

5/9

LIST OF ITALIAN AND HUNGARIAN KEY MEN.

MEMORANDUM TO COMMITTEE I.

In regard to Italian key-men Dr. Litawski has been compiling a list.
It includes, as you will see:

- (a) Mussolini and his Ministers from the time of Italy's intervention in the war till the fall of Mussolini in July 1943;
- (b) Italians holding key positions in Yugoslavia;
- (c) Some prominent Fascist personalities.

Before typing these lists for submission to Committee I, we would like a ruling on the following points of principle:

1. Are all Italians who have held office as Mussolini's Ministers (in list a) to be regarded as key-men in the sense of the definition in the preface to the List 7?
(For example: what about GRANDI, who was, it is believed, instrumental in overthrowing Mussolini?)
2. Should Ministers who held office under Mussolini, and later on under Badoglio be excluded?

Can you let us know your views, in time to get the list ready for the next Committee?

Hungarian List of Key-men.

We have compiled a list of about 30 Hungarian key-men, but in view of the very long lists already published in Hungary—presumably under Soviet auspices—it seems hardly useful to issue such a list.

If the list is to be produced, should Horthy be included?

8th June, 1945.

Handwritten signature

I/10.
28th June, 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE I.

PROPOSAL AS TO THE DECISION ON THE FRENCH CHARGE NO. 947.
(STAFF OF MILITARBEFEHLSHAUER IN FRANKREICH).

By Dr. SCHWELB.
Legal Officer.

I.

As requested by Committee I in its meeting of June 20th, 1945, I have compiled an analysis of the German Military Government (Military Administration) in France, 1943-1944, as it existed according to the document appended to the French Charge No 947. This analysis has been circulated as an appendix to Summary of Information, No. 31.

In the meeting of Committee I, held on June 27th, 1945, it was decided that M. Malezieux should, with my assistance, place before the next meeting of the Committee concrete proposals how to dispose of the charge No. 947 as such, i.e. on which lists the people mentioned in the document should be put.

M. Malezieux has left for France and will not be back in this country before next Wednesday. I had the opportunity of going through the matter with him only cursorily. The following remarks are, therefore, my own and are not officially approved of by the French National Office.

II.

The document contains approximately 660 names of German officials holding positions in the administration of France.

The organisation outlined there, is not restricted to the tasks of a "looting organisation" but covers the whole of a state machinery; it comprises all branches of the executive, excepting the Security and State Police and the Armed Forces. But the stress which is laid on the economic exploitation of France is apparent from the fact that only two Abteilungen are devoted to "administration" including Justice, whilst not less than eight concern themselves with "economics" (Wirtschaft).

None of the persons listed in the document is charged with a particular crime. They can therefore be charged if at all, only as "key-men", i.e. to quote the preface to List 7 their "crimes consisted less in the perpetration of specific atrocities than in their having acted as ringleaders in the organisation of war crimes". Those of the persons whom it is proposed to put on one of the Commission's lists must "have held positions of authority in the government of (France) and must be treated as responsible in virtue of their official position for the various atrocities which have been committed within the sphere of their competence."

Having in mind that we are dealing with several hundred persons not charged with a particular and specified crime, but with people suspected of being responsible for various crimes because of the official positions they held at the material time, we have to de-limit the number of people to be put on our lists both, as it were, vertically and horizontally. Vertically: we have to make a distinction between persons holding higher appointments, like heads of departments, heads of groups and sections, rapporteurs etc. on the one hand, and filing clerks, typists, accountants, etc. on the other.

Horizontally: we must distinguish between the individual departments, groups, and sections, because in some of them there is a very great probability, almost a certainty, that their leading officials are responsible for war crimes, while in others the probability that they have committed criminal offences in their official capacity is rather remote. Gruppe 1 of Abteilung Wirtschaft I (General questions and the elimination of the Jews) and Gruppen A and B of Abteilung Wirtschaft VII (Labour Control, a.o., Labour Mobilisation, Control of the demand for man-power etc.) are examples of the former, the Veterinary Section of Gruppe Verw. I/1 of Abteilung Verwaltung I and the Central Filing Department of Abteilung Wirtschaft I are examples of the latter.

This is, of course, not to say that a German administrative official below a certain rank or serving in a "neutral" department has under no circumstances committed war crimes. It only means that persons who have served in a low rank or in a department, not likely to have been responsible for criminal activities, can be placed on the Commission's list only, if a particular charge is preferred against them as individuals.

III

Applying the principles outlined under (II) I, therefore, propose the following procedure:

- 1) To place either on a key-men list 'A' or on 'S' the following functionaries of all departments:

| | <u>Persons</u> |
|--|----------------|
| a) the three members on the "highest level" of the military administration (Michel, Lehmann and Ermert) (of. p.3. of Summary of Information No. 31). | 3 |
| b) the heads of the Zentral-abteilung and its Gruppen (Jonquieres, Dyckerhoff and Horst) | 3 |
| c) the heads of the three Abteilungen Verwaltung. (Teuchert and Oertzen; no name of the head of Abteilung Verwaltung II Justiz is given). | 2 |
| d) the heads of seven Abteilungen Wirtschaft (Abteilung Wirtschaft VIII is identical with Abteilung Verwaltung III): Zee-Heraeus, Tehle, Reinhardt, Hausmann, Mahs, Seifahrt, Baucht, Kohl (Abteilung Wirtschaft has two Leiter) | 8 |
| e) The Hauptabteilungsleiter of Hauptabteilung Arbeit and his deputy (Glatze, List). | 2 |

| | Brought forward | <u>Persons</u> |
|--|-----------------|----------------|
| 2) To place on the same key-men List 'A' or on 'S': | | 18 |
| a) The Sachbearbeiter of Verw. I/1 General Internal Administration (Seefeldner and Tobias) | | 2 |
| b) six officials of Verw. I/2 (Kultur and Kunst-Verwaltungen, because of their connection with the looting of art treasures; if the Committee should be of opinion that the information about the looting of art treasures in France justifies this procedure | | 6 |
| c) six officials of Verw. II: Justiz. | | 6 |
| d) the Gruppenleiter of Verw. III/1 (Drücke; costs of occupation) | | 1 |
| e) Militärverwaltungsrat Tier of III/1, Rapporteurs on questions of budget, French taxes and German Jewish property. | | 1 |
| f) two officials of Verw. III/2 (German property in France) | | 2 |
| g) Hauptmann Fuhrmann, Generalreferent zu den französischen Ministerien etc. Verbindung zum Reichsministerium für Bewaffnung und Munition. Hauptmann Brandts: Verbindungsoffizier der Waffenstillstandskommission | | 2 |
| h) Gruppenleiter Militärverwaltungsoberrat Dr. Blanke of Wl. I/1 and four officials of Ref. I/C. (Entjudung der Wirtschaft). | | 5 |
| i) Gruppenleiter Militärverwaltungsoberrat Rinke of Wl. I/2 (enemy property) | | 1 |
| j) Gruppenleiter Dr. Mann of Wl. I/4 (Economic Transports) | | 1 |
| k) the Gruppenleiter of Gruppen A to N of Wl. II (some of these Gruppen have two Gruppenleiter) | | 15 |
| l) the Gruppenleiter of Gruppen 1 to 3 of Wl. III. | | 3 |
| m) the Gruppenleiter of Gruppen 1 to 3 of Wl. IV. | | 3 |
| n) the Gruppenleiter of Gruppen 1 and 2 of Wl. V, four officials of Ref. Ia (Questions of principle of export trade and currency regulations, international agreements, legislation) and three officials of Ref. I/C (Goods traffic with the German Reich and the occupied territories). | | 9 |
| o) 5 Referatsleiter of Wl. VI | | 5 |

| | | <u>Persons</u> |
|----|---|-------------------|
| | Brought forward | 80 |
| p) | the Stellvertreter des Abteilungsleiters and all Gruppenleiter, Referatsleiter, Sachbearbeiter and Leiter of Wi. VII (Labour Control) including the two Beauftragte mentioned on page 18. | 14 |
| q) | all officials of the Generalbevollmächtigte für der Arbeitseinsatz, der Beauftragte in Frankreich | 10 |
| r) | Neuendorf and Grote (Special commissioners for Labour questions mentioned at bottom of page 18) | 2 |
| s) | the Chefrichter (Boetticher) and three Oberkriegsgerichtsräte forming the Gericht des Militäerbefehlshabers in Frankreich | 4 |
| | | <hr/> 110 persons |

3) Some of the persons whose names are given in the document and who have not been proposed for the key-men list 'A' or for 'S' under (1) and (2) above, but of whom it is probable that they have knowledge of war crimes could be placed on list 'W'. This applies particularly to interpreters and translators (Dolmetscher); to many Sachbearbeiter and Mitarbeiter.

IV

In examining the adequacy of the above proposal it should be borne in mind that the charge deals with the German administration other than police, and the combatant military units, and that therefore the worst abominable crimes committed by the Gestapo, the Allgemeine SS., the Waffen SS. and some other formations are outside its scope.

1/10
28th June, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

COMMITTEE I

PROPOSAL AS TO THE DECISION ON THE FRENCH CHARGE NO. 947
(STAFF OF MILITARY RESERVE IN FRANCE ETC.).

(By Dr. SCHWEIB, Legal Officer).

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| b) The heads of the Zentral-abteilung and its Gruppen (Tonquieres, Dyckerhoff and Horst) | 3 | ✓ |
| c) The heads of the three Abteilungen Verwaltung. (Teuchert and Oertzen; no name of the head of Abteilung Verwaltung II Justiz is given). | 2 | |
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| e) The Hauptabteilungsleiter of Hauptabteilung Arbeit and his deputy (Glatze, List). | 2 | |

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| c) six officials of Verw. II: Justiz. | 6 | |
| d) the Gruppenleiter of Verw. III/1 (Drücke; costs of occupation) | 1 | |
| e) Militärverwaltungsrat Tier of III/1, Rapporteurs on questions of budget, French taxes and German Jewish property. | 1 | |
| f) two officials of Verw. III/2 (German property in France) | 2 | |

| | <u>Persons</u> |
|--|--------------------|
| Brought forward | 36 |
| g) Hauptmann Fuhrmann, Generalreferent zu den französischen Ministerien etc. Verbindung zum Reichsministerium für Bewaffnung und Munition. Hauptmann Brandts: Verbindungsoffizier der Waffenstellstandskommission. | 2 ✓ |
| h) Gruppenleiter Militäerwaltungsoberrat Dr. Blanke of Wi. I/1 and four officials of Ref. I/C (Entjudung der Wirtschaft) | 5 |
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| o) 5 Referatsleiter of Wi. VI. | 5 |
| p) The Stellvertreter des Abteilungsleiters and all Gruppenleiter, Referatsleiter, Sachbearbeiter and Leiter of Wi. VII (Labour Control) including the two Beauftragte mentioned on p. 18. | 14 |
| q) All officials of the Generalbevollmächtigte für der Arbeitseinsatz, Der Beauftragte in Frankreich. | 10 ✓ |
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1/11.
July 3rd, 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE I.

REPORT ON THE CZECHOSLOVAK CHARGE NO. 952. (OSWIECIM-BIRKENAU).

as amended by Dr. Ecer's communication, received on July 2nd 1945.

By Dr. Schwelb, Legal Officer.

The charge is directed against individuals and groups of persons enumerated under Nos. 1 to 369.

a) Nos. 1 to 32 are the members of the German Government in the material time (1939-1945) and, in view of a number of precedents in the practice of Committee I, do not raise any new problem.

b) Nos. 33 to 57 are persons responsible for the direction of the police activities in Germany on the highest level. Apart from items 48 and 56, which concern groups of persons ("all officials of...") with which I shall deal later in this paper, no problems arise here either.

c) Items 266 to 369 concern the persons responsible for the administration of the camps and the actual camp personnel. In my opinion, here also no new questions either of law, or of fact are to be settled by Committee I.

d) Items 58 to 265 refer to the police authorities acting in, or competent for, the different parts of the Czechoslovak Republic.

The Czechoslovak National Office holds these persons and groups of persons responsible for ordering and executing the arrest of Czechoslovak nationals and for committing them to the concentration and extermination camps Oswiecim-Rajsko (Auschwitz-Birkenau), and/or for aiding and abetting these criminal activities. The charge differs from similar charges which so far have been dealt with by Committee I that it indicts not only the persons in authority on the top level (Reich Government, SS. High Command) and the actual perpetrators at the end of the journey (the camp personnel), but that it attempts to establish the guilt and responsibility of the intermediate authorities, i.e. the people competent to exercise local jurisdiction in the different parts of occupied Czechoslovakia and who had the power either to propose or to order the individual arrests and commitments to the camps.

(e) In making charges against these people, who are held responsible for their share in the crime, as it were, on the intermediate level, the Czechoslovak National Office makes two distinctions:

(I) between functionaries of the Ordnungspolizei on the one hand and functionaries of the Sicherheitspolizei on the other. Both were competent to order arrests with a view to commit the arrested persons to a concentration and extermination camp. But there being no sufficient evidence that the regular police (Ordnungspolizei) took a decisive part in these activities, the Czechoslovak National Office proposes to put the officials of the Ordnungspolizei on 'S', while it is proposed to put the persons responsible for the Sicherheitspolizei (Gestapo and S.D.) on 'A'. (Note: It is obviously due to a misprint that throughout the argument the charge proposes

putting people on "List 9" which should be corrected into 'S').

(2) The charge further distinguishes between police authorities having jurisdiction exclusively for Czechoslovak territory (so-called Protectorate Bohemia and Moravia (items 57a to 151) and the so-called Reichsgau Sudetenland (items 153 to 203)), and such police authorities as are in charge of predominantly Reich German or Austrian provinces to which slices of Czechoslovak territory have been "annexed" during the occupation. The latter are: (a) Upper Silesia, to which the Czechoslovak districts of Hlučín, Fryštát and Český Těšín had been added, items 204 to 219; (b) Bavaria, to which parts of the Czechoslovak districts of Domázlice, Klatovy, Sušice, and Prachatice had been annexed (items 220-230); (c) the Reichsgau Oberdonau (i.e. the province of Upper Austria) to which parts of the Czechoslovak districts Český Krumlov, Kaplice, České Budějovice and Třebon had been added (items 235-248); (d) the so-called Reichsgau Niederdonau (i.e. the province of Lower Austria) to which parts of the Czechoslovak districts of Znojmo, Mikulov, Jindřichov, Hradec, Dačice, Mor. Budejovice, Moravský Krumlov, Hustopeče and Bratislava had been annexed.

As to the police officials, other than Ordnungspolizei, the charge proposes in the case of the "Protectorate" and of the "Reichsgau Sudetenland" their listing on 'A': as to the police officials of Upper Silesia, Bavaria, Upper Austria, and Lower Austria their listing on 'S'; the reason for this distinction being that a comparatively unimportant part of their activities concerned Czechoslovak territory and Czechoslovak nationals and that they are merely suspect of having committed crimes against Czechoslovaks, a proper prima facie case not being established with regard to them. This accounts for the fact that it is proposed to list such notorious Nazi criminals as Bracht (item 205,) Epp (item 220), Eigruber (item 234) and Jury (item 251) on 'S' only.

(f) When the charge was considered in Committee I on June 27th, 1945, objections were raised by several members of the Committee against a number of items (altogether 61) charging groups of persons under the designations "all officials of..." or "the staff of...".

In the amendment, the Czechoslovak National Office proposes to leave out four out of these 61 items (208, 223, 237 and 254) and with regard to the remaining 57 it proposes a delimitation of the responsibility by charging only:

(i) the administrative officials of the higher administrative police service from the rank of Government Councillor (Regierungsrat) upwards;

(ii) the executive officials of the security police who belong to the Führerlaufbahn des mittleren Dienstes und der Sicherheitspolizei, from the rank of Criminal Secretary (Kriminalsekretär) upwards;

(iii) the S.D. functionaries from the rank of manager (Geschäftsführer) upwards.

Colonel WADE and myself tried to get information from informed quarters how the demarcation line between responsible higher police officials on the one hand and mere clerks and other subordinates on the other should be properly drawn. We were advised that a proper line to draw would be between Beamte, i.e. established civil servants, and Angestellte, i.e. mere office employees. It appears that the demarcation proposed by the Czechoslovak National Office excludes not only all Angestellte, but also a great number of Beamte. A further group of Gestapo officials remains outside, namely persons who,

without being career civil servants, were employed by the German police authorities ad hoc because of their knowledge of local conditions and of the Czech language.

The Czechoslovak authorities will, no doubt, eventually charge also such temporary functionaries of the German Police, as soon as the examination of the German police files, and other inquiries, reveal their identity.

CONCLUSION

According to the established practice of Committee I, there can, in my submission, be no doubt that there is a good prima facie case against the persons either named, or identified by their functions, and proposed for List 'A'.

I/11
July 3rd, 1945

UNITED NATIONS WAR CRIMES COMMISSION

Committee I

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The Czechoslovak authorities will, no doubt, eventually charge also such temporary functionaries of the German Police, as soon as the examination of the German police files, and other inquiries, reveal their identity.

CONCLUSION

According to the established practice of Committee I, there can, in my submission, be no doubt that there is a good prima facie case against the persons either named, or identified by their functions, and proposed for List A.

1.412

I/12
July 6th, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

Nazi Atrocities in Innsbruck, Austria, in
November 1938

The Commission has received a statement by Sgt. Benson, dated June 22nd, 1945, containing charges of murder committed by Austrian (or German) Nazis against Austrian Jews. (Enclosure)

The case does not fall within the jurisdiction of the Commission, as so far understood; the position is similar to that of the cases presented to Committee I by the Association of German Democratic Lawyers in Great Britain.

Nevertheless a ruling by Committee I as to how this case should be dealt with would be appreciated. The communication of the information either to the Allied Control Commission for Austria, or to the allied military authorities in occupation of the Tyrol, would seem to recommend itself.

C O P Y

Haifa, 22nd June 1945

the: Allied War Crimes Commission,
Law Courts,
Strand, London, W.C.2.

Statement relating to Nazi atrocities committed in INNSBRUCK in November 1938

At midnight on November 9th 1938 the SS and SA of INNSBRUCK were called on parade by Gauleiter HOFER. The assembled men were given the official order to return at 2 a.m. in mufti, as an attack on the Jewish inhabitants of INNSBRUCK was planned for that night by the highest Nazi authorities. The assembled men, who divided themselves into groups of 10 to 15, were given the addresses of the Jewish inhabitants by the head of the Gestapo, Hilliges and Kommissar Mössinger. These groups forced their way systematically into every Jewish home and dragged some of their victims off to prison whilst others were brutally maltreated and seriously injured,

Oberbaurat Ingenieur Richard BERGER (the husband of the undersigned) Dr. Wilhelm BAUER and Ingenieur Richard GRAUBART were beastly murdered. The following were admitted to hospital seriously injured:

Ingenieur Josef ADLER
Karl BAUER
Adolf NEUMANN
Mr. and Mrs. POPPER

Polizeipräsident FRANZELIN, a high ranking SA official, had instructed the police to keep off the streets during that particular night. The police were also ordered not to intervene on behalf of the Jews. At the same time he had ordered the INNSBRUCK telephone exchange not to connect any calls from the Jewish subscribers. FRANZELIN patrolled the streets during that night in the side car of a motor cycle, ridden by a policeman, JUNGENEGER, who is not a Nazi and who was detained for this job, in order to convince himself of the execution of this above-mentioned order to the police.

The following were the main organisers:

Polizeipräsident FRANZELIN
Gauleiter HOFER
Gestapoleiter HILLIGES, Bienerstr. 31
Kommissar MÖSSINGER, Pradlerstr.
Dr. v. GELB, Fallmereystr.
Dr. PFANNER (whose son was active in
one of these murder groups)
Dr. CZERMAK, Anichstr.
Dr. DUXNEURER

STROBL, dentist, Anichstr. 7
SALCHER (brothers)
Dr. MARKL, lawyer
WIESER, Ernst (Kommissar of the firm
Michael BRÜLL), Anichstr.
Dr. KRÖSSL, Brixnerstr.
DICHTL, Igls
LANTSCHNER, Igls
Dr. LANTSCHNER, Karl-Ludwigstr. platz
JANNER, Ernst, P.T. instructor

ZACK (fishmonger) Marktgraben
NEUMAYER (fishmonger's son) Claudiastr.
HOLEFKA, Anichstr. 13

PFANNER Jun., ZACK and NEUMAYER have been identified during the murder of Ing. GRAUBART and Dr. W. BAUER.

I personally informed Dr. HOHENLEITNER, the public prosecutor, of the brutal murder of my husband, Oberbaurat Ing. Richardt BERGER, but he showed no interest whatsoever in any murder committed by Nazis.

(signed) Margarete BERGER
5A Hapoelstreet,
HAIFA (Palestine)

This is a summary of letters written to me by my mother. She is convinced that a number of witnesses of these incidents are still living in INNSBRUCK today and I shall endeavour to trace everyone of them as soon as possible. Should there be any other information required by you, Sirs, will you please kindly let me know and I shall then immediately get in touch with my mother in HAIFA.

Yours respectfully,
Sgt. F.R. BENSON
13051585
Chief Postal Censor,
LONDON

C O P Y

Haifa, 22nd June 1945

the: Allied War Crimes Commission,
Law Courts,
Strand, London, W.C.2.

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Yours respectfully,
Sgt. F.R. BENSON
13051585
Chief Postal Censor,
LONDON

I/13.
July 10th, 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE I.

REPORT ON THE YUGOSLAV CASE NO. 940. (Italian
Courts in Dalmatia).

By Mr. E. Schwelb, Legal Officer.

At its meeting of June 20th, 1945 (Minutes No. 15), Committee I adjourned the case No. 940 (against Giuseppe BASTIANINI and 36 other persons), because it wished to obtain additional information about the character of the courts to which some of the accused belonged, their procedure, and the substantive law which they were called upon to administer.

The Yugoslav delegate has now submitted a memorandum concerning the organisation and working of Italian Tribunals in occupied Yugoslav territory adding that it will appear from the memorandum, that the Italian judicial machinery established in Yugoslavia was one of the instruments used by Fascist Italy to enforce the denationalisation of the Yugoslav population. In his accompanying letter, Dr. Marković asks to hand this Memorandum to Committee I. The memorandum was distributed to the members of Committee at its meeting held on July 4th, 1945.

The following is a summary of the position as it appears from the charge, as supplemented by the Memorandum.

I.

The persons named under numbers 1 to 21 are alleged to be responsible for either the actual commission of, or the participation in, mass murders, ill-treatment, arrest or internment of citizens, as well as the pillage and burning down of entire villages; as a particular example, the ill-treatment of the Orthodox Bishop of Sibenik is mentioned. The accused Nos. 14, 15 and 16, are, in addition, charged with the responsibility for the shooting of 48 hostages. (Part 3 of the charge).

The evidence of these crimes has, it is stated, been collected by the local Yugoslav authorities investigating war crimes in Dalmatia, and has been transmitted to the Yugoslav State Commission. The charge refers to a number of documents. Although these documents are not placed before the Committee, it will be in accordance with the usual procedure to place these persons (items 1 to 21) on 'A', no novel question either of law or of fact being involved.

II.

MAGALDI (No. 2) is further charged with having set up in Sibenik an "Extraordinary Court" which he used as an instrument for committing "ordinary" i.e. common crimes. This court, under Magaldi's chairmanship and with SERRENTINO (No. 3) and CARRUSO (No. 4) as member judges, is accused of having pronounced sentences on innocent people in summary and arbitrary proceedings without any kind of legal provision for the accused. Two examples of such sentences, passed on October 13, 1941, and October 29, 1941, are given which led to the shooting of six and eleven innocent Yugoslav citizens.

Part III of the Yugoslav Memorandum deals with the Tribunale Straordinario della Dalmazia, which seems to be the "Extraordinary Court" mentioned in part 2 of the charge, accusing Magaldi, Serrentino and Carruso.

The Tribunale Straordinario della Dalmazia is stated to have been formed by a Decree of the Governor of Dalmatia, Bastianini, in October 1941 (Decree No. 34). The Yugoslav Memorandum states that this Decree was enacted on October 12, 1941, but was antedated so as to cover a death sentence passed on October 11, 1941.

According to the Memorandum, an agent of the Italian police was killed in Sibenik, the perpetrator of this act was not found, a large number of Yugoslav youngsters were arrested and the ante-dated decree was meant as a "legal basis" for putting these youngsters to death.

This case seems to be different from a case described in the charge which deals with a death sentence passed on the 13th October, 1941, against six men, described as perfectly innocent farmers, who were sentenced by the Extraordinary Court on the basis of mere suspicion of their unreliability vis-à-vis the Italian authorities.

If this interpretation of the charge on the one hand, and the Memorandum on the other, be correct, the three members of this court are accused of having committed murder in three concrete cases:

- (a) the case of the youngsters condemned to death even before the Decree was actually promulgated (11th October 1941);
- (b) the case of the six farmers (13th October 1941); and
- (c) the case of the eleven innocent inhabitants (October 29th, 1941).

The Memorandum goes on to state that the court in the four cases above sentenced over fifty people to death. It is not clear whether these four cases include the three cases mentioned above, or whether they are in addition to them.

The Court had no permanent seat but functioned mostly in Sibenik (Sebenico) and in Split (Spalato). The three cases mentioned above are all located in Sibenik.

If the statements contained in the Yugoslav charge and in the Yugoslav memorandum are accepted as prima facie evidence, then it is submitted that it is not necessary to analyse the provisions regarding the setting up of the Tribunale Straordinario della Dalmazia, because on this evidence, the three sentences passed on 11th, 13th and 29th October, 1941, do not seem to have been passed in bona fide exercise of the judicial office, whatever the contents of the enactment setting up the court may have been.

From this point of view, it would not be necessary for Committee I to commit itself to a definite pronouncement whether the setting up of the Tribunale Straordinario and accepting office to sit on it as such constitute a crime and Committee I would have a sufficient justification for charging the three members of the court for the (three) actual judgments cited.

If this be correct, the case of the Tribunale Straordinario differs from the Czechoslovak cases regarding Sondergerichte and Standgerichte (Nos. 389, 424 and 464; see my Report dated April 3rd, 1945), in that here it is not necessary to have recourse to the general provisions of the enactments concerned, the actual results arrived at in several proceedings of the court establishing prima facie evidence of the commission of crimes clothed in the form of judicial process.

III.

If Committee I would like to base its decision not on the actual facts of the three trials mentioned respectively in the charge and the

Memorandum, but on the wider ground that the setting up of the Tribunale Straordinario and accepting office in it as such constitute a war crime, it would have to consider the following peculiarities of the Decree establishing the Tribunal, which are pointed out by the Yugoslav memorandum:

- (a) only one sentence could be passed: the death sentence;
- (b) the organisation and procedure of this court were regulated by three articles only;
- (c) in regard to the proceedings the Decree provided only that the accused could have a counsel;
- (d) the sentence was to be carried out forthwith and without delay;
- (e) everything else was left to the arbitrary will of the chairman.

By way of comparison it may be said that neither the Military Government Courts set up by the Western Allies in Italy (the provisions are published in the British Yearbook of International Law, 1944, pp. 156 et seq.), nor the Military Government Courts set up by the Western Allies in Germany (see Doc. C. 132), nor the British Military Courts set up in the British zone under the Royal Warrant (see Doc. C. 131) suffer from the defects (a) to (e) supra. But in spite of that, I personally very much doubt whether the mere setting up of similar courts and the mere acting as a member of them is criminal, provided that the occupation in the course of which the courts are being set up is not illegal and provided that the courts exercise their judicial office properly and bona fide, i.e. passing sentences only on persons who are convicted of having committed crimes falling under the jurisdiction of these courts.

IV.

In addition to the three members of the Tribunale Straordinario, the Yugoslav charge also accuses several persons responsible for the activities of a new court, called "Special Court" set up at Sibenik for the same criminal purposes.

The charge states that the persons responsible for the activities of this "Special Court" are the persons named under Nos. 4 to 19.

This statement seems to be erroneous. The person charged under No. 4 (Carruso) was a member of the Tribunale Straordinario and is charged as such, while the persons charged under Nos. 5 to 19 do not seem to have had any connection at all with either type of court. They are charged, in part 1, as responsible for terrorism unconnected with judicial proceedings, as e.g. Ferretti (No. 17), Pividori (No. 18) and Canazzoni (No. 19) with the ill-treatment of the bishop and his valet and with looting the bishop's belongings, and Sestilli (No. 14), Bungaro (No. 15) and Terranova (No. 16) with the shooting of hostages.

It is the persons named under Nos. 22 to 34 who are stated to have been judges of the Special Court, the persons named under Nos. 36 and 37 to have been prosecutors before the court and No. 35 to have been chief prosecutor in Zadar (Zara).

V.

As to the "Special Court", the charge states that it was established in 1942, that it tried over 5000 people, over 400 of whom it sentenced to death. The cases were invariably tried without a proper investigation being made, the sentences were often decided upon even before the trial took place, thus revealing, according to charge No. 940, the fact that the Court was carrying out sheer judicial crimes.

The charge mentions one concrete case, i.e. the putting to death of 26 innocent inhabitants on January 29, 1942. Particular circumstances of this case are not given.

The Yugoslav memorandum, on the other hand, states that the Tribunale Speciale della Dalmazia was formed not, as is stated in the charge, in 1942, but by a proclamation by Mussolini dated October 24, 1941. It is not clear, therefore, whether the "Special Court" mentioned in the charge and the Tribunale Speciale, mentioned under IV in the Memorandum, are the same institution and whether, what is said in the Memorandum about the latter applies also to the former.

About the constitution and procedure of the Tribunale Speciale della Dalmazia, the following is said in the Memorandum:

- (a) It was designed as "the opposite number" of the Special Court for the Defence of the State (Tribunale Speciale per la Difesa di Stato) in Rome;
- (b) In spite of the fact that Articles 11 to 15 of the relevant Decree provided for civil as well as military judges, all the members of the Court were military;
- (c) The organisation was in every respect analogous to the organisation of the Tribunali Militari di Guerra;
- (d) It was a political tribunal, important powers being reserved to the Governor of Dalmatia;
- (e) The tribunal was competent to try offences against "War discipline", which included anything from the non-delivery of wool to murder;
- (f) There was no guarantee that the accused could defend himself, the maxim in dubio pro reo was not applied, motions put forward by the prosecutor were accepted, he was an omnipotent personality and it was he who determined the type and severity of the punishment:

The reasons summarised under (a) to (d) do not appear to make the establishment of, and the acceptance of service on, such courts as such a criminal offence, although the Tribunali Militari di Guerra (c) applied the procedure called "guidizio direttissimo" which appears to have had a somewhat too summary character. The circumstance listed under (d) brings the Tribunale Speciale perilously near the German Sondergerichte and (e) throws also a light on them in which they appear to have been from the very beginning designed not as courts fulfilling bona fide judicial functions, but as instruments of political repression.

In spite of that I personally would rather hold that the description of the general provisions applicable to, and applied by, these tribunals is not precise enough to be classified as prima facie evidence of the criminality of their mere setting up.

VI

We are, therefore, also with regard to these Tribunali Speciali thrown back on the amount of evidence produced as to their actual functioning.

It was already pointed out that the charge mentions one case only, where the "Special Court" sentenced 26 innocent inhabitants to death, (January 29, 1942). (See supra V).

The Memorandum mentions a number of other cases, without giving dates, names or a description of actual circumstances:

(a) Pronouncement of sentences as a result of vague indications, such as friendly relations from childhood or professional relations (apparently with actual perpetrators of alleged crimes), photographs showing cheerful picnic parties;

(b) A person was held guilty because he had belonged, before the war, to a certain political party, or had been a member of a national organisation;

(c) Many of the accused were sentenced merely because, during the trial, they refused to give the fascist salute;

(d) In one case the Court accepted as conclusive evidence of membership of a "subversive organisation" the fact that all the accused persons who were all young girls from Sibenik wore the same shoes;

(e) The court acted upon hearsay evidence, given by the occupying authorities or their agents.

Particularly the circumstances indicated under (a) to (c) taint the courts with a character which is at least very near the borderline between the exercise of military jurisdiction on occupied territory and the commission of a war crime. The difficulty which arises for Committee I comes from the fact that the Memorandum obviously has not been compiled in order to substantiate a criminal charge, but its purpose is to give a general picture of the activities of certain types of Italian courts as instruments of denationalisation. The Memorandum therefore omits any concretisation and documentisation of its allegations, it does not give either names, or dates, or places and it is, therefore, a matter for Committee I to decide whether it accepts the general statements contained in the Memorandum, as prima facie evidence of the occurrences alluded to.

If it does, the further question will have to be decided, whether the persons named under Nos. 22 to 37 should be put on 'A' or on 'S'. Nos. 22 to 34 (13 persons) were judges of the Special Court. From the foregoing it appears that no data about the trials being given, it is also not stated which of the 13 judges have taken part in those trials where the irregularities pointed out supra under (a) to (e) occurred. From this, according to the usual practice of Committee I, it would follow that the Chairman of the Court (Maggiore; No. 22) and the prosecutors (Nos. 35 to 37) should go on 'A', the rest (Nos. 23 to 34) on 'S'.

Against this, it might be pointed out that, according to the charge, the Special Court has tried no less than over 5000 people and sentenced to death over 400, from which it could fairly be argued that probably all the 13 judges must have taken part in this great number of proceedings. In view of this also a decision to put all the judges on 'A' could reasonably be made.

I/13
July 10th, 1945

UNITED NATIONS WAR CRIMES COMMISSION

Committee I

REPORT ON THE YUGOSLAV CASE NO. 940
(Italian Courts in Dalmatia)

By Mr. E. Schwelb, Legal Officer

At its meeting of June 20th, 1945 (Minutes No. 15), Committee I adjourned the case No. 940 (against Giuseppe BASTIANINI and 36 other persons), because it wished to obtain additional information about the character of the courts to which some of the accused belonged, their procedure, and the substantive law which they were called upon to administer.

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The following is a summary of the position as it appears from the charge, as supplemented by the Memorandum.

I

The persons named under numbers 1 to 21 are alleged to be responsible for either the actual commission of, or the participation in, mass murders, ill-treatment, arrest or internment of citizens, as well as the pillage and burning down of entire villages; as a particular example, the ill-treatment of the Orthodox Bishop of Sibenik is mentioned. The accused Nos. 14, 15 and 16, are, in addition, charged with the responsibility for the shooting of 48 hostages. (Part 3 of the charge).

The evidence of these crimes has, it is stated, been collected by the local Yugoslav authorities investigating war crimes in Dalmatia, and has been transmitted to the Yugoslav State Commission. The charge refers to a number of documents. Although these documents are not placed before the Committee, it will be in accordance with the usual procedure to place these persons (items 1 to 21) on A, no novel question either of law or of fact being involved.

II

MAGALDI (No. 2) is further charged with having set up in Sibenik an "Extraordinary Court" which he used as an instrument for committing "ordinary" i.e. common crimes. This court, under Magaldi's chairmanship and with SERRENTINO (No. 3) and CARRUSO (No. 4) as member judges, is accused of having pronounced sentences on innocent people in summary and arbitrary proceedings without any kind of legal provision for the accused. Two examples of such sentences, passed on October 13, 1941, and October 29, 1941, are given which led to the shooting of six and eleven innocent Yugoslav citizens.

Part III of the Yugoslav Memorandum deals with the Tribunale Straordinario della Dalmazia, which seems to be the "Extraordinary Court" mentioned in part 2 of the charge, accusing Magaldi, Serrentino and Carruso. The Tribunale Straordinario della Dalmazia is stated to have been formed by a Decree of the Governor of Dalmatia, Bastianini, in October 1941 (Decree No. 34). The Yugoslav Memorandum states that this Decree was enacted on October 12, 1941, but was ante-dated so as to cover a death sentence passed on October 11, 1941.

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This case seems to be different from a case described in the charge which deals with a death sentence passed on the 13th October, 1941, against six men, described as perfectly innocent farmers, who were sentenced by the Extraordinary Court on the basis of mere suspicion of their unreliability vis-à-vis the Italian authorities.

If this interpretation of the charge on the one hand, and the Memorandum on the other, be correct, the three members of this court are accused of having committed murder in three concrete cases:

- (a) the case of the youngsters condemned to death even before the Decree was actually promulgated (11th October 1941);
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The Memorandum goes on to state that the court in the four cases above sentenced over fifty people to death. It is not clear whether these four cases include the three cases mentioned above, or whether they are in addition to them.

The court had no permanent seat but functioned mostly in Sibenik (Sebenico) and in Split (Spalato). The three cases mentioned above are all located in Sibenik.

If the statements contained in the Yugoslav charge and in the Yugoslav memorandum are accepted as prima facie evidence, then it is submitted that it is not necessary to analyse the provisions regarding the setting up of the Tribunale Straordinario della Dalmazia, because on this evidence, the three sentences passed on 11th, 13th and 29th October, 1941, do not seem to have been passed in bona fide exercise of the judicial office, whatever the contents of the enactment setting up the court may have been.

From this point of view, it would not be necessary for Committee I to commit itself to a definite pronouncement whether the setting up of the Tribunale Straordinario and accepting office to sit on it as such constitute a crime and Committee I would have a sufficient justification for charging the three members of the court ~~for~~ the (three) actual judgments cited.

If this be correct, the case of the Tribunale Straordinario differs from the Czechoslovak cases regarding Sondergerichte and Standgerichte (Nos. 389, 424 and 464; see my Report dated April 3rd 1945), in that here it is not necessary to have recourse to the general provisions of the enactments concerned, the actual results arrived at in several proceedings of the court establishing prima facie evidence of the commission of crimes clothed in the form of judicial process.

III

If Committee I would like to base its decision not on the actual facts of the three trials mentioned respectively in the charge and the Memorandum, but on the wider ground that the setting up of the Tribunale Straordinario and accepting office in it as such constitute a war crime, it would have to consider the following peculiarities of the Decree establishing the Tribunal, which are pointed out by the Yugoslav memorandum:

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IV

In addition to the three members of the Tribunale Straordinario, the Yugoslav charge also accuses several persons responsible for the activities of a new court, called "Special Courts" set up at Sibenik for the same criminal purposes.

The charge states that the persons responsible for the activities of this "Special Court" are the persons named under Nos. 4 to 19.

This statement seems to be erroneous. The person charged under No. 4 (Carruso) was a member of the Tribunale Straordinario and is charged as such, while the persons charged under Nos. 5 to 19 do not seem to have had any connection at all with either type of court. They are charged, in part 1, as responsible for terrorism unconnected with judicial proceedings, as e.g. Ferretti (No. 17), Pividori (No. 18) and Canazzoni (No. 19) with the ill-treatment of the bishop and his valet and with looting the bishop's belongings, and Sestilli (No. 14), Bungaro (No. 15) and Terranova (No. 16) with the shooting of hostages.

It is the persons named under Nos. 22 to 34 who are stated to have been judges of the Special Court, the persons named under Nos. 36 and 37 to have been prosecutors before the court and No. 35 to have been chief prosecutor in Zadar (Zara).

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As to the "Special Court", the charge states that it was established in 1942, that it tried over 5000 people, over 400 of whom it sentenced to death. The cases were invariably tried without a proper investigation being made, the sentences were often decided upon even before the trial took place, thus revealing, according to charge No. 940, the fact that the Court was carrying out sheer judicial crimes.

The charge mentions one concrete case, i.e. the putting to death of 26 innocent inhabitants on January 29, 1942. Particular circumstances of this case are not given.

The Yugoslav memorandum, on the other hand, states that the Tribunale Speciale della Dalmazia was formed not, as is stated in the charge, in 1942, but by a proclamation by Mussolini dated October 24, 1941. It is not clear, therefore, whether the "Special Court" mentioned in the charge and the Tribunale Speciale, mentioned under IV in the Memorandum, are the same institution and whether, what is said in the Memorandum about the latter applies also to the former.

About the constitution and procedure of the Tribunale Speciale della Dalmazia, the following is said in the Memorandum:

- (a) It was designed as "the opposite number" of the Special Court for the Defence of the State (Tribunale Speciale per la Difesa di Stato) in Rome;
- (b) In spite of the fact that Articles 11 to 15 of the relevant Decree provided for civil as well as military judges, all the members of the Court were military;

- (c) The organisation was in every respect analogous to the organisation of the Tribunale Militari di Guerra;
- (d) It was a political tribunal, important powers being reserved to the Governor of Dalmatia;
- (e) The tribunal was competent to try offences against "War discipline" which included anything from the non-delivery of wool to murder;
- (f) There was no guarantee that the accused could defend himself, the maxim in dubio pro reo was not applied, motions put forward by the prosecutor were accepted, he was an omnipotent personality and it was he who determined the type and severity of the punishment;

The reasons summarised under (a) to (d) do not appear to make the establishment of, and the acceptance of service on, such courts as such a criminal offence, although the Tribunale Militari di Guerra (c) applied the procedure called "giudizio direttissimo" which appears to have had a somewhat too summary character. The circumstance listed under (d) brings the Tribunale Speciale perilously near the German Sondergerichte and (e) throws also a light on them in which they appear to have been from the very beginning designed not as courts fulfilling bona fide judicial functions, but as instruments of political repression.

In spite of that I personally would rather hold that the description of the general provisions applicable to, and applied by, these tribunals is not precise enough to be classified as prima facie evidence of the criminality of their mere setting up.

VI

We are, therefore, also with regard to these Tribunali Speciali thrown back on the amount of evidence produced as to their actual functioning.

It was already pointed out that the charge mentions one case only, where the "Special Court" sentenced 26 innocent inhabitants to death. (January 29, 1942). (See supra V).

The Memorandum mentions a number of other cases, without giving dates, names or a description of actual circumstances:

- (a) Pronouncement of sentences as a result of vague indications, such as friendly relations from childhood or professional relations, (apparently with actual perpetrators of alleged crimes), photographs showing cheerful picnic parties;
- (b) A person was held guilty because he had belonged, before the war, to a certain political party, or had been a member of a national organisation;
- (c) Many of the accused were sentenced merely because, during the trial, they refused to give the fascist salute;
- (d) In one case the Court accepted as conclusive evidence of membership of a "subversive organisation" the fact that all the accused persons who were all young girls from Sibenik wore the same shoes;
- (e) The court acted upon hearsay evidence, given by the occupying authorities or their agents;

Particularly the circumstances indicated under (a) to (c) taint the courts with a character which is at least very near the borderline between the exercise of military jurisdiction on occupied territory and the commission of a war crime. The difficulty which arises for Committee I comes from the fact that the Memorandum obviously has not been compiled in order to substantiate a criminal charge, but its purpose is to give a general picture of the activities of certain types of Italian courts as instruments of denationalisation. The Memorandum therefore omits any concretisation and documentisation of its allegations, it does not give either names, or dates, or places and it is, therefore, a matter for Committee I to decide whether it accepts the general statements contained in the Memorandum, as prima facie evidence of the occurrences alluded to.

If it does, the further question will have to be decided, whether the persons named under Nos. 22 to 37 should be put on A, or on S. Nos. 22 to 34 (13 persons) were judges of the Special Court. From the foregoing it appears that no data about the trials being given, it is also not stated which of the 13 judges have taken part in those trials where the irregularities pointed out supra under (a) to (e) occurred. From this, according to the usual practice of Committee I, it would follow that the Chairman of the Court (Maggiora; No. 22) and the prosecutors (Nos. 35 to 37) should go on A, the rest (Nos. 23 to 34) on S.

✓ Against this, it might be pointed out that, according to the charge, the Special Court has tried no less than over 5000 people and sentenced to death over 400, from which it could fairly be argued that probably all the 13 judges must have taken part in this great number of proceedings. In view of this also a decision to put all the judges on A could reasonably be made.

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I/14
10th July, 1945

UNITED NATIONS WAR CRIMES COMMISSION

Committee I

NOTE ON THE YUGOSLAV CASE NO. 1014.

Terrorism in Krusevac, Kragujevac and Cacak

I

H. KORI G.m.b.H. (item 16) is a Limited Company, (Gesellschaft mit beschränkter Haftung) comparable to an English Private Company.

DIDIER-WERKE A.G. OFENBAU (item 19) is also a Limited Company (Aktiengesellschaft) comparable to an English Public Company.

These companies are charged with having constructed and delivered special ovens for the cremation of the bodies of executed persons.

It is doubtful whether the construction and delivery of appliances for the cremation of the bodies of executed persons constitutes a crime. The positions appear to be distinguishable from the case of the Berlin firm of FAULHABER, the partners of which have been listed on a Commission charge for having delivered gas chambers for the extermination (killing) of living persons.

In case Committee I should regard also persons who delivered appliances for the disposal of dead bodies as accessories to the crimes by which the prisoners had been killed, it would be necessary to find out the persons in charge of and responsible for the two companies. I very much doubt whether Corporations aggregate can as such be listed as war criminals. Even in English law a corporation aggregate cannot be indicted for criminal offences involving violence. Most continental legal systems do not know at all the criminal responsibility of corporations.

The persons responsible for the two companies could be found out without difficulty from the Commercial Registry (Handelsregister).

II

On page 3 of the charge it is stated that MEISSNER gave the actual order for the punitive expedition in October and December 1942.

According to page 4, General Ritter von GRABENHOFE (probably Grabenhof or Grabenhofer) was, a.o. responsible for certain crimes.

These two names do not appear in the list of accused.

E. Schwelb.

SECRET

1.412 ✓
I/15
12th July 1945

UNITED NATIONS WAR CRIMES COMMISSION

Committee I

OFFICIAL INTER ALLIED-DECLARATIONS ON
DISPOSSESSION AND LOOTING

In connection with the statement made by Professor Gros when dealing with the French case No. 947 (Staff of Militärbefehlshaber in France) in the meeting of Committee I, held on July 11th, 1945, I herewith submit, for the convenience of members, extracts from the relevant Inter-Allied Declarations on Axis looting, as far as they are of interest for the problem of prosecuting war criminals.

Egon SCHWELB
Legal Officer

---oOo---

1. The Inter-Allied Declaration against Acts of Dispossession committed in Territories under Enemy Occupation or Control, dated January 5th, 1943.

"The Governments of the Union of South Africa; the United States of America; Australia; Belgium; Canada; China; the Czechoslovak Republic; the United Kingdom of Great Britain and Northern Ireland; Greece; India; Luxembourg; the Netherlands; New Zealand; Norway; Poland; the Union of Soviet Socialist Republics; Yugoslavia; and the French National Committee:

Hereby issue a formal warning to all concerned and in particular to persons in neutral countries, that they intend to do their utmost to defeat the methods of dispossession practised by the Governments with which they are at war against the countries and peoples who have been so wantonly assaulted and despoiled.

Accordingly, the Governments, making this Declaration and the French National Committee reserve all their rights to declare invalid any transfers of, or dealings with, property, rights and interests of any description whatsoever which are, or have been, situated in the territories which have come under the occupation or control, direct or indirect, of the Governments with which they are at war, or which belong, or have belonged to persons (including juridical persons) resident in such territories. This warning applies whether such transfers or dealings have taken the form of open looting or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected.

The Governments making this Declaration and the French National Committee solemnly record their solidarity in this matter."

2. From the Covering Statement by His Majesty's Government in the United Kingdom to the Declaration, dated January 5th, 1943.

"His Majesty's Government in the United Kingdom have today joined with sixteen other Governments of the United Nations, and with the French National Committee, in making a formal Declaration of their determination to combat and defeat the plundering by the enemy Powers of the territories

which have been overrun or brought under enemy control. The systematic spoliation of occupied or controlled territory has followed immediately upon each fresh aggression. This has taken every sort of form, from open looting to the most cunningly camouflaged financial penetration, and it has extended to every sort of property - from works of art to stocks of commodities, from bullion and bank-notes to stocks and shares in business and financial undertakings. But the object is always the same - to seize everything of value that can be put to the aggressors' profit and then to bring the whole economy of the subjugated countries under control so that they must slave to enrich and strengthen their oppressors. ...

... the ruthless and complete methods of plunder begun in Central Europe are now being extended on a vast and ever-increasing scale in the occupied territories of Western Europe.

His Majesty's Government agree with the Allied Governments and the French National Committee that it is important to leave no doubt whatsoever of their resolution not to accept or tolerate the misdeeds of their enemies in the field of property, however these may be cloaked, just as they have recently emphasised their determination to exact retribution from war criminals for their outrages against persons in the occupied territories."

3. From the Explanatory Memorandum issued by the Parties to the Declaration, dated January 5th, 1943.

"The Declaration makes it clear that it applies to transfers and dealings effected in territory under the indirect control of the enemy (such as the former "unoccupied zone" in France) just as much as it applies to such transactions in territory which is under his direct physical control.

In the Declaration the parties "reserve all their rights" to declare invalid transfers of or dealings with property, rights, etc. which have taken place during the period of enemy occupation or control of the territories in question. It is obviously impossible for a general declaration of this nature to define exactly the action which will require to be taken when victory has been won and the occupation or control of foreign territory by the enemy has been brought to an end. Dispossession has taken many forms and all will require consideration in the light of circumstances which may well vary from country to country. The wording of the Declaration, however, clearly covers all forms of looting to which the enemy has resorted. It applies, e.g. to the stealing or forced purchase of works of art just as much as to the theft or forced transfer of bearer bonds."

"... The parties making the Declaration have accordingly decided as a first step in this direction to establish a committee of experts, who will consider the scope and sufficiency of the existing legislation of the Allied countries concerned for the purpose of invalidating transfers or dealings of the nature indicated in the Declaration in all proper cases. The Committee have also been asked to receive and collect available information upon the methods adopted by the enemy Governments and their adherents to lay their hands upon property, rights, etc. in the territories which they have occupied or brought under their control. When a report is available from this committee of experts the whole question will be reviewed by the Governments making the Declaration and the French National Committee. The other Governments of the United Nations will be informed of the results of this enquiry."

4. From the Final Act of the United Nations Monetary and Financial Conference, Bretton Woods, 1944.

"Resolution VI
ENEMY ASSETS AND LOOTED PROPERTY

Whereas, in anticipation of their impending defeat, enemy leaders, enemy Nationals and their collaborators are transferring assets to and through neutral countries in order to conceal them and to perpetuate their influence, power, and ability to plan future aggrandizement and world domination, thus jeopardizing the efforts of the United Nations to establish and permanently maintain peaceful international relations;

Whereas, enemy countries and their nationals have taken the property of occupied countries and their nationals by open looting and plunder, by forcing transfers under duress, as well as by subtle and complex devices, often operated through the agency of their puppet governments, to give the cloak of legality to their robbery and to secure ownership and control of enterprises in the post-war period;

Whereas, enemy countries and their nationals have also, through sales and other methods of transfer, run the chain of their ownership and control through occupied and neutral countries, thus making the problem of disclosure and disentanglement one of international character;

Whereas, the United Nations have declared their intention to do their utmost to defeat the methods of dispossession practised by the enemy, have reserved their right to declare invalid any transfers of property belonging to persons within occupied territory, and have taken measures to protect and safeguard property, within their respective jurisdictions, owned by occupied countries and their nationals, as well as to prevent the disposal of looted property in United Nations markets; therefore

The United Nations Monetary and Financial Conference

1. Takes note of and fully supports steps taken by the United Nations for the purpose of:

(a) uncovering, segregating, controlling, and making appropriate disposition of enemy assets;

(b) preventing the liquidation of property looted by the enemy, locating and tracing ownership and control of such looted property, and taking appropriate measures with a view to restoration to its lawful owners;

2. RECOMMENDS:

That all Governments of countries represented at this Conference take action consistent with their relations with the countries at war to call upon the Governments of neutral countries

(a) to take immediate measures to prevent any disposition or transfer within territories subject to their jurisdiction of any

(i) assets belonging to the Government or any individuals or institutions within those United Nations occupied by the enemy; and

(ii) looted gold, currency, art objects, securities, other evidences of ownership in financial or business enterprises, and of other assets looted by the enemy; as well as to uncover, segregate and hold at the disposition of the post-liberation authorities in the appropriate country any such assets within territory subject to their jurisdiction;

(b) to take immediate measures to prevent the concealment by fraudulent means or otherwise within countries subject to their jurisdiction of any

(i) assets belonging to, or alleged to belong to, the Government of and individuals or institutions within enemy countries;

(ii) assets belonging to, or alleged to belong to, enemy leaders, their associates and collaborators; and

to facilitate their ultimate delivery to the post-armistice authorities."

1/16.
14th July, 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE I.

REPORT ON THE FRENCH CHARGE NO. 1056.

(shooting of Prisoners of War at Bad Sulza).

By Mr. E. Schwelb, Legal Officer.

The Charge is based on a captured document, containing Orders of the Day of the Commanders of the Prisoner of War Camp at Bad Sulza, extracts of which have been made available to the National Offices concerned, (France, United Kingdom, Czechoslovakia, Yugoslavia), and to the Embassy of the U.S.S.R.

I.

The French charge is, of course, restricted to incidents of which French prisoners of war have been the victims.

The Enclosure to the Order of the Day No. 1/23/44, dated 29th August, 1944, contains the announcement that, inter alia, two French prisoners of war (André Poulain and Charles Lagarde) were shot "whilst attempting to escape" on the 13th and 22nd of June 1944, respectively. The Order of the Day No. 1/23/44, dated 1st September, 1944, to which this Enclosure is attached, contains the commendation by the commander Colonel Schaal (item 1 of the charge), of Gefreiter Heyne (item 2 of the charge) for his prudent and resolute behaviour in preventing the flight of a French prisoner of war. Heyne was granted an extraordinary leave of five days for excellent acts of service.

Simultaneously, the Order of the Day contains commendations of Schwebe, Woitaschek, Drechsel, Sieger, Boerner and Aschenbach (items 3 to 8), for resolute behaviour towards Prisoners of War who attempted to escape or who showed themselves to be obstinate ("die sich aufsässig zeigten").

There is, therefore, a great amount of probability that Heyne (2) was responsible for the shooting at least of one of the two French prisoners of war and that 3 to 8 were responsible for the death of the other prisoners of war whose shooting had been announced, including the other French prisoner, one British prisoner and one Soviet prisoner.

Colonel Schaal was at the material time (June to September, 1944) commander of the camp.

II.

On November 1st, 1944, it was announced in the Order of the Day No. 25/44 that SS. Obergruppenführer and General der Polizei Erbprinz von Waldeck (item 9 of the charge) will inspect, a.o. the camps in the Wehrkreis IX and the Camp Commander, Colonel Schaal, ordered all his subordinates to admit him to all camps and to furnish to him information.

From the Order of the Day dated February 14th, 1945 (No. 5/45) it follows that Erbprinz zu Waldeck as "der Höhere Kommandeur der Kr. Gef. i. W.K. IX" has commended two N.C.O.s for resolute behaviour towards prisoners of war who attempted to escape or showed themselves obstinate. They did make use of their shooting weapon in time and energetically.

The then Camp Commander, Oberst Trefz expressly acceded to this commendation.

The particular incident, mentioned in the Order of the Day of 14th February, 1945, did not concern French prisoners of war; the shooting of two Slovak prisoners had been announced. But though the name of Prince Waldeck appears in the dossier for the first time in November, 1944, there is in accordance with the practice of Committee I a prima facie case against him also with regard to the shooting of the two French prisoners of war in June, 1944, because as Höherer Kommandeur der Kr. Gef. i. W.K. IX (Higher Commander for prisoners of war in the Wehrkreis IX) he is responsible for what is going on under his command. His personal responsibility is, of course, still more definite with regard to similar incidents that happened after November, 1944, e.g. the shooting of the two Slovak prisoners in December, 1944, and January, 1945.

III.

Conclusions.

1. There is a good prima facie case against the nine accused.
2. Additional Officers and men could be charged by the other National Offices mentioned in the introduction to this paper.

I/16
14th July 1945

UNITED NATIONS WAR CRIMES COMMISSION

Committee I

REPORT ON THE FRENCH CHARGE NO.1056

(shooting of Prisoners of War at Bad Sulza)

By Mr. E. Schwelb, Legal Officer

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I

The French charge is, of course, restricted to incidents of which French prisoners of war have been the victims.

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Simultaneously, the Order of the Day contains commendations of Schwebe, Woitaschek, Drechsel, Sieger, Boerner and Aschenbach (items 3 to 8), for resolute behaviour towards Prisoners of War who attempted to escape or who showed themselves to be obstinate ("die sich aufsässig zeigten").

There is, therefore, a great amount of probability that Heyne (2) was responsible for the shooting at least of one of the two French prisoners of war and that 3 to 8 were responsible for the death of the other prisoners of war whose shooting had been announced, including the other French prisoner, one British prisoner and one Soviet prisoner.

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III

Conclusions

1. There is a good prima facie case against the nine accused.
2. Additional Officers and men could be charged by the other National Offices mentioned in the introduction to this paper.

I/17
July 17th, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

COMMITTEE I

Note on the French Charge No. 1053.

(Sinking of French merchantman by Italian submarine
on July 10th, 1940)

By Mr. E. Schwelb, Legal Officer.

I.

The accused, Pini, commander of the Italian submarine "Scire", is charged with having sunk the French merchant vessel "Cheik" without warning and without having first placed passengers, crew and ship's papers in a place of safety.

The charge is based on two different, and, in my submission, independent grounds, viz. a) that the sinking constituted a breach of the Franco-Italian armistice, b) that it constituted a breach of conventional rules regulating naval warfare.

These two grounds will be dealt with separately in the following two paragraphs of this note.

II.

The provisions of the Armistice between France and Italy, signed at the Villa Incisa, near Rome, on June 24, 1940 by General Huntzinger on behalf of France and by Marshall Badoglio on behalf of Italy, which might be relevant, were as follows :

Article I

France will cease hostilities in metropolitan territory, in French North Africa, in the colonies and in territories under French mandate. France will also cease hostilities in the air and on the sea.

Article XIV

The French Government, in addition to the obligation not to carry on hostilities in any form anywhere against Italy, undertakes to prevent members of its armed forces and French citizens generally from leaving national territory to take part in hostilities against Italy.

.....

Article XVI

Departure of all the French merchant marine is forbidden until such time as the Italian and German Governments may permit partial or total resumption of commercial or maritime traffic.

The French merchant marine which is not at the moment of the armistice in French ports or in some way under French control, will be either recalled to French ports or sent to neutral ports.

Article XXV

This armistice convention will become effective upon signature. Hostilities will cease in all theatres of operation six hours from the moment in which the Italian Government communicates to the German Government the conclusion of this agreement. The Italian Government will notify the French Government of this moment by radio.

Article XXVI

The convention shall remain in force until the conclusion of a peace treaty, but may be denounced by Italy at any time in the event the French Government does not fulfil its obligations.

Huntzinger
Badoglio.

I do not know at present when the radio communication mentioned in Article XXV was effected, but it certainly was before July 10th, 1940.

In spite of that it does not seem expedient that Committee I should base its decision on this point, chiefly, because the recognition of the 1940 Armistice as a source of international law regulating the relations between France and Italy, would imply consequences which might be repugnant to the Committee's decisions in other cases, e.g. regarding the status of the F.F.I. Nor does it seem necessary to base the charge against Pini on the Armistice in view of the fact that, as will be pointed out under (III), the alternative ground (*supra* (8)) is quite sufficient for a prima facie case against the Italian submarine commander.

III.

1). At the London Conference of 1930 a Treaty was signed between Great Britain, The United States, France, Italy and Japan which laid down in Part IV (article 22) "the established rules of international law" which it declared to be as follows : "(1) In their action with regard to merchant ships, submarines must conform to the rules of international law to which surface vessels are subject; (2) In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit and search, a warship, whether surface vessel or submarine, may not sink or render incapable of navigation a merchant vessel without having first placed passengers, crew and ship's papers in a place of safety. For this purpose, the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or the presence of another vessel which is in a position to take them on board."

France and Italy have not ratified the Treaty (Oppenheim - Lauterpacht, II. page 384.) but the above rules were embodied in the Protocol of November 6, 1936, to which forty-eight States, including Germany, Italy and Japan, had adhered by the end of August 1939.

(Higgins and Colombos, The International Law of the Sea, 1943, 420).

In spite of her signature of the London Protocol, Germany in September 1939 proclaimed a German naval submarine campaign concentrated upon "the blockade of England" which went beyond anything attempted during the unrestricted submarine warfare of 1917-1918. The German Government had in advance made up its mind to resort to an indiscriminate attack upon all shipping whatsoever and as a result had placed German submarines in position before the outbreak of war. This breach of the obligation to which it has solemnly subscribed was therefore quite flagrant and deliberate, and its example was afterwards followed by the two other members of the "Axis" alliance, Italy and Japan. As a retaliatory measure Great Britain and the United States also employed their submarines in 1942 for the destruction of enemy merchant vessels carrying supplies and munitions of war, but only after all their protests against the barbarous methods adopted by their enemies had proved unavailing.

(Higgins - Colombos, 437).

From this it follows that the sinking of a merchantman without warning was, in July, 1940, not an act of legitimate warfare, according to conventional International law then binding on both Italy and France. Nor was it so according to the customary rules of International Law.

2). As to the latter, it may be pointed out that the (abortive) Treaty of Washington of February 6, 1922, signed by Great Britain, the U.S.A. France, Italy and Japan, but not ratified contained a combined declaration of "those fundamental principles of the laws of naval warfare" which had been systematically and flagrantly violated by the German submarine commanders.

The first Resolution reaffirmed a principle for which Great Britain and her Allies stood during the late war: the maintenance of the rule of international law forbidding the sinking of merchant ships at sight whether such ships be enemy or neutral, and requiring that crews and passengers be placed in safety if a vessel is destroyed owing to unavoidable circumstances. The Washington Treaty also contained a sanction: Any person in the service of any Power adopting these rules, whether or not such person is under the superior orders of a Government, shall be deemed to have violated the laws of war and "shall be liable to trial and punishment as if for an act of piracy, and may be brought to trial before the civil or military authorities of any Power within whose jurisdiction he may be found."

3). As to the illegality of the action in question reference may also be had to the British Reprisals Order in Council (S.R. & O. 1939, No. 1709, extended to Italy by S.R. & O. 1940, No. 979) in the preamble of which it is recited inter alia that "German forces have in numerous cases sunk merchant vessels, British, Allied and neutral, in violation of the rules contained in the Submarine Protocol, 1936, to which Germany is a party."

4). In the French "Notes on the case", para. 3, the possible defence that the French merchantman was armed, is considered. The charge quotes article 2 (2) of the French Naval Instructions of 1934 which expressly provides that merchant vessels must not be attacked for the sole reason that they are armed defensively (Oppenheim - Lauterpacht, II, p. 364, Note 5.) and the corresponding Italian Rule, adding that the armament of the "Cheik" was only fictitious.

An "overwhelming weight of authority" recognises that their defensive armament in no way alters the legal status of merchant vessels (Oppenheim - Lauterpacht, II, p. 363). The British Government have always insisted on the distinction between converted armed merchant cruisers and defensively armed merchantmen (ibid. p. 362) ".... It is fully consistent with the fundamental principles of the law of war to assert that merchant vessels, defensively armed for the purpose of resisting attack, do not lose either their character as merchant vessels or the concomitant right to be treated as such both by the enemy and by neutrals" (ibid. p. 364).

5). The "Notes on the case" deal also with the consequence of the fact, which seems to be implied, that the "Cheik" was not at the time of the attack flying the French flag.

This question would be relevant only, if the charge were based solely on the ground supra I(a), (disregarding the armistice); it makes no difference, if the charge is based on the general conventional rules (I.3); in the latter case the nationality of the merchant vessel is irrelevant, for it must not be sunk at sight even if it is an enemy vessel.

In addition this question concerns more the problem of mens rea or mistake as a defence in criminal law and must be solved by the Court, not by the Commission.

IV.

Conclusions

There is a good prima facie case against Pini based on the ground I (3) supra.

I/17A.
18th July, 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE I.

Addendum to the Note on the French charge No. 1053 (Sinking of French merchantman by Italian submarine).

By Mr. E. Schwelb, Legal Officer.

In addition to what has been said in paragraph III of the Note I/17, I would like to place before the Committee the following quotation from Professor Lauterpacht's article "The Law of Nations and the Punishment of War Crimes", in British Year Book of International Law, 1944, at p. 77.

In the chapter entitled "The effect of the operation of reprisals", the Whewell Professor of International Law says:

"Moreover, there is room for the view that if the victorious belligerent has himself, in pursuance of reprisals, set aside international law in a particular sphere, he cannot properly make such acts on the part of his opponent the subject of prosecution for a war crime."

It is submitted that Professor Lauterpacht does not lay down a general rule of law to the effect that, whenever a belligerent by way of reprisals has adopted a practice of warfare, which, but for its character of a reprisal, would be illegal, he is prevented from prosecuting similar acts committed by the enemy who cannot validly invoke the right to exercise retaliatory measures. What Professor Lauterpacht expresses is not a rule of International Law, but a consideration of policy of the law, and, to a certain extent, of expediency.

The sentence quoted from the learned author's paper does, therefore, not necessarily affect the purely legal statement, contained in Doc. I/17. p.3, that the sinking of a merchantman without warning was, in July 1940, not an act of legitimate warfare.

I/17.
July 17th, 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE I.

Note on the French Charge No. 1053.

(Sinking of French merchantman by Italian submarine on July 10th, 1940).

By Mr. E. Schwelb, Legal Officer.

I.

The accused, Pini, commander of the Italian submarine "Scire", is charged with having sunk the French merchant vessel "Cheik" without warning and without having first placed passengers, ~~crew~~ and ship's papers in a place of safety.

The charge is based on two different, and, in my submission, independent grounds, vis. a) that the sinking constituted a breach of the Franco-Italian armistice, b) that it constituted a breach of conventional rules regulating naval warfare.

These two grounds will be dealt with separately in the following two paragraphs of this note.

II.

The provisions of the Armistice between France and Italy, signed at the Villa Incisa, near Rome, on June 24, 1940 by General Huntzinger on behalf of France and by Marshall Badoglio on behalf of Italy, which might be relevant, were as follows:

Article I.

France will cease hostilities in metropolitan territory, in French North Africa, in the colonies and in territories under French mandate. France will also cease hostilities in the air and on the sea.

Article XIV.

The French Government, in addition to the obligation not to carry on hostilities in any form anywhere against Italy, undertakes to prevent members of its armed forces and French citizens generally from leaving national territory to take part in hostilities against Italy.

.....

Article XVI.

Departure of all the French merchant marine is forbidden until such time as the Italian and German Governments may permit partial or total resumption of commercial or maritime traffic.

The French merchant marine which is not at the moment of the armistice in French ports or in some way under French control, will be either recalled to French ports or sent to neutral ports.

Article XXV.

This armistice convention will become effective upon signature. Hostilities will cease in all theatres of operation six hours from the moment in which the Italian Government communicates to the German Government the conclusion of this agreement. The Italian Government will notify the French Government of this moment by radio.

Article XXVI.

The convention shall remain in force until the conclusion of a peace treaty, but may be denounced by Italy at any time in the event the French Government does not fulfil its obligations.

Huntzinger.
Badoglio.

I do not know at present when the radio communication mentioned in Article XXV was effected, but it certainly was before July 10th, 1940.

In spite of that it does not seem expedient that Committee I should bas its decision on this point, chiefly because the recognition of the 1940 Armistice as a source of international law regulating the relations between France and Italy, would imply consequences which might be repugnant to the Committee's decisions in other cases, e.g. regarding the status of the F.F.I. Nor does it seem necessary to base the charge against Pini on the Armistice in view of the fact that, as will be pointed out under (III) the alternative ground (supra (B) is quite sufficient for a prima facie case against the Italian submarine commander.

III.

1) At the London Conference of 1930 a Treaty was signed between Great Britain, the United States, France, Italy and Japan which laid down in Part IV (article 22) "the established rules of international law" which it declared to be as follows: "(1) In their action with regard to merchant ships, submarines must conform to the rules of international law to which surface vessels are subject; (2) In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit and search, a warship, whether surface vessel or submarine, may not sink or render incapable of navigation a merchant vessel without having first placed passengers, crew and ship's papers in a place of safety. For this purpose, the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or the presence of another vessel which is in a position to take them on board".

France and Italy have not ratified the Treaty (Oppenheim-Lauterpacht, II. page 384) but the above rules were embodied in the Protocol of November 6, 1936, to which forty-eight States, including Germany, Italy and Japan, had adhered by the end of August 1939.

(Higgins and Colombos, The International Law of the Sea, 1943, 420).

In spite of her signature of the London Protocol, Germany in September 1939 proclaimed a German naval submarine campaign concentrated upon "the blockade of England" which went beyond anything attempted during

the unrestricted submarine warfare of 1917-1918. The German Government had in advance made up its mind to resort to an indiscriminate attack upon all shipping whatsoever and as a result had placed German submarines in position before the outbreak of war. This breach of the obligation to which it has solemnly subscribed was therefore quite flagrant and deliberate, and its example was afterwards followed by the two other members of the "Axis" alliance, Italy and Japan. As a retaliatory measure Great Britain and the United States also employed their submarines in 1942 for the destruction of enemy merchant vessels carrying supplies and munitions of war, but only after all their protests against the barbarous methods adopted by their enemies had proved unavailing.

(Higgins - Colombos, 437).

From this it follows that the sinking of a merchantman without warning was, in July 1940, not an act of legitimate warfare, according to conventional International law then binding on both France and Italy. Nor was it so according to the customary rules of International Law.

2). As to the latter, it may be pointed out that the (abortive) Treaty of Washington of February 6, 1922, signed by Great Britain, the U.S.A., France, Italy and Japan, but not ratified contained a combined declaration of "those fundamental principles of the laws of naval warfare" which had been systematically and flagrantly violated by the German submarine commanders.

The first Resolution reaffirmed a principle for which Great Britain and her Allies stood during the late war: the maintenance of the rule of international law forbidding the sinking of merchant ships at sight whether such ships be enemy or neutral, and requiring that crews and passengers be placed in safety if a vessel is destroyed owing to unavoidable circumstances. The Washington Treaty also contained a sanction: Any person in the service of any Power adopting these rules, whether or not such person is under the superior orders of a Government, shall be deemed to have violated the laws of war and "shall be liable to trial and punishment as if for an act of piracy, and may be brought to trial before the civil or military authorities of any Power within whose jurisdiction he may be found."

3) As to the illegality of the action in question reference may also be had to the British Reprisals Order in Council (S.R. & O. 1939, No. 1709, extended to Italy by S.R. & O. 1940, No. 979) in the preamble of which it is recited inter alia that "German forces have in numerous cases sunk merchant vessels, British, Allied and neutral, in violation of the rules contained in the Submarine Protocol, 1936, to which Germany is a party".

4) In the French "Notes on the case", para. 3, the possible defence that the French merchantman was armed, is considered. The charge quotes article 2 (2) of the French Naval Instructions of 1934 which expressly provides that merchant vessels must not be attacked for the sole reason that they are armed defensively (Oppenheim-Lauterpacht, II, p.364, Note 5) and the corresponding Italian Rule, adding that the armament of the "Cheik" was only fictitious.

An "overwhelming weight of authority" recognises that their defensive armament in no way alters the legal status of merchant vessels (Oppenheim-Lauterpacht, II, p.363). The British Government have always insisted on the distinction between converted armed merchant cruisers

and defensively armed merchantmen (ibid. p.362) "..... It is fully consistent with the fundamental principles of the law of war to assert that merchant vessels, defensively armed for the purpose of resisting attack, do not lose either their character as merchant vessels or the concomitant right to be treated as such both by the enemy and by neutrals" (ibid.p.364).

5) The "Notes on the case" deal also with the consequence of the fact, which seems to be implied, that the "Cheik" was not at the time of the attack flying the French flag.

This question would be relevant only if the charge were based solely on the ground supra I(a), (disregarding the armistice); it makes no difference, if the charge is based on the general conventional rules (I.B); in the latter case the nationality of the merchant vessel is irrelevant, for it must not be sunk at sight even if it is an enemy vessel.

In addition this question concerns more the problem of mens rea or mistake as a defence in criminal law and must be solved by the Court, not by the Commission.

IV.

Conclusions.

There is a good prima facie case against Pini based on the ground I(B) supra.

I/17.A
18th July, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

COMMITTEE I

Addendum to the Note on the French charge No. 1053 (Sinking of French merchantman by Italian submarine.)

By Mr. E. Schwebel, Legal Officer

In addition to what has been said in paragraph III of the Note I/17, I would like to place before the Committee the following quotation from Professor Lauterpacht's article "The Law of Nations and the Punishment of War Crimes", in British Year Book of International Law, 1944, at p. 77.

In the chapter entitled "The effect of the operation of reprisals", the Whewell Professor of International Law says :

"Moreover, there is room for the view that if the victorious belligerent has himself, in pursuance of reprisals, set aside international law in a particular sphere, he cannot properly make such acts on the part of his opponent the subject of prosecution for a war crime."

It is submitted that Professor Lauterpacht does not lay down a general rule of law to the effect that, whenever a belligerent by way of reprisals has adopted a practice of warfare, which, but for its character of a reprisal, would be illegal, he is prevented from prosecuting similar acts committed by the enemy who cannot validly invoke the right to exercise retaliatory measures. What Professor Lauterpacht expresses is not a rule of International Law, but a consideration of policy of the law and, to a certain extent, of expediency.

The sentence quoted from the learned author's paper does, therefore, not necessarily affect the purely legal statement, contained in Doc. I/17. p.3, that the sinking of a merchantman without warning was, in July 1940, not an act of legitimate warfare.

I/18.
19th July, 1945.

✓ and the
next page
only

UNITED NATIONS WAR CRIMES COMMISSION

COMMITTEE I

CRIMES COMMITTED BY GERMANS AND AUSTRIANS

AGAINST GERMANS AND AUSTRIANS

Note by Mr. E. Schwelb, Legal Officer.

Committee I decided in its meeting held on July 18th, 1945, (Minutes No. 19) that an information regarding the cases submitted by the Association of German Democratic Lawyers (see Minutes No. 10, item 4) and regarding the case submitted by Sgt. Benson (Doc. I/12) should be drawn up and sent to the following authorities :

The Control Council for Germany
Mr. Justice Jackson
The Attorney General
The Allied Military Authorities in Innsbruck
The American representative on the Commission.
The British representative on the Commission
The French representative on the Commission.

Because this is a new departure in the activities of Committee I, I venture to circulate herewith the Draft Summary which, if agreed to by Committee I, will be stencilled and sent to the authorities mentioned with a short accompanying letter, which will be submitted to Lord Wright for signature.

I further propose to inform a) The Association of German Democratic Lawyers; b) Sgt. Benson, of the fact that the Commission has informed the charges to the appropriate allied military, military government, and control authorities.

forwarded

DRAFT SUMMARY

of charges presented to the United Nations War Crimes Commission regarding crimes committed before September, 3rd, 1939, by Germans against German Nationals and by Austrians against Austrian Nationals.

The United Nations War Crimes Commission has received a number of charges drawn up by private bodies and private persons which deal with crimes committed by Germans and Austrians against German and Austrian Nationals, particularly Jews and political opponents of Nazism. The Commission was offered by the association which has forwarded the greater number of these charges the submission of many more charges of a similar kind.

All charges are supported by statements naming witnesses, living either in this country or - in the Austrian case - in Palestine, who are prepared to give evidence about the incidents.

The cases do not fall within the competence of the United Nations War Crimes Commission as at present understood. Therefore this summary is being forwarded to the competent Allied Military, Military Government, and Control authorities. The Commission is prepared to make its files concerning the cases mentioned below available to those authorities who want to take further action in the matter.

I. Charges presented by the Association of Democratic German Lawyers, c/o Dr. F. Hellendall, 29, Langland Gardens, London, N.W.3.

Charge No. 1.

The following members of the S.A. Sturm Kaulsdorf near Berlin are accused of having participated in the false imprisonment and subsequent murder of Dr. Philippsthal, Medical Practitioner, and another in February, 1933 :

Erich Goltzsch, Uckermarkstrasse, Kaulsdorf nr. Berlin (39)
Erich Hilcher, Ferdinandstrasse, Kaulsdorf nr. Berlin (39)
Günther Damas, Frankfurter Strasse 4, Kaulsdorf (30)
Brothers Rodenbach, Bahnhofstrasse nr. the Station Kaulsdorf (30)
- Kreuz, Kaulsdorf-Nord, Gerichtsbeamter and Member of the Ostasiatenbund (55)
Gottfried Golen, Koepenicker Strasse, Kaulsdorf, Owner of a Gardener's Shop and all his employees, about 12 persons whose names are unknown
Hübner, Publican, Wilhelmstrasse 35, Kaulsdorf
- Wohlgemut, Kaulsdorf-Niederfeld, Holbeinstrasse (50)
Paul Greif, Coffee and Tea Merchant, Leopoldstrasse, Kaulsdorf (50), and his son (25 or 27)
Engelbrecht, Kaulsdorf Nord.
Hugo Pape, former member of the Police Force, Koepenickerstrasse 91
Arthur Rex, Son of the Coal Merchant, Bahnhofstrasse, Kaulsdorf
Hans Lorenz, Son of the Brewery Owner, Frankfurterstrasse, Kaulsdorf
- Schreiber, Son of a Merchant, Wilhelmplatz, Kaulsdorf
Friedrich, Father and Son, Kaulsdorf-Süd.

Both acts which are the subject-matter of this charge were part and parcel of the first purge instituted by the Nazis against the opponents in February, 1933, and as such were part of a system approved by the Nazi Government.

Charge No. 2

Vogt, Commandant of Concentration Camp, Neu-Sustrum, Kreis Papenburg, Hanover Province, is accused of having tortured and subsequently murdered the Social-Democratic editor Papenheim and another person at the Concentration Camp Neu-Sustrum, Kreis Papenburg.

It is submitted that the facts indicate that the offences were committed on the accused's own initiative, but by committing these offences he was acting within the "powers" given to him by the Nazi government, and thus may be said to have been carrying on a system approved by "authority".

Charge No. 3

The following S.S. men, resident in Beckum, Westphalia, are accused of having in November 1938, murdered two Jewish inhabitants of Beckum (Stein and Falk), caused grievous bodily harm to others and desecrated the synagogue at Beckum :

Roggenkamp, Obersturmbannführer S.S.
Bernhard Richter, S.S. Mann
Dietrich Dorand, "
Ludwig Holtmann, "
Brinkmann, "
Hugo Scheifharke, "
Stefan Steinhoff, last known address: Nordstrasse, Beckum.
Cadolf Schuermann Strasse).

It would appear that all the accused acted in pursuance of orders given by the Nazi Government to organise a pogrom against the whole Jewish population of Germany on November, 10, 1938 after a German consular official, von Rath, had been killed by a young Jew, in Paris. Similar incidents as the alleged took place all over Germany by order of the Nazi Government.

Charge No. 4

Mandel, Kommissar der Gestapo and Behrendt, Kommissar der Gestapo, are accused of having, in February, 1934, participated in the killing and torture of prisoners of the Gestapo Prison Prinz Albrecht Strasse, Berlin.

The accused carried out a system approved by the Nazi Government which in numerous decrees and orders encouraged the officials of the Gestapo not to be lenient with prisoners.

Charge No. 5

- 1) Jaeckel, S.S. Führer
- 2) Sauckel, S.A. Führer
- 3) Police Officer known under the nickname of "Langer Heinrich",

all at Brunswick when the offence was committed are accused of having, on July 4, 1933, given the orders for the summary execution of ten anti-Nazi prisoners, detained in protective custody at the S.A. Barracks Neue Krankenkasse, Brunswick.

Charge No. 6

Mauke, Blockwart, last known address: Berlin-Halensee, Markgraf-Albrechtstrasse 13 is accused of having been the leader of a group of Nazi adolescents who, on 3rd November, 1938, destroyed and looted the grocery shop of a Jewish woman, Mrs. Gans, Berlin Halensee, Markgraf Albrecht Strasse.

The offence was part of the pogrom organised by the Nazi Government against the Jewish population of Germany on the 9th and 10th November, 1938, and in that respect it was part of a system approved and encouraged by the Nazi authorities. It is unknown whether the accused had actual orders to commit this crime.

Charge No. 7

Weber, Kriminal-Hauptwachtmeister, S.S. Man, Chemnitz, Saxony, Germany
Webst, Kriminal-Hauptwachtmeister, S.S. Man, Chemnitz, Saxony, Germany
 are accused of having maltreated a prisoner of the Gestapo prison,
 Polizeipräsidium, Chemnitz, Saxony (Mr. Kurt Rudolf) during interrogation
 in March, 1935.

It is not known whether the offenders had specific orders to maltreat
 Rudolf, or whether they acted on their own initiative. But maltreatment
 and torture is a recognised method of obtaining evidence from political
 prisoners in Nazi-Germany, and thus it is submitted that the offence was
 committed in carrying out a system approved by authority.

Charge No. 8

Lehmann, Sturmabführer, former Reichswehr Officer, discharged from
 the Reichswehr for Nazi activities under the Republic after the trial of the Ulm
 Reichswehr Officers before the Reichsgericht in 1930. Last known address
 Kottbus, Germany, is accused of having, in March and April, 1933, maltreated
 Mr. Hugo Richter, in such a way that he died from the consequences and of
 having maltreated numerous other persons at the S.A. Barracks of Standarte 52,
 Ostrowerda, Kottbus.

Similar treatment was inflicted on anti-Nazis during the same period all
 over Germany with the approval of the Nazi Government, and the offences stated
 may therefore said to have carried out a system approved by authority.

Charge No. 9

Rohn, Teacher at the Elementary School, Ortsgruppenführer der N.S.D.A.P.,
 S.A. Leader, Wuestenbrand near Chemnitz, Saxony, is accused of having illegally
 arrested and subsequently maltreated Mr. Max Scheller in the local prison cell
 in the cellar of the Wuestenbrand town hall, in March, 1933.

II. Charge presented by Sgt. F.R. Benson, 13051585, Chief Postal Censor, London.

The following are charges as the main organisers and perpetrators of the
 pogrom against the Jewish inhabitants of Innsbruck on November 9th, 1938.

- | | |
|---|--|
| 1) Polizeipräsident FRANZELIN | 11) Dr. MARKL, lawyer |
| 2) Gauleiter HOFER | 12) WIESER, Ernst (Kommissär of the firm |
| 3) Gestapoleiter HILLIGES, Bienerstrasse 31 | Michael BRULL), Anichstrasse |
| 4) Kommissär MÖSINGER, Pradlerstrasse | 13) Dr. KRÖSSL, Brinnerstrasse |
| 5) Dr. v. GELB, Fallmaeyerstrasse | 14) DICHTL, Igls |
| 6) Dr. PFANNER (whose son was active in one | 15) LANTSCHNER, Igls |
| of these murder-groups) | 16) Dr. LANTSCHNER, Karl-Ludwigsplatz |
| 7) Dr. CZERMAK, Anichstrasse | 17) JANNER, Ernst, P.T. instructor |
| 8) Dr. DUXNEUNER | 18) ZACK (fishmonger), Marktgraben |
| 9) STROBL, dentist, Anichstrasse 7 | 19) NEUMAYER (fishmonger's son), |
| 10) SALCHER (brothers) | Claudiastrasse. |
| | 20) HOLEFKA, Anichstrasse 13. |

The following particulars of the mass crimes were furnished to the Commission :

At midnight on November 9th, 1938 the SS and SA of INNSBRUCK were called on
 parade by Gauleiter HOFER. ^(supra 2) The assembled men were given the official order to return
 at 2 a.m. in mufti, as an attack on the Jewish inhabitants of INNSBRUCK was planned
 for that night by the highest Nazi authorities. The assembled men, who divided
 themselves into groups of 10 to 15, were given the addresses of the Jewish
 inhabitants by the head of the Gestapo, HILLIGES and Kommissar MOSINGER. (supra
 3 and 4). These groups forced their way systematically into every Jewish home
 and dragged some of their victims off to prison whilst others were brutally
 maltreated and seriously injured.

✓ er alias⁰ the following persons were murdered :

Oberbaurat Ingenieur Richard BERGER
Dr. Wilhelm BAUER
Ingenieur Richard GRAUBART.

The following were admitted to hospital seriously injured :

Ingenieur Josef ADLER
Karl BAUER
Adolf NEUMANN
Mr. and Mrs. POPPER.

Polizeipräsident FRANZELIN (1) a high ranking SA official, had instructed the police to keep off the streets during that particular night. The police were also ordered not to intervene on behalf of the Jews. At the same time he had ordered the INNSBRUCK telephone exchange not to connect any calls from the Jewish subscribers. FRANZELIN patrolled the streets during that night in the side car of a motor cycle, ridden by a policeman, JUNGENEGER, who is not a Nazi and who was detailed for this job, in order to convince himself of the execution of this above mentioned order to the police.

ANNEX III.

German Police Authorities in Czechoslovakia.

1. Höhere SS. und Polizeiführer.
2. Reichsprotektor and his Deputy.
3. Members of the Office of the Reichsprotektor, including Staatssekretär, Unterstaatssekretär, Befehlshabers der Ordnungspolizei and Sicherheitspolizei.
4. Reichsstatthalter and their Deputies.
5. S.D. Leitabschnitte and S.D. Abschnitte.
6. Staatspolizeileitstellen, Staatspolizeistellen, and Aussenstellen.
7. Höherer Polizeibehörden in Oberlandrats Districts.
8. Kriminalpolizeileitstellen and Kriminalpolizeistellen.
9. Staatliche Polizeiverwaltungen und Kriminalabteilungen (Polizeidirektionen).
10. Inspektors of the Ordnungspolizei, Sicherheitspolizei and of the S.D.
11. Regierungspräsidenten and Oberpräsidenten, and their Deputies.
12. Chiefs of Polizeipräsidien, Polizeidirektionen and Polizeiämter.

DRAFT.

R E P O R T

on the Czechoslovak charge

concerning the Oswiecim (Auschwitz) and Birkenau Concentration Camps.

To be sent to all the National Offices as
requested by the Czechoslovak Representative.

(Draft by the Legal Officer, Dr. LITAWSKI).

The Czechoslovak National Office recently transmitted to the Commission a charge against German war criminals concerning atrocities committed against Czechoslovak nationals which have taken place in Oswiecim (Auschwitz) and Birkenau concentration camps.

Because of the fact that this charge differs from similar charges which so far have been transmitted by other National Offices, the Commission felt it of some importance to draw the attention of National Offices to the scheme adopted in this charge, in case they should feel inclined to follow the policy of the Czechoslovak National Office.

The charge is directed against individuals and groups of persons (about 2,000 in number) as follows:

1. Members of the German Government in the material period (1939-1945).
2. Persons responsible for the direction of the police activities in Germany of the highest rank. Apart ofrom H. HIMMLER himself, this group comprises all chiefs and officials of the two Hauptämter of the Reichsführer SS. and Chef der Deutschen Polizei in the Reichsministerium des Innern: I. Hauptamt Ordnungspolizei; II. Reichssicherheitshauptamt. For the names and functions of these officials see Annex I.
3. Persons responsible for the general administration and supervision of all concentration camps, i.e. in Germany proper and in the occupied countries, so-called Wirtschafts und Verwaltungshauptamt (WWHA). The list of persons and their functions is attached in Annex II.
4. Persons of all ranks belonging to the camp personnel.
5. Chiefs and officials of the police authorities acting in, or competent for, the different sections and districts of the Czechoslovak Republic indicated by their functions or offices, in Annex III.

The Czechoslovak National Office holds these persons and groups of persons responsible for ordering and executing the arrest of Czechoslovak

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nationals and for committing them to the concentration and extermination camps Oswiecim-Rajsko (Auschwitz-Birkenau), and/or for aiding and abetting these criminal activities. The charge differs from similar charges which so far have been dealt with by Committee I in that it indicts not only the persons in authority on the top level (Reich Government, SS. High Command), and the actual perpetrators at the end of the journey (the camp personnel), but that it attempts to establish the guilt and responsibility of the intermediate authorities, i.e. the people competent to exercise local jurisdiction in the different parts of occupied Czechoslovakia and who had the power either to propose or to order the individual arrests and commitments to the camps.

In making charges against persons who are held responsible for their share in the crimes on the intermediate level, the Czechoslovak National Office makes two distinctions:

1. between functionaries of the Ordnungspolizei on the one hand and those of the Sicherheitspolizei on the other. Both were competent to order arrests with a view to committing the arrested persons to a concentration and extermination camp. But, there being no sufficient evidence that the regular police (Ordnungspolizei) took a decisive part in these activities, the Czechoslovak National Office proposed to put the officials of the Ordnungspolizei on the List of Suspects (S), while the officials of the Sicherheitspolizei, Gestapo and SD. ~~are~~ on the List of War Criminals (A).

2. The charge further distinguishes between police authorities having jurisdiction exclusively for Czechoslovak territory (so-called Protectorate of Bohemia and Moravia, and the so-called Reichsgau Sudetenland), and such police authorities ~~as~~ were in charge of predominantly Reich German or Austrian provinces to which slices of Czechoslovak territory have been annexed during the occupation. In the case of the "Protectorate" and of the "Reichsgau Sudetenland", the Czechoslovak National Office proposed to list the police officials, other than Ordnungspolizei, on the List of War Criminals (A), and officials responsible for other parts of Czechoslovak territory on the List of Suspects (S). The reason for this distinction was that a proper prima facie case could not be established with regard to this category of officials.

As far as the delimitation of responsibility of various ranks of the police officials is concerned the Czechoslovak National Office charged only:

(i) the administrative officials of the higher administrative police service from the rank of Government Councillor (Regierungsrat) upwards;

(ii) the executive officials of the security police who belong to the Führerlaufbahn des mittleren Dienstes und der Sicherheitspolizei, from the rank of Criminal Secretary (Kriminalsekretär) upwards;

(iii) the S.D. functionaries from the rank of manager (Geschäftsführer) upwards.

Committee I decided to put all the persons and groups of persons accused in the charge on the Commission's Lists A and S according to the delimitation of responsibility mentioned above.

ANNEX I.

Chiefs and Officials of the 3 Hauptämter of the Reichsführer SS. und Chef der Deutschen Polizei in the Reichsministerium des Innern:

Hauptamt Ordnungspolizei:

1. Chef der Ordnungspolizei.
2. Otto WINKELMANN, SS- GF, Generalleutnant der Polizei, Chief of the Kommandoamt in the Hauptamt Ordnungspolizei.
3. Anton DIERMANN, SS- BF. Generalmajor der Polizei, successor to WINKELMANN.
4. FLADE, SS- BF. Generalmajor der Polizei, successor to DIERMANN.
5. GEIBEL, SS - SF. Oberst der Gendarmerie, Chief of the Amtsgruppe II of the Kommandoamt.
6. FRANK, SS - GF. Generalleutnant der Waffen SS. und der Polizei, Chief of the Wirtschaftsverwaltungsamt in the Hauptamt Ordnungspolizei.
7. Generalinspekteur der Schutzpolizei des Reichs.
8. Generalinspekteur der Gendarmerie und der Schutzpolizei der Gemeinden.
9. Generalinspekteur der Schulen.
10. Generalinspekteur der Feuerschutzpolizei.
11. Inspekteur für Weltanschauliche Erziehung.

Reichssicherheitshauptamt:

12. Chef der Sicherheitspolizei und des S.D.
13. Ervin SCHULZ, SS. Brigadeführer, Chief of Amt I.
14. HAENEL, SS. Obersturmbannführer, Chief of Amt II.
15. OHLENDORF, SS. Brigadeführer, Chief of Amt III.
16. MÜLLER, SS. Gruppenführer, Chief of Amt IV.
17. NEBE, SS. Gruppenführer, Chief of Amt V.
18. SCHILLENBURG, SS. Brigadeführer, Chief of Amt VI.
19. Dr. SIX, Chief of Amt VII.

Heads of schools directly subordinate to the Reichssicherheitshauptamt:

20. Head of the Führerschule der Sicherheitspolizei und des S.D. in Berlin, Charlottenburg.
21. Head of the Sicherheitspolizeischule in Fürstenberg.
22. Head of the S.D. Schule in Bernau.
23. Head of the Sportschule in Pretzsch.
24. Head of the Funkschule auf Schloss Gruenberg.
25. Head of the Schiess-schule in Zella-Mehlig.
26. Head of the Schule der Sicherheitspolizei und des S.D. in Prague.

ANNEX II.

GENERAL ADMINISTRATION AND SUPERVISION OF CONCENTRATION CAMPS.

(Wirtschafts und Verwaltungshauptamt, WVHA).

1. Oswald POHL, SS. Obergruppenführer, Head of the W.V.H.A.
Sub-Department: Amtsgruppe D (Operation and Administration of Concentration Camps).
2. Richard GLUCKS, SS. Gruppenführer, Head of Amtsgruppe D.
Office No. 1 (Central Bureau).
3. Arthur LIEBEHENSCHER, SS. Obersturmbannführer, Chief of Office No. 1.
4. Rudolf HÖSS, SS. Obersturmbannführer, Successor to Liebehenschel.
Office No. II (General Administration and Prisoners).
5. Gerhard MAURER, SS. Obersturmbannführer, Chief of Office No. II.
Office No. III (Medical Administration).
6. Dr. Enno LOLLING, SS. Obersturmbannführer, Chief of Office No. III.
Office No. IV (General Administration of Camps and Camp Staff).
7. Anton KAINDL, SS. Sturmbannführer, Chief of Office No. IV.
8. HARBAUM, HSF, Official.
9. KIENER, HSF, Office in the Amtsgruppe D.
10. All other chiefs of the W.V.H.A. and all other Chiefs and Officials of the Amtsgruppe D.
11. KAMMLER, SS. Brigadeführer, Chief of Construction of Concentration Camps, Chief of Amtsgruppe C.

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2nd August, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

OSWIECIM (AUSCHWITZ) AND BIRKENAU CONCENTRATION CAMPS

Report of Committee I on a charge presented
by Czechoslovakia

The Czechoslovak National Office recently transmitted to the Commission a charge against German war criminals concerning atrocities committed against Czechoslovak nationals which have taken place in Oswiecim (Auschwitz) and Birkenau concentration camps.

Because of the fact that this charge differs from similar charges which so far have been transmitted by other National Offices, the Commission felt it of some importance to draw the attention of National Offices to the scheme adopted in this charge, in case they should feel inclined to follow the policy of the Czechoslovak National Office.

The charge is directed against individuals and groups of persons (about 2,000 in number) as follows :

1. Members of the German Government in the material period (1939-1945).
2. Persons responsible for the direction of the police activities in Germany of the highest rank. Apart from H. HIMMLER himself, this group comprises a number of senior officials of the two Hauptämter of the Reichsführer SS and Chef der Deutschen Polizei in the Reichsministerium des Innern: I. Hauptamt Ordnungspolizei; II Reichssicherheitshauptamt. For the names and functions of these officials see Annex I.
3. Persons responsible for the general administration and supervision of all concentration camps, i.e. in Germany proper and in the occupied countries, so-called Wirtschafts und Verwaltungshauptamt (WVHA). The list of persons and their functions is attached in Annex II.
4. Persons of all ranks belonging to the camp personnel.
5. Chiefs and officials of the police authorities acting in, or competent for, the different sections and districts of the Czechoslovak Republic indicated by their functions or offices, in Annex III.

The Czechoslovak National Office holds these persons and groups of persons responsible for ordering and executing the arrest of Czechoslovak nationals and for committing them to the concentration and extermination camps Oswiecim-Rajsko (Auschwitz-Birkenau), and/or for aiding and abetting these criminal activities. The charge differs from similar charges which so far have been dealt with by Committee I in that it indicts not only the persons in authority on the top level (Reich Government, SS. High Command), and the actual perpetrators at the end of the journey (the camp personnel) but that it attempts to establish the guilt and responsibility of the intermediate authorities, i.e. the people competent to exercise local jurisdiction in the different parts of occupied Czechoslovakia and who had the power either to propose or to order the individual arrests and commitments to the camps.

In making charges against persons who are held responsible for their share in the crimes on the intermediate level, the Czechoslovak National Office makes two distinctions :

1. Between functionaries of the Ordnungspolizei on the one hand and those of the Sicherheitspolizei on the other. The security police was competent to order arrests. Members of the Ordnungspolizei could be called upon to carry out the arrests ordered by the Security Police. As, however, the available material does not allow to ascertain beyond doubt whether in the cases dealt with in the Czechoslovak Charge members of the Ordnungspolizei actually had any part in carrying out arrests, the Czechoslovak National Office proposed to put officials of the Ordnungspolizei on the List of Suspects (S), while the officials of the Sicherheitspolizei Gestapo and SD. are on the List of War Criminals (A).

2. The charge further distinguished between police authorities having jurisdiction exclusively for Czechoslovak territory (so-called Protectorate of Bohemia and Moravia, and the so-called Reichsgau Sudetenland), and such police authorities as were in charge of predominantly Reich German or Austrian provinces to which slices of Czechoslovak territory have been annexed during the occupation. In the case of the "Protectorate" and of the "Reichsgau Sudetenland", the Czechoslovak National Office proposed to list the police officials, other than Ordnungspolizei, on the List of War Criminals (A), and officials responsible for other parts of Czechoslovak territory on the List of Suspects (S). The reason for this distinction was that a proper prima facie case could not be established with regard to this category of officials.

As far as the delimitation of responsibility of various ranks of the police officials is concerned the Czechoslovak National Office acting on the suggestion of Committee I charged only :

(i) the administrative officials of the higher administrative police service (Höherer Polizeiverwaltungsdienst) from the rank of Government Councillor (Regierungsrat) upwards;

(ii) the executive officials of the security police (Vollzugsbeamte der Sicherheitspolizei) from the Führerlaufbahn des mittleren Dienstes in der Sicherheitspolizei, from the rank of Criminal Secretary (Kriminalsekretär) upwards;

(iii) the S.D. functionaries from the rank of manager (Geschäftsführer) upwards.

Committee I decided to propose to the Commission to put all the persons and groups of persons accused in the charge on the Commission's Lists A and S according to the delimitation of responsibility mentioned above.

ANNEX I

Chiefs and Officials of the 3 Hauptämter of the Reichsführer SS. und
Chef der Deutschen Polizei in the Reichsministerium des Innern:

Hauptamt Ordnungspolizei:

1. Chef der Ordnungspolizei.
2. Otto WINKELMANN, SS-GF, Generalleutnant der Polizei, Chief of the Kommandoamt in the Hauptamt Ordnungspolizei.
3. Anton DIERMANN, SS- BF, Generalmajor der Polizei, successor to WINKELMANN.
4. FLADE, SS- BF, Generalmajor der Polizei, successor to DIERMANN.
5. GEIBEL, SS - SF, Oberst der Gendarmerie, Chief of the Amtsgruppe II of the Kommandoamt.
6. FRANK, SS - GF, Generalleutnant der Waffen SS. und der Polizei, Chief of the Wirtschaftsverwaltungsamt in the Hauptamt Ordnungspolizei.
7. Generalinspekteur der Schutzpolizei des Reichs.
8. Generalinspekteur der Gendarmerie und der Schutzpolizei der Gemeinden.
9. Generalinspekteur der Schulen.
10. Generalinspekteur der Feuerschutzpolizei.
11. Inspekteur für Volksschauliche Erziehung.

Reichssicherheitshauptamt:

12. Chef der Sicherheitspolizei und des S.D.
13. Erwin SCHULZ, SS. Brigadeführer, Chief of Amt I.
14. HAENEL, SS. Obersturmbannführer, Chief of Amt II.
15. OHLENDORF, SS. Brigadeführer, Chief of Amt III.
16. MÜLLER, SS. Gruppenführer, Chief of Amt IV.
17. NEBE, SS. Gruppenführer, Chief of Amt V.
18. SCHELENBURG, SS. Brigadeführer, Chief of Amt VI.
19. Dr. SIX, Chief of Amt VII.
- 19a. Other officials of the Reichssicherheitshauptamt (cf. Note 1 Annex III).

Heads of schools directly subordinate to the Reichssicherheitshauptamt:

20. Head of the Führerschule der Sicherheitspolizei und des S.D. in Berlin, Charlottenburg.
21. Head of the Sicherheitspolizeischule in Fürstenberg.
22. Head of the S.D. Schule in Bernau.
23. Head of the Sportschule in Pretzsch.
24. Head of the Funkschule auf Schloss Gruenberg.
25. Head of the Schiess-schule in Zella-Mehlig.
26. Head of the Schule der Sicherheitspolizei und des S.D. in Prague.

ANNEX II

GENERAL ADMINISTRATION AND SUPERVISION OF CONCENTRATION CAMPS.

(Wirtschafts und Verwaltungshauptamt, WVHA)

1. Oswald POHL, SS. Obergruppenführer, Head of the W.V.H.A.
Sub-Department: Amtsgruppe D (Operation and Administration of
Concentration Camps.)
2. Richard GLUCKS, SS. Gruppenführer, Head of Amtsgruppe D.
Office No. 1 (Central Bureau).
3. Arthur LIEBEHENSCHER, SS. Obersturmbannführer, Chief of Office No. 1.
4. Rudolf HOSS, SS. Obersturmbannführer, Successor to Lie ehenschel.
Office No. II (General Administration and Prisoners).
5. Gerhard MAURER, SS. Obersturmbannführer, Chief of Office No. II.
Office No. III (Medical Administration)
6. Dr. Enno LOLLING, SS. Obersturmbannführer, Chief of Office No. III.
Office No. IV (General Administration of Camps and Camp Staff).
7. Anton KLEINDL, SS. Sturmbannführer, Chief of Office No. IV.
8. HARBAUM, HSF, Official.
9. KIENER, HSF, Office in the Amtsgruppe D.
10. All other chiefs of the W.V.H.A. and all other Chiefs and Officials of
the Amtsgruppe D (cf. Note 1 Annex III).
11. KAMMLER, SS. Brigadeführer, Chief of Construction of Concentration Camps,
Chief of Amtsgruppe C.

ANNEX III

German Police Authorities in Czechoslovakia

a) German Police Authorities in the Protectorate of Bohemia and Moravia (the organisation of these police authorities corresponds on the whole with that of the German Police Authorities in all occupied countries).

1. Hoherer SS and Polizeiführer.
2. Reichsprotector and his Deputy
(Staatssekretar and Unterstaatssekretar).
3. Befehlshaber der Ordnungspolizei.
4. Befehlshaber der Sicherheitspolizei.
5. The Staff of the Befehlshaber der Sicherheitspolizei (cf. Note 1)
6. SD Leitabschnitte and SD Abschnitte
(Chiefs and other officials, cf. Note 1)
7. Staatspolizeileitstellen and Staatspolizeistellen
(Chiefs and other officials and officials of the Aussenstellen cf. Note 1)
8. Höhere Polizeibehörden (Oberlandrat).
(All Oberlandrate and their deputies).
9. Kriminalpolizeileitstellen and Kriminalpolizeistellen
(Chiefs and other officials cf. Note 1).
10. Staatliche Polizeiverwaltungen
(Polizeidirektionen) and Kriminalabteilungen.
(Polizeipräsidenten and their deputies and officials of the Kriminalabteilungen cf. Note 1).

b) German Police Authorities in the Reichsgau Sudetenland (the organisation of these Police Authorities corresponds with that of the Police Authorities in the German Reich and in the territories annexed by Germany during the war).

1. Hoherer SD und Polizeiführer.
2. Reichsstatthalter and his Deputy.
3. Inspekteur der Ordnungspolizei.
4. Inspekteur der Sicherheitspolizei und des SD.
5. The Staff of the Inspekteur der Sicherheitspolizei und des SD (cf. Note 1)
6. S.D. Leitabschnitte and S.D. Abschnitte
(Chiefs and other officials). (cf. Note 1)
7. Höhere Polizeibehörden (Regierungspräsidenten)
(all Regierungspräsidenten and their Deputies)
8. Staatspolizeileitstellen and Staatspolizeistellen
(Chiefs and other officials and officials of the Aussenstellen, cf. Note 1).
9. Kriminalpolizeileitstellen and Kriminalpolizeistellen
(Chiefs and other officials, cf. Note 1).
10. Staatliche Polizeiverwaltungen (Polizeipräsidium, Polizeidirektion,
(Polizeiaut) and Kriminalabteilungen
(Polizeipräsidenten and their deputies and officials of the Kriminalabteilungen, cf. Note 1).

NOTE I : In all cases in which Committee I placed groups on List A it restricted the number of officials responsible as members of this group to the ranks indicated on page 5. (cf. Annex I, 19a - Annex II, 10 - Annex III a) 5, 6, 7, 9, 10 - Annex III b) 5, 6, 8, 9, 10).

Note by Dr. Hays. Harting

I/199

**Amendments to Dr. Lammert's Report on the Czechoslovak Charge
concerning Criminals and Political Concentration Camps.**

I propose Dr. Lammert's Report on the Czechoslovak Charge concerning Criminals and Political Concentration Camps to be amended as follows:-

Page 2 par. 2: the words ".....this group comprises all chiefs and officials of the two Hauptämter of the Reichsführer SS and Chef der Deutschen Polizei....." to be substituted by: ".....this group comprises a number of senior officials of the two Hauptämter of the Reichsführer SS and Chef der Deutschen Polizei....."

Page 2 par. 1: the words ".....both were competent to order..... on the list of suspects (a)....." to be substituted by: "the security police was competent to order arrests. Members of the Ordnungspolizei could be called upon to carry out the arrests ordered by the Security Police. As, however, the available material does not allow to ascertain beyond doubt whether in the cases dealt with in the Czechoslovak Charge members of the Ordnungspolizei actually had any part in carrying out arrests, the Czechoslovak National Office proposed to put officials of the Ordnungspolizei on the list of suspects(a)....."

Page 2, last part At the last meeting of Committee I it was decided to alter the wording as follows: ".....The Czechoslovak National Office acting on the suggestion of Committee I charged only....."

Page 3 Par. 1: After the words: ".....of the higher administrative police service" is to be inserted (Höherer Polizeiverwaltungsdienst)

Par. 2: After the words: "the executive officials of the security police"

is to be inserted (Vollzugsbeamte der Sicherheitspolizei) from the
Führungsbeamten des mittleren Dienstes in der Sicherheitspolizei....."

ANNEK. I. 13a.

Other officials of the Reichssicherheitshauptamt (cf. Note 1 Annex XII)

ANNEK. II. 10

At the end is to be inserted (cf. Note 1 Annex XII)

ANNEK. III.

German Police Authorities in Czechoslovakia.

a) German Police Authorities in the Protectorate of Bohemia and Moravia
(the organization of these police authorities corresponds on the whole with
that of the German Police Authorities in all occupied countries)

1. Rektor III and police officer
2. Reichsprotector and his Deputy
(Statensprotector and Unterstatensprotector)
3. Befehlshaber der Ordnungspolizei
4. Befehlshaber der Sicherheitspolizei
5. The Staff of the Befehlshaber der Sicherheitspolizei (cf. Note 1)
6. SD Leitstelle and SD Abteilungen
(Chiefs and other officials, cf. Note 1).
7. Staatpolizeileitstellen and Staatpolizeistellen
(Chiefs and other officials and officials of the Anwesenstellen cf. Note 1)
8. Mehrere Polizeibehörden (Oberlande)
(All Oberlande and their deputies)
9. Kriminalpolizeileitstellen and Kriminalpolizeistellen
(Chiefs and other officials cf. Note 1)

10. Staatliche Polizeiverwaltungen (Polizeidirektionen) und Kriminalabteilungen. (Polizeipräsidenten and their deputies and officials of the Kriminalabteilungen of. Note 1)
- b) German Police Authorities ⁱⁿ and the Reichsgenau Selbstverwaltungen (the organization of these Police Authorities corresponds with that of the Police Authorities in the German Reich and in the territories annexed by Germany during the war).
1. ^{und} Mayor ⁱⁿ Police Officer
2. Reichsanwalt and his Deputy.
3. Inspektor der Ordnungspolizei
4. Inspektor der Sicherheitspolizei ^{und} / des SA.
5. The Staff of the Inspektor der Sicherheitspolizei ^{und} / des SA (cf. Note 1)
6. S.D. Leitende ^{und} / S.D. Beamte (Chiefs and other officials). (cf. Note 1.)
7. Höhere Polizeibehörden (Regierungspräsidenten) (all Regierungspräsidenten and their Deputies)
8. Staatspolizeistellen und Staatspolizeistellen (Chiefs and other officials and officials of the Staatsstellen, cf. Note 1)
9. Kriminalpolizeistellen und Kriminalpolizeistellen. (Chiefs and other officials, cf. Note 1)
10. Staatliche Polizeiverwaltungen (Polizeipräsidenten, Polizeidirektionen, Polizeiamt) und Kriminalabteilungen (Polizeipräsidenten and their deputies and officials of the Kriminalabteilungen, cf. Note 1)

III.1.

In all cases in which Committee I placed groups on List A had restricted the number of officials responsible as members of this group to the ranks indicated on page 3. (cf. Annex I, 19a - Annex II, 10 - Annex III a) 5. 6. 7. 9. 10 - Annex III b) 5. 6. 8. 9. 10)

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C.140
2nd August, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

OSWIECIM (AUSCHWITZ) AND BIRKENAU CONCENTRATION CAMPS

Report of Committee I on a charge presented
by Czechoslovakia

The Czechoslovak National Office recently transmitted to the Commission a charge against German war criminals concerning atrocities committed against Czechoslovak nationals which have taken place in Oswiecim (Auschwitz) and Birkenau concentration camps.

Because of the fact that this charge differs from similar charges which so far have been transmitted by other National Offices, the Commission felt it of some importance to draw the attention of National Offices to the scheme adopted in this charge, in case they should feel inclined to follow the policy of the Czechoslovak National Office.

The charge is directed against individuals and groups of persons (about 2,000 in number) as follows :

1. Members of the German Government in the material period (1939-1945).
2. Persons responsible for the direction of the police activities in Germany of the highest rank. Apart from H. HIMMLER himself, this group comprises a number of senior officials of the two Hauptämter of the Reichsführer SS and Chef der Deutschen Polizei in the Reichsministerium des Innern: I. Hauptamt Ordnungspolizei; II Reichssicherheitshauptamt. For the names and functions of these officials see Annex I.
3. Persons responsible for the general administration and supervision of all concentration camps, i.e. in Germany proper and in the occupied countries, so-called Wirtschafts und Verwaltungshauptamt (WVHA). The list of persons and their functions is attached in Annex II.
4. Persons of all ranks belonging to the camp personnel.
5. Chiefs and officials of the police authorities acting in, or competent for, the different sections and districts of the Czechoslovak Republic indicated by their functions or offices, in Annex III.

The Czechoslovak National Office holds these persons and groups of persons responsible for ordering and executing the arrest of Czechoslovak nationals and for committing them to the concentration and extermination camps Oswiecim-Rajsko (Auschwitz-Birkenau), and/or for aiding and abetting these criminal activities. The charge differs from similar charges which so far have been dealt with by Committee I in that it indicts not only the persons in authority on the top level (Reich Government, SS. High Command), and the actual perpetrators at the end of the journey (the camp personnel) but that it attempts to establish the guilt and responsibility of the intermediate authorities, i.e. the people competent to exercise local jurisdiction in the different parts of occupied Czechoslovakia and who had the power either to propose or to order the individual arrests and commitments to the camps.

In making charges against persons who are held responsible for their share in the crimes on the intermediate level, the Czechoslovak National Office makes two distinctions :

1. Between functionaries of the Ordnungspolizei on the one hand and those of the Sicherheitspolizei on the other. The security police was competent to order arrests. Members of the Ordnungspolizei could be called upon to carry out the arrests ordered by the Security Police. As, however, the available material does not allow to ascertain beyond doubt whether in the cases dealt with in the Czechoslovak Charge members of the Ordnungspolizei actually had any part in carrying out arrests, the Czechoslovak National Office proposed to put officials of the Ordnungspolizei on the List of Suspects (S), while the officials of the Sicherheitspolizei Gestapo and SD. are on the List of War Criminals (A).

2. The charge further distinguished between police authorities having jurisdiction exclusively for Czechoslovak territory (so-called Protectorate of Bohemia and Moravia, and the so-called Reichsgau Sudetenland), and such police authorities as were in charge of predominantly Reich German or Austrian provinces to which slices of Czechoslovak territory have been annexed during the occupation. In the case of the "Protectorate" and of the "Reichsgau Sudetenland", the Czechoslovak National Office proposed to list the police officials, other than Ordnungspolizei, on the List of War Criminals (A), and officials responsible for other parts of Czechoslovak territory on the List of Suspects (S). The reason for this distinction was that a proper prima facie case could not be established with regard to this category of officials.

As far as the delimitation of responsibility of various ranks of the police officials is concerned the Czechoslovak National Office acting on the suggestion of Committee I charged only :

(i) the administrative officials of the higher administrative police service (Höherer Polizeiverwaltungsdienst) from the rank of Government Councillor (Regierungsrat) upwards;

(ii) the executive officials of the security police (Vollzugsbeamte der Sicherheitspolizei) from the Führerlaufbahn des mittleren Dienstes in der Sicherheitspolizei, from the rank of Criminal Secretary (Kriminalsekretär) upwards;

(iii) the S.D. functionaries from the rank of manager (Geschäftsführer) upwards.

Committee I decided to propose to the Commission to put all the persons and groups of persons accused in the charge on the Commission's Lists A and S according to the delimitation of responsibility mentioned above.

ANNEX I

Chiefs and Officials of the 3 Hauptämter of the Reichsführer SS. und
Chef der Deutschen Polizei in the Reichsministerium des Innern:

Hauptamt Ordnungspolizei:

1. Chef der Ordnungspolizei.
2. Otto WINKELMANN, SS-GF, Generalleutnant der Polizei, Chief of the Kommandoamt in the Hauptamt Ordnungspolizei.
3. Anton DIERMANN, SS- BF. Generalmajor der Polizei, successor to WINKELMANN.
4. FLADE, SS- BF. Generalmajor der Polizei, successor to DIERMANN.
5. GEIBEL, SS - SF. Oberst der Gendarmerie, Chief of the Amtsgruppe II of the Kommandoamt.
6. FRANK, SS - GF. Generalleutnant der Waffen SS. und der Polizei, Chief of the Wirtschaftsverwaltungsamt in the Hauptamt Ordnungspolizei.
7. Generalinspekteur der Schutzpolizei des Reichs.
8. Generalinspekteur der Gendarmerie und der Schutzpolizei der Gemeinden.
9. Generalinspekteur der Schulen.
10. Generalinspekteur der Feuerschutzpolizei.
11. Inspekteur für Weltanschauliche Erziehung.

Reichssicherheitshauptamt:

12. Chef der Sicherheitspolizei und des S.D.
13. Erwin SCHULZ, SS. Brigadeführer, Chief of Amt I.
14. HAENEL, SS. Obersturmbannführer, Chief of Amt II.
15. OHLENDORF, SS. Brigadeführer, Chief of Amt III.
16. MÜLLER, SS. Gruppenführer, Chief of Amt IV.
17. NEBE, SS. Gruppenführer, Chief of Amt V.
18. SCHELENBURG, SS. Brigadeführer, Chief of Amt VI.
19. Dr. SIX, Chief of Amt VII.
- 19a. Other officials of the Reichssicherheitshauptamt (cf. Note 1 Annex III).

Heads of schools directly subordinate to the Reichssicherheitshauptamt:

20. Head of the Führerschule der Sicherheitspolizei und des S.D. in Berlin, Charlottenburg.
21. Head of the Sicherheitspolizeischule in Fürstenberg.
22. Head of the S.D. Schule in Bernau.
23. Head of the Sportschule in Pretzsch.
24. Head of the Funkschule auf Schloss Gruenberg.
25. Head of the Schiess-schule in Zella-Mehlig.
26. Head of the Schule der Sicherheitspolizei und des S.D. in Prague.

ANNEX II

GENERAL ADMINISTRATION AND SUPERVISION OF CONCENTRATION CAMPS.

(Wirtschafts und Verwaltungshauptamt, WVHA)

1. Oswald POHL, SS. Obergruppenführer, Head of the W.V.H.A.
Sub-Department: Amtsgruppe D (Operation and Administration of
Concentration Camps.)
2. Richard GLUCKS, SS. Gruppenführer, Head of Amtsgruppe D.
Office No. 1 (Central Bureau).
3. Arthur LIEBEHENSCHER, SS. Obersturmbannführer, Chief of Office No. 1.
4. Rudolf HÖSS, SS. Obersturmbannführer, Successor to Lie ehenschel.
Office No. II (General Administration and Prisoners).
5. Gerhard MAURER, SS. Obersturmbannführer, Chief of Office No. II.
Office No. III (Medical Administration)
6. Dr. Enno LOLLING, SS. Obersturmbannführer, Chief of Office No. III.
Office No. IV (General Administration of Camps and Camp Staff).
7. Anton KLINDL, SS. Sturmbannführer, Chief of Office No. IV.
8. HARBAUM, HSF, Official.
9. KIENER, HSF, Office in the Amtsgruppe D.
10. All other chiefs of the W.V.H.A. and all other Chiefs and Officials of
the Amtsgruppe D (cf. Note 1 Annex III).
11. KIMMELER, SS. Brigadeführer, Chief of Construction of Concentration Camps,
Chief of Amtsgruppe C.

ANNEX III

German Police Authorities in Czechoslovakia

- a) German Police Authorities in the Protectorate of Bohemia and Moravia (the organisation of these police authorities corresponds on the whole with that of the German Police Authorities in all occupied countries).

1. Hoherer SS and Polizeiführer.
2. Reichsprotector and his Deputy
(Staatssekretar and Unterstaatssekretar).
3. Befehlshaber der Ordnungspolizei.
4. Befehlshaber der Sicherheitspolizei.
5. The Staff of the Befehlshaber der Sicherheitspolizei (cf. Note 1)
6. SD Leitabschnitte and SD Abschnitte
(Chiefs and other officials, cf. Note 1)
7. Staatspolizeileitstellen and Staatspolizeistellen
(Chiefs and other officials and officials of the Aussenstellen cf. Note 1)
8. Höhere Polizeibehörden (Oberlandrat).
(All Oberlandräte and their deputies).
9. Kriminalpolizeileitstellen and Kriminalpolizeistellen
(Chiefs and other officials cf. Note 1).
10. Staatliche Polizeiverwaltungen
(Polizeidirektionen) and Kriminalabteilungen.
(Polizeipräsidenten and their deputies and officials of the Kriminalabteilungen cf. Note 1).

- b) German Police Authorities in the Reichsgau Sudetenland (the organisation of these Police Authorities corresponds with that of the Police Authorities in the German Reich and in the territories annexed by Germany during the war).

1. Hoherer SD und Polizeiführer.
2. Reichsstatthalter and his Deputy.
3. Inspekteur der Ordnungspolizei.
4. Inspekteur der Sicherheitspolizei und des SD.
5. The Staff of the Inspekteur der Sicherheitspolizei und des SD (cf. Note 1)
6. S.D. Leitabschnitte and S.D. Abschnitte
(Chiefs and other officials). (cf. Note 1)
7. Höhere Polizeibehörden (Regierungspräsidenten)
(all Regierungspräsidenten and their Deputies)
8. Staatspolizeileitstellen and Staatspolizeistellen
(Chiefs and other officials and officials of the Aussenstellen, cf. Note 1).
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(Polizeiant) and Kriminalabteilungen
(Polizeipräsidenten and their deputies and officials of the Kriminalabteilungen, cf. Note 1).

NOTE I : In all cases in which Committee I placed groups on List A it restricted the number of officials responsible as members of this group to the ranks indicated on page 5. (cf. Annex I, 19a - Annex II, 10 - Annex III a) 5, 6, 7, 9, 10 - Annex III b) 5, 6, 8, 9, 10).

DRAFT.

I/19
ambassador
C. 140
X

R E P O R T

on the Czechoslovak charge

concerning the Oswiecim (Auschwitz) and Birkenau Concentration Camps.

To be sent to all the National Offices as
requested by the Czechoslovak Representative.

(Draft by the Legal Officer, Dr. LITAWSKI).

The Czechoslovak National Office recently transmitted to the Commission a charge against German war criminals concerning atrocities committed against Czechoslovak nationals which have taken place in Oswiecim (Auschwitz) and Birkenau concentration camps.

Because of the fact that this charge differs from similar charges which so far have been transmitted by other National Offices, the Commission felt it of some importance to draw the attention of National Offices to the scheme adopted in this charge, in case they should feel inclined to follow the policy of the Czechoslovak National Office.

The charge is directed against individuals and groups of persons (about 2,000 in number) as follows:

1. Members of the German Government in the material period (1939-1945).
2. Persons responsible for the direction of the police activities in Germany of the highest rank. Apart of from H. HIMMLER himself, this group comprises all chiefs and officials of the two Hauptämter of the Reichsführer SS. and Chef der Deutschen Polizei in the Reichsministerium des Innern: I. Hauptamt Ordnungspolizei; II. Reichssicherheitshauptamt. For the names and functions of these officials see Annex I.
3. Persons responsible for the general administration and supervision of all concentration camps, i.e. in Germany proper and in the occupied countries, so-called Wirtschafts und Verwaltungshauptamt (WVHA). The list of persons and their functions is attached in Annex II.
4. Persons of all ranks belonging to the camp personnel.
5. Chiefs and officials of the police authorities acting in, or competent for, the different sections and districts of the Czechoslovak Republic indicated by their functions or offices, in Annex III.

The Czechoslovak National Office holds these persons and groups of persons responsible for ordering and executing the arrest of Czechoslovak

nationals and for committing them to the concentration and extermination camps Oswiecim-Rajsko (Auschwitz-Birkenau), and/or for aiding and abetting these criminal activities. The charge differs from similar charges which so far have been dealt with by Committee I in that it indicts not only the persons in authority on the top level (Reich Government, SS. High Command), and the actual perpetrators at the end of the journey (the camp personnel), but that it attempts to establish the guilt and responsibility of the intermediate authorities, i.e. the people competent to exercise local jurisdiction in the different parts of occupied Czechoslovakia and who had the power either to propose or to order the individual arrests and commitments to the camps.

In making charges against persons who are held responsible for their share in the crimes on the intermediate level, the Czechoslovak National Office makes two distinctions:

1. between functionaries of the Ordnungspolizei on the one hand and those of the Sicherheitspolizei on the other. Both were competent to order arrests with a view to committing the arrested persons to a concentration and extermination camp. But, there being no sufficient evidence that the regular police (Ordnungspolizei) took a decisive part in these activities, the Czechoslovak National Office proposed to put the officials of the Ordnungspolizei on the List of Suspects (S), while the officials of the Sicherheitspolizei, Gestapo and SD. are on the List of War Criminals (A).

2. The charge further distinguishes between police authorities having jurisdiction exclusively for Czechoslovak territory (so-called Protectorate of Bohemia and Moravia, and the so-called Reichsgau Sudetenland), and such police authorities as were in charge of predominantly Reich German or Austrian provinces to which slices of Czechoslovak territory have been annexed during the occupation. In the case of the "Protectorate" and of the "Reichsgau Sudetenland", the Czechoslovak National Office proposed to list the police officials, other than Ordnungspolizei, on the List of War Criminals (A), and officials responsible for other parts of Czechoslovak territory on the List of Suspects (S). The reason for this distinction was that a proper prima facie case could not be established with regard to this category of officials.

As far as the delimitation of responsibility of various ranks of the police officials is concerned the Czechoslovak National Office charged only:

(i) the administrative officials of the higher administrative police service from the rank of Government Councillor (Regierungsrat) upwards;

(ii) the executive officials of the security police who belong to the Führerlaufbahn des mittleren Dienstes und der Sicherheitspolizei, from the rank of Criminal Secretary (Kriminalsekretär) upwards;

(iii) the S.D. functionaries from the rank of manager (Geschäftsführer) upwards.

Committee I decided to put all the persons and groups of persons accused in the charge on the Commission's Lists A and S according to the delimitation of responsibility mentioned above.

ANNEX I.

Chiefs and Officials of the 3 Hauptämter of the Reichsführer SS. und Chef der Deutschen Polizei in the Reichsministerium des Innern:

Hauptamt Ordnungspolizei:

1. Chef der Ordnungspolizei.
2. Otto WINKELMANN, SS- GF, Generalleutnant der Polizei, Chief of the Kommandoamt in the Hauptamt Ordnungspolizei.
3. Anton DIERMANN, SS- BF, Generalmajor der Polizei, successor to WINKELMANN.
4. FLADE, SS- BF, Generalmajor der Polizei, successor to DIERMANN.
5. GEIBEL, SS - SF, Oberst der Gendarmerie, Chief of the Amtsgruppe II of the Kommandoamt.
6. FRANK, SS - GF, Generalleutnant der Waffen SS. und der Polizei, Chief of the Wirtschaftsverwaltungsamt in the Hauptamt Ordnungspolizei.
7. Generalinspekteur der Schutzpolizei des Reichs.
8. Generalinspekteur der Gendarmerie und der Schutzpolizei der Gemeinden.
9. Generalinspekteur der Schulen.
10. Generalinspekteur der Feuerschutzpolizei.
11. Inspekteur für Weltanschauliche Erziehung.

Reichssicherheitshauptamt:

12. Chef der Sicherheitspolizei und des S.D.
13. Ervin SCHULZ, SS. Brigadeführer, Chief of Amt I.
14. HAENEL, SS. Obersturmbannführer, Chief of Amt II.
15. OHLENDORF, SS. Brigadeführer, Chief of Amt III.
16. MÜLLER, SS. Gruppenführer, Chief of Amt IV.
17. NEBE, SS. Gruppenführer, Chief of Amt V.
18. SCHELLENBURG, SS. Brigadeführer, Chief of Amt VI.
19. Dr. SIX, Chief of Amt VII.

Heads of schools directly subordinate to the Reichssicherheitshauptamt:

20. Head of the Führerschule der Sicherheitspolizei und des S.D. in Berlin, Charlottenburg.
21. Head of the Sicherheitspolizeischule in Fürstenberg.
22. Head of the S.D. Schule in Bernau.
23. Head of the Sportschule in Pretzsch.
24. Head of the Funkschule auf Schloss Gruenberg.
25. Head of the Schiess-schule in Zella-Mehlig.
26. Head of the Schule der Sicherheitspolizei und des S.D. in Prague.

ANNEX II.

GENERAL ADMINISTRATION AND SUPERVISION OF CONCENTRATION CAMPS.

(Wirtschafts und Verwaltungshauptamt, WVHA).

1. Oswald POHL, SS. Obergruppenführer, Head of the W.V.H.A.
Sub-Department: Amtsgruppe D (Operation and Administration of Concentration Camps).
2. Richard GLUCKS, SS. Gruppenführer, Head of Amtsgruppe D.
Office No. 1 (Central Bureau).
3. Arthur LIEBEHENSCHER, SS. Obersturmbannführer, Chief of Office No. 1.
4. Rudolf HÖSS, SS. Obersturmbannführer, Successor to Liebehenschel.
Office No. II (General Administration and Prisoners).
5. Gerhard MAURER, SS. Obersturmbannführer, Chief of Office No. II.
Office No. III (Medical Administration).
6. Dr. Erno LOLLING, SS. Obersturmbannführer, Chief of Office No. III.
Office No. IV (General Administration of Camps and Camp Staff).
7. Anton KAINDL, SS. Sturmbannführer, Chief of Office No. IV.
8. HARBAUM, HSF, Official.
9. KIENER, HSF, Office in the Amtsgruppe D.
10. All other chiefs of the W.V.H.A. and all other Chiefs and Officials of the Amtsgruppe D.
11. KAMMLER, SS. Brigadeführer, Chief of Construction of Concentration Camps, Chief of Amtsgruppe C.

TRANSLATION.

Detailed Statement

on the murdering of ill and aged people in Germany.

1./ The murdering can be traced back to a secret law which was released sometime in Summer 1940.

2./ Besides the Chief Physician of the Reich Dr. L. Conti, the Reichsfuehrer SS Himmler, the Reichs Minister of the Interior Dr. Frick as well as other men, the following participate on the introduction of this secret law:

a./ The Councillor of the Ministry Dr. Herbert Linden of the Reich's Ministry of the Interior.

b./ Dr. Staehle-Nagold, the Chief Physician of Wuerttemberg.

c./ Councillor of Medicine /Obermedizinalrat/ Dr. Hermann Pfannmueller, Director of the Sanatorium and Nursing Institution Eglfing-Haar near Munich.

d./ Professor Dr. Werner Heyde, Director of the Psychiatric and Neurological Clinic in Wuerzburg.

/To characterize Dr. Conti, who was born in Tessin, it may be added that he changes his name from Leonhard to Leonardo, according to the change in the German people's feelings, the friendship of the Axis or to the change of feelings in the European community./

3./ As I have already stated, there were /after careful calculation/ at least 200.000 mainly mentally deficient, imbeciles, besides neurological cases and medically unfit people /these were not only incurable cases/, and at least 75.000 aged people.

4./ The murders were mainly accomplished in Muensigen /Wuerttemberg and Linz o/Danube; several gas-chambers with cremation chambers directly attached were constructed there. As the gas-chambers are next to the training grounds of the troops in Muensigen, it is believed that the mentally deficient who were murdered there, were used for experimenting with new poison-gasses.

5./ The transport from the institutions to the gas-chambers is carried out by SS Kommandos. These call themselves "Gemeinnuetzige Transport A.G., Berlin, Luetzowufer. This Limited Company also stores the individual medical cases histories of the murdered inmates of the institutions.

6./ The inmates of the many smaller and middle-sized institutions were murdered almost without exception. The larger institutions are partly - to keep up the pretence to the outside world - still at hand, but they now only have a fraction of the original number of their inmates; for example there are now only some 500 inmates instead of 2500 in Berlin-Buch; in Stadtroda/Thuringen only about 150 instead of 600; in Kaufbaun/Bayern only 200 instead of 1000, etc. Of the larger Sanatoriums and Nursing Institutions the following were already closed down completely some time ago: Illenau/Baden 800 inmates; Berlin/Herzberge 2500 inmates, Kreutzburg/Oberschlesien 1500 inmates; Sonnenstein/Sachsen 800 inmates; Werneck/Unterfranken-Bayern 1111 inmates; Steinhof/Wien 3000 inmates, and others, most probably now also Schleswig with 1000 beds, Guenzburg with 400 etc. etc.

7./ The following procedure is popular with old people, who are still perfectly healthy and who possess their own flat: the competent "political leader" reports them for welfare purposes; then a physician /usually an SS doctor/ who establishes "the fact" that the old people are mentally deficient, appears; he suggests in Court that they are to be put under tutelage and that they are to be sent to a nursing home. This suggestion is naturally put into force. The old people are then sent from the nursing home to the gas-chambers.

8./ Partly a very indirect procedure for killing these old people is used. For example a quite sudden transfer of a home for aged people in a very short period is very popular, this being often ordered and carried out in only a few hours, in the hope that through the excitement already a part of the old people will be killed by an apoplectic fit. The home for aged people is also frequently transferred into premises which are absolutely insufficient as far as sanitary conditions are concerned; another way is that suddenly all the nursing staff are called up for work in the Red Cross or in a munitions factory and the helpless patients are left to look after themselves.

Written in December 1941,

/sgd./ Dr.T. Lang.

C O P Y .

Dr.med.habil. THEO LANG
actually head-physician at
the Cantonal lunatic asylum
at Herisau in Switzerland

Herisau/Switzerland/
May 10th 1945.

/until 1941 acting at
the German Research Institute
for Psychiatry at Munich/

To the
Interallied Commission for the Investigation of War Crimes,

Gentlemen: -

Hereby I propose to you also to investigate, whether through official Services of the National-Socialists, especially such as the S.S., also the so-called "unknown sterilisations" have been carried out on opponents of the system, as also on inhabitants of the occupied territories. It would here be the question of an application of X-rays on the germ glands, during a radiation or the phototyping of such radiation, of itself quite unsuspected. The reason why I draw your attention to this possibility consists in the following. After the "Law concerning the prevention of the ill after-growth by heredity", enacted in the year 1934, had met with some resistance on the part of the population, the following German race-hygienic authorities discussed already in the year 1937 the question, whether it would not be possible to render sterile "elements undesirable as to race" quite unobtrusively, at the same time with an ordinary radiation of the thorax, by means of an increased dosis of rays, or by means of the use, at the same time, of a second tube directed at the abdomen and this in a way that the parties concerned would remain quite unaware of the infecundity performed on them. The names of the race-hygienic authorities discussing this problem were:

1st: Professor Dr. med. Ernst Rüdin, ordinary public professor for psychiatry and race-hygiene at the University of Munich, Director of the "Kaiser-Wilhelm-Institute for genealogy and demography of the German Research Institute for Psychiatry at Munich, Director of the Institute for race-hygiene of the University of Munich and "chairman of the working-community II for race-hygiene and race-politics of the Practitioner-Council for politics of population and race of the Ministry of the Interior of the Reich", Promoting-member of the S.S. and member of the Federation of Swiss National-Socialists.

2nd. Dr. med. and phil. Albert HARRASSER, his scientific assistant for anthropological work /an Austrian, who directly or indirectly took part in the murder of Dollfus and soon afterwards was admitted by Rüdin at his institute/ at that time Counsellor of race-hygiene in the Staff of the Superior S.A. leadership, in reality however and most probably a member of the SS security service for the supervision of the S.A. leadership.

3rd. Dr. med. Friedrich Stumpf, the scientific co-worker of Rüdin in the domain of criminal-biology, later on professor for race-hygiene at the University of Innsbruck /also an Austrian/.

4th Dr. med. Heinz Riedel, at that time SS-Sturmführer /later on most probably SS-Sturmbannführer/ a stipendiary of the Reichsführer of the SS and aggregated to Professor Rüdin as scientific worker.

I am naturally willing to confirm my above made statements under oath.

The proceedings discussed was at that time not followed up, with the explanation that the technical difficulties were too great.

Soon after the occupation of Poland the question of the unobtrusive sterilisation was again taken up and this not only by the aforementioned persons, but with them also by the following National-Socialists:

5th Dr. phil. Bruno Kurt Schultz /also an Austrian/ at that time professor for race-hygiene at the Superior School for bodily exercise at Berlin-Charlottenburg, "Chef des Rassenamts der SS". and SS-Standartenführer, lately also professor for race-hygiene at the German Karl University at Prague.

6th. Dr. med. Herbert Linden, Ministerial Director in the Ministry of the Interior of the Reich, SS-Oberführer.

7th Dr. med. Carl Heinz Rodenberg, Ministerial Director in the Ministry of the Interior of the Reich and SS-Oberführer, previously scientific assistant at the institute of Professor Rüdin.

Probably the following was also called upon.

8th. Dr. med. and Professor H. Holfelder, Director of the Institution for X-rays of the surgical section of the clinique of the University at Frankfurt on the Main, also a member of the S.S.

As the whole matter was dealt with in secrecy, and outside of the institute for research, I was prevented to gather more exact informations, but I have reason to believe that already in 1940 corresponding experiments were carried out.

It is quite probable that about the whole question more conclusive information might be obtained through Professor Dr. N.W. Timoréeff-Rassovsky, the Leader of the genetical section of the Kaiser Wilhelm-Institute for brain research at Berlin-Buch. Professor Timoféeff has been, up to 1941, especially anti-national-socialistic and was also very well informed about the cruelties which were being carried out at that time in Poland. I have had with him a conversation about these and other happenings and some scientific problems at his Institute on the 23rd of January 1941.

In order to underline my statements, I would draw the attention to the fact, that I was the first expert of psychiatry who abroad made precise indications concerning the erection of institutions for gasification. The indications which are enclosed hereby in copies were given by me personally during my interview to a gentleman of the English secret service. /Mr. Farrel of Geneva/ and were completed by verbal statements. This indicated interview took place on the 2nd of January 1942 at Berne in the domicile of the family Climençon, Bubeggartenplatz 10. It may be that my statements were not forwarded to the services interested or that such found no faith even though the indications were very clear and precise and the regularity of which can now be easily proven. In order to prevent that my statements should again be directed to the wrong parties or find no attention, I now make the aforesaid indications by two separate ways /each time in German and English/ and direct them to you and I surmise that according to my experiences you will be fully interested.

Concluding I would like to state that all German doctors, first of all those working at clinics of a psychiatric nature and those working at lunatic-asylums, were aware at least at the end of 1940/41 of the gasifications of insane and nervously ill, as well as of the executions of the healthy ones but unagreeable according to race in Germany and Poland. This has also been confirmed to me quite especially by Professor Dr. M.H. Gbring /a cousin of the marshal of the Empire/ Director of the German-Institute for psychotherapy at Berlin, at that time Oberfeldarzt of the Luftwaffe and with whom, in order to start a counter-action, a conversation

- 4 -

was held by me with him on the 20th of January 1941 in his institute at Berlin. Naturally he declined on account of the general lack of civil-courage, to sign a statement planned by me against these gasifications and which should have circulated in the medical circles and laid before the Government, and this although he had pronounced himself against such gasifications before me.

Most respectfully,

/sgd./ Dr.Th. Lang

ENCLOS. A+B.

1720

OFFICE OF THE CZECHOSLOVAK
REPRESENTATIVE ON THE
UNITED NATIONS WAR CRIMES
COMMISSION.

Report on Sterilisation in Germany and occupied countries

to be sent to the members of Committee I.

Submitted by Dr. B. Ečer.

Aug. 2. 1947

Some time ago the Czechoslovak representative on the United Nations War Crimes Commission received through the Czechoslovak Minister in Berne the enclosed report of Dr. med. habil. Theo Lang, now senior medical officer at the Kantonale Heil- und Pflegenstalt Herisau (County Hospital) Switzerland. (Enclosure A). Dr. Lang asked for the report to be forwarded to the United Nations War Crimes Commission.

Dr. Theo Lang had been working at the German Research Institute for Psychiatry in Munich until 1941. According to his report as early as 1937 methods of sterilisation were discussed in circles of well known German doctors - so-called authorities on the subject of racial hygiene. It was intended to sterilise in a way unnoticeable to the victims, persons "undesirable from a racial point of view".

These discussions obviously had at first no results. They were, however, taken up again after the occupation of Poland. Dr. Lang believes it to be likely that already in 1940 experiments were carried out and possible that sterilisations were later practiced in Germany as well as in occupied countries.

Dr. Lang's information should be considered sufficient for further steps and I, therefore, propose that the United Nations War Crimes Commission approach the military authorities in Germany with a view to interrogating the persons indicated by Dr. Lang and generally investigating the whole question.

-2-

Dr. Lang further handed to the Czechoslovak Minister in Berne notes on a report which he had made on January 2nd 1942. This report contains material concerning the murder of infirm and aged persons in Germany. A translation of these notes is enclosed. (Enclosure B).

Duplicate
File Copy.

WILLIAM HODGSON WAS A SUSPECT

(Research Office)

To the Chairman of Committee No. I.

Mr. Lottman's letter denouncing WILLIAM JED, former Mayor of Vienna, which Colonel Hodgson laid before Committee I, has been passed to me.

As we do not know anything of JED, I have sent "Crosses" (Major Ryan) a copy of the letter and have asked if they have any information about him. Marshall, Dr. McDonald has noted JED's name for the next list of "suspects".

My I point out, however, that our procedure seems to need supplementing in this respect. The new list of "suspects" has not yet been looked at, and before it can be examined by a sub-committee and printed and issued at least a month will elapse. Marshall, JED will remain at liberty, so far as concerns anything we are able to do. Surely we should have some machinery for putting a man, who has thus been denounced, at once on our next "Suspect" list. At present this cannot be done unless he has been "charged" with a crime, and in JED's case that is not at present possible.

I felt the same difficulty last week about the allegations against a number of German officers, forwarded by a United States Regiment, for crimes committed against Italians, which the Committee told me to refer back to Italy for more details. That has been done, but the further information will take some time to obtain. Surely, as these German officers were definitely accused by a responsible authority, some immediate steps should have been taken, by placing them on our "Suspect" list, or otherwise, to ensure their being detained. For all we know, they will now be demobilized and will go home, and it may be difficult to find them again.

July 21st, 1945.

Copies to
Colonel Hodgson ✓
Lord Wright ✓
Mr. Beaumont, ✓
Dr. Mayr-Harting. ✓

I/21
~~87-8-73~~
1-8-45

UNITED NATIONS WAR CRIMES COMMISSION

COMMITTEE I

The Trial against Kramer and others

Suggestion by Mr. E. Schwelb.
Legal Officer.

According to newspaper reports, the trial against Josef Kramer, commandant of the Belzen Concentration Camp, and 47 other accused, is to begin at Lüneburg on August 12th, 1945.

Therewith I submit for consideration by Committee I, the question whether Committee I should not propose to the Commission to send one or more members of the Commission and/or members of its legal staff as observers to this trial.

The reasons for this suggestion are as follows :

1). The fact that the trial will be held by a British Military Court shows that Kramer is not considered to fall within the group of those "German criminals, whose offences have no particular geographical location and who will be punished by a joint decision of the Governments of the Allies". (Moscow Declaration).

From this it follows that those limitations of the competence of the United Nations War Crimes Commission which sometimes are said to exist in the case of the "top criminals" do not apply in the case of the Kramer trial.

2). Nationals of most of the members of the U.N.W.C.C. were among the victims of the accused and the Governments represented on this Commission have, therefore, a particular interest in this trial. It has not, so far, been made known whether the Convening Officer has appointed as members of the Court officers of Allied Forces serving under him, as he is entitled to do under Regulation 5 (3) of the Regulations for the Trial of War Criminals (See Doc. C.131, para. 4).

3). The trial against Kramer is, though not the first, in time, no doubt, the most important trial to be conducted under the Royal Warrant A.O. 81/1945.

4). The trial will be most interesting both with regard to the facts which will be found, and with regard to the legal implications and consequences.

5). The trial will, no doubt, be attended by a great number of reporters from all parts of the world. But journalists pay mainly attention to what is "news" and attractive for the readers and the presence even of most distinguished journalists does not guarantee that the legally relevant matters will in time become known to this Commission and the Governments represented on it.

6). Under Rules 94 et seq. of the Rules of Procedure, 1926, which apply, under the Royal Warrant (Regulation 3) to Military Courts, all transactions of the Court will be recorded. But even if inspection of the record should, in due course, be granted to this Commission, or to the interested governments, this would necessarily be at a much later stage, after the time perhaps, when the experience of the Kramer trial could be made use of by other governments.

7). The Royal Warrant ^{has} introduced special rules of evidence, different from the rules applied by English and other Courts, particularly the provision regarding "collective responsibility" in the form of a prima facie case against members of units and groups. (Regulation 8(11), see Doc. C.131, para 9). It is the working of these new provisions, which will be of particular interest to the Commission and the governments interested in the investigation of War Crimes.

I/22
2nd August, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

COMMITTEE I

Note on the Yugoslav Case No. 1143

(Debasement of currency and other offences)

By Mr. E. Schwelb, Legal Officer

In the case 1143, which was adjourned on August 1st, 1945, for further consideration, the accused Generalmajor Schockhausen, Kommandant der Feldkommandatur in Sabac, and others, are accused, inter alia, of "Debasement of the Currency and Issue of Spurious Currency".

The following remarks may be useful for the further consideration of the case.

I.

The powers of occupants in regard to money and currency are based on the occupant's general power to maintain law and order (Art. 43 of the Hague Regulations, 1907). This may be affected by several methods, varying according to circumstances and policy:

- 1) the use of the existing currency of the occupied country;
- 2) the use of the occupant's currency;
- 3) the introduction of new regional currencies.

Ad 1) The occupant will normally leave in circulation the currency in the occupied region. More often than not, even payments for requisitions will be made in this currency, a supply of which is obtained through contributions. Complications arise if the coverage of this currency has become inadequate, as was the case in several occupied countries during the first World War. A similar situation was created in Belgium when the Belgian Government, in 1914, removed the metal coverage of the national currency to London. If in such a contingency the local currency continues to be used, an occupant may reorganise the national currency by appropriate methods. (Feilchenfeld, The International Economic Law of Belligerent Occupation, Washington, 1942, para. 272. Feilchenfeld's book is the leading monograph on the subject.)

Ad 2) The occupant may, and not infrequently will, use his own currency in the occupied region. This method is by no means abnormal where payments by the occupant are concerned and was, for instance, followed by Austria-Hungary during 1914-1918. On the other hand, the Germans at that time found this method inconvenient because the coverage for their national currency had already become inadequate and, for that reason, authorities were afraid of exposing it to additional strains. Unless the coverage of the currency of the occupied region has disappeared and cannot be replaced locally, there is no legitimate reason why an occupant should replace the local currency by his own currency for all purposes and enforce its use not only for his own payments but also for payments among inhabitants. In the absence of a special justification of this kind, such replacement might amount to a fundamental change in institutions, which is prohibited under the Hague Regulations. (Feilchenfeld, l.c., para. 285).

Ad 3) Where the regional currency has become inadequate and it is deemed inadvisable by the occupant to expose his own currency to further strain, new types of money may be created by the occupant. Such new currency may have a new name and may be issued by institutions created for the purpose. (ibid., para. 296).

II.

The gravest complications arise not so much from the use of various types of currency as from fictitious valuation used or enforced in the exchange of money or goods. During the War of 1914-1918, Allied opinion tended to regard all such measures and valuations as fraudulent, and, consequently, as illegal. (cf. Paul Fauchille, "Chronique des faits internationaux", Revue générale de droit international public, Vol. XXVI (1919), pp. 310-321, Hyde, International Law, Feilchenfeld, para. 299.)

The old currency of an occupied state will often be substantially weakened by the costs of fighting and the losses resulting from contributions and other occupation measures. A new local currency will suffer from the same weaknesses; in addition there may be fear that the new currency will disappear at the end of a war and have to be exchanged at unfavourable rates. On the other hand, the occupant's own currency will also suffer from the strain of war. Consequently, occupation authorities maintaining law and order may deem it advisable to take adequate measures for the prevention of extreme inflation. Such inflation might be unavoidable if "honest" valuation of money remained compulsory. Its occurrence may be as detrimental to the interests of the inhabitants as of those of the occupant. While the Hague Regulations are silent on the question it would seem that an occupant has the right, and possibly the duty, to take adequate measures for the prevention of extreme inflation. (Feilchenfeld, para. 300).

The prevention of inflation would seem to include measures fixing the relationship between the various kinds of locally circulating currency on the one side, and prices of goods and of money of third jurisdictions on the other. (ibid. para. 301).

None of these considerations would seem to hold, however, where artificial rates are imposed for the exchange of local money and of money of the occupant. Such measures can only have the effect of enriching the occupant financially at the expense of the occupied state and its inhabitants. Manipulations of this kind are not needed either for the maintenance of law and order or for the needs of the occupying army. Despite the silence of the Hague Regulations on the specific point, it appears clearly that under these Regulations compulsory shifts in wealth from the occupied state to the occupant are meant to be limited to requisitions and other specified measures. These specified permissions are sufficiently broad, and there is no legitimate reason for their enlargement by legal construction (ibid., para. 302).

III.

Since the first World War many states have resorted to currency manipulations in peacetime which would have been considered fraudulent a generation ago. It has been held that States resorting to such practices in peacetime would seem to be barred from protesting against similar measures of occupants undertaken under the less normal conditions of war and that the resulting lowering of peacetime standards would automatically lower the level to be expected from belligerents (ibid., para. 304).

From what has been said before it would seem that the appreciation of currency manipulations by a belligerent occupant depends on subtle distinctions and on an elaborate study of the financial and economic conditions in the occupied country, both before and during occupation, and criminal procedure does not appear to be the instrumentality fitted to decide these controversies. Without being a financial expert, I venture to submit that the currency of a comparatively poor country, like Yugoslavia, may under the stress of total war, occupation and partisan fighting, be affected to such an extent that some manipulations by the occupant appear necessary.

It may, of course, be said that an illegal, i.e. aggressive, war, gives the aggressor no rights of interference with the occupied territory whatsoever. But if we do not go as far as that, the subjection of currency measures to criminal proceedings appears justified only if prima facie evidence is adduced to show that the manipulations were fraudulent and that the individual officials who carried the scheme out, had, or at least ought to have had knowledge of their fraudulent character.

Apart from such clear cases, there might apply what Lauterpacht (B.Y.B. 1944, p. 75) says even of such matters as aerial bombardment, viz. that "it is doubtful whether, in this and similar matters, tribunals entrusted with the task of punishing war criminals are a proper agency for solving controversial and difficult problems of the law of war."

IV.

It may be appropriate to quote here what Lauterpacht says on this and related problems in B.Y.B. 1944, pp. 77 et seq, because of its bearing on the general practice of Committee I :

"In particular, does every violation of a rule of warfare constitute a war crime? It appears that, in this matter, textbook writers and, occasionally, military manuals and official pronouncements have erred on the side of comprehensiveness. They make no attempt to distinguish between violations of rules of warfare and war crimes. The Commission on Responsibilities set up by the Paris Conference in 1919 included under the list of charges of war crimes such acts as "usurpation of sovereignty during military occupation", "attempts to denationalize the inhabitants of occupied territory", "confiscation of property", exaction of illegitimate or exorbitant contributions and requisitions", "debasement of the currency and issue of spurious currency", "imposition of collective penalties", and "wanton destruction of religious, charitable, educational and historic buildings and monuments". In view of the comprehensiveness of this list it is in the nature of an anti-climax to note that the number of persons whose delivery the Allied States eventually demanded was inconsiderable. It is possible that one of the reasons for the failure to give effect to the decision to prosecute war criminals after the first World War was the extent of the list of offences as adopted by the Conference and the absence of a distinction between violations of international law and war crimes in the more restricted sense of the term....."

"It must be a matter for serious consideration to what extent an attempt to penalise by criminal prosecution at the hand of the victorious belligerent all and sundry breaches of the law of war may tend to blur the emphasis which must be placed on the punishment of war crimes proper in the limited sense of the term. These may be defined as such offences against the law of war as are criminal in the ordinary and accepted sense of fundamental rules of warfare and of general principles of criminal law by reason of their heinousness, their brutality, their ruthless disregard of the sanctity of human life and personality, or their wanton interference with rights of property unrelated to reasonably

conceived requirements of military necessity. There is room for the view that the punishment of war crimes by the victorious belligerent ought to be limited to offences of this nature - offences which, on any reasonable assumption must be regarded as condemned by the common conscience of mankind....."

"The task of defining, from this point of view, the scope of violations of the laws of war which ought to fall within the purview of punishment by the victorious belligerent is one of considerable difficulty. A seemingly administrative act of a political nature, like deportation or segregation of large sections of the population of the occupied territory, may, in its effects upon human life and in the cruelty of its execution, be indistinguishable from the common crime of deliberate murder. But it is a task which ought to be attempted. The result of the differentiation thus established between the two categories of violations of the law of war would not necessarily be to render immune from punishment or from the duty of compensation the less heinous manifestations of lawlessness....."

"Pillage, plunder and arbitrary destruction of private and public property may, in their effects, be no less cruel and **deserving** of punishment than acts of personal violence. There may, in effect, be little difference between executing a person and condemning him to a slow death of starvation and exposure by depriving him of shelter and means of sustenance."

UNITED NATIONS WAR CRIMES COMMISSION.

COMMITTEE I.

The Luxembourg Courts Case.

Note by the Legal Officer, Mr. Schwelb.

The Luxembourg Ministry of Justice has recently submitted the following cases which concern the administration of justice during the German occupation:

- No. 991 (Raderschall), Landgerichtsdirektor.
- No. 993 (Drach), Erster Staatsanwalt und Stellvertretender Kommissar für die Staatsanwaltschaft.
- No. 994 (Lüdtke), Senatspräsident des oberlandesgerichtlichen Senates und Stellvertretender Kommissar für die Justizverwaltung.
- No. 1084 (Wienecke), Staatsanwalt.
- No. 1085 (Hofmann), Oberstaatsanwalt und Stellvertretender Kommissar für die Staatsanwaltschaft.
- No. 1219 (Bergmann), Oberlandesgerichtspräsident und Kommissar für die Justizverwaltung.
- No. 1220 (Bauknecht), Landgerichtsdirektor und Stellvertretender Kommissar für die Justizverwaltung.

Raderschall (991) and Drach (993) have been put on 'A', but the following was placed on record (see Minutes No. 18 of July 11th, 1945);

"(a) The Luxembourg case No. 991 (Landgerichtsdirektor Adolf Raderschall).

It was unanimously decided to place Raderschall, who has been arrested and is detained by forces of the U.S. occupation army on 'A'. On the motion of Captain Wolff it was decided that the basis for the Commission's decision is the last count of the charge: the allegation that Raderschall as member of a Standgericht is responsible for the condemnation to death (in 21 cases) of Luxembourg patriots who had protested against the introduction, on 30.8.42, of compulsory military service with the German Army and against the conferment of German citizenship on Luxembourg nationals.

(b) The Luxembourg case No. 993 (Leo Drach, Erster Staatsanwalt und Stellvertretender Kommissar für die Staatsanwaltschaft.

It was unanimously decided to put Drach, who is also detained by the United States forces on 'A', the ratio decidendi being in this case similarly as in the case of Raderschall (991) the accusation that Drach, as public prosecutor, has demanded the death sentence on the Luxembourg patriots, by the Standgericht, of which Raderschall was a member."

The cases of Lüdtke (994), Wienecke (1084), Hofmann (1085) have been adjourned in order to obtain further information; the cases of Bergmann (1219) and Bauknecht (1220) will be before Committee I for the first time on August 8th, 1945.

The additional case of Hartmann (1221) who was the Chief of the Gestapo and president of the Standgericht, does not give rise to any difficulties.

Lüdtke (994) is accused of having:

- 1) contributed to the transformation of the judicial organisation of Luxembourg.
- 2) of having caused illegal arrestation.
- 3) of having caused, the resignation, the arrestation, and detention in prison or concentration camps of magistrates, counsel and functionaries.
- 4) of being responsible for judgments imposing penalties for deeds which do not constitute crimes under Luxembourg law or under the relevant International Convention.
- 5) of having contributed to the imprisonment, to the detention in a penitentiary and to the death of Luxembourg nationals.

Wienecke (1084) is accused of:

- (1), (2), and (5) supra and
- (6) of having, as public prosecutor, requested the passing of sentences for deeds which do not constitute crimes under Luxembourg or International law.

Hofmann (1085) is accused of:

- (1), (2), (3), (6), and (5).

Bergmann (1219) is accused of (1) and (4).

Bauknecht is accused of (1), (2), (4), (5).

The fact that Committee I, in dealing with the cases of Raderschall (991) and Drach (993) based its decision exclusively on the part played by the accused in the activities of the Standgericht, does not imply the laying down of the rule that the charges preferred against the other accused (1) to (6) other than judicial murder by way of the Standgericht are unfounded.

1) The transformation of the judicial system.

Under this heading Lüdtke, is accused of having introduced the German salute. Hofmann, has introduced robes with the German emblem. Both brought pressure to bear upon their subordinates towards the purchase of Nazi literature, Bauknecht ordered the using, in giving judgment, of the German formula "In Namen des Volkes". It is also stated that pressure was being brought upon Luxembourg judges to obtain severe judgments.

There can be no doubt that a belligerent occupant is not as such allowed to introduce structural alterations in, and transformations of, the judicial system in the occupied territory. He has particularly no right to constrain the courts to pronounce their verdicts in his name, although he need not allow them to pronounce verdicts in the name of the legitimate government. (Oppenheim-Lauterpacht, International Law II, pp.349 where the famous incident of the Nancy court of September, 1870, is recited).

In the charge No. 1220 it is not stated that Bauknecht ordered the pronouncement of judgments in the name of the German people, the word German in "Jui Naimen des Deutschen Volkes" being struck out.

Apart from that the more general problem arises whether every violation of a rule of the law of belligerent occupation constitutes a war crime (See Lauterpacht, B.Y.B.1944, p. 77 quoted in the paper I/22 at p.3).

2.4.5.6. Illegal Arrestation, Imprisonments, and Death Penalties.

These charges are based on the activities of the Sondergericht as distinguished from the Standgericht.

Lidtke was president of the Sondergericht, Wienecke and Hofmann acted as public prosecutors before it. Bergmann was the supreme chief of the administration of justice and is also held responsible for the death sentences passed by the Sondergerichte. No concrete case of a judicial murder committed under the cloak of a death sentence pronounced by the Sondergericht is quoted in the charges; the only case cited is that of M. Loesch who was sentenced to five months imprisonment.

The decision of Committee I with regard to these charges therefore depends on the character of the Sondergerichte, established by the Germans in Luxembourg and the working of these courts about which the Luxembourg National Office will, no doubt, furnish further information.

The Czechoslovak charges No. 389 and 464 dealt with the German Standgericht established in Czechoslovakia and are therefore comparable to the Luxembourg charges Nos. 991 and 993. The Czechoslovak charge No. 424 dealt with the Sondergerichte and is therefore analogous to the Luxembourg charges Nos. 994, 1084, 1085, 1219 and 1220.

In principle, the provisions regulating the activities of the Sondergerichte should have been the same both in Luxembourg and in Czechoslovakia, both countries having been "annexed" to the German Reich. But in the charge No. 424 some particular features of the Sondergerichte as established in Czechoslovakia have been set out which were the basis for the decision in the Czechoslovak Sondergerichte case. These particular features have been summarised in my paper dated April 3rd, 1945, as follows:-

The Czechoslovak charge sets out in detail why in the view of the Government also the institution of these Sondergerichte and their activities constitute war crimes. The following are those of the reasons adduced by the Czechoslovak Government which appear to me most convincing:

- (a) the provision enabling the Sondergerichte to impose sentences in excess of the ordinary maximum penalty, if the "sound popular feeling" (das gesunde Volksempfinden) calls for it;
- (b) the manner of the execution of the death penalty is not being defined by the judge in the sentence, but is fixed by administrative officials after the sentence has been passed;
- (c) the excessiveness of the penalties to be imposed and actually imposed by the Sondergerichte (e.g. the death penalty for theft and for the slightest infringement of the numerous emergency regulations);
- (d) by an order dated July 3rd, 1942, the Sondergerichte replaced the Standgerichte after the state of civil emergency had ceased to exist. This Order provides for the punishment by death of anyone who gives lodgings or any other help to a person whom he knows to be engaged in an act hostile to the Reich, or who, according to the circumstances, can be assumed to be so engaged or who omits to notify the authorities in time. Section 1, Article 2, of this Order introduced an un rebuttable presumption that if a person is not registered with the police, he is deemed to be a person whose harbouring is punishable by death;
- (e) simultaneously, the death sentence was introduced for the forgery or alterations of identity cards and similar offences.

From the list of persons executed in consequence of sentences passed by the Sondergerichte, it follows that actually people were found guilty, punished by death and executed for offences like larceny of postal parcels, black-out offences, assault and ill-treatment of German nationals, concealment of part of the harvest, illicit slaughter of cattle, etc.

With regard to the members of the Hitler Government and the other persons responsible for the institution of these Sondergerichte, their case is therefore also indistinguishable in law from the case already decided by Committee I (389).^a

It would be helpful if the Luxembourg National Office could provide evidence of a similar character as to the activities of the Sondergerichte in Luxembourg.

SECRET

I/24
17th August, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

COMMITTEE I

NOTE ON THE YUGOSLAV CASE NO. 1281
(PREFETTO DI CATTARO; TAKING OF
HOSTAGES.)

By Mr. E. SCHUELB

I.

In the meeting of Committee I, held on August 15th, 1945, the case against the "prefetto di Cattaro" was adjourned for further consideration.

The accused, whose name is unknown but whose identity as head of the administration of an important town and harbour it should be possible to establish, is charged with having committed the crime of "Internment of Civilians under inhuman conditions".

It is stated that "he selected hostages from the above-mentioned villages and arrested them with the intention of having them shot if any disturbances occurred in that district. This action caused the imprisonment of innocent men and women and the terrorisation of the civilian population."

"Evidence is based on the original document in which the order was issued. The signature on the document is illegible except for the title - IL PREFETTO. This document is now filed in the archives of the Yugoslav State Commission."

Under "References to relevant provisions of international law" the Yugoslav charge alleges a violation of Articles 4 and 5 of the Hague Regulations, 1907. These are not relevant to the problem because they deal with prisoners of war, while the victims of the crime, which the charge indicts, were civilian inhabitants of occupied territory.

II.

The question, therefore, arises whether what the accused is alleged to have done, is a war crime.

The Commission, in its meeting held on May 9th, 1944, adopted the proposal, embodied in Doc. C.15(1) and added the following to the List of War Crimes which had been provisionally adopted by the Commission on 2nd December, 1943 (Doc. C.1) :

"Indiscriminate mass arrests for the purpose of terrorising the population, whether described as taking of hostages or not."

It appears that the statement of facts contained in the charge No. 1281 does not establish the facts of this Resolution.

In the present case the arrests are not stated to have been "mass arrests" and "indiscriminate". On the contrary: the prefetto is accused of having selected hostages.

Nor is the purpose of terrorising the population established. It is stated that the intention was to shoot the hostages "if any disturbances occurred in that district."

Nor does the statement of facts bear out the description "Internment of civilians under inhuman conditions."

III.

The decision on this charge therefore depends on the question whether the taking of hostages is criminal per se.

The present state of International Law on this problem is thus stated in Oppenheim-Lauterpacht Vol. II, Revised Sixth Edition (1944):

"A new practice of taking hostages was resorted to by the Germans in 1870 during the Franco-German War for the purpose of securing the safety of forces against possible hostile acts by private inhabitants of occupied enemy territory. Well-known men were seized and detained, in the expectation that the population would refrain from hostile acts out of regard for the fate of the hostages. Thus, when unknown people frequently wrecked the trains transporting troops, the Germans seized prominent enemy citizens and put them on the engines, a device which always proved effective, and soon put a stop to further train wrecking. The same practice was resorted to, although for a short time only, by Lord Roberts in 1900 during the South African war. It has been condemned by the majority of writers. But it may be difficult to agree with their opinion. Matters would be different if hostages were seized, and exposed to dangers, for the purpose of preventing legitimate hostilities on the part of members of the armed forces of the enemy. But no one can deny that train-wrecking on occupied enemy territory by private enemy individuals is an act which a belligerent is justified in considering and punishing as war treason. It is for the purpose of guarding against an act of illegitimate warfare that these hostages are put on the engines. The danger to which they are exposed comes from their fellow-citizens, who are informed that hostages are on the engines, and ought therefore to refrain from wrecking the trains. It cannot, and will not, be denied that the measure is a harsh one, and that it makes individuals liable to suffer for acts for which they are not responsible. But the safety of the troops and lines of communication of the occupying belligerent is at stake, and it seems doubtful, therefore, whether even the most humane commanders will always be able to dispense with this measure, since it alone has proved effective.

During the first World War, Germany adopted a terrible practice of taking hostages in the territories occupied by her armies, and shooting them when she believed that civilians had fired upon German troops. During the Second World War she followed the practice of mass shooting of hostages on such unprecedented scale as to bring it prominently within the category of war crimes, the punishment of which was declared by the United Nations to constitute a major purpose of the war."

The British Manual (Chapter XIV, para. 461 et seq.) though not considering the taking of hostages commendable, does not go as far as declaring it illegal. Para. 461 recognises the right to take hostages with the proviso that all they have to suffer is captivity, and not death. According to para. 464 it would appear legitimate to take inhabitants as hostages for the proper treatment of wounded and sick. A similar course might become necessary, if prisoners have fallen into the hands of irregular troops, or of inhabitants who have risen in arms, since there might be fear for their maltreatment.

- 3 -

IV.

Time did not allow the present writer to place before the Committee a complete survey of the modern literature dealing with the legality of the taking of hostages; but what has been quoted under III supports the view expressed by members of Committee I that the taking of hostages is not as such a war crime.

SECRET

I/25
18th August, 1945.

UNITED NATIONS WAR CRIMES COMMISSION

COMMITTEE I

REPORT ON THE YUGOSLAV CHARGE NO. 1323
(PERSONNEL OF THE SPECIAL TRIBUNAL FOR
THE DEFENCE OF THE STATE, ROME.

By Mr. E. SCHWELB

I.

The present case is to some extent similar to the case No. 940, which dealt, inter alia, with the personnel of the Tribunale Speciale della Dalmazia which in the Yugoslav memorandum, presented in the case 940, was described as the "opposite number of the Tribunale Speciale per la Difesa di Stato in Rome" (See Doc. I/15). Committee I decided on July 17th, 1945, to put the personnel of the Tribunale Speciale della Dalmazia on S.

An information on Italian courts in Yugoslavia will be circulated by Col. Wade as Doc. I/26.

II.

This writer, who was greatly interested at the time in Fascist "legal" developments, does not doubt in the least that the Special Court for the Defence of the State in Rome from its very beginning in 1926 has been nothing but an instrument of oppression and a cloak for common crimes committed by the Fascist Government first against Italian opponents of the regime and eventually, during the Second World War, also against citizens of other countries, particularly of inhabitants of Italian occupied Yugoslav territories. In spite of this fact, of which the Committee could, as it were, take judicial notice, it is necessary to scrutinize the charge closely not only because of the necessity of establishing the guilt (prima facie) of the individuals charged, but also for the reason that the formulation of the Yugoslav charges implies some conceptions of International law and municipal criminal law which would hardly be acceptable to some other governments. Even if it be admitted (and as a matter of fact there can be no reasonable doubt about it) that the sentences imposed by the Court on Italian citizens of Yugoslav race (members of the Yugoslav minority in the Italy of between the two wars) were unjust, illegal, and even criminal, International Law does not recognise the right of a racial minority to rise against the state under whose jurisdiction it fell under the 1919 Peace Treaties. No exemption of Italian citizens of Yugoslav race from Italian jurisdiction can be claimed for the time when the disputed territory undoubtedly formed part of Italy, both under International law and according to the municipal legal orders of Yugoslavia and Italy. It is well known that as a matter of law Italy had even no obligations towards her minorities analogous to those accepted by other states in 1919/20.

III.

Applying what has been summarily stated sub (II) supra to the "Particulars of alleged crime" in the Yugoslav charge, the following general observations can be made :

a) The trying of Slovenes and Croats from Istria, Gorizia and Trieste is not illegal. The same may be said of the trial of Yugoslav citizens for alleged offences committed on Italian territory (i.e. territory forming part of Italy under the territorial arrangements of 1919/20). In addition: the so-called territoriality of criminal law "is not an absolute principle of international law" (The Permanent Court of International Justice in the case of S.S. Lotus (France v. Turkey), 1927, Judgment No. 9, Series A, No. 10). Many continental legal systems penalize some crimes, particularly crimes against the security of the state, also if committed by foreigners abroad; as municipal jurisprudence is divided, the Permanent Court held that "it is hardly possible to see in it an indication of the existence of the restrictive rule of international law" (i.e. of a rule restricting the criminal jurisdiction of a state to its territory). Incidentally, it is a consequence of the fact that the jurisdiction of a state is not restricted to its nationals and to its territory, that there exists "universality of jurisdiction over war crimes." (Op. Willard B. Cowles in California Law Review, June, 1945; and Quincy Wright, Article "War Criminals" in American Journal of International Law, April 1945). We cannot claim for the United Nations universal jurisdiction over war crimes, and simultaneously indict jurisdiction exercised under the so-called "protection principle" as a war crime per se.

b) The exercise of jurisdiction by courts of the occupying Power over the inhabitants of the occupied territory does not itself constitute "usurpation of sovereignty." Such jurisdiction is compatible with the restraint placed upon the occupant by the Hague Regulations. There was, of course, illegal usurpation of sovereignty over Italian occupied Yugoslavia during the war, but it is doubtful whether it was the judges of the Rome court who committed this contravention of the rules of warfare. It was obviously the Italian Executive and, probably, the Legislature, but not the judiciary, who illegally "annexed" Yugoslav territories.

c) "Slovenes and Croats from Istria, who left Italy in 1929 and became Yugoslav citizens, were tried and sentenced by this Special Court." The fact that they left Italy in 1929 does not necessarily mean that they ceased to be Italian citizens; nor does the acquisition of Yugoslav citizenship necessarily and automatically bring about the loss of Italian citizenship.

d) The trial and sentencing of Yugoslav citizens from Dalmatia because they had worked for their liberation is not necessarily a war crime on the part of the judges. Whether or not it constitutes a war crime depends both on what the Yugoslav patriots had done, and how the trial was conducted and what kind of law was applied. If only such activities had been punished after due process of law as the belligerent occupant is entitled to forbid, no crime would have been committed.

e) What was stated under (d) applies also to the case of Yugoslav citizens from regions not occupied by Italy, if they were tried for alleged offences committed in the Italian occupied parts of Yugoslavia.

f) The distinction between "reconnaissance duties" and "spying" is subtle. Only after close study of the individual cases could the question be answered whether by sentencing a person who acted on reconnaissance duty as a spy, the members of the court have committed a crime.

IV.

Notes on the instances numbered in the charge No. 1523
(1) to (6).

(1) Under the presidency of Tringali-Casanuova (1) the Special Court sentenced to death and to hard labour 91 persons who were Yugoslav citizens belonging to the Yugoslav minority in Gorizia and Istria who had fought for their national liberation from the Italian and fascist yoke. This statement contains an inconsistency: either the victims belonged to the Yugoslav minority in Italy, then they were Italian citizens (nationals). Or they were Yugoslav nationals, then they could not belong to the Yugoslav minority in Italy. In the first case they fought against the state whose citizens they were. In the second case they were foreign nationals fighting on Italian soil against the local sovereign. The fact that politically the struggle of those Yugoslav patriots and of those members of the Yugoslav minority in Italy was favourable to the cause of the United Nations and deserving also in other respects does not alter the fact that in law the Italian courts were competent to try offences, committed on Italian territory to free part of this territory from the Italian yoke. Here a prima facie case of a judicial crime does not seem to be established. *

(2) General Le Metre (2). No details about the alleged offences of the victims and of the court proceedings are given. The Yugoslav National Office should be asked to furnish further information.

(3) General Griffini (5).

(4) General Suppiej (6).

(5) General Contincelli (3)

(6) General Gauttiori (4).

In these cases what was said under (2) applied.

V.

Notes on the instances numbered in the charge No. 1523
I to XII.

The greatest admiration for the National Liberation movement cannot undo the fact that "in those Yugoslav regions taken by Italy after the first World War" the movement was directed against the legitimate local sovereign and the courts of the local sovereign were, under International and municipal law alike, entitled to punish offences against the local law.

ad I. In my submission part of, but not all the facts stated with regard to the sentence passed on 28th April, 1941, indicate that the court proceeded illegally. The court was, under International law, prima facie not entitled to punish Yugoslav citizens inhabiting occupied Yugoslav territory because they belonged to the Slovene society and because they

* While this paper was being typed the Yugoslav National Office informed the Commission's office by telephone that the words "and Yugoslavs" were to be inserted between "Yugoslav citizens" and "belonging". Thus the inconsistency dealt with in the text has been remedied.

conducted propaganda against the unity of the Italian state, but it was entitled to try persons because they encouraged people to sabotage, spy and rebel against the (so. Italian) State. With regard to Italian citizens this restriction did not apply.

ad II. This seems to be a case of unjustified imprisonment. The victim had done nothing which could be properly tried in an Italian court.

ad III. This information seems to need supplementation.

Prime facie persons from Gorizia (a town then belonging to Italy) could be tried for an attack against members of the (Italian) Customs Guard.

ad IV. This is a case of political oppression. The Communist party was prohibited in Italy and under her totalitarian regime membership in the Communist Party was a crime. The sentence passed on Italian citizens for membership in the Communist Party is barbaric, and obnoxious to the Western mind, but it is not a war crime.

ad V. This is a borderline case. As stated in the introduction to this paper (supra III), in cases of offences against the security of the state (and in other cases also, e.g. counterfeiting currency) many continental legal orders allow the punishment of crimes committed by foreigners abroad.

ad VI. Provided that Matkovic and Ban were Yugoslav nationals (Matkovic is stated to have been born in Italy) there seems to be an excess of judicial power.

ad VII. Here the nationality of the victims seems to be relevant. Vico-Gustincic and Cekada appear to have been Italian citizens. If this is so, they could be tried when captured as members of the armed forces of a state with which Italy was at war.. Vrekar appears to have been a Yugoslav national and his serving in the Yugoslav forces did not constitute an act which could properly be made the object of criminal proceedings in an Italian court.

The Yugoslav National Office should be asked to furnish information about the nationality of the 22 Yugoslav soldiers according to the Treaty provisions and municipal rules valid in the period between the two wars.

ad VIII Here it could probably be said that the occupant was not obliged to allow inhabitants of the occupied territory to maintain liaison with the British in order to harm Italian military operations.

ad IX. Here applies what was said under V.

ad X. As to Glorija Jarda the case depends on the legal standing of the Partisan Units in the material time (before November 28, 1942).

Assuming that the Partisans then already had the status of belligerents within the meaning of Art. 1 of the Hague Regulations, Miss Jarda had the right to be treated as a prisoner of war and her trial and punishment was illegal.

The case of the 4, 7 and 2 Slovenes and Croats who were Italian citizens does not constitute a war crime.

ad XI This case rises difficult problems. The victims ought not to have been on the Lipari islands. As they were deported there illegally, it could be maintained that they were entitled to self-help and that they, therefore, ought not to have been punished for taking part in their revolutionary organization.

On the other hand, it could be said that no state is under an obligation to tolerate revolutionary organizations formed by foreigners on its territory and the fact that the foreigners came to the territory against their will does not necessarily alter this position.

ad XII No details about the case of Radovanovic and Vrhinec are given.

VI.

Conclusions

- 1) I submit that the decision on this charge should be adjourned until the Yugoslav National Office kindly furnishes additional information on the different questions which have been mentioned in the earlier chapters of this paper.
- 2) When the charge will thus be supplemented it will probably be possible to list part of the accused on A and part on S.
- 3) But in addition there will remain a large number of crimes which are not war crimes but which fall within the category of "analogous offences", chiefly atrocities committed against Italian citizens. It would be worth considering whether the attention of the Allied Control Commission for Italy should not be drawn to these "crimes against humanity" within the meaning of Section 6(c) of the Charter of the International Military Tribunal.

UNITED NATIONS WAR CRIMES COMMISSION.
(Research Office)

SECRET.

COMMITTEE I.

I/26.
(R/IT/17/8).

COPY OF STATEMENT OBTAINED FROM THE FOREIGN OFFICE RESEARCH DEPARTMENT,
AS REQUESTED BY THE COMMITTEE IN CONNECTION WITH THE YUGOSLAV CASE NO.940.

(See also Document I/13).

(R 11037/329/92)

Special Courts in Dalmatia.

Soon after the Italians took over the administration of Dalmatia the Italian Legal Gazette announced that the administration of justice was to remain in the hands of existing courts, but with the use of the Italian language in certain districts (Susak, Sibenik, Split, Dubrovnik and Kotor) as "the language of indictment against civil defendants." There was to be a Court of Appeal at Split. (Transocean, 18th May 1941.) Three months later there was news of the establishment by Decree of a military tribunal at Sibenik, which it was stated was to play an important part in the "welding together of the old and new order and the uprooting of such conceptions as were incompatible with the authority and dignity of the State" (Regime Fascista, 30th August, 1941).

A similar court was apparently set up at Split, for it was reported from Rome in October that 30 "Communists" had just been sentenced, 18 of them to death, by these two courts (New York Times, 19th October).

Shortly afterwards a new Law was passed in Rome for the establishment of a special military tribunal for Dalmatia. The offences to be tried by this Court included the concealment of arms and ammunition, the hoarding of food-stuffs for the purpose of increasing prices, and the destruction of raw materials, agricultural produce and industrial goods, for all of which penalties up to death could be imposed. For other crimes, such as participation in public demonstrations, incitement to revolt, the spreading of false rumours for purposes of propaganda, or assistance to other persons guilty of these offences the court could decree terms of imprisonment ranging from five to 15 years (New York Times, Göteborgs Handels-och Sjöfartstidning, 29th October).

Early in November La Stampa (12th November) described a bomb incident at Split at which several persons were injured and one was killed. One hundred and fifty people were arrested on the spot—they were described as "Communist elements", many of whom came from other parts of the Balkans—and held as hostages. The culprits, it was stated, would be tried by the Special Tribunal for the Defence of the State.

Since the end of 1941 this Department has had no information concerning the activities of the Court at Sibenik.

The description of persons suspected of anti-Italian activities as "Communists" does not necessarily give any clue to such persons' views and aims. It may well have been a mere propaganda device.

Research Department,
Foreign Office.

19th July, 1945.

Rep. Aug. 2nd

I/27.
21st August, 1945.

NOTE FOR COMMITTEE I
ON THE CROWCASS DETENTION LIST No. I.
(By Dr. LITAWSKI, Legal Officer)

A few days ago the CROWCASS transmitted to the Commission the Detention List No. I, which calls for the attention of Committee I and the Commission, as well as for some comments and action. Only a superficial look at the List gives the following impressions.

I.

1. The List comprises in all 405 persons detained. The List comprises only very few persons listed on the Commission's Lists. Out of this total there have been mentioned in the List only 39 war criminals who appear on the Commission's Lists, and some 21 who might be the same persons as listed on our Lists, but this could not be definitely ascertained owing to the lack of sufficient personal data entered on the Detention List or on the Commission's Lists.

2. Out of the most important top level group of persons (arch criminals), the Detention List No. I comprises about twenty-five names, as follows:

| | |
|--------------------------------|---------------|
| DALUEGE | KESSELRING |
| DARRE | LEHMERS |
| DOENITZ | LEY |
| DORFMULLER | MEISSNER |
| EPP | PAPEN |
| FRANK, Hans | RIBBENTROP |
| FRICK | SELDT |
| FUNK | SEYSS-INQUART |
| GOERING | SCHACHT |
| HORTHY (described as a German) | SPEER |
| JODL | STREICHER |
| KEHRL | RENNERTROP |

3. With one exception, that of the United States, the List comprises also very few persons wanted by the different Governments, and the repartition in this respect is as follows:

| | |
|--------------------------|-----|
| UNITED STATES OF AMERICA | 218 |
| FRANCE | 27 |
| POLAND | 4 |
| CZECHOSLOVAKIA | 3 |
| UNITED KINGDOM | 1 |
| SOVIET RUSSIA | 1 |
| CZECHOSLOVAKIA | 1 |

The interests of other Governments are not represented.

4. Some of the war criminals wanted by the Governments are not indicated in the Detention List as wanted by the respective Governments, but as Security Suspects, though they appear on the Commission's Lists already issued, e.g., General LINDEMAN, Hans FRANK.

There are more instances of this kind.

5. On the whole, the Detention List No. I comprises mostly the Security Suspects and not war criminals as such and persons mostly of lower or lowest ranks.

6. In my submission, it would be of some importance for the future work of this Commission, as well as for the next issues of the Detention Lists, to call the attention of CROWCASS to the points mentioned above.

II.

The explanatory memorandum attached to the Detention List No. I calls also for some explanation as to the competence of CROWCASS.

From paragraph e) on page 2, it appears that CROWCASS will, in the future, have some authority regarding the handing over of war criminals, and it has been stated there that some explanatory memorandum on procedure in this respect will be circulated in a subsequent communication.

We have, of course, to await this communication, but on the whole it appears that in this matter there is an urgent need for action by this Commission to settle or clear up for the Government members of the Commission all this matter on principle.

We know there are now many and various authorities dealing with this subject and they will have much to say in the future as to the handing over of war criminals, not only from the technical point of view, but from the legal one as well. It may be mentioned that there are at this moment four military authorities of different zones of occupation in Germany alone which hold the war criminals, and, farther on, there are the Allied Military Governments, the CROWCASS, and this Commission, not to mention others which will have to take some part in the procedure of surrendering war criminals, and the relation in this matter between all of them, as well as their competence, should be finally established.

It ...

It is also of the utmost importance to see a statement on the most complicated subject, i.e., which one of the many authorities involved is going to be authorised to decide the legal questions of handing over war criminals in all those instances in which the same individual war criminal is being or would be wanted by more than one Government.

Official File

20.8.1945.

I/28

UNITED NATIONS WAR CRIMES COMMISSION

FOUR SUGGESTIONS CONCERNING C.R.O.W.C.A.S.S.

By M. de BAER

- I. A close collaboration has now been obtained between C.R.O.W.C.A.S.S. and the U.N.W.C.C. Attempts by C.R.O.W.C.A.S.S. to obtain contact with some of the National Offices have not always reached the right person so that it is now felt that the proper channel through which the Governments can be most usefully and most speedily reached is through the members of the U.N.W.C.C.; they are undoubtedly the best placed to ensure a proper liaison. Therefore, and in order that the members of the W.C.C. should have an up-to-date view of the progress that has been made by C.R.O.W.C.A.S.S. and that, moreover, C.R.O.W.C.A.S.S. may receive from the Commission any suggestion concerning the improvement of its work, it is necessary to create a regular contact between the two bodies, i.e. that a representative of C.R.O.W.C.A.S.S. be invited to come to London at regular intervals, say every month, until the completion of our common work, to attend one of the U.N.W.C.C.'s meetings.

C.R.O.W.C.A.S.S. is taking a leading part in the scheme of the punishment of war criminals, it has proved its merits as a centralising office covering the activity of - and giving assistance to - all the United Nations engaged in that work; previously it was working under S.H.A.E.F. On the termination of Combined Command control of C.R.O.W.C.A.S.S. passed from S.H.A.E.F. to the U.S. Group Control Council and the Control Commission (British Element) working in close association with the other parts of the Quadrupartite Commission. It is carrying out its work in this way to the satisfaction of all concerned. It is however necessary to provide for the continuation of its work after the expiration of the lease-lend period, when the question of the financing of C.R.O.W.C.A.S.S. will arise. It is therefore suggested that, when the lease-lend period finishes (and that period, if it is not prolonged, may end on Nov. 9th), C.R.O.W.C.A.S.S. should rather than be split up among the Allies, remain a central body the financing of which could be done in the same way as the U.N.W.C.C.

- II. In the connection mentioned under II. above, it is advisable that the activity of C.R.O.W.C.A.S.S. should not be controlled only by Great Britain and U.S.A. but that outside representation should be provided within that body. This for obvious reasons not possible to provide for the representation of all European Continental countries, but as C.R.O.W.C.A.S.S. is functioning in Paris it seems that at least one of them, namely France, should be represented in it, the more so that she is taking a part in the occupation of Germany.

- IV. The Commission of Control has not yet adopted a policy

in respect of the handing over of persons whose surrender is requested by two or more Allies. It is therefore suggested that a copy of the U.N.W.C.C. recommendations on arbitration by the Commission when the surrender of an accused is requested by several Allies (doc. C.123) be forwarded to the Commission of Control for its information, together with the answers received to date by the Governments concerned.

It is suggested that the U.N.W.C.C. should make suitable recommendations to the Governments on the four points mentioned above and that a copy of these recommendations be sent to the Commission of Control.

I/29 A.
6th September 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

According to the decision by Committee I, I consulted Captain Alletson about the way to correspond with the Control Council for Germany and was advised to send a letter to the British Element of the Control Commission for Germany, Norfolk House, St. James' Street, for his, Captain Alletson's, attention. Captain Alletson will see to it that the information is forwarded to the Headquarters of the Control Council in Germany.

E. SCHWELB.

I/29

23rd August 1945.

UNITED NATIONS WAR CRIMES COMMISSION

COMMITTEE I

DRAFT LETTERS TO THE FOUR ALLIED COMMANDERS IN GERMANY AND
TO THE NATIONAL OFFICES RE: STERILIZATION IN GERMANY (Doc. I/20).

In accordance with the decision of Committee I of August 22nd, 1945, I herewith submit the draft letter to be sent to the four allied commanders in Germany.

E. SCHWELE.

I.

Sir,

The United Nations War Crimes Commission received through its Czechoslovak member a letter from Dr. Theo Lang, Herisau (Switzerland), dated May 10th, 1945, containing information about crimes committed in Germany by means of compulsory sterilization. The Commission also received a statement, made by Dr. Lang, on the murdering, in Germany of infirm and aged people.

I am directed by the Commission to send you herewith copies of the two documents mentioned suggesting that you be kind enough to order the persons indicated by Dr. Lang to be interrogated, as far as they are in the zone of Germany under your command, and to have the whole question of sterilization and murder committed under the guise of "racial hygiene" investigated.

The United Nations War Crimes Commission would be very much obliged if it could be informed of the steps taken by you and of their result.

Yours faithfully,

Secretary-General.

II.

Letter to the National Offices.

(First paragraph as in Letter I above)

I am directed by the Commission to send you herewith copies of the documents mentioned, suggesting that your National Office should, if possible, investigate similar crimes committed on your territory or against your nationals and inform the Commission of the result of your investigations.

Yours faithfully,

Secretary-General.

UNITED NATIONS WAR CRIMES COMMISSION

I/30
September 5, 1945

REPORT

on the Yugoslav Charges No: 1323 (R/It/114) and No: 1339 (R/It/117)

by Dr. R. ZIVKOVIC

I.

Preliminary Remarks

The above charges were submitted to Committee I and adjourned for re-examination.

Both charges have raised a question of principle, namely, whether criminal offences committed by Italians against Yugoslavs of Italian citizenship can be regarded as war crimes, or even as crimes at all.

In respect of the charge No: 1323, against members of the "Tribunale Speciale per la Difesa dello Stato", the Legal Officer produced a report (Doc. I/25) and underlined the right of the courts of an occupying Power to exercise jurisdiction over their own citizens (Yugoslavs from Italy) and also over the citizens of the occupied country (Yugoslavia). Her therefore, reached the conclusions that "the trying of Slovenes and Croats from Istria, Gorizia and Trieste is not illegal"; that "the same may be said of the trial of Yugoslav citizens for alleged offences committed on Italian territory"; and that, as to the trial of Yugoslav citizens for offences committed in the occupied territories (Yugoslavia), "many continental legal systems penalise some crimes, particularly crimes against the security of the State, also if committed by foreigners abroad", (page 2, III, a).

In respect of the charge No: 1339, members of Committee I expressed the view that it was related to "crimes perpetrated by Italians against Italians."

So, it appears that the question of citizenship is the chief legal problem to be considered in regard to the above two charges, and that prior to their acceptance or non-acceptance by Committee I, it should be solved as a matter of principle.

The other question of importance is the question of the right of an occupying Power to exercise its jurisdiction in an occupied country over the citizens of that country.

My purpose in this paper is to analyse both these items with concrete reference to the position existing during the present war between the Italian authorities and the Yugoslavs, both of Yugoslav and Italian citizenship.

Since the question of citizenship is a more complicated one, which will, therefore, require more extensive consideration, the question of jurisdiction will be dealt with in the first place.

II.

Right to Exercise Jurisdiction in Occupied Territory

1. There was a very important point in concreto which was overlooked

when the following views were expressed in Doc. I/25, page 2, 6: "The exercise of jurisdiction by courts of the occupying Power over the inhabitants of the occupied territory does not itself constitute "usurpation of sovereignty", - and that (under d): "The trial and sentencing of Yugoslav citizens from Dalmatia because they had worked for their liberation is not necessarily a war crime on the part of the judges".

It was never said in the charge No: 1323 that the exercise of jurisdiction by the Italian courts over the Yugoslav citizens was "itself an usurpation of sovereignty. This was said in concreto for the Tribunale Speciale per la Difesa dello Stato in Rome.

According to Article 43 of the Hague Regulations, 1907, an occupying Power is entitled to "restore and ensure, as far as possible, public order and safety" in the occupied country, but it is at the same time bound to "respect, unless absolutely prevented, the laws in force in the country". According to Article 42, "the occupation extends only to the territory where such authority has been established and is in a position to assert itself." Thus, an occupying Power is entitled to exercise its own jurisdiction only in so far as this is absolutely necessary in order to maintain public order and safety in the occupied territory. This, for instance, entitles the occupying Power to have its military tribunals operating for offences committed by non-belligerent individuals against members of the occupying forces and other authorities. But, -and here is the main point, - this is a restrictive rule, the spirit of which has been clearly defined in Article 43, and which can never authorise an occupying Power to extend its jurisdiction beyond the limits imposed by the purpose of occupation.

This being so, the trial of Yugoslav citizens by the Tribunale Speciale in Rome represents a conspicuous instance of usurpation of sovereignty in violation of Article 43. Namely, the Tribunale Speciale in Rome is a court which was set up for the protection of the Fascist Regime in Italy, against Italian anti-fascists, and this in peace time. It was an instrument of Italian home policy, of internal Italian political affairs, which, both with regard to its constitution and its jurisdiction, had nothing to do with the occupation of another country in war-time, and which could never, therefore, be extended beyond the borders of Italy, and never be applied to inhabitants and citizens of a country temporarily occupied by the Italian forces.

In other words, the Tribunale Speciale in Rome was not one of the courts that could have been put into operation according to Article 43.

For this reason, the very fact that this court exercised its jurisdiction over Yugoslav subjects under Italian occupation represents in se a violation of the existing Treaties. A violation which in International Law we are accustomed to classify as acts of "usurpation of sovereignty."

The relevant legal consequence of such a situation is that sentences passed by this court on Yugoslav subjects under Italian occupation were illegal, and that, as a further consequence, they represented crimes perpetrated through the channel of this particular judicial instrument of political oppression and persecution.

So, all death sentences passed on Yugoslav citizens by this court are tantamount to murders, the court lacking any legal authority to

pass such sentences. All sentences of life imprisonment or shorter terms are likewise tantamount to illegal internment and deportation, for the same reason.

In this lies the true legal significance of the exercise of jurisdiction by the Tribunale Speciale in Rome over Yugoslav subjects, and it is an issue that emerges not only from contemporary International Law, but also from the International Law of the last century. Therefore, all remarks made in Doc. I/25 as to the possible validity of the sentences pronounced by the Tribunale Speciale in Rome on Yugoslav citizens, are irrelevant.

As a final point of importance, it should be pointed out that, the task of the Tribunale Speciale in Rome being focussed on the protection of the Italian Fascist Regime as such, it represented even in Italy, in regard to Italian-born subjects, an arbitrary instrument of unlimited power to crush any semblance of non-compliance with the Fascist Regime. It is, therefore, quite easy to realise what guarantee it could give when applied to subjects of an occupied country, and more particularly to subjects of territories which the Italian Fascist Regime occupied with the undisguised intention of annexing and forcibly incorporating it into Italian land proper.

In view of the above described position, the following sentences passed by the Tribunale Speciale in Rome, as described in the charge No: 1323, can already at this stage of my analysis be considered as war crimes:

1. The sentences mentioned on page 4 under 1 and 2, insofar as they were passed on Yugoslav of Yugoslav citizenship.
2. The sentence passed on Leopold Lado CERMELJ, born in Trieste in 1889, but a Yugoslav citizen since 1920, i.e. the time of the incorporation of Trieste, Istria and Gorizia into Italy; and that passed on Josef ZIDARIC, born in Trieste in 1919, but a Yugoslav citizen since after that time (page 4, under I).
3. The sentence passed on Bruno GACINA, a Yugoslav citizen since 1918, who always lived in Yugoslavia, for reconnaissance work while on military duty the day before the Italian attack against Jugoslavia, i.e. before the state of war between Italy and Yugoslavia existed, both de facto and de jure (page 4, under II).
4. The sentence passed on Franc PRINOZIC, a Yugoslav citizen since 1918, who had always lived in Jugoslavia, because he performed his military duty 1933-1935, whilst on military service, as a Gendarme on the Italo-Yugoslav border (page 4, under V).
5. The sentence passed on Eugen MATCOVIC and Venceslav BAN, Yugoslav citizens from the beginning, because they approached the U.S. Consul General in Zagreb with a view to obtaining protection for four ships belonging to MATCOVIC (pages 4-5, under VI).
6. The sentences passed on Josip ZNIDARSIC and Ivo STERGAR, both Yugoslav citizens from the beginning, for having given military information about the Italian Army before the war, in 1938 and later - (page 5, under IX).
7. The sentences described on pages 5 and 6 under XI and XII,

passed on Yugoslav citizens interned or imprisoned by the Italians during the war, for having "formed a revolutionary organization" in the internment camp (XI), or for having expressed anti-fascist views before the war (XII).

III.

Italian Citizenship of Yugoslavs as an Alleged Legal Basis for Exculpating Individuals Guilty of War Crimes

This appears to be the chief objection raised in regard to the charges No: 1323 and No: 1339:

(a) As to the charge No: 1323, the objection is formulated as follows in Doc. I/25 (page 1, II)

"No exemption of Italian citizens of Yugoslav race from Italian jurisdiction can be claimed for the time when the disputed territory undoubtedly formed part of Italy, both under International Law and according to the municipal legal orders of Yugoslavia and Italy."

This means that Yugoslavs of Italian citizenship could lawfully be tried and sentenced by the Tribunale Speciale in Rome because they were Italian subjects, and that members of this court are, accordingly, completely exculpated on account of such a legal position.

(b) As to the charge No: 1339, the beating and torture of Yugoslavs of Italian citizenship in the prison prior to their trial by the Tribunale Speciale appear, likewise, not to represent war crimes, because the victims were Italian, and not Yugoslav subjects.

So, the sole fact that the Yugoslavs in question happened to hold Italian citizenship seems to prevent Committee I from recognizing that crimes committed against them in exactly the same circumstances and in the same way as those perpetrated against Yugoslavs of Yugoslav citizenship are war crimes which entail punishment.

This is a far-reaching conclusion that deserves a very careful analysis, with regard to its consequences, - and these are manifold:

1. First of all, to decide upon the legal nature of an offence solely according to the citizenship of the victims means operating on a purely formalistic basis, which is not only typical of the schools of thought of the past, but is in contradiction to the most recent developments in International Law. In our particular case, this formalism is displayed in that a legal status, which was created over a quarter of a century ago (1918-1919), is taken for granted and is automatically considered as being still valid nowadays, without any consideration of the changes that have occurred since that time.

In other words, this means isolating a legal phenomenon from its surroundings, i.e. from the complex of facts which preceded it and rendered possible its appearance in the world of Law, and after having done so, applying it mechanically to any particular situation in the world of realities, regardless of the time and of new facts and circumstances.

One of the consequences of such a way of legal thinking is that if it were justified at all as a general principle, we would have never witnessed the sweeping developments which took place during this war in International Law. Moreover, we ourselves, of the United Nations War Crimes Commission, would never have been in a position to contribute to these developments.

I refer here to the Agreement for the Prosecution and Punishment of the Major War Criminals, with the Charter embodied in it. According to the Agreement and the Charter many deeds accomplished long before the war (1933 onwards), and which up to the present were not considered as criminal acts, have definitely been recognised as crimes in International Law.

Such a recognition, related to acts performed between the two wars and during this war, was dictated by the changes which occurred during that period of time, changes so profound and significant that they literally revolutionised the legal concepts existing hitherto. Thus:

(a) The aggressive war prepared by the European Axis from 1933 onwards and launched in 1939 was in 1945 classified as a crime against peace, - a legal concept in respect of which, only a year ago, Committee III said it could not be accepted lege lata (Doc. III/9, 15 Sept. 44, I).

(b) Heads of State were taken as penally responsible for the preparation and launching of aggressive war;

(c) No automatic exculpation was recognised in respect of offences committed upon superior orders.

(d) The concept of criminal organisation was introduced as being liable to be applied to official State bodies bearing all the external requisites of legality.

(e) And, finally, - for the purpose of this report, the most important issue is that "murder, extermination, enslavement, deportation, and other inhuman acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds....whether or not in violation of the domestic law of the country where perpetrated" were also recognised as being crimes in International Law. They were classified as "crimes against humanity". Further considerations on this issue will be given later on.

It is quite evident that all these legal issues could never have been arrived at, had we abided by, and were we to abide by the sacrosanct principles of pre-1939 International Law, considering them automatically valid for the state of affairs of our present days.

However, this is the very thing that is being done when the citizenship of a class of victims of war crimes is raised as a legal obstacle for dealing with these crimes. This again a reference to the lex lata of the past, as if International Law had the magic property of being an immutable quality per se, emanating from a transcendental power once and for all.

2. 2. Therefore, to put forward such an argument as this does not yet mean at all that it is really still valid. The answer to this question depends entirely on whether the present existing circumstances permit us