the reading of that opinion.

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ANNEX II.

STATUT DE LA COUR.

(Adopté par la Conférence.)

ARTICLE PRÉLIMINAIRE.

Convention.

La Constitution permanente de la Cour Internationale Criminelle est établie aux termes de la convention de (lieu) datée le , 19 . Ladite Cour sera une Chambre de la Cour Permanente de Justice Internationale de la Haye, mais elle exercera ainsi qu'il est défini plus bas, sa juridiction séparément dans les affaires où des Etats ou des individus seront accusés d'infractions internationales.

CHAPITRE I.

Organisation de la Cour.

ART.1.

Composition de la Cour.

La Cour est composée d'un corps de Magistrats sans égard de leur nationalité parmi les personnes qui réunissent dans leur pays respectifs les conditions requises pour être nommés aux plus hautes fonctions judiciaires et qui sont ou qui ont été Magistrats dans les Tribunaux siégeant en matière pénale ou des juristes qui sont spécialement qualifiés par leur expérience de la pratique de ces Cours.

Art.2.

Nombre des Juges.

La Cour se compose de quinze membres, soit dix Juges et cinq Juges suppléants. Les parties qui ratifient ou qui auront subséquentement ratifié la Convention de (lieu) datée le , 19 , peuvent décider de changer le nombre des Juges ou de Juges suppléants.

Art.3.

Election des Membres.

Les Membres de la Cour sont élus par l'Assemblée et par le Conseil de la Société des Nations sur une liste des personnes présentées par les groupes nationaux de la Cour Permanente d'Arbitrage de la Haye, conformément aux dispositions des articles 4 à 12 du Statut de la Cour Permanente de Justice Internationale.



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Art.4.

Déclaration en entrant en fonction.

Tout membre de la Cour doit, avant d'entrer en fonction, prendre engagement solennel en séance publique d'exercer ses attributions avec impartialité et en toute conscience.

Art.5.

Durée de la fonction.

Les membres de la Cour sont élus pour neuf ans, et ils sont rééligibles.

Ils restent en fonction jusqu'à leur remplacement. Après ce remplacement, ils continuent à connaître des affaires dont ils sont déjà saisis.

Art.6.

Immunités Diplomatiques.

Les membres de la Cour voyageant à La Haye ou en revenant pour les affaires de la Cour, ont droit à des passeports diplomatiques et, durant l'exercice de leurs fonctions de la Cour à La Haye, ils jouissent des privilèges et immunités diplomatiques.

Art.7.

Incompatibilités.

Aucun Juge de la Cour ne peut exercer les fonctions d'agent, d'avocat ou de conseil, dans aucune affaire. Les Juges suppléants ne sont exclus desdites qualités que relativement aux affaires pour lesquelles ils sont appelés à exercer leurs fonctions près de la Cour.

Les membres ne peuvent exercer leurs fonctions en toute affaire dans laquelle ils sont antérieurement intervenus comme agents, avocats ou conseils de l'une des parties, ou comme membre d'un tribunal national ou international ou d'une commission d'enquête ou en toute autre qualité.

Art.8.

Nominations aux sièges vacants.

Il est pourvu aux sièges devenus vacants selon la méthode suivie pour la première élection.

La personne élue pour remplir le siège vacant à la Cour, sera nommée, en ce qui concerne la durée de ses fonctions conformément au présent statut, pour une période

- III -

période de neuf ans à partir de la date de son élection.

Art.9.

Porte de fonctions.

Les membres de la Cour peuvent être relevés de leurs fonctions, si, au jugement unanime des autres membres, ils ont cessé de répondre aux conditions requises par le présent Statut.

Le Secrétaire Générale de la Société des Nations est officiellement informé par le greffier.

Cette communication emporte vacance de siège.

Art.10.

Election du Président et du Vice-Président.

La Cour élit un Président et un Vice-Président parmi ses membres pour une période de trois ans; ils sont rééligibles pour de nouvelles périodes de trois ans.

Art.11.

Election du Greffier.

La Cour nomme son Greffier.

La fonction de Greffier de la Cour n'est pas incompatible avec celle de Secrétaire Générale de la Cour Permanente d'Arbitrage.

Art.12.

Siège de la Cour.

Le siège de la Cour est fixé à La Haye.

Art.13.

Session de la Cour.

La Cour siège dans les trois mois qui suivent la mise au rôle de toute affaire, et continue à siéger tant que le rôle n'est pas épuisé.

Le Président convoque la Cour en session quand les circonstances l'exigent.

Art.14.

Composition de la Cour.

Sous réserve de ce qui est prévu par le présent Statut, le Président ou en son lieu



lieu le Vice-Président décide qui siège comme Juge dans toute session de la Cour.

Si pour une raison spéciale, l'un des membres de la Cour estime devoir ne pas participer au jugement d'une affaire déterminée, il en fait part au Président.

La Cour siège en une ou plusieurs Sections; une Section se compose de cinq Juges, dont un peut être un Juge suppléant.

#### Art.15.

##### Appel.

Au cas où une Section rend un arrêt prononçant la peine de mort ou de prison à perpétuité ou pour une période supérieure à cinq ans, il y a lieu à appel devant une Cour composée d'au moins sept Juges dont deux au plus peuvent être des Juges suppléants. L'Etat défendeur accusé d'une infraction a droit en tout cas d'interjeter appel par devant cette Cour contre toute décision rendue par une Section.

#### Art.16.

##### Cour sommaire.

Le Président ou le Vice-Président peut former, toutes les fois qu'il le juge nécessaire, des Cours sommaires composées chacune de trois membres dont un Juge, afin de statuer en procédure sommaire sur les affaires dans lesquelles une accusation est portée, non contre un Etat, mais contre un national de cet Etat, et dans les cas où le représentant du gouvernement de l'accusé consent à ce que l'affaire soit entendue devant cette Cour. En ce cas l'accusé a le droit d'appel conformément à l'article 15. Ces cours peuvent prononcer une peine maximum de deux ans, de prison, ou d'un an, avec travaux forcés, avec faculté de condamner à une amende qui ne peut dépasser cent livres sterling.

Toutes les demandes interlocutoires sont portées devant une Cour sommaire.

#### Art.17.

##### Nationalité des Juges.

Les Juges de la nationalité de chacune des parties en cause sont désignés pour siéger dans l'affaire dont la Cour est saisie; si la Cour compte sur le siège un Juge de la nationalité d'une seule des parties, l'autre partie peut désigner pour siéger un Juge suppléant s'il s'en trouve un de sa nationalité. S'il n'en existe pas, elle peut choisir un Juge sur la liste des candidats déjà présentés par la Cour Permanente d'Arbitrage.

Si la Cour ne compte sur le siège aucun Juge ou Juge suppléant de la nationalité des parties, chacune de ces parties peut procéder au choix d'un Juge sur ladite liste. Les Juges désignés aux termes du présent article sont régis par les règles prévues aux arts. 1. à 7. du présent statut.

Art. 18.

Règle de Procédure.

La Cour établit les règles de sa procédure y compris celle de la procédure sommaire.

Art. 19.

Emoluments.

Les émoluments (allocations et pensions comprises) des Juges et Juges suppléant, et ceux du greffier seront fixés par l'Assemblée de la Société des Nations sur la proposition du Conseil et seront soumis aux règlements qui peuvent être établis de la même manière.

Art. 20.

Frais de la Cour.

Les frais de la Cour sont supportés par les Membres de la Société des Nations dans la proportion que l'Assemblée peut décider sur la proposition du Conseil.

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CHAPITRE II.

Compétence de la Cour.

Art. 21.

Compétence.

La compétence de la Cour s'étend à toute accusation de:

- a. Violations d'obligations internationales, ayant un caractère pénal, commises par les sujets ou citoyens d'un Etat ou par un habitant, contre un autre Etat, ou ses sujets, ou ses citoyens.
- b. Violations de tous traités, convention ou déclaration liant les Etats parties à la Convention de (lieu) datée le , 19 , qui règle les méthodes et la conduite des hostilités.
- c. Violations des lois et coutumes de guerre généralement acceptées et reconnues obligatoires par les nations civilisées.

Sous réserve de la compétence ordinaire de la Cour, ainsi qu'elle est définie

définie plus haut, la Cour est compétente pour juger toutes affaires ayant un caractère pénal, qui lui seraient déferées par le Conseil ou l'Assemblée de la Société des Nations, pour être jugées ou pour être l'objet d'une enquête, et pour présenter un rapport à leur propos. En cas de contestation sur le point de savoir si la Cour est compétente, la Cour décide.

Art.22.

Jugement, Condamnation, Arrêt.

La Cour peut rendre un arrêt déclaratoire, en toute matière portée devant elle, sans prononcer aucune peine.

Lorsque la Cour trouve que l'accusation portée contre un Etat est établie, elle peut ordonner qu'il soit payé par cet Etat à l'Etat plaignant:

a. une pénalité pécuniaire, b. une indemnité pour tout dommage causé, c. une somme à tout sujet ou citoyen de l'Etat plaignant, sous forme d'indemnité, qui aura prouvé avoir subi une perte ou un dommage causé par l'acte ou l'omission de l'Etat accusé, ou de tout sujet, ou de tout citoyen de cet Etat.

Lorsque la Cour trouve qu'une accusation contre un sujet, ou un citoyen, ou un Heimatlos est établie, la Cour peut le condamner à toute peine qu'elle croit juste, sous les conditions suivantes:

- a. La peine de mort ne sera prononcée contre personne, à moins que cette peine ne puisse être infligée pour une infraction similaire selon les lois de l'Etat auquel appartient le coupable.
- b. En aucun cas, le fouet ne sera ordonné;
- c. En tous autres cas, la peine d'emprisonnement ou de détention sera prononcée par la Cour, qui ordonnera la Nature de l'emprisonnement ou de la détention infligée;
- d. Les pénalités pécuniaires et les indemnités seront infligées, soit cumulativement, soit au lieu de la peine prononcée.

Art.23.

Droit applicable.

La Cour applique:

1. Les traités, conventions et déclarations internationaux, soit généraux, soit spéciaux, reconnus par les Etats en litige.



2. La coutume internationale comme preuve d'une coutume générale acceptée ayant la force d'une loi.

3. Les principes généraux de droit public ou international reconnus par les nations civilisées.

4. Les décisions judiciaires comme moyens auxiliaires de détermination des règles de droit.

En outre, la doctrine des publicistes les plus qualifiés peut être citée.

Pourvu qu'aucun acte ne puisse être jugé comme infraction à moins qu'un acte pareil ne soit reconnu comme infraction par le Statut de la Cour ou par la loi interne de l'accusé ou, dans le cas d'unheimatlos, par la loi du lieu de sa résidence au moment de la perpétration du crime, ou à défaut de résidence, par la loi de l'Etat où le crime aura été commis.

### CHAPITRE III.

#### Procédure.

#### Art. 24.

#### Parties.

Les Etats parties à la Convention de (lieu) datée le , 19 , et tous autres Etats qui acceptent la compétence de la Cour par traité ou adhésion ou autrement ont le droit de recours à cette Cour. Le dépôt d'une accusation par un Etat qui n'est pas partie à ladite Convention est réputé équivalant à l'adhésion à ladite Convention.

1. Tout Etat a le droit de porter plainte pour son propre compte ou pour le compte de ses sujets ou de ses citoyens ou pour tous les deux contre un autre Etat, ses sujets ou ses citoyens ou contre tous les deux à la condition qu'au cas où une accusation est portée seulement contre un sujet ou un citoyen de l'Etat auquel ce sujet appartient, ledit Etat soit mis en cause.

2. Aucun sujet ou citoyen n'a le droit d'ester en qualité d'accusateur.

Une accusation peut être déposée contre un Etat un sujet ou un citoyen ou contre tous les deux malgré que cet Etat ne soit pas partie à la Convention ou n'ait pas accepté la compétence de la Cour. Un Etat qui n'est partie à la Convention et contre lequel une accusation est portée, peut accepter la compétence de la Cour en donnant avis à cet effet au greffier.

Si l'accusation est prouvée, la Cour prononce un arrêt seulement, mais elle ne prononce pas de condamnation. Sous réserve des règles établies par le Règlement

Règlement de la Cour; les règles du présent Statut se rapportent à la rédaction, à la signification et au jugement de l'accusation doivent, en tant qu'elles peuvent être appliquées, être observées dans la procédure.

Art. 25.

Contenu et signification de l'accusation.

L'accusation est faite par écrit, elle contient une relation succincte des faits constitutifs de l'infraction et elle est accompagnée, s'il y a lieu, des pièces sur lesquelles elle se base. L'acte d'accusation et les pièces sont déposés au greffe.

L'acte d'accusation ne peut être signifié à un Etat, un sujet ou un citoyen qu'à la suite d'une demande faite à la Cour et après autorisation par cette dernière de la manière prévue par le présent Statut.

La demande d'autorisation de signifier l'acte d'accusation est faite par l'Etat demandeur à la Section formée par le Président ou le Vice-Président pour juger cette demande.

En tout état de cause, la Cour pourra rejeter toute plainte qu'elle juge sans importance, de nature frivole, vexatoire ou qui constituera un abus de la procédure de la Cour.

Le greffier doit signifier une copie de l'acte d'accusation à l'Etat défendeur, et ledit Etat doit comparaître par devant la Cour et assurer la comparution de tout sujet ou citoyen nommé dans l'acte d'accusation.

Si un Etat ou un sujet ou un citoyen défendeur ou un hématlos présente une défense spéciale, il doit en faire la notification au greffier en temps utile, et le greffier en fera parvenir une copie à l'Etat plaignant.

Art. 26.

Représentants des parties.

Les Etats plaignants et défendeurs sont représentés dans la procédure par des agents et peuvent plaider leurs affaires respectives devant la Cour par des agents ou des conseils ou des avocats. Le sujet ou citoyen ou hématlos défendeur comparait à l'audience de la Cour et peut plaider son affaire en personne ou peut se faire représenter à cet effet par un agent, un conseil ou un avocat.

Art. 27.

Nomination du Procureur ou Agent.

Art.27.

Nomination du Procureur ou Agent.

Les plaignants, en déposant l'acte d'accusation et les Etats défendeurs à qui signification en aura été faite nommeront immédiatement un procureur ou un agent ayant sa résidence dans l'Etat où se trouve la Cour et ratifieront ladite nomination au greffier de la Cour.

Cette nomination donne droit et comporte obligation ipso facto pour le procureur ou agent nommé d'accepter au nom de son mandat la signification de toutes notifications, ordonnances, sommations et de toute autre démarche, ladite signification à lui faite valant signification à son mandant et devenant obligatoire pour lui.

La signification faite au Procureur ou à l'Agent d'un Etat défendeur constituera une signification valable à un sujet ou citoyen défendeur dudit Etat.

La signification de notifications, ordonnances, sommations ou toute autre démarche faite aux individus et personnes morales hors du territoire de l'Etat où se trouve la Cour, sera effectuée quand il y en aura besoin par requête; L'Etat, partie dans la procédure, doit se conformer à la requête et informer immédiatement le greffier par le dit procureur, si la requête a été exécutée ou non, suivant le cas.

Art.28.

Commission Rogatoire.

Lorsqu'il paraît nécessaire à la Cour de recueillir des témoignages en dehors de la Cour, elle peut ordonner à cet effet une commission rogatoire.

Art.29.

Pouvoirs de la Cour.

La Cour peut aux fins du présent Statut à tout moment:

- a. Ordonner la communication et la production de tout document, pièce, ou autre chose ayant trait à la procédure et dont la production paraît nécessaire au jugement de l'affaire; et
- b. Ordonner la comparution de témoins et leur audition par devant la Cour ou par devant un ou plusieurs de ses membres ou ordonner que l'audition de ces témoins soit faite conformément aux règles de leur loi territoriale et admettre leur déposition comme preuve par devant la Cour ou par devant un ou plusieurs de ses membres;



c. Quand un point surgit dans l'affaire entraînant une longue investigation qui à l'avis de la Cour ne peut être faite convenablement par devant elle, elle ordonne qu'il en soit référé à un Commissaire spécial nommé par elle, afin qu'il fasse une enquête et présente son rapport, et la Cour peut statuer sur ce rapport ce qu'il appartiendra; et

d. Ordonner la comparution de tout expert en matière militaire, navale, aérienne et scientifique afin qu'il soit entendu dans toute affaire où il paraît à la Cour que ses connaissances spéciales sont nécessaires au jugement de l'affaire; et

e. Sur la demande de toute partie en cause, ou de sa propre initiative, la Cour peut mettre en cause comme défendeur un autre Etat ou un sujet ou un citoyen de l'Etat défendeur ou de tout autre Etat comme elle le croira utile.

f. Lancer un mandat d'amener ou un mandat d'arrêt contre l'accusé.

#### Art. 30.

##### Audience.

L'audience est publique, à moins qu'à cause de la nature de l'accusation ou des témoignages, la Cour décide autrement.

#### Art. 31.

##### Procédure Orale.

La Procédure orale consiste dans l'audition par la Cour des témoins, agents, conseils et avocats; les témoins peuvent être contre-examinés, et réexaminés.

En tout état de cause, la Cour peut poser à tout témoin toute question qu'il lui paraîtra utile. Le sujet ou citoyen défendeur peut être requis de donner son témoignage, mais il ne peut le donner en toute autre qualité.

#### Art. 32.

##### Procès-Verbal de l'Audience.

Procès-Verbal de l'audience est signé par le Juge qui la préside et par le Greffier.

Le Procès-Verbal contient un compte-rendu succinct de tous les incidents importants et constitue la seule preuve que les formalités prescrites pour l'audience ont été observées.

#### Art. 33.

Art. 33.

Défaut de comparaître.

Si un sujet ou un citoyen ou un habitant accusé ne comparait pas à l'audience, la Cour, après avoir eu la preuve que l'acte d'accusation a été signifié, peut (1) procéder au jugement de l'affaire, rendre son arrêt, et prononcer une condamnation, s'il y a lieu, comme si l'accusé avait comparu et plaidé non coupable, ou, si elle juge nécessaire, (2) renvoyer l'affaire, lancer un mandat d'amener ou un mandat d'arrêt, et continuer le jugement de l'affaire en la présence de l'accusé.

La Cour doit s'assurer non seulement qu'elle a compétence aux termes de l'Art. 21, mais que l'accusation est bien fondée en fait et en droit.

Art. 34.

Prononcé de l'Arrêt.

Quand l'accusation et la défense auront présenté leurs moyens et complété leurs plaidoiries, le Juge qui préside déclare les débats clos et l'affaire entendue.

La Cour peut rendre son arrêt immédiatement ou se retirer pour délibérer ou réserver son jugement. Les délibérations de la Cour sont et restent secrètes.

Art. 35.

Arrêt rendu à la majorité.

Les décisions de la Cour sont prises à la majorité des Juges présents à l'audience, pourvu que la décision sur l'accusation et la peine soit prise à la majorité des deux tiers des Juges.

En cas de partage des voix, l'accusation sera rejetée.

Art. 36.

Motifs de l'Arrêt.

Tout arrêt de condamnation ou d'acquittement expose les motifs sur lesquels il est fondé, ainsi que la loi applicable.

L'arrêt de la Cour est prononcé par son Président, et aucun arrêt n'est prononcé par un autre membre de la Cour. L'arrêt est lu en audience publique. Il est signé par le Président et le Greffier et il est déposé aux archives de la Cour.

Art. 37.

Art. 37.

Exécutions des Arrêts et des Ordonnances de la Cour.

L'arrêt prononcé par la Cour est exécuté par l'Etat dont le condamné est sujet ou citoyen, ou si le condamné est un héimatlos, par l'Etat dans lequel il réside. L'Etat défendeur présentera à la Cour un rapport sur la bonne exécution de la sentence.

L'arrêt condamnant un Etat et les Ordonnances de la Cour seront exécutées sur requête par chacun des Etats contractants.

Art. 38.

Cassation et Révision.

Le pourvoi en cassation ou en révision de l'arrêt ne peut être fait que par un Etat défendeur ou son sujet ou citoyen, et seulement à raison de la découverte d'un fait de nature à exercer une influence décisive et qui avant le prononcé de l'arrêt, était inconnu de la Cour, et de la partie qui demande la révision, sans qu'il y ait en de sa part faute à l'ignorer.

Art. 39.

Le droit de grâce sera exercé par (.....).

Art. 40.

Frais.

La Cour a plein pouvoir discrétionnaire concernant les frais d'une affaire déterminée et tous frais y relatifs.

  

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E.1.

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INTERNATIONAL COMMISSION FOR PENAL RECONSTRUCTION AND DEVELOPMENT

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COMMITTEE ON THE ESTABLISHMENT OF A PROPER CRIMINAL JUSTICE IN

AXIS COUNTRIES, AND THOSE UNDER THEIR CONTROL.

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CONFIDENTIAL: NOT FOR PUBLICATION

INTERNATIONAL COMMISSION FOR PENAL RECONSTRUCTION AND DEVELOPMENT

COMMITTEE ON THE ESTABLISHMENT OF A PROPER CRIMINAL JUSTICE IN  
AXIS COUNTRIES, AND THOSE UNDER THEIR CONTROL.

One of the major tasks which will confront the United Nations when the War is brought to a victorious conclusion, is to take the necessary measures to prevent a repetition on the part of the Axis Powers of their aggression. We know that in many responsible quarters the greatest importance is attached to this aspect of post-war policy. To take two instances only: It is thought that Security Measures will have to be taken to prevent Germany's industrial powers from working for purposes of re-armament. It is also thought that it is no less important to take the appropriate measures in relation to the future educational system of Germany. In considering this policy, criminal justice should not be left out of sight. I imagine that no one will deny the truth of the observation that Dr Radzinowicz and I made when editing the Proceedings of the first Conference of our Commission, namely that "It was no accident that the violations of international law which the world has witnessed in the last ten years have been accompanied, and indeed preceded by violations of the principles of criminal justice (1) in the municipal systems of the countries under Axis influence".

We were glad to notice that in a recent publication issued by the Royal Institute of International Affairs which deals with the problem of Germany, this aspect of our future policy in regard to Germany has not been overlooked. Thus we read in this constructive report the following:

"The suppression of personal freedom in a powerful country like Germany naturally represents a fearful danger for her neighbours, since violations against the rights of the individual citizen is apt to be a preparation (2) for external aggression"

(1) Proceedings of Penal Reconstruction and Development, held on 14 November, 1941 between nine allied countries and of the Department of Criminal Science in the University of Cambridge, edited by L. Radzinowicz and J.W.C. Turner, p.2.

(2) The Problem of Germany, Royal Institute of International Affairs, Oxford University Press, 1943, p.40.

The same observation can be applied to other Axis Powers. It will be imperative once the war is over to see the complete liquidation of the penal system introduced by the Nazi and Fascist Governments, and a re-establishment of a proper criminal justice. This penal reconstruction must take place not only in the Axis countries, but also in all those which are either controlled or influenced by them. That task, in order adequately to be fulfilled must be preceded by the collection of reliable and comprehensive material, showing the changes which the Axis Powers have introduced in the penal system of their respective countries.

This is the purpose of a Committee which we propose to set up and I therefore have the honour to move:

"That this Conference hereby sets up a Committee for the Establishment of a Proper Criminal Justice in Axis countries and others under their control".

If the Conference adopts this resolution in due course the members will be consulted as to the composition of the Committee and the procedure that is to be pursued.



INTERNATIONAL COMMISSION FOR PENAL RECONSTRUCTION AND DEVELOPMENT

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COMMITTEE ON THE RIGHTS TO BE ACCORDED TO PERSONS SUSPECTED  
OR ACCUSED OF CRIMES.

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CHAIRMAN: His Excellency Professor S. Glaser, LL.D.,  
Polish Minister to the Government of Belgium.

DRAFT OF A MINIMUM CODE OF RULES

Article 1.

Detention before trial shall be an exceptional measure of prevention, applicable only in cases of the more important offences, and if there is real danger that the fact of the accused being at liberty might interfere with the course of justice.

Article 2.

Magistrates shall be the sole authority empowered to decide on detention before trial. The accused shall be brought before the appropriate magistrate within 24 hours of arrest. The only exception shall be when Sunday intervenes, in which case the period may be as much as 48 hours. The nature of the charge against the accused shall be communicated to him immediately upon arrest.

Article 3.

The duration of detention before trial shall not exceed six weeks save that in exceptional cases only, the judge may extend this period for not longer than a further six weeks, but in such case the judge must state his reasons for the extension.

Article 4.

Special establishments shall be provided for persons detained before trial. These establishments shall not be called prisons.

Article 5.

The accused while detained shall be subjected to the minimum restriction and privation.

Article 6.

Decisions on detention before trial, or on prolongation of such detention or on release on bail, shall be taken in public session. There shall be a right of appeal to a higher court (court of second instance) against a decision imposing detention before trial.

Article 7.

Supervisory officers shall be entrusted with the duty of ensuring that sentences involving deprivation of liberty are carried out in strict accordance with the law. These officers shall be provided and appointed by authorities independent of the police and prison administration.

Article 8.

Prison officials shall constitute a special body, separated from the police force, and independent of police control.

Article 9.

The period of detention before sentence shall be counted as part of the actual sentence in every case, except when the accused has caused the trial to be delayed.

Article 10.

Magistrates and officials guilty of abuses of the pre-trial stages of procedure shall be amenable to disciplinary punishments imposed by a higher court.

Article 11.

Any person proved to have been unjustly detained, shall have the right to compensation from public funds.

Article 12.

Save in cases where he manifests violence the accused shall appear before the Court unmanacled and accompanied only by guards to prevent him from escaping.

Article 13.

The accused shall have the right to consult a lawyer as soon as he desires, the consultation to take place within sight, but out of hearing of the police or prison officials.

Article 14.

Any person may apply at any stage of the proceedings to be granted, on grounds of poverty, legal advice at the expense of the State. An appeal to a higher court shall lie against a refusal to accede to such application.

Article 15.

The accused and his legal adviser shall have the right to inspect in good time any relevant documents and other evidence which the prosecution intend to use against him.

Article 16.

Only a voluntary confession, made without the application of any threat or promise, shall be admissible in evidence against the accused.

Article 17.

The employment of deceit or of mental or physical torture to extract confessions or other statements shall be prohibited in the criminal codes as a serious offence.

Article 18.

The accused may decline to answer questions put to him by the police or magistrates.

Article 19.

At any stage in the proceedings the accused may refuse to answer questions put to him in the absence of his legal adviser.

Article 20.

Any confession by the accused shall not be accepted, save after the same examination and tests as are applied to any other evidence.

Article 21.

The accused and his legal adviser shall have the right to call evidence at any stage of the proceedings.

Article 22.

The accused may not be tried and convicted in his absence, save with his consent or if, after reasonable notice of the trial has been given to him, he neglects or refuses to attend.



Article 23.

No evidence against the accused may be given in his absence and that of his legal adviser unless the accused has consented to be dealt with in his absence or after reasonable notice of the proceedings has been given to him, he neglects or refuses to attend.

Article 24.

If an accused person appeals to a higher court, such court may not increase the sentence (i.e. shall not have the right of reformatio in peius).

Article 25.

A special tribunal shall be established as a court of ultimate appeal, sitting in public, to hear and investigate complaints that any of the rights accorded by these Articles have been violated, with power to nullify acts done contrary to the right guaranteed, to rectify any abuse of the rights and to compensate the accused therefor.

Article 26.

Where a right of appeal has not been expressly provided in the preceding Articles, an accused or convicted person shall none the less be allowed to bring before the special court described in Article 25 a complaint that he has been denied any of the rights accorded to him in any of these Articles, and such court shall hear and investigate his complaint and shall make such order as may be found just.

Article 27.

The above-mentioned rules shall be enacted in the constitutional laws of each country as "minimum rules".

It is suggested that all States should be invited to bind themselves by international treaties (conventions) to adopt the rules outlined in the above Articles, and to establish an International Tribunal to hear complaints of any failure to observe such minimum rules.

June, 1943.

CONFIDENTIAL

LONDON INTERNATIONAL ASSEMBLY

COMMISSION II ON THE TRIAL OF WAR CRIMINALS

Minutes of the meeting held at 4 p.m. on Tuesday, 24th November, 1942, at 115, Eaton Square, S.W.1

Were present : Prof. Dr. de Baer (in the Chair) (Belgium), Dr. Aulie (Norway), Dr. Bisschop (Great Britain), Dr. de Moor (Holland), Dr. Lehmann (Great Britain), Dame Adelaide Livingstone (Great Britain), Mr. Slavic (Czechoslovakia), Mr. Thurneyssen (representing Prof. Cassin) (France), Dr. Winkel (Holland), Mr. Yusuf Ali (India), Miss Lazarus (representing Mr. Judd - L.I.A. Secretarial), Miss Van Steenkiste (Acting Secretary)

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The Minutes of the meeting held on the 3rd November, 1942, were approved by all members present.

The CHAIRMAN informed the assembly that Mr. Slavic desired to propose a new member for election : Dr. Bohuslav ECER, Barrister-at-Law and deputy-Mayor of Brno. Dr. Bohuslav Ecer, he added, only escaped recently from France and is very interested in the question of the punishment of war criminals. He is an eminent criminologist and would certainly be of great value to our Commission. The proposal was seconded by Dr. Bisschop to whom Dr. Ecer is personally known, and the Commission unanimously elected Dr. Ecer as a member.

The CHAIRMAN then asked Dr. WINKEL to read the report which had been drafted by Dame Livingstone, Dr. Lehmann and himself, and after a general discussion the majority of the members agreed with the following wording :

"Suggestions for the work of the United Nations' Commission for the Investigation of War Crimes.

1. The United Nations' Commission for the Investigation of War Crimes, which is being set up, will have for its primary task the collecting of evidence with a view to the immediate punishment of war criminals after the termination of hostilities.
2. In order to facilitate the working of the said United Nations' Commission it is suggested that each Allied Government should take evidence from its own nationals, which should then be submitted to the United Nations' Commission.
3. This evidence should be taken by the proper authority, and in the form prescribed by the law of the relevant country.
4. The investigation should not be limited to the crimes defined in the existing criminal code of the relevant country and should be extended to offences against international law.
5. Any information relating to war crimes obtained so far by each Allied Government should be reviewed by them and, if necessary, supplemented and afterwards submitted to the United Nations' Commission.
6. The necessary machinery for collecting and supplementing evidence to be obtained in liberated territories should be prepared now. The setting up of an Inter-Allied Constabulary functioning in Axis countries should be studied now.

7. The Committee feels that it would be desirable that the scope of the United Nations' Commission should be extended to those questions which arise in connection with the extradition of war criminals.

8. The drafting of an International Criminal Code concerning the punishment of war crimes, should be one of the aims of the United Nations' Commission."

It was proposed to bring this Resolution urgently before the L.I.A. and the CHAIRMAN said that he would do this on Wednesday, 16th inst., at the meeting of the General Purposes Committee of the L.I.A.

There was no time to continue the discussion on the list of war crimes, which had to be postponed until the next meeting.

It was proposed to hold the next meeting on Tuesday, 15th December, 1942, at 4 p.m. sharp.

The meeting was closed at 6 p.m.



## LONDON INTERNATIONAL ASSEMBLY

Fourteenth Ordinary Meeting of the First Session  
to be held at Gas Industry House, Grosvenor Crescent,  
S.W.1  
at 2.30 p.m. on Monday, November 30th, 1942.

The Rt. Hon. Viscount Cecil will preside

### AGENDA

#### 1. "REPORT ON AMERICA"

(A discussion on America at the end of the first year of war: the development of America's war effort, the problems of war organisation, and present trends of public opinion in America with regard to the war and the kind of settlement that should follow the war).

##### (a) Opening Speakers:

Professor R.H. Tawney, B.A., Litt.D., Professor of Economic History at the London School of Economics, who has recently returned from a special mission to the British Embassy at Washington to advise on labour questions.

Lieut-Commander Herbert Agar, U.S.N.R., now attached to the American Embassy in London, on leave of absence from the Editorship of the "Louisville Courier Journal".

##### (b) Questions and Discussion in which the General Purposes Committee especially invites members of the Assembly who have visited America during the year to take part.

#### 2. (not later than 4.30 p.m.)

##### "THE TRIAL OF WAR CRIMINALS"

The Chairman of Commission II, Dr. de Baer, Chief of the Belgian Courts of Justice in Great Britain, will propose that the following suggestions be submitted for the work of the "United Nations' Commission for the Investigation of War Crimes":

- (1) The United Nations Commission for the Investigation of War Crimes, which is being set up, will have for its primary task the collecting of evidence with a view to the immediate punishment of war criminals after the termination of hostilities.
- (2) In order to facilitate the working of the said United Nations Commission it is suggested that each Allied Government should take evidence from its own nationals, which should then be submitted to the United Nations Commission.
- (3) This evidence should be taken by the proper authority of, and in the form prescribed by, the law of the relevant country.

P.T.O.

- (4) The investigation should not be limited to the crimes defined in the existing criminal code of the relevant countries and should be extended to offences against international law.
- (5) Any information relating to war crimes obtained so far by each Allied Government should be reviewed by them and, if necessary, supplemented and afterwards submitted to the United Nations Commission.
- (6) The necessary machinery for collecting and supplementing evidence to be obtained in liberated territories should be prepared now. The setting up of an inter-allied constabulary in Axis countries should be studied now.
- (7) It is desirable that the scope of the United Nations Commission should be extended to those questions which arise in connection with the extradition of war criminals.
- (8) The drafting of an international criminal code concerning war crimes should be one of the aims of the United Nations Commission.

3.

### PRIVATE BUSINESS

The Chairman of the General Purposes Committee, Professor Arthur Newell, President of the American Outpost, will present a short statement on behalf of the Committee and will move

- (1) That Professor Henri Rolin, Legal Adviser to the Belgian Ministry of Foreign Affairs and Counsellor of the Belgian Supreme Court of Justice, former Delegate to League of Nations Assemblies; at one time President of the International Federation of League of Nations Societies and President of the First World Youth Congress, be elected Deputy President of the London International Assembly.
- (2) That H.E. Monsieur Aghnides, Greek Ambassador to Great Britain, be invited to be an Honorary Vice-President of the Assembly.

5 p.m. - Tea.

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Admission to the Assembly will be by membership card. Members are asked to arrive not later than 2.25 p.m. and to record their attendance at the door. The doors will be closed at 2.30 p.m. and will be kept closed during each speech. Members wishing to address the Assembly are asked to send up their names to the President and to come to the platform when called upon to speak.

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### Discussion on India

Members are reminded that Colonel His Highness the Maharajah Jai Sahib of Nawanagar, Chancellor of the Chamber of Princes and Representative of India at the War Cabinet, will address a private meeting of members of the Assembly and their friends at Gas Industry House at 4.30 p.m. on Thursday, December 3rd. Lord Lytton will preside.

Names of those who intend to be present must reach the Secretary at 11 Maiden Lane, W.C.2 not later than Tuesday, December 1st.

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The Secretariat regrets that owing to shortage of staff it has not yet been possible to issue the full Proceedings of recent meetings.



CONFIDENTIAL

LONDON INTERNATIONAL ASSEMBLY

COMMISSION II ON THE TRIAL OF WAR CRIMINALS

Minutes of the meeting held at 4 p.m. on Tuesday, 15th December, 1942, at 115, Eaton Square, S.W.1.

Were present : Prof. Dr. de Baer (in the chair) (Belgium), Dr. Bisschop (Great Britain), Mr. Vernon Gattie, (Great Britain), Dr. Lehmann (Great Britain), Dame Adelaide Livingstone (Great Britain), Dr. Tschoffen (Belgium), Mr. Thurneysen (representing Prof. Cassin) (France), Mr. Yusuf Ali (India), Miss Lazarus (representing Mr. Judd - L.I.A. Secretarial), Miss Van Steenkiste (Acting Secretary).

The Minutes of the meeting held on the 24th November, 1942, were approved by all members present.

The CHAIRMAN informed the assembly that he had received a request by some Czech members of the Commission suggesting that he should write to Lord Cecil in connection with the anxiety which was felt in respect of the collaboration with Admiral Darlan. The CHAIRMAN read the letter which he had drafted.

Dr. BISSCHOP and Mr. VERNON GATTIE did not approve of this letter being sent to Lord Cecil, because they were under the impression that the question of collaboration with Admiral Darlan was a purely political matter and that it did not come under the scope of Commission II.

The CHAIRMAN decided to postpone the further discussion of the letter until the next meeting, when he hoped that the members who had asked him to write it would be present.

The CHAIRMAN then stated that he had a second proposal to make : he had learned that Dr. Bohuslav ECER, the new member for Czechoslovakia, was conversant with Soviet and German laws as they stand at present and that he would be willing to address the Commission on this subject. As all the members present agreed with this proposal, the CHAIRMAN promised to ask Dr. ECER to do so at an early date.

The CHAIRMAN further informed the members that it was proposed to alter the terms of reference of some of the Commissions of the L.I.A. and asked them if Commission II would be ready to study alongside with the punishment of war crimes, the question of the armistice terms. He asked the members present to think the matter over in order to discuss it at a further meeting.

The CHAIRMAN was also pleased to inform the members that Professor Sheldon GLUECK had published in the "Free World" an article which was completely in accordance with the ideas of this Commission, and which would undoubtedly influence American public opinion. Professor GLUECK was sending copies of his article which the CHAIRMAN would circulate as soon as he had received them.

The new provisional list of War Crimes was then discussed, it was modified in accordance with the views of the members and is attached to these Minutes.

It was proposed to hold the next meeting on Tuesday, 12th January, 1943, at 4 p.m. sharp, when the discussion will be opened on the law which is to be applied.

The meeting was closed at 6.30 p.m.

P.T.O.



## LIST OF WAR CRIMES

First category : acts directly connected with warfare and contrary to customs of war :

- (i) Making use of poisoned or otherwise forbidden arms and ammunition, including asphyxiating, poisonous, and similar gases or methods.
- (ii) Wilful attacks on hospital ships and hospitals.
- (iii) Refusal of quarter.
- (iv) Killing of the wounded.
- (v) Wilful prevention of the saving of lives on land or at sea, when such saving was possible.
- (vi) Use of civilians or prisoners of war as a screen for troops, or for clearing minefields or removing mines, or for any other work immediately connected with actual fighting.
- (vii) Any other violation of The Hague Convention IV or of the Convention of Washington.

Second category : acts which have caused death, illness or bodily harm or loss of liberty to those to whom they were applied :

- (a) crimes committed without order or authority :  
Serious crimes against persons punishable by ordinary criminal law, committed without any pretence of legal authority or order, (including e.g., murder, manslaughter, infliction or grievous bodily harm, torture, false imprisonment, rape, etc..)
- (b) crimes ordered by or committed under order of or with approval of authorities :
  - (i) Common murder - or mass murder of civilians or prisoners of war.
  - (ii) Putting hostages to death.
  - (iii) Execution, bodily disablement or prolonged deprivation of liberty ordered by a court which was either (a) composed of persons some of whom have no authority to sit on it, or (b) without jurisdiction as to the person or the act, or (c) imposing a sentence in violation of the law or without due respect for the rights of the defence.
  - (iv) Wilful starvation of populations, excessive removal of foodstuffs, or depriving persons of shelter, clothing and/or other means of sustenance.
  - (v) Compulsory enlistment of civilians or prisoners of war in enemy forces, or in dangerous war work.
  - (vi) Internment or segregation in inhuman conditions.
  - (vii) Mass deportation.
  - (viii) Abduction of women with the object of prostitution.
  - (ix) Abduction of children.
  - (x) Serious ill-treatment or torture of civilians or prisoners of war.
  - (xi) Compelling sick or wounded, women, children or old people to a work which is out of proportion with their condition, age or sex.
  - (xii) Imposing collective punishments.
  - (xiii) Any other violations of the Geneva Convention of 1929.

Third category : serious crimes against property :

- (a) crimes committed without authority or order :  
Crimes against property under ordinary criminal law (theft - looting - robbery, arson, etc..)
- (b) crimes committed under order or with approval of authorities :
  - (i) Wanton destruction of property unrelated to military events, carried out by the occupying authorities, in occupied countries.
  - (ii) Plundering or removal of property belonging to the State, Associations, Churches, Schools, etc... or private individuals.

CONFIDENTIAL

LONDON INTERNATIONAL ASSEMBLY

COMMISSION II ON THE TRIAL OF WAR CRIMINALS

Minutes of the meeting held at 4 p.m. on Tuesday, 9th February, 1943, at 115, Eaton Square, S.W.1.

Were present : Mr. de Baer (in the chair) (Belgium), Dr. Aulie (Norway), Dr. Bisschop (Great Britain), Dr. Ecor (Czechoslovakia), Mr. Vernon Gattie (Great Britain), Dame Adelaide Livingstone (Great Britain), Mr. Stabell (Norway), Mr. Thurneysson (representing Prof. Cassin) (France), Prof. Winiarski (Poland), Miss Lazarus (representing Mr. Judd - L.I.A. Secretarial), Miss Van Steenkiste (Acting Secretary).

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I. The Minutes of the meeting held on January 19th, 1943, were approved by all members present.

II. The CHAIRMAN informed the assembly that Commission II was going to be wound up and become Commission I and that this meeting was the last one of Commission II as it now stood.

The terms of reference of Commission I which was to be called "Liquidation of the War" were the following : (a) Liberation of United Nations, (b) Restoration of their Governments and rights, (c) Occupation of Axis countries, (d) War Criminals, (e) Disarmament of Axis powers, (f) Restitutions.

The CHAIRMAN asked the members of Commission II who were present and who were not members of the London International Assembly whether they were prepared to continue their membership of the Commission. Dr. Aulie, Dr. Bisschop, Dr. Ecor, Mr. Stabell and Mr. Thurneysson replied in the affirmative.

III.. The CHAIRMAN then stated that as Commission II was being wound up he had thought it useful to sum up the work which had been done so far in a form of Resolution. This Resolution, he added, was not for publication, but was to serve as a guidance to the new Commission and to record the work which had been done so far.

After a general discussion of the Resolution of which a copy had been sent to all the members, the following wording was adopted :

WHEREAS the punishment of the authors of this aggressive war and of war crimes has been many times stated as one of the major purposes of this war; and

WHEREAS it is desirable that crimes committed in Allied occupied countries should be tried in those countries, and

WHEREAS it is not desirable that war criminals who are Axis nationals should be tried by their own Courts, and

WHEREAS some of these criminals may escape punishment for lack of an Allied Court having jurisdiction to try them and whereas the number of potential victims of such crimes includes several millions of prisoners of war and labourers who are nationals of the United Nations; and

WHEREAS in the interest of international morality and order it is also essential that crimes committed against stateless persons should not remain unpunished; and

WHEREAS it is not desirable that the existing jurisdiction of



municipal Courts should be interfered with or curtailed without the consent of the States concerned,

IT IS PROPOSED :

1. that the internal machinery of justice of each Allied State shall not be interfered with by any Armistice or Peace Treaty, and that each of the Allied States will administer justice in its own territory in conformity with its own laws;
2. that crimes which can be tried by municipal Courts may be judged by such Courts either civil or military, as provided, by the law of the countries concerned;
3. that in any country where this is possible and convenient, jurisdiction of municipal Courts (civil or military) shall, by means of suitable legislation, be extended to crimes committed abroad against their nationals;
4. that an International Criminal Court shall be instituted to have jurisdiction over the following categories of crimes :
  - (a) crimes in respect of which no Allied Court has jurisdiction;
  - (b) crimes in respect of which although an Allied Municipal Court has jurisdiction the State concerned prefers not to try it in its own Courts, such as in the following cases :
    - in the case where a trial in the country concerned might lead to disturbances and where a trial by an International Criminal Court would be more convenient;
    - in cases where a country fears that a judgment of its municipal Courts might be considered as biased;
    - in cases where a municipal Court would be unable to obtain evidence, because the witnesses are residing in an Axis country and refuse to leave that country, and where such evidence could be obtained by an International Court functioning in the Axis country where the witnesses are residing;
    - in the case of criminals who have committed crimes in several Allied countries;
    - in the case of criminals who have committed crimes taking effect in several countries (Hitler, Goering, Himmler, etc..)
5. that the necessary machinery shall be set up in the near future, and be ready to function at the moment when fighting has ceased and when, according to the Lord Chancellor's statement of October 7th, 1942, the war criminals are delivered to the Allies.

IV. The discussion on the Draft Convention for the creation of an International Criminal Court which was started, was to be continued at another meeting.

V. No date was fixed for the next meeting, but the CHAIRMAN pointed out that the members would be duly informed.

The meeting was closed at 6.30 p.m.



CONFIDENTIAL

LONDON INTERNATIONAL ASSEMBLY

COMMISSION I. FOR QUESTIONS CONCERNED WITH THE LIQUIDATION OF THE WAR

Minutes of the meeting held at 115, Eaton Square, London, S.W.1., at 4 p.m. on Tuesday, February 23rd, 1943.

Were present : Mr. de Baer (in the chair) (Belgium), Dr. A. Aulie (Norway), Dr. V. Benes (Czechoslovakia), Mr. Burnay (France), Mr. E.A. Colban (Norway), Dr. Cisar (Czechoslovakia), Dr. de Moor (Holland), Mr. Luiz Felipe do Rego Rangel (Brazil), Dr. Ečer (Czechoslovakia), Dr. S.N. Ghose (India), Dr. V. Lehmann (Great Britain), Dame Adelaide Livingstone (Great Britain), Mr. Nagorski (Poland), Mr. H. Rolin (Belgium), Mr. P.P. Stabell (Norway), Mr. Thurneyssen (representing Prof. Cassin) (France), Dr. Winkel (Holland), Prof. Winiarski (Poland), Miss Lazarus (representing Mr. Judd - L.I.A. Secretarial).

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The CHAIRMAN welcomed the members of Commission I. and thanked the members of Commission II for their passed collaboration.

He pointed out that he had thought it useful to sum up the work which had been done so far by Commission II in a form of Resolution. This Resolution was included in the Minutes of the last meeting of Commission II, a copy of which had been distributed to all members present. The CHAIRMAN remarked that this Resolution was not for publication, but would serve as a guidance to the members who were taking over the work of Commission II.

The CHAIRMAN mentioned the terms of reference of Commission I. and proposed to divide the work into four <sup>main</sup> questions : the first which was, in his opinion, of the most immediate importance was the question of unconditional surrender. At Casablanca it had been stated that there would be no cessation of hostilities until the enemy had surrendered unconditionally. The CHAIRMAN wondered what this really meant : surrenders or capitulations are primarily military agreements; did it mean the unconditional surrender of the army alone or did it mean the surrender of the whole German Reich? He thought that as the whole nation was at war with us, it would be logical to construct that expression as meaning that the whole Reich would surrender. In this case what would be the position of the German administration, which would be entirely Nazi? If there had been two parties in Germany, a majority and an opposition, it could have been hoped that after the war the opposition party might have governed. Unfortunately this was not so, any opposition having been suppressed under the Nazi régime, and if Germany collapsed there would be no party to take over the Government. Therefore, the United Nations when they occupied Germany would have to administer the country either by means of Nazi officials or else they would have to take over themselves the control of the whole German administration. The question was did the United Nations have the necessary staff available or were they making any preparations to that effect, e.g. by forming administrators having some knowledge of the German language, institutions, mentality? In this connection a blue-print seemed necessary. Another question that would have to be studied carefully to avoid misunderstandings was what were the powers which would be conferred upon the Allies by the unconditional surrender? The CHAIRMAN thought that a signed agreement would be necessary formally stating the surrender without any possibility for the Nazis of ever disputing that they had accepted it. This agreement would have to be worded very carefully and enumerate the obligations which were to be those of Germany and the powers which the Allies intended to assume. Further there was the

question of the actual signature of the unconditional surrender : After the last war the Armistice had been signed by Erzberger who was held responsible for it and murdered thereafter. It would be unfair to make a democrat seal the doom of Nazism and the CHAIRMAN said that in his opinion the man who should conduct the funeral of the Nazi Reich should be a Nazi : Hitler, Goering, Goebbels or any other leader, and if all these people escaped, there was still Hess.

The second main question which should occupy the Commission's attention was the occupation of Germany. By whom would the aforesaid powers be exercised? Obviously by the Military. But much caution was needed : mistakes could easily be made in the beginning and a bad start might be fatal. It is indispensable, said the CHAIRMAN, that a United Nations' Council or Board be instituted to deal with those questions and assist the Commander-in-Chief with its advice.

The third question, of vital importance as soon as the occupation was established, would be that of the repatriations and restitutions. Man-Power and Equipment which the Nazis had stolen from the occupied countries and taken to their own country would have to be restituted at once in order that the plundered factories of the liberated countries could start work as quickly as possible. Restitutions also applied to the art treasures which had been stolen and should be returned to their owners without delay.

The fourth question was the continuation of the work of the punishment of war criminals which included the Responsibility of Heads of States, Superior Orders, Extradition, the extension of jurisdiction of national courts (civil or military) to acts committed abroad against nationals, and finally the possible institution of an International Criminal Court.

M. ROLIN thanked the Chairman for his interesting account and said that some of the questions which had been sent over to this Commission had already been superficially studied and discussed and that papers to this effect would be circulated among the members of Commission I. In M. ROLIN's opinion the immediate steps to be taken following the cessation of hostilities were the following : (1) Liberation of occupied countries, (2) Occupation of Axis countries, (3) Disarmament of Axis countries. Although M. ROLIN agreed with the Chairman's plan, he stated that as far as the unconditional surrender was concerned, personally he did not see the facts in the same way as the Chairman had exposed them : he was afraid that there would be a contradiction in the word "unconditional" compared with the refusal to discuss with the Nazi Government. By "unconditional surrender" M. ROLIN understood a mere military act. He did not believe that this time there would be a signed armistice agreement. It is possible, he added, that we will discuss with the generals of the German, Italian or Japanese Armies and being threatened with destruction and seeing no hope to escape, they may just yield. He further stated that the rights of the Allies would be those in conformity with the Hague Conventions.

M. ROLIN went on by saying that during the occupation of the Rhineland after the last war, there were different zones : American, Belgian, British, French zones. It would be better to have this time a United Nations' occupation. He did not believe that there would be any central Government left in Germany, but the Allies could be helped by local administration which was left in power and of which the staff could be increased.

Another difficult question was the Restoration of their Governments and Rights. It was good to indicate that there would be restoration, but it would not be easy to indicate the way in which this restoration would take place. As example M. ROLIN mentioned the Czechoslovak Government which practically had been in the hands of Quislings over a period of several years, and wondered what the degree of preparation was of the Governments of the Allies to take in their



question of the actual signature of the unconditional surrender : After the last war the Armistice had been signed by Erzberger who was held responsible for it and murdered thereafter. It would be unfair to make a democrat seal the doom of Nazism and the CHAIRMAN said that in his opinion the man who should conduct the funeral of the Nazi Reich should be a Nazi : Hitler, Goering, Goebbels or any other leader, and if all these people escaped, there was still Hess.

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hands the administration.

M. ROLIN further mentioned that there was in preparation at this moment a Joint Conference of International law and that on its agenda one of the items was "The Restoration of Rights". This was needed he said, as the Axis powers had confiscated private property, had liquidated private property, had transferred private property to individuals inside Germany, inside neutral countries and inside occupied countries. He was of the opinion that the question of "Restoration of Rights" could be left aside, as that Conference would deal with it.

M. ROLIN finished by saying that these were his preliminary observations and that he thought it a good thing if Commission I. had "rapporteurs" to look into the various questions which had to be studied.

The CHAIRMAN thanked M. ROLIN for his suggestions and agreed with him that it would be better to appoint various "rapporteurs" rather than to divide the Commission into sections. It would decrease the number of meetings, and when the reports were ready they would be submitted to the Commission and after discussion presented in a form of resolution to the General Purposes Committee.

A discussion followed after which it was agreed that the main questions to be studied would be :

1. The Consequences of Unconditional Surrender,
2. The Occupation of Axis countries,
3. Disarmament of Axis powers,
4. Restitutions,
5. War criminals, this question to include (Superior Orders,  
)Extradition,  
)Extension of Jurisdiction of  
)National Courts,  
)Responsibility of Heads of  
)State,  
)The International Criminal  
)Court.

Dr. LEHMANN put forward that the question of Superior Orders should not be treated in a too narrow sense : there would be a defense and a plea he said, not only of Superior Orders but also of the law which had forced the accused to act.

In connection with this question the CHAIRMAN mentioned that he had in his possession a few copies of the German Militärstrafgesetzbuch of 10 October 1940, and that he was willing to communicate them.

Dr. ECER remarked that a distinction should be made between war crimes taken in the technical sense and the "délits de droit commun", especially as regards Czechoslovakia.

Dr. LEHMANN suggested that the "rapporteur" who was charged with the task of studying the question of Occupation of Axis countries, should examine whether the administration should be civil or military.

Dr. CISAR pointed out that the "rapporteur" on the question of War Criminals should take into consideration the war guilt. The CHAIRMAN answered that this was a part of the question of Responsibility of Heads of State.

After a general discussion the following "rapporteurs" were appointed :

- M. de BAER : on the study of Jurisdiction of Military Courts.  
(Report ready for next meeting).
- Dr. de MOOR : on the study of an International Criminal Court.  
(Report ready in one month.)
- M. de BAER ( : on the study of Superior Orders.  
& ) (Report ready for next meeting).  
Dr. de MOOR (
- M. de BAER ( : on the study of Heads of States (resp. of waging war, and  
& ) and ) resp. of war crimes.  
Dr. ECER ( War guilt.  
(Report ready in one month.)
- Dr. BENES : on the study of Extradition.  
(Report ready end of April.)
- Mr. NAGORSKI : on the study of Occupation of Axis countries.  
(Report ready end of April.)
- Dr. CISAR ( : on the study of Reparations and Restitutions.  
& ) (Report ready in six weeks.)  
M. THURNEYSSEN (
- Mr. VERNON GATTIE : on the study of Disarmament (subject to his consent).
- Dame LIVINGSTONE ( : on the study of Liberation of United Nations and  
M. de BAER, ) Consequences of Unconditional Surrender.  
M. SLAVIC ( (Report ready in two months.)  
& )  
Dr. WINKEL (

The CHAIRMAN stated that he had received a letter from a member of the Commission asking that the question of the trial of Axis Criminals who had fallen into the hands of the Allies should be raised (e.g. Hess, Paulus, etc...). The majority of the members were of the opinion that it was not advisable that such persons be tried before the end of the war, and that in each case the question should be left to the discretion of the Governments concerned.

The CHAIRMAN regretted the absence on the Commission of any representative of U.S.A. He proposed that Colonel BETTS, the American Judge Advocate General be approached. This was unanimously agreed.

The appointment of the Secretary of Commission I. was then discussed, and Dr. BENES accepted to undertake the secretaryship.

It was proposed to hold the next meeting on Tuesday, March 9th, 1943, at 4 p.m. sharp, at 115, Eaton Square, London, S.W.1.

The meeting was closed at 6 p.m.



CONFIDENTIAL

LONDON INTERNATIONAL ASSEMBLY

COMMISSION I. FOR QUESTIONS CONCERNED WITH THE LIQUIDATION OF THE WAR

Minutes of the meeting held at 115, Eaton Square, London, S.W.1, at 4 p.m. on Monday, March 15th, 1943.

Were present : Mr. M. de Baer (in the chair) (Belgium), Dr. V. Benes - Secretary - (Czechoslovakia), Dr. W.R. Bisschop (Great Britain), Mr. Burnay (France), Dr. J.M. de Moor (Holland), Senhor Luiz-Felippe-Do-Rangel (Brazil), Dr. B. Ecer (Czechoslovakia), Mr. W. Latoy (Great Britain), Dr. V. Lehmann (Great Britain), Dame Adelaide Livingstone (Great Britain), Mr. Matthieu (France), Dr. J.L. Polak (Holland), Mr. H. Rolin (Belgium), Mr. R. Thurneysen (representing Prof. Cassin) (France), Prof. Winiarski (Poland), Dr. H. Winkel (Holland), Dr. V. Znojensky (Czechoslovakia), Miss Lazarus (representing Mr. Judd - L.I.A. Secretarial).

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The CHAIRMAN welcomed the members who had been unable to attend the first meeting of Commission I.

- I. The Minutes of the meeting held on February 23rd, 1943, were approved by all members present.
- II. The CHAIRMAN said that some members had asked him a few questions in connection with the work which had been done by Commission II. Therefore he thought it useful to repeat that the Minutes of the last meeting of Commission II contained a Resolution which summed up the work which had been done by this Commission.
- III. The Conclusions of the Chairman's Note on the Jurisdiction of Military Courts concerning War Crimes, and on Art. 228-230 of the Versailles Treaty, a copy of which had been sent last week to all the members, were discussed. The substance of the Conclusions was approved, due note was taken of the various comments of the members, and it was decided that they would be redrafted and submitted to the Commission's approval at the next meeting.
- IV. The CHAIRMAN then asked Dr. de Moor to report on his Preliminary Report on the Plea of Superior Order.

Dr. de MOOR explained that his report contained merely his own and Dr. de Baer's answers to a questionnaire circulated by the Sub-Committee on the Defence of Superior Order of the Cambridge Committee concerned with Crimes against International Public Order, and that this was in his view a good base for preliminary discussion.

Dr. ECER gave a brief account of the Czech civil and military laws ruling the plea of Superior Order : He stated that the Czech Civil Penal Code did not contain any special provisions concerning the Defence of Superior Order, so that according to Czech law, a civilian who refused to execute an order of a civilian authority did not commit a crime. He added that the Czech Government recognised, however, the plea of Superior Order as a justification for illegal acts when :

- (1) the life of the subordinate is threatened if he refuses the execution of the order given,
- (2) the execution of the order is the only way to avoid this threat.

These two provisions, he added, were considered as "irresistible compulsion". The situation was different in the Czech Military Penal Code, which stipulates that the order given by an officer to a



subordinate soldier must not be executed, and that the latter is exculpated when he refuses to execute it in the following cases :

- (1) when the order given is not connected with a military duty, or is against his military oath,
- (2) when the order given is illegal and criminal.

A general discussion on the Defence of Superior Order followed, and as no definite agreement was reached between the members present, this question was left for further consideration until the next meeting, at which Dr. Ecer will present a report on this problem in respect of certain categories of Nazi officials.

- V. It was proposed to hold the next meeting on Friday, 9th April, 1943, at 4 p.m. sharp, at 115, Eaton Square, London, S.W.1.

The meeting was closed at 6 p.m.

N.B. - The Committee room being unavailable on April 9th, it has been found necessary to fix the next meeting on April 7th.

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